

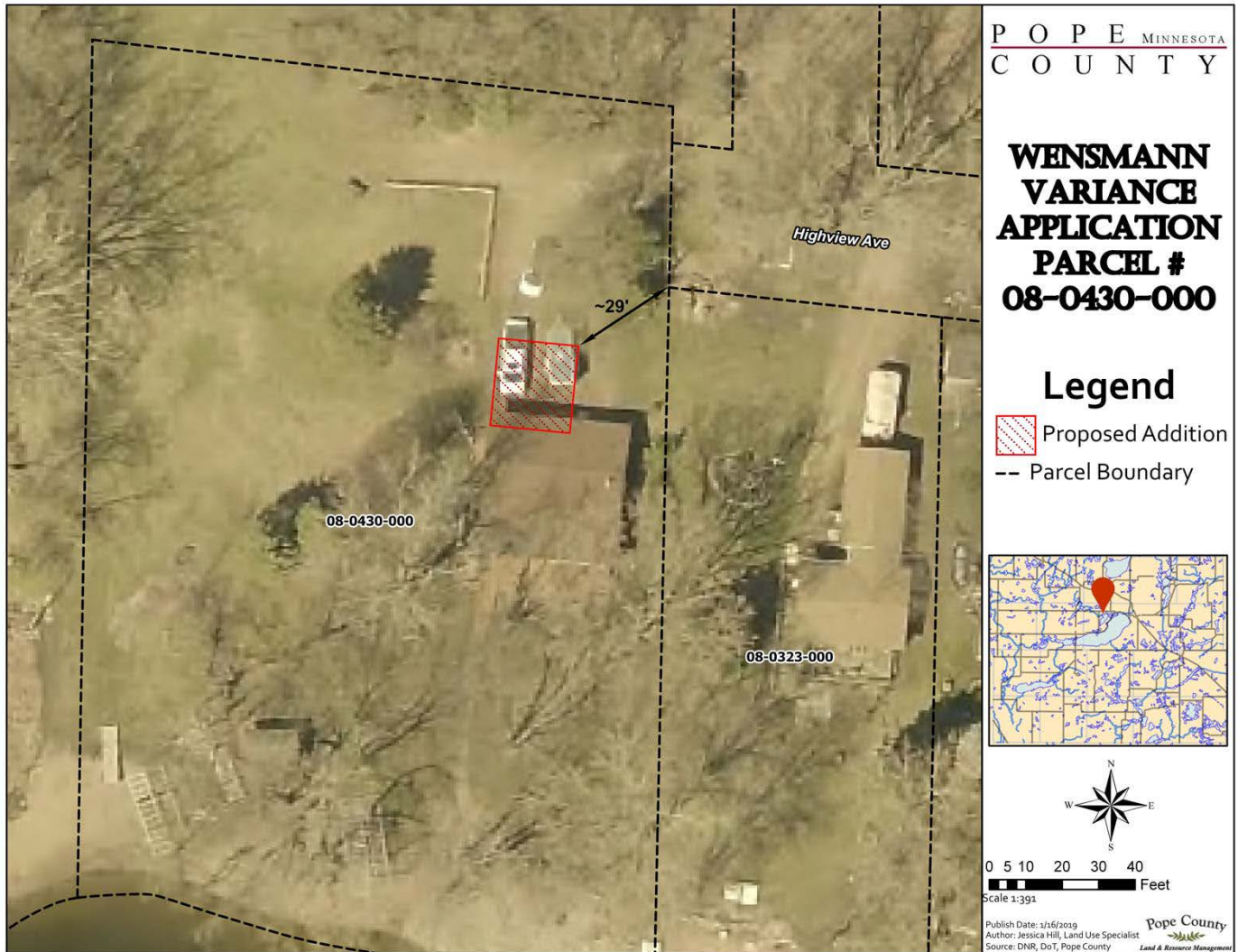
**BOARD OF ADJUSTMENT**

**STAFF REPORT**

**Applicant:** Ronald & Audrey Wensmann      **Owner:** Ronald & Audrey Wensmann

**Application:** Variance to locate structure at 27 feet from the road right-of-way where 40 feet is the minimum standard setback in a Shoreland-Recreational Development (S-RD) zoning district as per section 4.3.4.G. of the Pope County Land Use Controls Ordinance.

**Location:** Lot 1 of Hendrickson’s Highview Addition, Section 9, Township 125 (Minnewaska), Range 38, Pope County, Minnesota.



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**Background:** The applicant is proposing to construct an addition to the existing structure. The new structure is located at approximately 29 feet from the end of the right-of-way.

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**Applicable Statutes:**

- This application is subject to the criteria and procedures as prescribed in Section 11.6 Variance From Standards of the Pope County Land Use Controls Ordinance.
- Specific standards of use and development for parcels located in the Shoreland-Recreational Development (S-RD) zoning district are referenced in the Pope County Land Use Controls Ordinance section 4.3.4.G.:

*4.3.4 Setbacks:*

*G. Right-of-way line or town road, public street, other legal roads or streets not classified: 40 Feet*

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**Staff Comments:** Staff offers the following comments for consideration:

- Based on Minnesota Statute 394.27 subd. 7: A variance may be granted if enforcement of the zoning ordinance as applied to a particular piece of property would cause the landowner “practical difficulties.” There is a Three Factor Test for establishing practical difficulties. If the applicant does not satisfy all three factors of the test, then the variance should not be granted.

1. Reasonableness

The first factor is that the property owner proposes to use the property in a reasonable manner. This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance. It does not mean that the land cannot be put to any reasonable use whatsoever without the variance. For example, this variance application is for a building to be located too close to a right of line and therefore will not meet the required setback. The question to be considered is: whether the request to place or expand a building there is reasonable.

2. Uniqueness

The second factor is that the landowner’s problem is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner. When considering the variance for a structure to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of

property, such as sloping topography or other natural features like wetlands or trees that prevent the structure from being located in compliance.

### 3. Essential Character

The third factor is that the variance, if granted, will not alter the essential character of the locality. Under this factor, consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area. For example, when thinking about this variance for an encroachment into a setback from the end of the right of way, how will the accessory structure and its location look when compared to others in the neighborhood, and if that fits in with the character of the area.

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**Staff Recommendation:** Based on comments received and the findings of fact as presented, staff does not object to the issuance of a variance in this case. The following conditions are recommended by staff:

1. The proposed attached addition may not be located any closer than 27 feet from the road right-of-way.
2. Prior to any construction activities, all necessary permits are secured from Township, County and State agencies.

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**Staff Findings:** The Staff proposes the following findings of fact for consideration by the Board of Adjustment:

- 1. Variance request consistent with purposes and intent of the official controls and the comprehensive plan:** The purpose of the required setback for structures from roadways is to protect personal property; provide for maintenance and potential expansion of public roads; ensure safety for all users of roads and for those adjacent to roads; and to preserve the neighborhood character and aesthetics. The proposed location of the structure is approximately 29 feet from the right-of-way. However, the right-of-way is minimally used and is devoid of a driving surface. Therefore, the safety of the driving public is not of consequence. The location of the proposed structure is buffered by a mature strand of trees. Therefore, it is not likely that allowing for the structure will negatively impact the existing visual aesthetics.
- 2. Use of property/structure is a reasonable use:** A residential garage structure is a common use in the Shoreland districts of Pope County.

- 3. Character of locality and detriment to neighboring properties:** Granting the variance will not change the character of the locality or be a detriment to the neighboring properties.
- 4. Plight of the landowner is due to circumstances unique to the property and not self-created:** The circumstances contributing to the need for the variance are that there is preexisting development on the property including an existing cabin structure which is located at approximately 40 feet from the right-of-way. To be in compliance with the right-of-way setback, the proposed attached garage would require movement of the existing cabin or excavation and reconstruction of the septic system elsewhere on the property.

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## **Report Appendix**

- **Routing Sheet** (*Comments, concerns and conditions*)
- **Public Notice**
- **Supplemental Information**
  - **Attachment 1:** *Site Plan (Nyberg Surveying, December 2018)*

<h2 style="margin: 0;">Routing Sheet</h2> <p style="margin: 0;">Comments, concerns and conditions</p>
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Agency

- MN DNR            *DNR received and reviewed the Notification of Hearing for the Wensmann Variance Request.*
- SWCD-Pope        *COMMENTS: There are no wetland concerns in the area identified.*

County Department

- Attorney            No Comments Received
- E911/IT            No Comments Received
- Emergency Mgmt *COMMENTS: Does not appear that this would empede any L.E. or E.M. issues.*
- Recorder           *COMMENTS: Any documents to be recorded in the Recorder's office please see MN Statute 507.093 Standards for documents to be recorded or filed. Our office shows that the applicant's are the current owners on parcel 08-0430-000 per Warranty Deed document #275802; which can be found on our Laredo program.*

Township

- Minnewaska        No Comments Received

Other Comments Received

No Comments Received

**POPE COUNTY COURTHOUSE  
130 E. MINNESOTA AVENUE, SUITE 113  
GLENWOOD, MINNESOTA 56334  
(320) 634-7791**

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**POPE COUNTY BOARD OF ADJUSTMENT  
NOTICE OF PUBLIC HEARING FOR  
VARIANCE REQUEST**

**Notice is hereby given** that a Public Hearing will be held in the Community Room of the Pope County Courthouse, 130 East Minnesota Ave, Glenwood, MN 56334 at 6:00 pm or shortly thereafter on Thursday, February 28<sup>th</sup>, 2018, where the Pope County Board of Adjustment will consider a variance request per Pope County Land Use Ordinance sec. 11.6.

**Description of Request:** Variance hearing on the application by Ronald and Audrey Wensmann, if granted would permit applicant to locate structure at 27 feet from the road right-of-way where 40 feet is the minimum standard setback in a Shoreland-Recreational Development (S-RD) zoning district as per section 4.3.4.G. of the Pope County Land Use Controls Ordinance.

**Legal Description/Site Location:** Lot 1 of Hendrickson's Highview Addition, Section 9, Township 125 (Minnewaska), Range 38, Pope County, Minnesota.

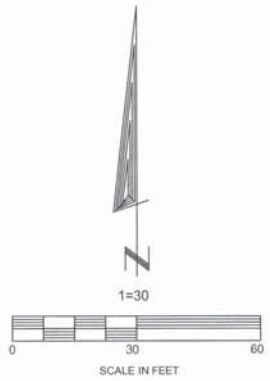
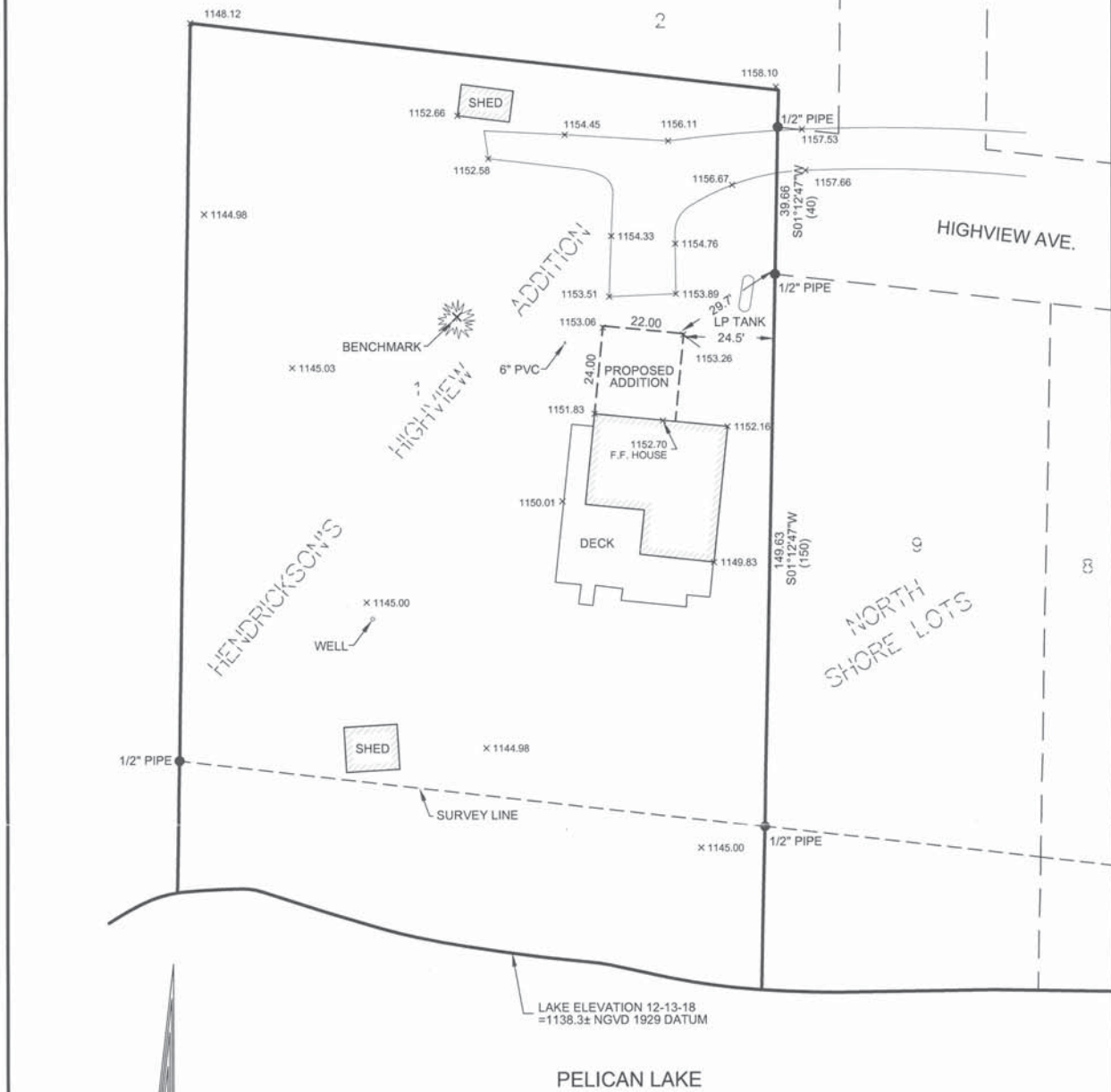
**Dated:** February 11, 2019

**By:** Jessica Hill  
Land Use Specialist  
Land & Resource Management

**Supplemental Information Attachment 1:**  
***Site Plan (Nyberg Surveying, December 2018)***



# SITE PLAN



**Surveyor's Notes:**

The Base Flood Elevation of Pelican Lake is determined to be 1144.36 NGVD 29 datum. The determination was made by using the Minnesota DNR shoreland management method by adding two feet to the highest recorded or the ordinary high water elevation, whichever is higher. The highest recorded elevation of 1142.36 was recorded on 4-12-2001 and the ordinary high water is 1139.6. The proposed addition would be built on existing grade at an elevation of approximately 1152± and would have a finish main floor elevation very similar to the existing structure.

Prior to construction verify size, location and elevation of proposed building with the General Contractor.

This is not a Boundary Survey. The purpose of this sketch is to ensure that the addition to the existing structure is not within the flood zone and that it will meet structure setback requirements.

- INPLACE IRON MONUMENT
- 1/2" IRON REBAR WITH PLASTIC CAP STAMPED "RLS 42620" & "RLS 45335"
- ( ) RECORD DATA

X BENCH MARK: RR SPIKE NORTH SIDE 18" SPRUCE ELEVATION: 1151.26' (1929 N.G.V.D.)

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

*Eric G. Nyberg*  
Eric G. Nyberg

Date December 18th, 2018 License No. 45335

SEC. 9 T 125 N R 38 W

DATE: 12-18-2018 • DRAWN BY: EGN • CHECKED: EGN • JOB NO. 9968

REQUESTED BY: **RONALD & AUDREY WENSMANN**

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