



Village Hall, 262-567-2757
Fax, 262-567-4115
Highway Dept., 262-567-2422
Police Dept., 262-567-1134
Building Inspector, 262-490-4141
www.summitvillage.org

Summit Village Hall • 37100 Delafield Road • Summit, WI 53066

AGENDA

Village of Summit Zoning Board of Appeals

Thursday, October 30, 2025

6:45 p.m.

At the Summit Village Hall, 37100 Delafield Road

1. CALL TO ORDER
2. ROLL CALL AND CONFIRM POSTING
3. Appoint meeting Chair per Village of Summit Zoning Code 1.08 D (3) (f) If the chair is absent from the zoning board of appeals, the village administrator or his/her designee shall call the meeting to order and the zoning board of appeals shall elect a chair for the meeting.
4. Upon motion duly made, seconded and approved by a roll call vote of the members present at the meeting, the Board reserves the right, prior to the hearing or during the hearing, to adjourn into "Closed Session," pursuant to Section 19.85(1)(g), Wisconsin State Statutes, as needed to confer with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved, specifically the hearing on the request for a Variance by Attorney Kathy Sawyer-Gutenkunst, agent, on behalf of property owner, Brian Smith, for property located at 36906 Lower Lake Road, also known as Lot 1 CSM # 12110, part of the NW ¼ of Section 27, T7N, R17E (SUMT0682014005).
5. The Board will return to open session to take action on those matters discussed in closed session and/or commence or continue the hearing on the request for a Variance by Attorney Kathy Sawyer-Gutenkunst, agent, on behalf of property owner, Brian Smith, for property located at 36906 Lower Lake Road, also known as Lot 1 CSM # 12110, part of the NW ¼ of Section 27, T7N, R17E (SUMT0682014005).
6. **PUBLIC HEARING AND ACTION** regarding a petition from Attorney Kathy Sawyer-Gutenkunst, agent, on behalf of property owner, Brian Smith, to obtain a Variance from Section 111-96(a)(9) Shore Setback requirements of the Village of Summit Zoning and Shoreland Protection Code to allow construction of a single-family residence and attached garage within the shore setback. The property is located at 36906 Lower Lake Road, also known as Lot 1 CSM # 12110, part of the NW ¼ of Section 27, T7N, R17E (SUMT0682014005).
 - A. Announcement of Proceedings
 - B. Presentation by Zoning Administrator
 - C. Board Member questions
 - D. Presentation by Applicant
 - E. Board member questions
 - F. Input from the Public

**** Please note that, upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information or to request this service contact the Village Hall at 567-2757.

**** It is possible that members of and possibly a quorum of members of other governmental bodies of the municipality may be in attendance at the above-stated meeting to gather information; no action will be taken by any other governmental body except by the Village of Summit Zoning Board of Appeals noticed above.

- G. Board member questions
- H. Legal Arguments of the Parties
- I. Consideration of Any Other Issues Related to the Appeal
- J. Close Public Hearing
- K. Deliberation
- L. Upon motion duly made, seconded and approved by a roll call vote of the members present at the meeting, the Board reserves the right to adjourn into “Closed Session,” pursuant to Section 19.85(1)(a), Wisconsin State Statutes, to deliberate concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body, specifically the request for a Variance by Attorney Kathy Sawyer-Gutenkunst, agent, on behalf of property owner, Brian Smith, for property located at 36906 Lower Lake Road, also known as Lot 1 CSM # 12110, part of the NW ¼ of Section 27, T7N, R17E (SUMT0682014005).
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- N. Adjourn to a Date and Time Certain for a Decision or Announce Decision
- O. Direct Staff to Prepare Written Decision and take any necessary action

7. **ADJOURN** Zoning Board of Appeals Meeting

Respectfully submitted,

Amy Barrows, Village Planner

Posted: October 28, 2025

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K. Deliberation

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N. Adjourn to a Date and Time Certain for a Decision or Announce Decision

O. Direct Staff to Prepare Written Decision and take any necessary action

6. **ADJOURN** Zoning Board of Appeals Meeting

Respectfully submitted,

Amy Barrows, Village Planner

Posted: October 27, 2025

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PUBLIC HEARING NOTICE
ZONING BOARD OF APPEALS
VILLAGE OF SUMMIT, WISCONSIN
Thursday, October 30, 2025

Please be advised that the Village of Summit Zoning Board of Appeals will be holding a public hearing on Thursday, October 30, 2025, beginning at 6:45 p.m., at the Summit Village Hall located at 37100 Delafield Road, Summit, Wisconsin. The purpose of this hearing is to receive and respond to comments regarding a request from Attorney Kathy Sawyer-Gutenkunst, agent, on behalf of property owner, Brian Smith, to obtain a variance from the Village of Summit Zoning and Shoreland Protection Ordinance to allow the construction of a single-family residence and attached garage within the shore setback. The property is located at 36906 Lower Lake Road, also known as Lot 1 CSM # 12110, part of the NW ¼ of Section 27, T7N, R17E (SUMT0682014005).

Information regarding this application is available for review at the Village of Summit Village Hall, 37100 Delafield Road, during regular business hours. For more information regarding this public hearing, please contact Amy Barrows, Village Planner, at the Summit Village Hall (262) 567-2757.

All interested parties will be heard.

VILLAGE OF SUMMIT
Amy Barrows, Village Planner

Published: October 16, 2025 & October 23, 2025

Zoning Board of Appeals – 10/30/2025

Brian Smith Property

36906 Lower Lake Road – SUMT0682014005

Staff Report

Village of Summit, Wisconsin

Property Location: 36906 Lower Lake Road
Property Owner: Brian Smith (Petitioner)
Agent: Attorney Kathy Sawyer-Gutenkunst, Axley
Current Zoning: R-4 Cottage Residential
Land Use: SF Residential 0.6-acre density
Tax Key Number: SUMT0682014005

Request:

Variance from Section 111-96(a)(9) Shore Setback requirements of the Village of Summit Zoning and Shoreland Protection Code to allow the construction of a new single-family residence and attached garage.

Property Description:

The subject property is approximately 1.43 acres in size. A significant area on the east side of the property is located below the ordinary high water mark of Lower Genesee Lake and within the wetland and floodplain. The property currently consists of a residence and shed, which will both be razed to accommodate the construction of a new single-family residence and attached garage. The property is served by a private waste disposal system and private well.

Background:

In 2023, a variance request was made by a different land owner/petitioner to construct a single-family residence and attached garage that would have required variances from the shore and wetland setbacks. The property has sold and a revised variance application has been submitted by the new petitioner and his agent.

Staff Analysis:

The petitioner is proposing to construct a new residence that is 1,702 sq. ft. on the 1st floor, 1,047 sq. ft. on the 2nd floor, a 499 sq. ft. attached garage and 1,702 sq. ft. crawlspace. The proposed total square footage of all structures, excluding the crawlspace, is 3,248 sq. ft. The proposed residence has 4 bedrooms and 2 ½ bathrooms.

The proposed improvements comply with all requirements of the zoning ordinance, except that the closest point of the proposed residence is located 40 ft. from the shore setback, whereas 57.55 ft. is required when averaging with the adjacent property to the west. The shore setback of the enclosed porch on the adjacent property to the west is 40.1 ft. The building envelope that is available in compliance with all dimensional standards of the zoning ordinance appears to be less than 800 sq. ft.

The zoning permit application that was submitted states that the existing one-story residence is 1,225 sq. ft. and the existing shed is 160 sq. ft. Based on assessor records, the current residence is 576 sq. ft. with two enclosed porches that consist of an additional 480 sq. ft., a total of 1,056 sq. ft. This measurement is consistent with the survey that shows the total sq. ft. of the residence, including enclosed porches, to be 1,088.95 sq. ft., based on exterior wall measurements of the structure. The ordinance requires that the minimum first floor of a residence be 1,000 sq. ft. with a total floor area of 1,400 sq. ft. The existing residence does not comply with these minimum standards. The existing residence is also nonconforming to shore setback. The residence is located 29.8 ft. from the shore, 10.2 ft. closer to the shore than the proposed residence.

In accordance with Section 111-225(1), the existing nonconforming structure may be replaced, vertically expanded, and may be expanded horizontally if the horizontal expansion complies with the shore setback. The structure would need to meet the minimum size requirements of the ordinance. A horizontal expansion of the existing structure would be severally limited due to the available building envelope that complies with all dimensional standards.

The petitioner is required to demonstrate that they meet three tests specified on the Village of Summit's application for a Variance, including a demonstration of unnecessary hardship, that unique physical conditions exist, and that there are no adverse effects to the general public interest/welfare and not be detrimental to nearby properties/improvements or the natural resources in the area. Please read the criteria of the application for a more detailed explanation.

Petitioner's Comments:

The petitioner's comments are included in the packet. The petitioner states that the village planner provided a drawing depicting the shore setback requirements that would apply for the issuance of a building permit for the new residence. The depiction includes a shore setback requirement of 35.7 ft. The petitioner suggests that the property was purchased in reliance on the shoreland setback requirements as noted in the drawing. However, after purchasing the property, the petitioner was notified that the setback was actually 57.55 ft.

Village Planner Response:

The village planner did provide the property owner with an illustration of a potential envelope for an addition to the existing residence. The envelope was never intended for the construction of a new residence. The envelope was created with the understanding that the existing residence could be used in the calculation for setback averaging for the benefit of an addition to the existing residence. The planner corrected the allowable building envelope when the petitioner's builder asked for information regarding the available building envelope in order to design a residence. No applications were submitted for an addition or new residence before the planner corrected the information related to the allowable building envelope.

UW-Extension has suggested that a staff error may be used as justification for granting a variance as it relates to unnecessary hardship. The other criteria still need to be met, including that unique physical conditions exist, and that there are no adverse effects to the general public interest/welfare and not be detrimental to nearby properties/improvements or the natural resources in the area.

Requested Action:

The Zoning Board of Appeals will need to determine if the proposed request for variances from the shore setback can be justified based on the following criteria:

- Village of Summit Staff **made an error or did not make an error** in the review of the applicant’s request for approval to build a new residence and attached garage that **justifies or does not justify** the variance as proposed or as modified by the Board. The Zoning Board of Appeals shall also decide that the applicant has or has not demonstrated that there are unique physical conditions that exist on the property and that there are no adverse effects to the general public interest/welfare and not be detrimental to nearby properties/improvements or the natural resources in the area.

If the Zoning Board of Appeals determines that a variance should be granted based on a “staff error”, the Board should identify the error that was made and provide reasons why the ordinance provisions should be modified for the applicant. It is important to note that the Board’s decision does not set a precedent. Each property or request is reviewed on its own merits.

OR,

- The applicant **has or has not** demonstrated that the request for a variance from the shore setback provisions meet the three tests specified on the application for a Variance.

If the Zoning Board of Appeals determines that a variance should be granted for this reason, the Board shall specifically state how each of the variance tests have been met.

* DENIED

APPLICATION FOR A ZONING PERMIT

Fee Pd. (see Fee Schedule) _____ Receipt No. _____ Permit approved by _____ PSE Approved _____
BOA No. _____ PO No. _____ CU No. _____ ZP Appl. No. _____ ZP No. _____
File copy _____ Owner/Applicant copy _____ Agent copy _____
Require a variance from the Village of Summit Zoning Code _____

Tax Key # SUMT0682014005 Zoning District R-4 / ~~CCB~~ / WL / E-C / FP (FD)
Owner/Applicant Brian + Amy Smith Agent (if different) Demiana Builders Inc
Daytime Phone No. (_____) _____ Daytime Phone No. (_____) _____

Address of Premises (if different) LOT #1 Lower Lake Rd, 36906 Lower Lake Road Oconomowoc, WI
Legal Description (from survey) SW 1/4, NW 1/4 of section 27, T7N, R19E

Detailed and complete description of proposed work to be completed and the intended use (attach additional pages, if necessary): Raze existing structures; New single family residence + attached garage
Type of existing structures on the lot and the use(s) of each: House ← To Be Razed → + Garage
Cost of project (labor/materials at a fair market value) \$ TBD FMV of Non-Conforming structure _____ %

EXISTING STRUCTURE(S)
Sanitary Facilities Public sewer _____ Type of private system Septic is Flow System
Water Supply Private Yes Other _____
Non-conforming Structure Yes _____ No _____
Structure Size Width 24.5 Depth 48.4 Height 20.5
Structure Style 1 Story X 2 Story _____ Split level _____
No. of Bedrooms 2 No. of Bathrooms 1
Floor Area 1st Floor 1,225 sq ft 2nd Floor _____
Garage _____ Basement _____
Other structures Detached Steel 160 sq ft
Total SF (all SF except the basement) _____
Size of Lot Average Width _____ Average Depth _____

PROPOSED STRUCTURE(S)
Sanitary Facilities Public sewer _____ Type of private system _____
Sanitary Permit No. (for new construction) _____
Water Supply Private _____ Other _____
Structure Size Width 58 Depth 56 Height 34' 11' to peak
Structure Style 1 Story _____ 2 Story X Split level _____
No. of Bedrooms 4 No. of Bathrooms 2 1/2
Floor Area 1st Floor 1700 2nd Floor 1047
Garage 499 Basement 1702 Crawl space
Other structures _____
Total SF (all SF except the basement) 3248
Total Area (excluding established road ROW) 17875 +/-

Location of Structure/Addition (measure to the closest point). Measure to the overhang only if it exceeds two (2) feet.
Setback 330 feet from the building foundation to the centerline of the platted road right-of-way.
Setback 320 feet from the building foundation to the established road right-of-way line (base setback line).
Offset 10.2 feet from building foundation to the (N,S,E,W) W property line.
* Offset 40.5 feet from building foundation to the (N,S,E,W) E property line. SHORE
Offset 40.2 feet from building foundation to the (N,S,E,W) S property line.
* Shore setback 40.2 feet from building foundation to the ordinary high water mark.
Floodplain/Wetland/Conservancy setback 424 feet from building foundation to the 100 year floodplain (867.1 elevation) or C-1.

THREE COPIES OF AN ACCURATE SITE PLAN OR PLAT OF SURVEY (preferred), DRAWN TO SCALE, MUST BE SUBMITTED WITH THIS APPLICATION. The map should show (1) location and dimensions of lot, (2) location and dimensions of all existing/proposed buildings on lot and those within 50 feet of lot, (3) location and centerline of all abutting streets, (4) high water line of any water body which lot abuts, (5) location of existing/proposed wells and septic systems on lot and within 50' of lot, (6) floor elevation of proposed new buildings, (7) location of percolation tests and soil borings for new buildings.
SOIL TESTS, TWO SETS OF BUILDING PLANS AND A GRADING PLAN MAY ALSO BE REQUIRED. APPROVAL OF THE SEPTIC SYSTEM BY THE ENVIRONMENTAL HEALTH DIVISION IS REQUIRED PRIOR TO ISSUANCE OF THE ZONING PERMIT. AN INCOMPLETE APPLICATION FORM OR MISSING INFORMATION WILL CAUSE DELAY IN THE ISSUANCE OF THE ZONING PERMIT. AND THE APPLICATION MAY BE RETURNED FOR ADDITIONAL INFORMATION. CONSTRUCTION MUST START WITHIN 6 MONTHS AND BE COMPLETED WITHIN 18 MONTHS OF THE DATE OF ISSUANCE OF THE ZONING PERMIT.

The undersigned states that the foregoing information is true and accurate to the best of his/her knowledge; it is hereby agreed that for and in consideration of the issuance of a zoning permit that the foregoing work will be carried out as defined in this application; that all applicable ordinances or codes of the state, county, and village will be complied with in carrying out the proposed work stated in the application; and that work will not commence before a building permit has been obtained from the village building inspector. If any changes or deviations are made from the original application, a new permit is required. Failure to comply with the permit as issued will result in the revocation of the permit or other penalties.

Signature of Owner/Applicant See attached Date _____
Signature of Agent _____ Date _____

Application (approved) (denied) by Zoning Administrator Amy Barron Date 7/7/05

REASONS FOR DENIAL: Per Section III-96(a)(9), The proposed residence and attached garage do NOT comply with the shore setback. The floor elevations and grading plan are not consistent with each other. The grading plan does not extend 20 ft on to the adjacent property to the west per Section III-73.

Note: No decks or patios proposed in plans. Application requires approval from Waukesha County Environment Health for proper sewerage disposal.

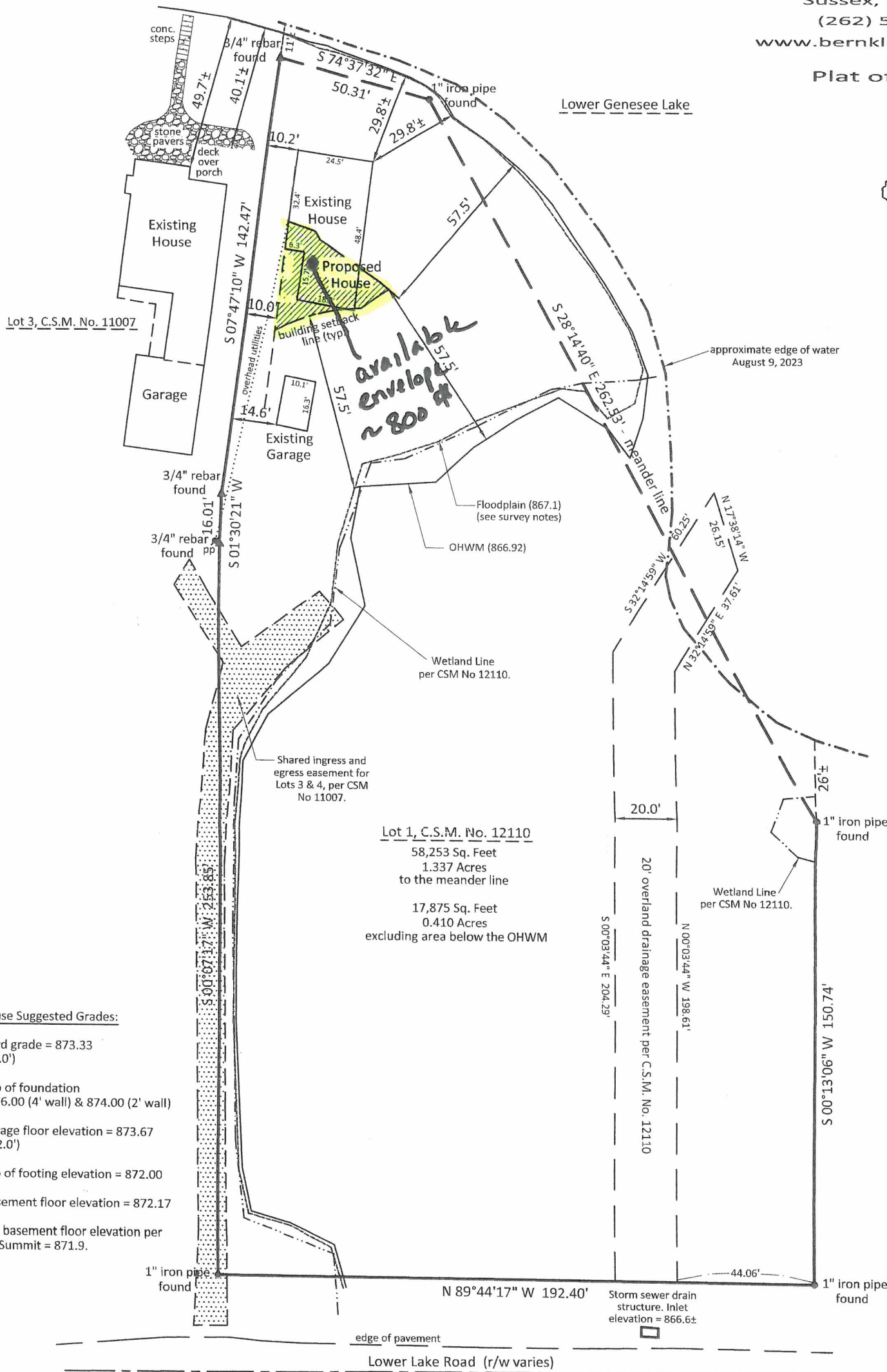
Yellow Envelope Allowed By-Right

Bernklau Surveying, Inc.

N60 W25864 Walnut Road
Sussex, WI 53089
(262) 538-0708
www.bernklausurveying.com

Plat of Survey

OHWM = 866.92 per Waukesha County GIS Mapping Site



available envelope ~ 800 sq ft

Proposed House Suggested Grades:

- Suggested yard grade = 873.33 (drop siding 2.0')
- Suggested top of foundation elevation = 876.00 (4' wall) & 874.00 (2' wall)
- Suggested garage floor elevation = 873.67 (drop garage 2.0')
- Suggested top of footing elevation = 872.00
- Suggested basement floor elevation = 872.17
- The minimum basement floor elevation per the Village of Summit = 871.9.

Impervious Surface Area Calculations:

- Lot Area to the OHWM = 17,875±
- Existing House & Garage = 1,256 sq. ft. (to be removed)
There is not an existing gravel or hard surface driveway on the subject property.
- Proposed House, Driveway, Porch & Walk = 4,368 sq. ft. (24.4%)
- Maximum impervious surface permitted per the Village of Summit = 30%.

Survey Notes:

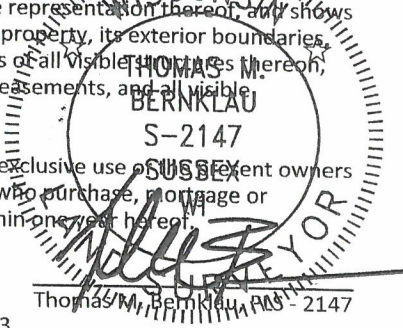
- Offsets shown to the existing house siding.
- Easements shown hereon are derived from the recorded Subdivision Plat or Certified Survey Map. This survey does not guarantee location or existence of any other easements that may be part of this property. A Title Policy was not provided to Bernklau Surveying, Inc.
- The Base Flood Elevation of Lower Genesee Lake = 867.1 per FEMA LOMR 19-05-5478P, Effective Date 6/12/2020.
- The building setback line shown hereon was calculated based on setback averaging to the OHWM with the existing house to west and the required 75' setback divided by 2, resulting in a setback of 57.5 feet from the OHWM, as directed by the Village of Summit.
- The variance request setback line shown hereon is pending.
- C.S.M. No. 12110 note: Any land below the ordinary high water mark of a lake or a navigable stream is subject to the public trust in navigable waters that is established under Article IX, Section 1 of the State Constitution.
- The hatched area shown hereon = 666 square feet, which is the buildable area per code.

Lot 1, Certified Survey Map No. 12110, a division of Lot 4 of Certified Survey Map No. 11007 and lands being a part of the Southwest 1/4 of the Northwest 1/4 of Section 27, Township 7 North, Range 17 East, in the Village of Summit, Waukesha County, Wisconsin.

I, Thomas M. Bernklau, Professional Land Surveyor, certify that I have surveyed the above described property to the official records, to the best of my knowledge and belief, and that the map shown hereon is a true representation thereof, and shows the size and location of the property, its exterior boundaries, the location and dimensions of all visible encroachments thereon, boundary fences, apparent easements, and all visible encroachments, if any.

This survey is made for the exclusive use of the present owners of the property; also those who purchase, mortgage or guarantee title thereto, within one year hereof.

Date August 9, 2023
Revised September 13, 2023
Revised March 5, 2024
Revised August 8, 2024
Revised August 28, 2024



Prepared for:
Demlang Builders, Inc.
N67 W27770 Moraine Drive
Sussex, WI 53089

Owner: Smith

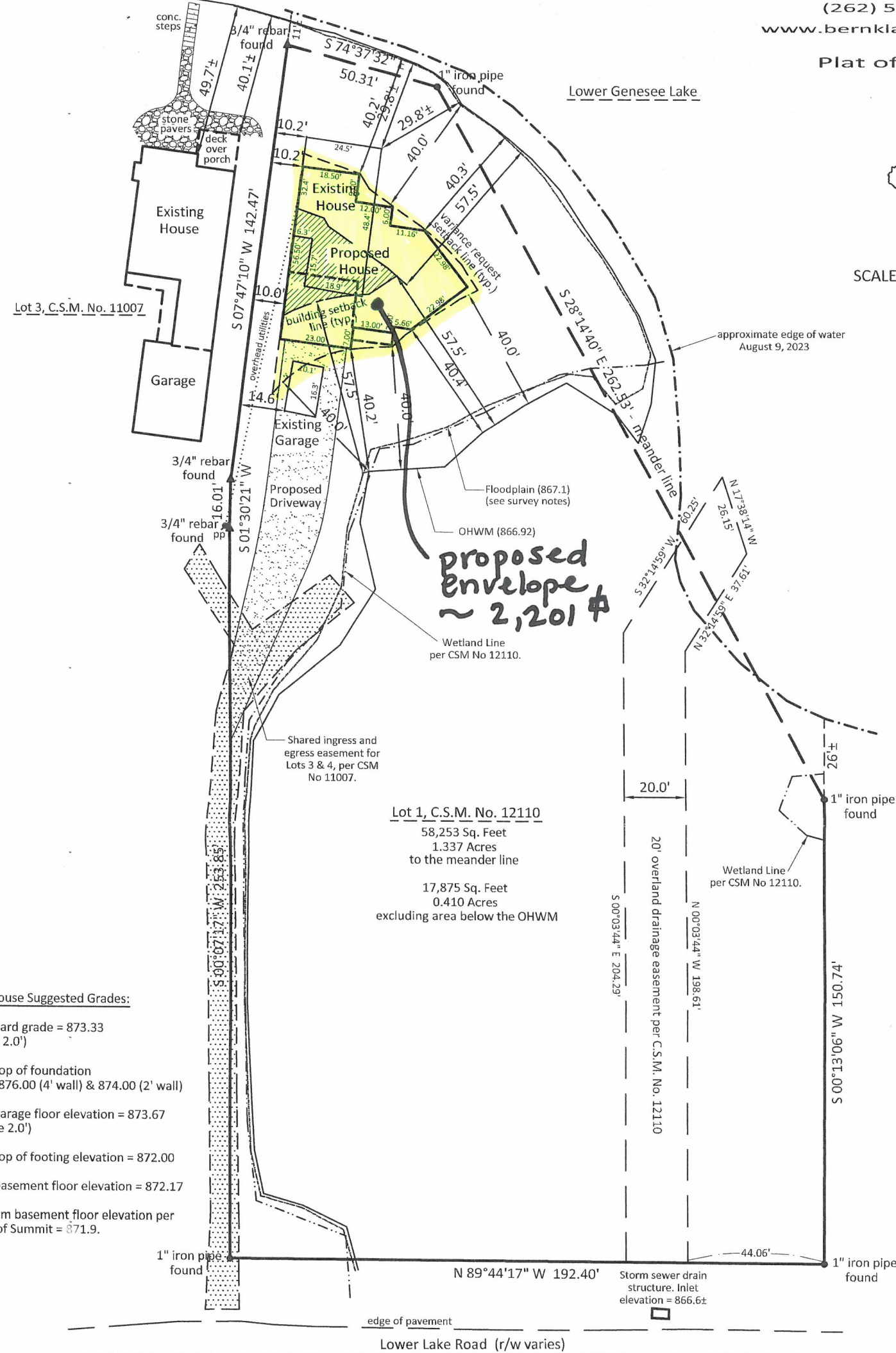
Yellow Envelope Proposed with Variance

Bernklau Surveying, Inc.

N60 W25864 Walnut Road
Sussex, WI 53089
(262) 538-0708
www.bernklausurveying.com

Plat of Survey

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SCALE 1" = 40'

proposed envelope ~ 2,201 #

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Owner: Smith

Survey Notes:

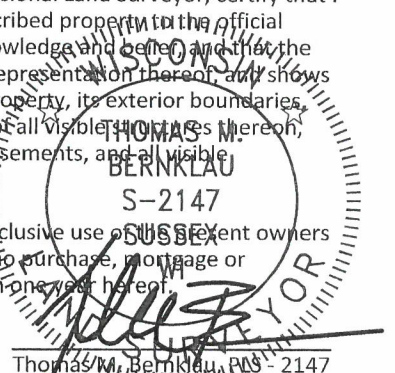
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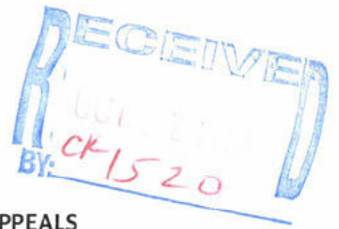
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This survey is made for the exclusive use of the present owners of the property; also those who purchase, mortgage or guarantee title thereto, within one year hereof.

- Date August 9, 2023
- Revised September 13, 2023
- Revised March 5, 2024
- Revised August 8, 2024
- Revised August 28, 2024



Village of Summit
Shoreland Zoning Division
37100 Delafield Road Summit WI 53066 262 567 2757



VARIANCES AND APPEALS TO THE VILLAGE OF SUMMIT BOARD OF ZONING APPEALS

Fee Paid: \$ 600 Receipt No.: _____ BOA File No.: _____

Office Use Only:

Zoning and Shoreland Protection Ordinance Section 11-96(a)(9) Zoning District (s) R-4
Application is hereby made for a Variance and/or Appeal from the following section(s):
Road Setback _____ Offset _____ Shore Setback X Wetland Setback _____ Conservancy Setback _____
Impervious Surface _____ Min. Floor Area _____ Bldg. Height _____ Other _____

Address of Subject Property 36906 Lower Lake Rd, Oconomowoc, WI 53068 Tax Key No. SUMT0682014005

Brian L. Smith _____
Owner/Applicant Mailing Address City State Zip Daytime Phone No.

Kathy Sawyer-Gutenkunst _____
Agent (if different from above) Mailing Address City State Zip Daytime Phone No.

Email address and/or fax number so we can forward a copy of the final staff report to you prior to meeting

Please list the type of project(s) and approximate date(s) of any previous variances or zoning permits on this property if known:

Variance to allow construction of a single family home
Variance request by previous owner denied 5/17/23

Describe in detail the proposed construction and use:
See attached

Section 59.694(7)(c) of the 2003-2004 Wisconsin State Statutes and Wisconsin case law (*Ziervogel-McGinnity v. Washington County, Snyder v. Waukesha County*) requires the petitioner to demonstrate that their request for a variance meets the following three tests:

1. Compliance with the ordinance would cause the owner to experience an unnecessary hardship. The test as to whether or not an unnecessary hardship exists is whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk, density, etc. would unreasonably prevent the owner from using the property for a permitted purpose, or whether it would render conformity with such restrictions unnecessarily burdensome. Hardships should not be financial or economic in nature. Variances are intended to provide only the minimum amount of relief necessary to allow a reasonable use of the property.
2. There are unique physical conditions existing on the property, which are not self-created, and which prevent compliance with the ordinance thereby causing a hardship and/or no reasonable use. The physical limitations of the property, and not the personal circumstances or desires of the property owner, are the basis for this test. A variance is not a convenience to the property owner.
3. The granting of the variance will not adversely affect the general public interest/welfare or be detrimental to nearby properties/improvements or the natural resources in the area. Lack of local opposition does not mean a variance will not harm the public interest.

Please explain how your variance request meets the above three tests for a variance, what special circumstances are unique to your property and which justify, in your opinion, favorable action by the Board of Adjustment (attach additional sheets if necessary):

See attached

APPLICATION FOR A ZONING PERMIT

Fee Pd. (see Fee Schedule) _____ Receipt No. _____ Permit approved by _____ PSE Approved _____
 BOA No. _____ PO No. _____ CU No. _____ ZP Appl. No. _____ ZP No. _____
 File copy _____ Owner/Applicant copy _____ Agent copy _____
 Require a variance from the Village of Summit Zoning Code _____

Tax Key # SUMT0682014005 Zoning District R-4/WL/E-C/FP
 Owner/Applicant Brian and Amy Smith Agent (if different) Demlang Builders, Inc.
 [Redacted] [Redacted]
 Daytime Phone No. [Redacted] Daytime Phone No. [Redacted]

Address of Premises (if different) Lot #1 Lower Lake Rd.; 36906 Lower Lake Road, Oconomowoc, WI
 Legal Description (from survey) SW 1/4, NW 1/4 of Section 27, T7N, R19E

Detailed and complete description of proposed work to be completed and the intended use (attach additional pages, if necessary): Raze existing structures; and construct new single family residence and attached garage
 Type of existing structures on the lot and the use(s) of each: House and garage - to be razed
 Cost of project (labor/materials at a fair market value) \$ TBD FMV of Non-Conforming structure _____ %

EXISTING STRUCTURE(S)	Septic is flow system	PROPOSED STRUCTURE(S)
Sanitary Facilities Public sewer _____ Type of private system _____		Sanitary Facilities Public sewer _____ Type of private system _____
Water Supply Private Yes _____ Other _____		Sanitary Permit No. (for new construction) _____
Non-conforming Structure Yes _____ No _____		Water Supply Private _____ Other _____
Structure Size Width <u>24.5</u> Depth <u>48.4</u> Height <u>20.5</u>		Structure Size Width <u>57' 11"</u> Depth <u>56' 6"</u> Height <u>34' 10"</u>
Structure Style 1 Story <u>x</u> 2 Story _____ Split level _____		Structure Style 1 Story _____ 2 Story <u>x</u> Split Level _____
No. of Bedrooms <u>2</u> No. of Bathrooms <u>1</u>		No. of Bedrooms <u>4</u> No. of Bathrooms <u>2 1/2</u>
Floor Area 1st Floor <u>1,225</u> sq ft 2nd Floor _____		Floor Area 1st Floor <u>1,702</u> sq ft 2nd Floor <u>1,047</u> sq ft
Garage _____ Basement _____		Garage <u>499</u> sq ft Basement <u>1,702</u> sq ft crawl space
Other structures <u>Detached Shed 160</u> sq ft		Other structures _____
Total SF (all SF except the basement) _____		Total SF (all SF except the basement) <u>3,248</u> sq ft
Size of Lot Average Width _____ Average Depth _____		Total Area (excluding established road ROW) <u>17,875</u>

Location of Structure/Addition (measure to the closest point). Measure to the overhang only if it exceeds two (2) feet.
 Setback 330 feet from the building foundation to the centerline of the platted road right-of-way.
 Setback 320 feet from the building foundation to the established road right-of-way line (base setback line).
 Offset 10.2 feet from building foundation to the (N,S,E, W) W property line.
 Offset 40.3 feet from building foundation to the (N,S,E,W) E property line. Shore
 Offset 40.2 feet from building foundation to the (N,S,E,W) S property line.
 Shore setback 40 feet from building foundation to the ordinary high water mark.

Floodplain/Wetland/Conservancy setback _____ feet from building foundation to the 100 year floodplain (867.1 'elevation) or C-1.

THREE COPIES OF AN ACCURATE SITE PLAN OR PLAT OF SURVEY (preferred), DRAWN TO SCALE, MUST BE SUBMITTED WITH THIS APPLICATION. The map should show (1) location and dimensions of lot, (2) location and dimensions of all existing/proposed buildings on lot and those within 50 feet of lot, (3) location and centerline of all abutting streets, (4) high water line of any water body which lot abuts, (5) location of existing/proposed wells and septic systems on lot and within 50' of lot, (6) floor elevation of proposed new buildings, (7) location of percolation tests and soil borings for new buildings.

SOIL TESTS, TWO SETS OF BUILDING PLANS AND A GRADING PLAN MAY ALSO BE REQUIRED. APPROVAL OF THE SEPTIC SYSTEM BY THE ENVIRONMENTAL HEALTH DIVISION IS REQUIRED PRIOR TO ISSUANCE OF THE ZONING PERMIT. AN INCOMPLETE APPLICATION FORM OR MISSING INFORMATION WILL CAUSE DELAY IN THE ISSUANCE OF THE ZONING PERMIT, AND THE APPLICATION MAY BE RETURNED FOR ADDITIONAL INFORMATION. CONSTRUCTION MUST START WITHIN 6 MONTHS AND BE COMPLETED WITHIN 18 MONTHS OF THE DATE OF ISSUANCE OF THE ZONING PERMIT.

The undersigned states that the foregoing information is true and accurate to the best of his/her knowledge; it is hereby agreed that for and in consideration of the issuance of a zoning permit that the foregoing work will be carried out as defined in this application; that all applicable ordinances or codes of the state, county, and village will be complied with in carrying out the proposed work stated in the application; and that work will not commence before a building permit has been obtained from the village building inspector. If any changes or deviations are made from the original application, a new permit is required. Failure to comply with the permit as issued will result in the revocation of the permit or other penalties.

Signature of Owner/Applicant Brian Peter Smith Date 10/1/2025

Signature of Agent Kathryn Sawyer Smith Date 10/1/25

Application (approved) (denied) by Zoning Administrator _____ Date _____

Conditions for approval or reasons for denial _____

BRIAN SMITH
VARIANCE REQUEST
BACKGROUND INFORMATION

Applicant requests the granting of a variance from the requirements of §111-96(a)(9) of the Village of Summit Shoreland Zoning Code (“Code”). §111-96(a)(9) of the Code requires that all buildings or structures be set back 75 ft. from the ordinary highwater mark of any navigable body of water. Applicant’s property is located on Lower Genesee Lake, and Applicant seeks a variance which would allow construction of a single-family residence with a 40 ft. shoreland setback from Lower Genesee Lake.

The lot is 62,100 sq. ft., and currently is improved with a small cabin and shed containing 1,263.8 sq. ft. (**Exhibit A**). The existing structures are located 29.1 ft. from the ordinary high-water mark of Lower Genesee Lake.

Waukesha County GIS map (**Exhibit B**) and a survey prepared by Bernklau Surveying, revised as of August 28, 2024 (**Exhibit A**) depict:

1. The current shoreland setback from Lower Genesee Lake of existing structures on the Applicant Property is **29.8 ft.**
2. The shoreland setback from Lower Genesee Lake and of the structures located on the adjacent property east of Applicant Property (“Adjacent Property”) is **40.1 ft.** The Adjacent Property has a mailing address of 36912 Lower Lake Road.

In 2023 an application for variance (“2023 Application”) to allow construction of a residence on Applicant Property was considered by the BOZA but denied, on May 17, 2023. The application sought a variance from both the Lower Genesee Lake shoreland setback requirement of 75 ft. and the wetland setback requirement of 25 ft. The Variance, if granted, would have allowed construction based on the current setback of 29.8 ft. This Application seeks a variance that would allow a construction setback of 40 ft. from Lower Genesee Lake.

A comparison of the variance requested by the 2023 application and the current application reflects that both the area of the proposed structures and the shoreland setback distances are substantially different:

	Building Footprint	Shoreland Setback
2023 Application	3817 sq. ft. living area 29.1 ft. 1550 sq. ft. garage for a Total of 5,767 sq. ft.	29.8 ft.
2025 Application	two story structure 1,702/1,047 sq. ft. 499 sq. ft. garage for a Total 3,248 sq. ft.	40 ft.

UNNECESSARY HARDHIP

Prior to the purchase of the Applicant's Property, the Applicant's representatives met with the village planner for the purpose of determining and confirming the shoreland setback requirements that would apply upon raising the existing structure and constructing a new single-family residence. The village planner prepared and provided a drawing depicting the shoreland setback requirements that would apply when applying for the issuance of a building permit for the new residence. That drawing consists of 2 pages, and the second page includes handwritten notes of the village planner reflecting the shoreland setback requirement with respect to the Applicant's property was 35.7 ft. (**Exhibit C**).

After Applicant purchased the property in reliance on the shoreland setback requirements as noted above, Applicant began the construction process. It was only following the purchase and start of the construction process that Applicant was advised that shoreland setback information provided by the village official prior to purchase of the lot was not accurate. Applicant was advised that village officials had determined that the minimum shoreland setback was, 57.55 ft., and **not** 37.5 ft. as the Applicant was earlier advised and memorialized on **Exhibit C**.

§ 111-96(a)(9)g.3 of the zoning code provides that where a development pattern already exists, the zoning administrator may reduce the shoreland setback for a proposed principal structure to the average shoreland setback of the principal structures and appurtenances on each adjacent lot within 250 ft. of the proposed principal structure and appurtenances subject to the following:

1. Zoning administrator may not reduce the shoreland setback for a proposed structure to less than 35 ft. from the ordinary high-water mark.
2. There are two structures that are non-conforming with respect to the shoreland setback and located on adjacent parcels on each side of the proposed structure, *the average of the shoreland setback of the two existing structures shall apply.* (Emphasis added)
3. If there is an existing structure on an adjacent lot in *only one (1) direction*, the setback shall equal an average of the shoreland setback of the existing structure and the required 75 ft. setback. (Emphasis added)

The Smith property only has a home immediately adjacent on one side. The other side of the property is bordered by wetland and a easement granted to the Village for drainage purposes.

Accordingly, the zoning administrator after the meeting with Applicants Representatives moved forward with an averaging using the existing structure on the lot adjacent in the one direction and the 75 ft. setback, which is how the administrator arrived at 57.5 ft.

As noted above, the Bernklau Survey establishes that the shoreland setback of the Adjacent home is 40.1 ft. The setback for the adjacent home was arrived upon utilizing the Applicant's existing structure and the home on the other side as allowed in #2 above.

The requested variance:

1. Eliminates the existing nonconforming shoreland setback from a 29.1 ft. shoreland setback, and creates a new shoreland setback of 40 ft., a shoreland setback which is greater than the 37.5 ft. shoreland setback noted by the village planner (**Exhibit C**).
2. Is consistent with the shoreland setback of the adjacent properties.
3. Substantially less impactful than the 2023 variance application for the same lot.
4. Allows for the construction of a useable single family home as compared to the building envelope permitted under the code (**Exhibit D**).

The application form provided by the Village cites *Snyder v. Waukesha Board County Zoning*, 74 Wis.2d 468, 247 N.W.2d 98 (1976), a Wisconsin Supreme Court decision wherein the court held that the Applicant for a variance must present evidence of the existence of an unnecessary hardship to obtain a variance. *Snyder* and subsequent cases have held that an unnecessary hardship must be unique and not self-created. See, *Accent Developers, LLC v. City of Menomonie Board of Zoning Appeals*, 2007 WI App 48, ¶6. 300 Wis. 2d 563, 730 N.W. 2d 194. The *Accent* court upheld the granting of a variance where the Applicant relied upon an error in information provided by the building inspector. The court concluded that the board of zoning appeals conclusion that the error created an unnecessary hardship unique to the property owner, justified the granting of the variance.

The information provided to the Applicant, both as to the shoreland setback and the building envelope, is unique to this property and presents an unnecessary hardship not created or caused by the Applicant. Simply put, “but for” the incorrect information relating to the required shoreland setback being provided while conducting due diligence, the Applicant would not have purchased the property and would not have expended the time, money and resources required to obtain the building permit allowing construction of the Applicant’s proposed new home.

IMPACT ON ADJOINING PROPERTIES

Granting of this variance will not have an adverse impact on adjoining properties. Indeed, as noted above, the requested variance approving a 40 ft. shoreland setback is the same shoreland setback for which a building permit was issued allowing construction of the residence and deck on the adjacent property.

Applicants’ property contains wetland on which no building can occur in the future. The property adjacent to the wetlands is improved with structures located south of Genesee Road. Thus, the granting of this variance cannot, in the future, constitute a basis for any other property seeking a variance using the “averaging method” allowed by §111-96(a)(9)g.2 of the zoning code. It is that provision of the code which permitted issuance of a building permit for the Adjacent Property without the requirement of obtaining a variance. (**Exhibit E**)

An Applicants burden of proof justifying the granting of a variance is lower when seeking an area variance, as is sought here, than when a use variance is sought. This allows the variance procedure to properly function as an escape valve. The broad purpose of variances is the rendering

of justice and unique and individual cases of practical difficulties or unnecessary hardship. See, *State ex. Rel. Ziervogel v. Washington County Board of Adjustments*, 2004 WI 23, P23, 26, 269 Wis.2d 549, 676 N.W.2d 401. Variances are intended to be a protective device necessary for the protection of constitutional rights. *Ziervogel*, id., 17.

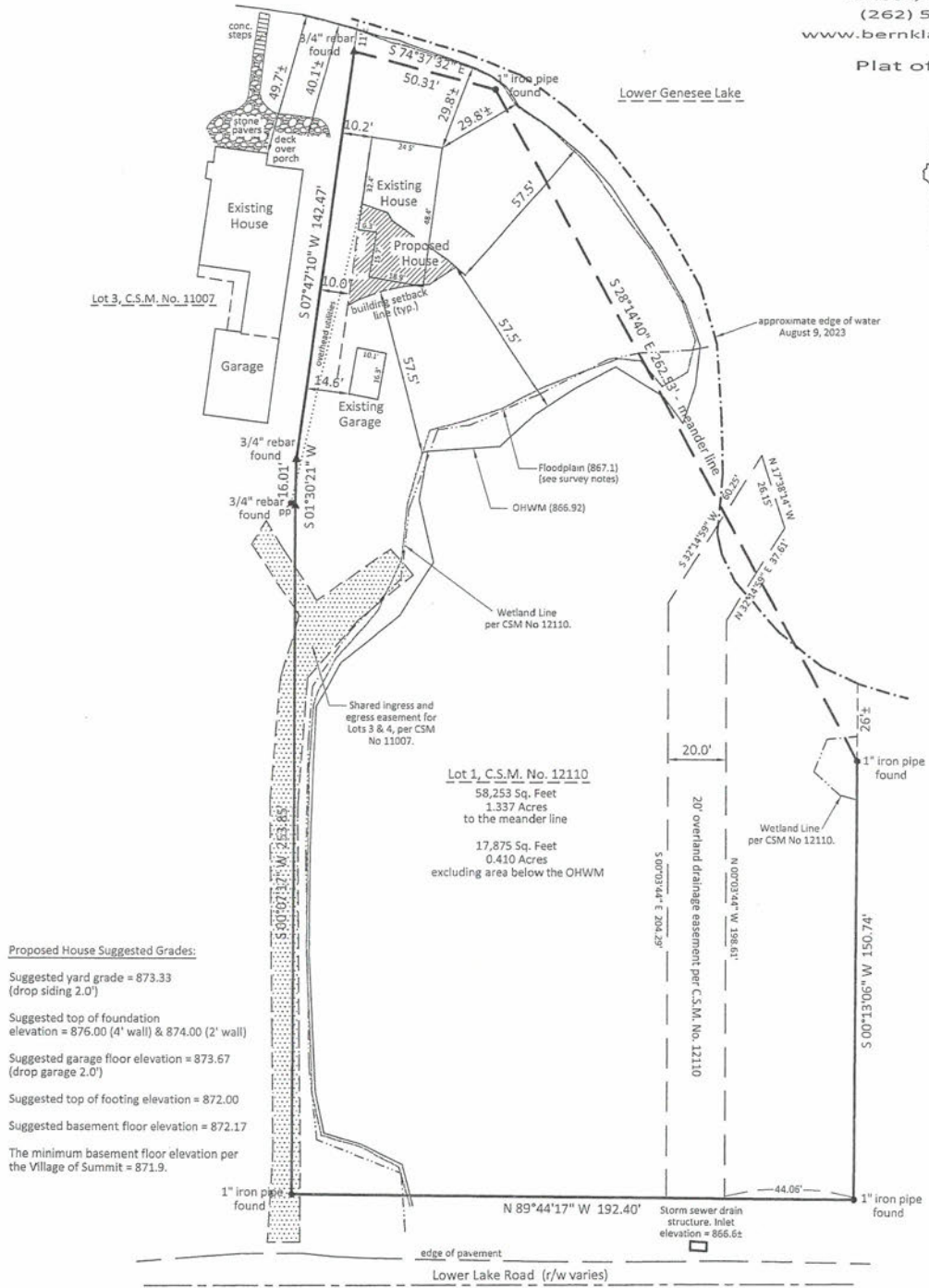
A fundamental constitutional right afforded to all citizens is that of equal protection of the laws. In this case, the denial of the requested variance when other similarly situated properties are permitted to obtain permits and construct structures at the same shoreland setback without the requirement of obtaining a variance, would result in the denial of the equal protection of law guarantees afforded to the Applicant.

The Application is consistent with the spirit and intent of the zoning code. The circumstances which give rise to the application are circumstances that were not self-created. Residents should be confident that information provided by village officials can be relied upon, and when errors are made and reasonable solutions can ameliorate and damage that might otherwise be caused, then reasonable solutions as requested by this Variance should be implemented.

Further, allowing the home to be constructed consistent with the immediately adjacent homes, the Smith Family is being treated consistently with the families who have built the existing homes that compromise the existing pattern of development (Exhibit B). It will also allow for the removal of a shed built in the 1900s and a home built in the 1940s, resulting in a year-round energy efficient home.

Plat of Survey

OHWM = 866.92 per Waukesha
County GIS Mapping Site



Proposed House Suggested Grades:
Suggested yard grade = 873.33 (drop siding 2.0')
Suggested top of foundation elevation = 876.00 (4' wall) & 874.00 (2' wall)
Suggested garage floor elevation = 873.67 (drop garage 2.0')
Suggested top of footing elevation = 872.00
Suggested basement floor elevation = 872.17
The minimum basement floor elevation per the Village of Summit = 871.9.

Impervious Surface Area Calculations:
Lot Area to the OHWM = 17,875 sq. ft.
Existing House & Garage = 1,256 sq. ft. (to be removed)
There is not an existing gravel or hard surface driveway on the subject property.
Proposed House, Driveway, Porch & Walk = 4,368 sq. ft. (24.4%)
Maximum impervious surface permitted per the Village of Summit = 30%.

Prepared for:
Demlang Builders, Inc.
N67 W27770 Moraine Drive
Sussex, WI 53089

Owner: Smith

Survey Notes:
Offsets shown to the existing house siding.
Easements shown hereon are derived from the recorded Subdivision Plat or Certified Survey Map. This survey does not guarantee location or existence of any other easements that may be part of this property. A Title Policy was not provided to Bernklau Surveying, Inc.
The Base Flood Elevation of Lower Genesee Lake = 867.1 per FEMA LOMR 19-05-5478P, Effective Date 6/12/2020.
The building setback line shown hereon was calculated based on setback averaging to the OHWM with the existing house to west and the required 75' setback divided by 2, resulting in a setback of 57.5 feet from the OHWM, as directed by the Village of Summit.
The variance request setback line shown hereon is pending.
C.S.M. No. 12110 note: Any land below the ordinary high water mark of a lake or a navigable stream is subject to the public trust in navigable waters that is established under Article IX, Section 1 of the State Constitution.
The hatched area shown hereon = 666 square feet, which is the buildable area per code.

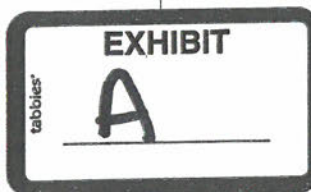
Lot 1, Certified Survey Map No. 12110, a division of Lot 4 of Certified Survey Map No. 11007 and lands being a part of the Southwest 1/4 of the Northwest 1/4 of Section 27, Township 7 North, Range 17 East, in the Village of Summit, Waukesha County, Wisconsin.

I, Thomas M. Bernklau, Professional Land Surveyor, certify that I have surveyed the above described property to the official records, to the best of my knowledge and belief, and that the map shown hereon is a true representation thereof, and shows the size and location of the property, its exterior boundaries, the location and dimensions of all visible structures thereon, boundary fences, apparent easements, and all visible encroachments, if any.

This survey is made for the exclusive use of the present owners of the property; also those who purchase, mortgage or guarantee title thereto, within one year hereof.

Date August 9, 2023
Revised September 13, 2023
Revised March 5, 2024
Revised August 8, 2024
Revised August 28, 2024

Thomas M. Bernklau, PLS - 2147
Professional Land Surveyor





Legend

- Plats
- Retired Plats
- Municipal Boundary_2K
- FacilitySites_2K_Labels
- Parcel_Dimension_2K
- Note_Text_2K
- Lots_2K
- Lot
- Unit
- General Common Element
- Outlot
- SimultaneousConveyance
- Assessor Plat
- CSM
- Condominium
- Subdivision
- Cartoline_2K
- EA-Easement_Line
- PL-DA
- PL-Extended_Tie_line
- PL-Moundar_Line
- PL-Note
- PL-Tie
- PL-Tie_Line
- <all other values>
- Road Centerlines_2K
- Railroad_2K
- TaxParcel_2K
- Waterbodies_2K_Labels
- Waterlines_2K_Labels
- Municipal Boundary_5K
- FacilitySites_5K_Labels
- Waterbo
- Waterlin
- Railroad
- Simultar
- Asse

EXHIBIT
B

0 103.54 Feet

The information and depictions herein are for informational purposes and Waukesha County specifically disclaims accuracy in this reproduction and specifically admonishes and advises that if specific and precise accuracy is required, the same should be determined by procurement of certified maps, surveys, plats, Flood Insurance Studies, or other official means. Waukesha County will not be responsible for any damages which result from third party use of the information and depictions herein, or for use which ignores this warning.

Notes: 2024

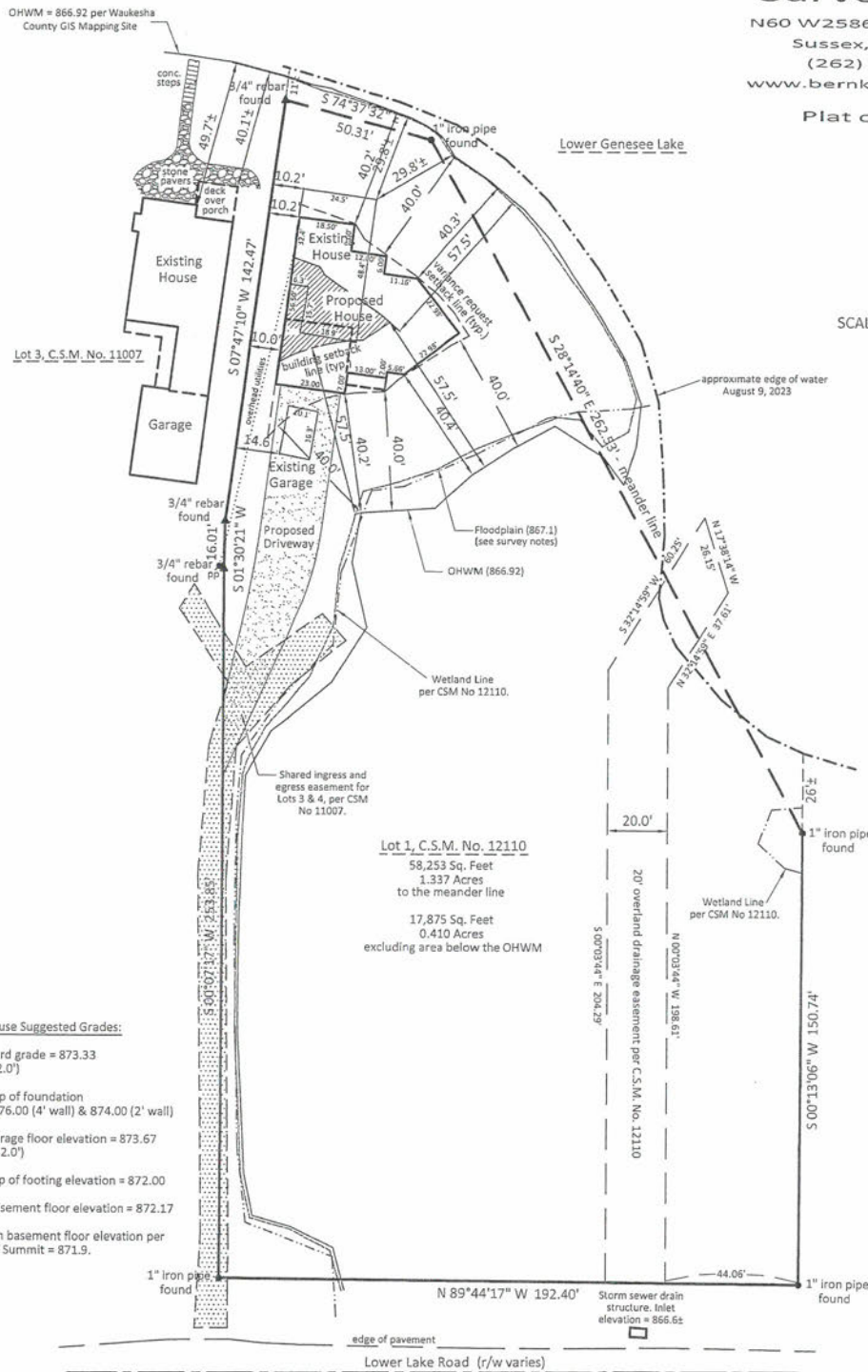
Printed: 3/4/2025



Plat of Survey



SCALE 1" = 40'



Proposed House Suggested Grades:

- Suggested yard grade = 873.33 (drop siding 2.0')
- Suggested top of foundation elevation = 876.00 (4' wall) & 874.00 (2' wall)
- Suggested garage floor elevation = 873.67 (drop garage 2.0')
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- Suggested basement floor elevation = 872.17
- The minimum basement floor elevation per the Village of Summit = 871.9.

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Lot Area to the OHWM = 17,875±

Existing House & Garage = 1,256 sq. ft. (to be removed)
There is not an existing gravel or hard surface driveway on the subject property.

Proposed House, Driveway, Porch & Walk = 4,368 sq. ft. (24.4%)

Maximum impervious surface permitted per the Village of Summit = 30%.

Prepared for:
Demlang Builders, Inc.
N67 W27770 Moraine Drive
Sussex, WI 53089

Owner: Smith

Survey Notes:

- Offsets shown to the existing house siding.
- Easements shown hereon are derived from the recorded Subdivision Plat or Certified Waters Map. This survey does not guarantee location or existence of any other easements that may be part of this property. A Title Policy was not provided to Bernklau Surveying, Inc.
- The Base Flood Elevation of Lower Genesee Lake = 867.1 per FEMA LOMR 19-05-5478P, Effective Date 6/12/2020.
- The building setback line shown hereon was calculated based on setback averaging to the OHWM with the existing house to west and the required 75' setback divided by 2, resulting in a setback of 57.5 feet from the OHWM, as directed by the Village of Summit.
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- C.S.M. No. 12110 note: Any land below the ordinary high water mark of a lake or a navigable stream is subject to the public trust in navigable waters that is established under Article IX, Section 1 of the State Constitution.
- The hatched area shown hereon = 666 square feet, which is the buildable area per code.

Lot 1, Certified Survey Map No. 12110, a division of Lot 4 of Certified Survey Map No. 11007 and lands being a part of the Southwest ¼ of the Northwest ¼ of Section 27, Township 7 North, Range 17 East, in the Village of Summit, Waukesha County, Wisconsin.

I, Thomas M. Bernklau, Professional Land Surveyor, certify that I have surveyed the above described property to the official records, to the best of my knowledge and belief and that the map shown hereon is a true representation thereof, and shows the size and location of the property, its exterior boundaries, the location and dimensions of all visible structures hereon, boundary fences, apparent easements, and all visible encroachments, if any.

This survey is made for the exclusive use of the present owners of the property; also those who purchase, mortgage or guarantee title thereto, within one year hereof.

Date August 9, 2023
Revised September 13, 2023
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EXHIBIT
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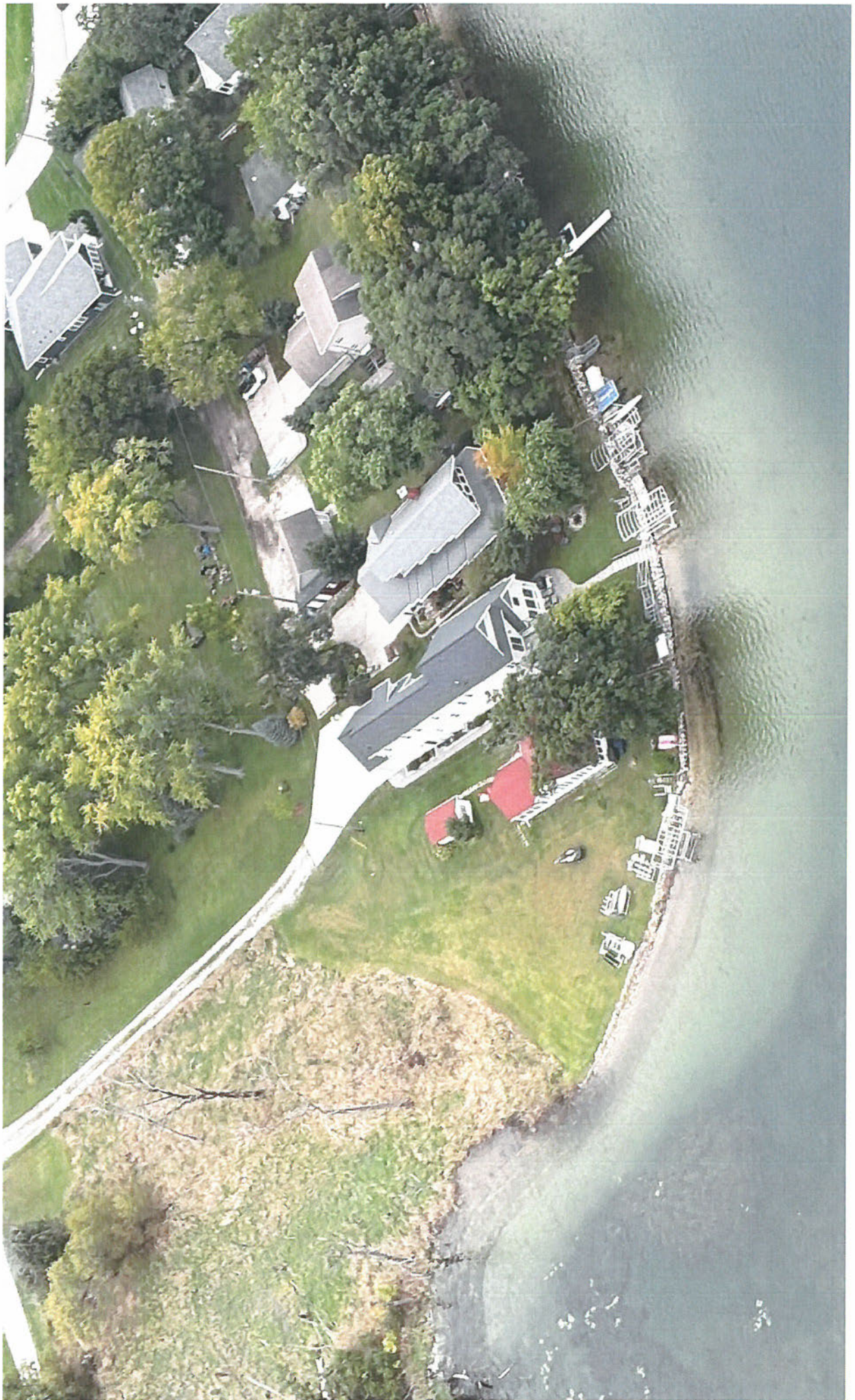


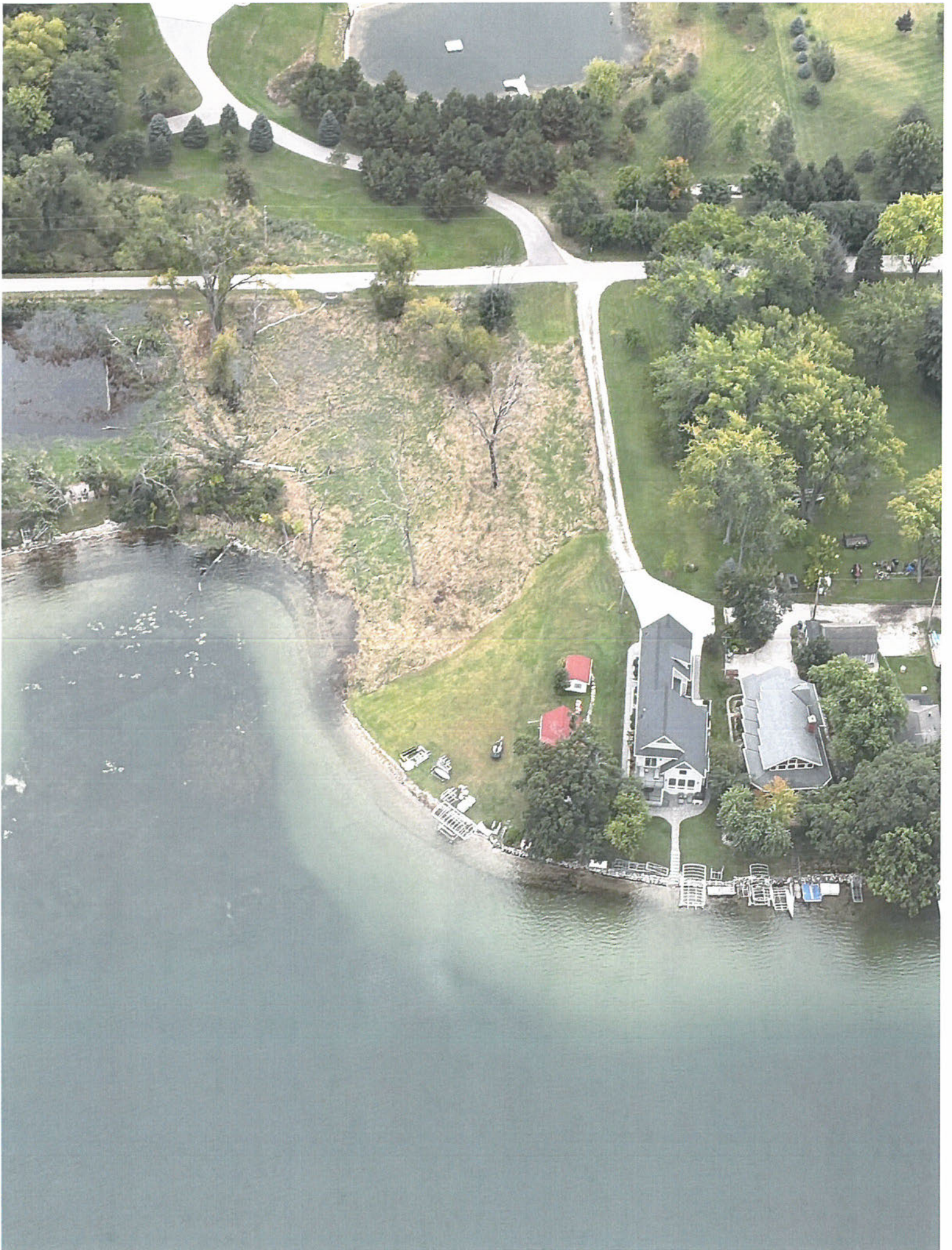


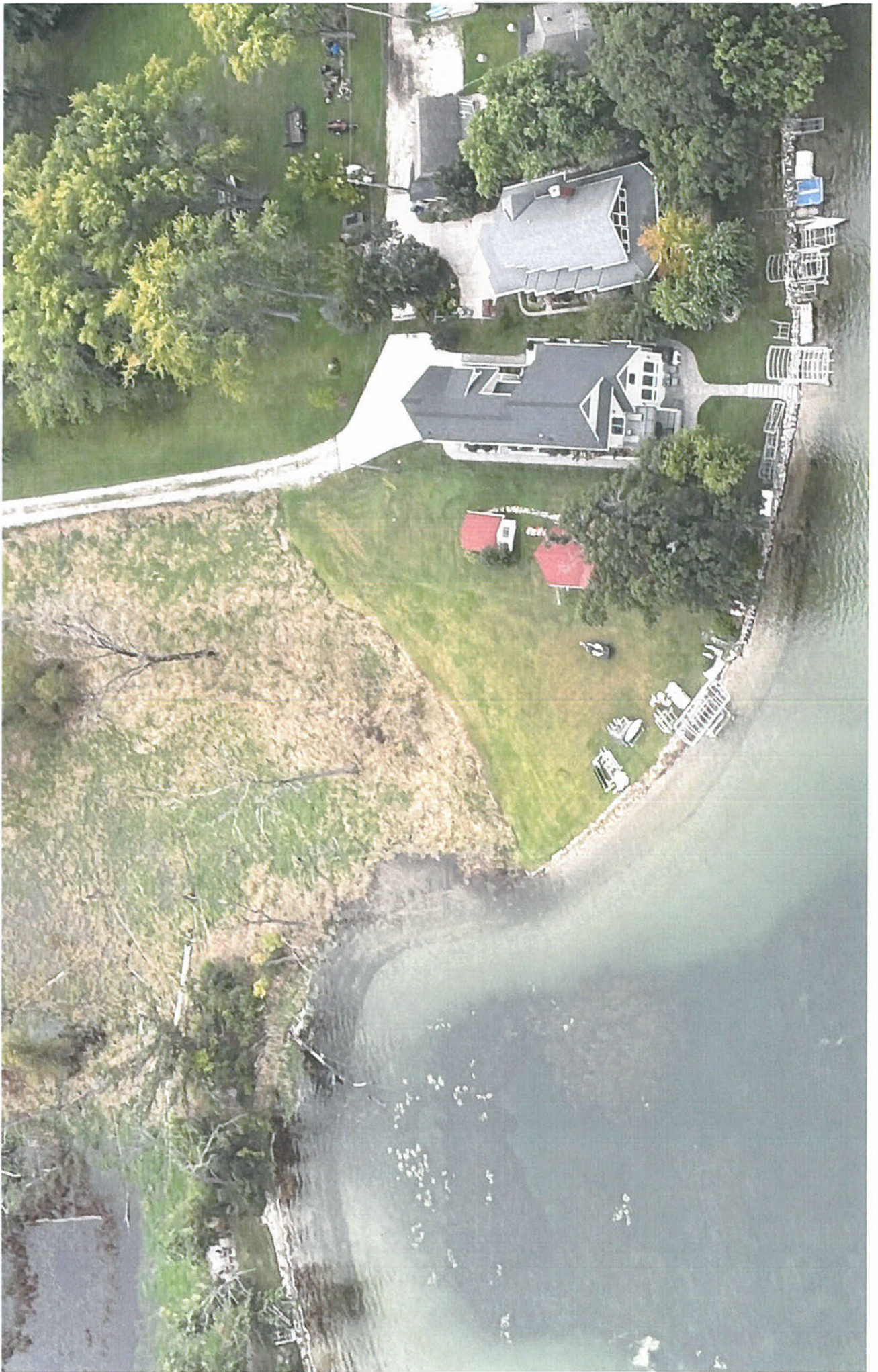










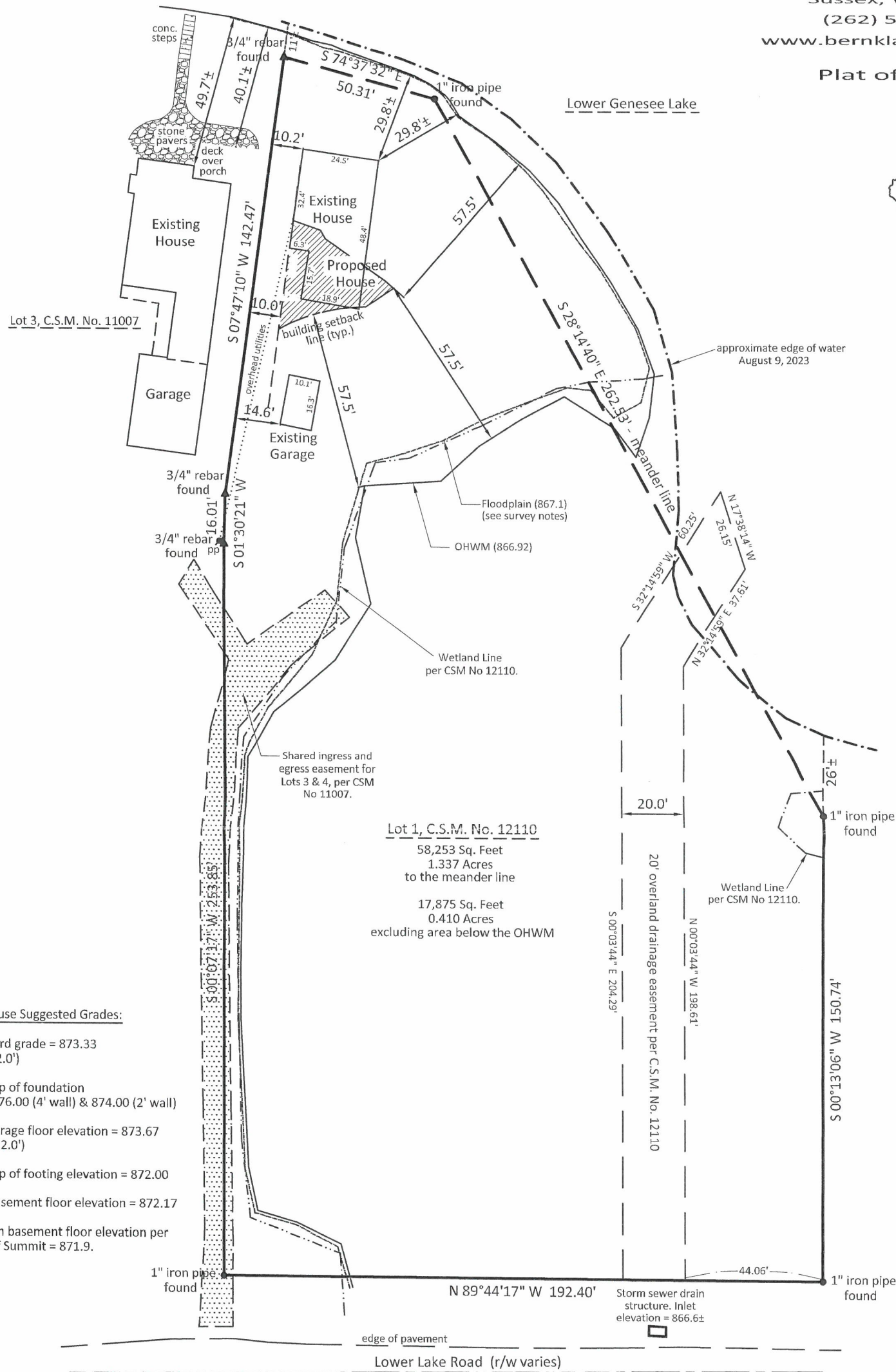


Bernklau Surveying, Inc.

N60 W25864 Walnut Road
Sussex, WI 53089
(262) 538-0708
www.bernklausurveying.com

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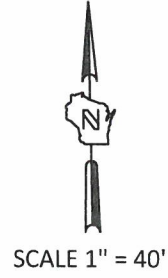
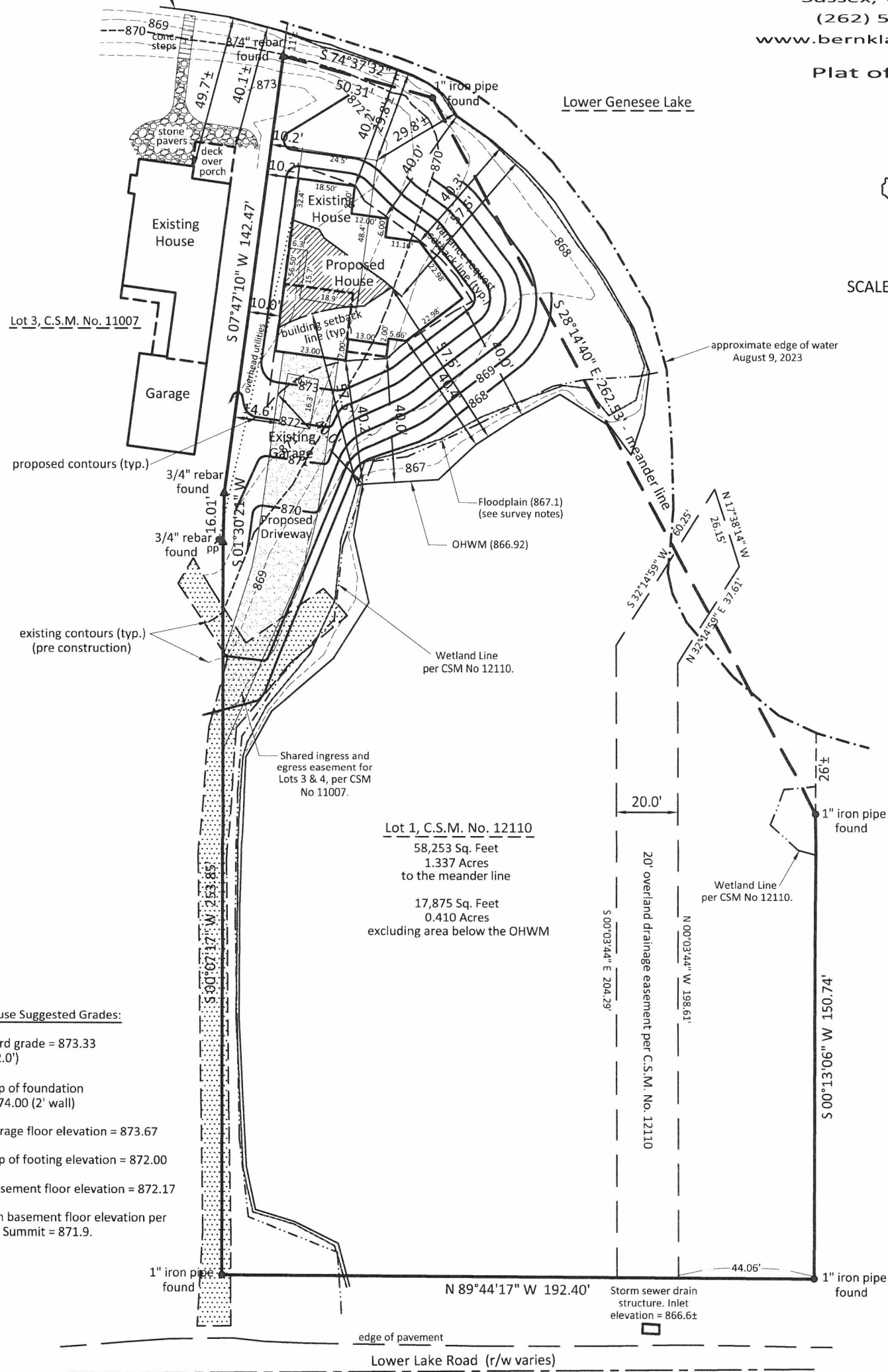
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Sussex, WI 53089
(262) 538-0708
www.bernklausurveying.com

Plat of Survey

OHWM = 866.92 per Waukesha
County GIS Mapping Site



Proposed House Suggested Grades:

- Suggested yard grade = 873.33 (drop siding 2.0')
- Suggested top of foundation elevation = 874.00 (2' wall)
- Suggested garage floor elevation = 873.67
- Suggested top of footing elevation = 872.00
- Suggested basement floor elevation = 872.17
- The minimum basement floor elevation per the Village of Summit = 871.9.

Impervious Surface Area Calculations:

- Lot Area to the OHWM = 17,875±
- Existing House & Garage = 1,256 sq. ft. (to be removed)
There is not an existing gravel or hard surface driveway on the subject property.
- Proposed House, Driveway, Porch & Walk = 4,368 sq. ft. (24.4%)
- Maximum impervious surface permitted per the Village of Summit = 30%.

Prepared for:
Demlang Builders, Inc.
N67 W27770 Moraine Drive
Sussex, WI 53089

Owner: Smith

Survey Notes:

- Offsets shown to the existing house siding.
- Easements shown hereon are derived from the recorded Subdivision Plat or Certified Survey Map. This survey does not guarantee location or existence of any other easements that may be part of this property. A Title Policy was not provided to Bernklau Surveying, Inc.
- The Base Flood Elevation of Lower Genesee Lake = 867.1 per FEMA LOMR 19-05-5478P, Effective Date 6/12/2020.
- The building setback line shown hereon was calculated based on setback averaging to the OHWM with the existing house to west and the required 75' setback divided by 2, resulting in a setback of 57.5 feet from the OHWM, as directed by the Village of Summit.
- The variance request setback line shown hereon is pending.
- C.S.M. No. 12110 note: Any land below the ordinary high water mark of a lake or a navigable stream is subject to the public trust in navigable waters that is established under Article IX, Section 1 of the State Constitution.
- The hatched area shown hereon = 666 square feet, which is the buildable area per code.

Lot 1, Certified Survey Map No. 12110, a division of Lot 4 of Certified Survey Map No. 11007 and lands being a part of the Southwest 1/4 of the Northwest 1/4 of Section 27, Township 7 North, Range 17 East, in the Village of Summit, Waukesha County, Wisconsin.

I, Thomas M. Bernklau, Professional Land Surveyor, certify that I have surveyed the above described property to the official records, to the best of my knowledge and belief, and that the map shown hereon is a true representation thereof, and shows the size and location of the property, its exterior boundaries, the location and dimensions of all visible structures hereon, boundary fences, apparent easements, and all visible encroachments, if any.

This survey is made for the exclusive use of the present owners of the property; also those who purchase, mortgage or guarantee title thereto, within one year hereof.

- Date August 9, 2023
- Revised September 13, 2023
- Revised March 5, 2024
- Revised August 8, 2024
- Revised August 28, 2024
- Revised June 20, 2025

Thomas M. Bernklau, PLS - 2147





LEFT SIDE ELEVATION
*GRADE -8" FROM TOP OF FOUNDATION (AS SHOWN)



FRONT ELEVATION (LAKE VIEW)
*GRADE -8" FROM TOP OF FOUNDATION (AS SHOWN)



RIGHT SIDE ELEVATION
*GRADE -8" FROM TOP OF FOUNDATION (AS SHOWN)



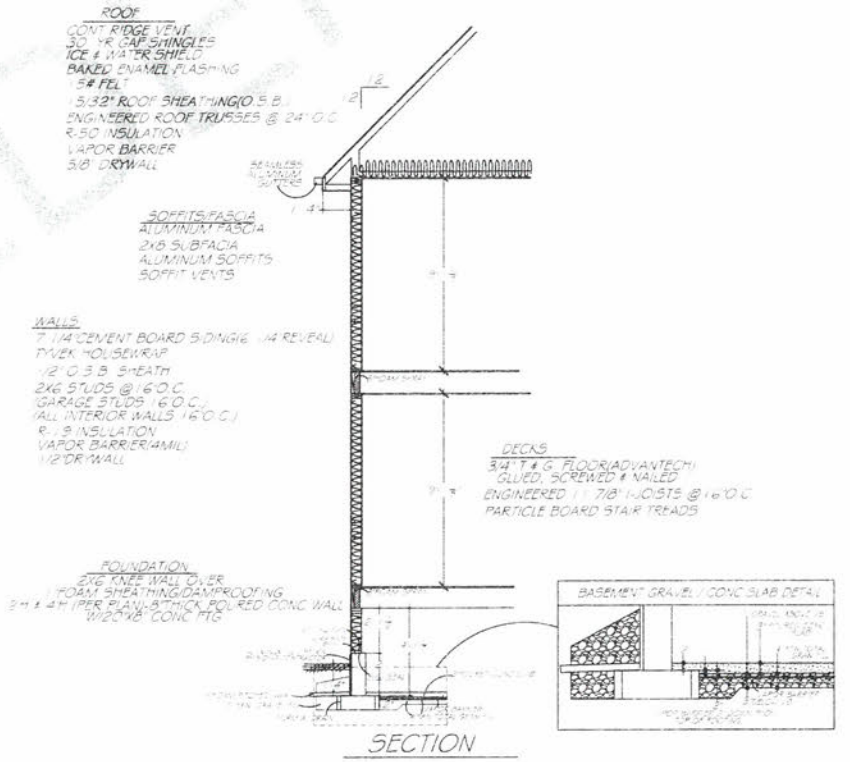
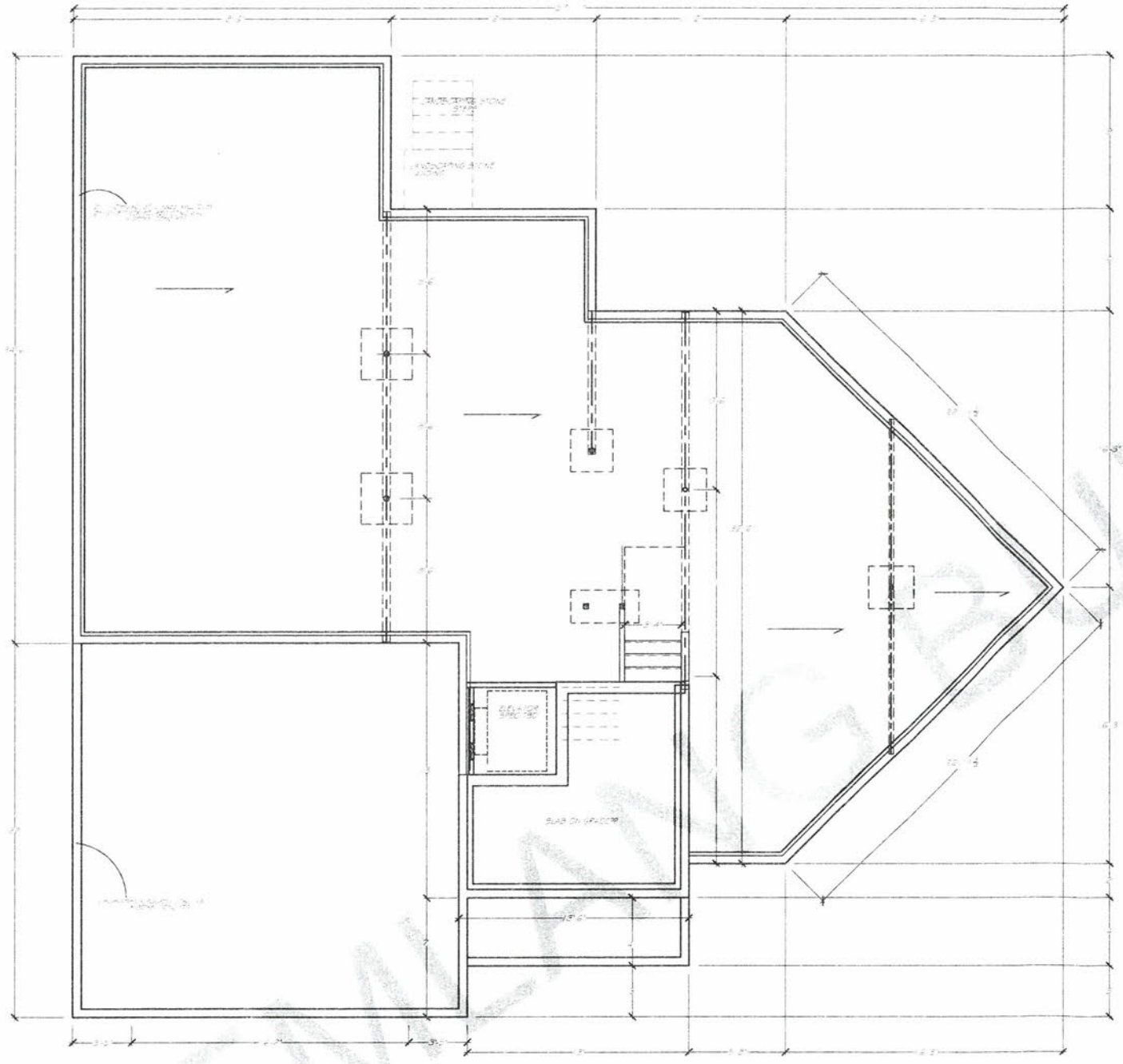
BACK ELEVATION (ROAD VIEW)
*GRADE -8" FROM TOP OF FOUNDATION (AS SHOWN)

THESE PLANS AND ALL INFORMATION CONTAINED HEREIN ARE THE PROPERTY OF DEMLANG BUILDERS, INC. AND ARE NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF DEMLANG BUILDERS, INC.

ELEVATIONS
 SCALE - 1/4" = 1'-0"
 9.7.25
 PAGE 1 OF 1

DEMLANG BUILDERS, INC.
 1007 W. 27TH AVE. SUITE 100
 SUDBURY, ONT. N3B 2K9
 (905) 246-2330

BRIAN SMITH
 RESIDENCE



DEMLANG BUILDERS, INC.

DEMLANG BUILDERS, INC.
1677 W. 2770 MORRIS DRIVE
WISCONSIN WI 53099
(262) 246-0330

BRIAN SMITH
RESIDENCE

CONTRACTOR: DEMLANG BUILDERS, INC. (LICENSED CONTRACTOR)
ARCHITECT: BRIAN SMITH ARCHITECTURE (LICENSED ARCHITECT)
ENGINEER: BRIAN SMITH ARCHITECTURE (LICENSED ARCHITECT)
GENERAL CONTRACTOR: DEMLANG BUILDERS, INC. (LICENSED CONTRACTOR)
FOUNDATION CONTRACTOR: DEMLANG BUILDERS, INC. (LICENSED CONTRACTOR)
ROOF CONTRACTOR: DEMLANG BUILDERS, INC. (LICENSED CONTRACTOR)
WALL CONTRACTOR: DEMLANG BUILDERS, INC. (LICENSED CONTRACTOR)
DECK CONTRACTOR: DEMLANG BUILDERS, INC. (LICENSED CONTRACTOR)
BASINEMENT CONTRACTOR: DEMLANG BUILDERS, INC. (LICENSED CONTRACTOR)

FOUNDATION & SECTION
SCALE: 1/4" = 1'-0"
DATE: 3-25

PAGE: 3 OF 3