Board of Adjustment
February 26, 2026
VAR-26-001

POPECOUNTY MINNESOTA

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STAFF REPORT

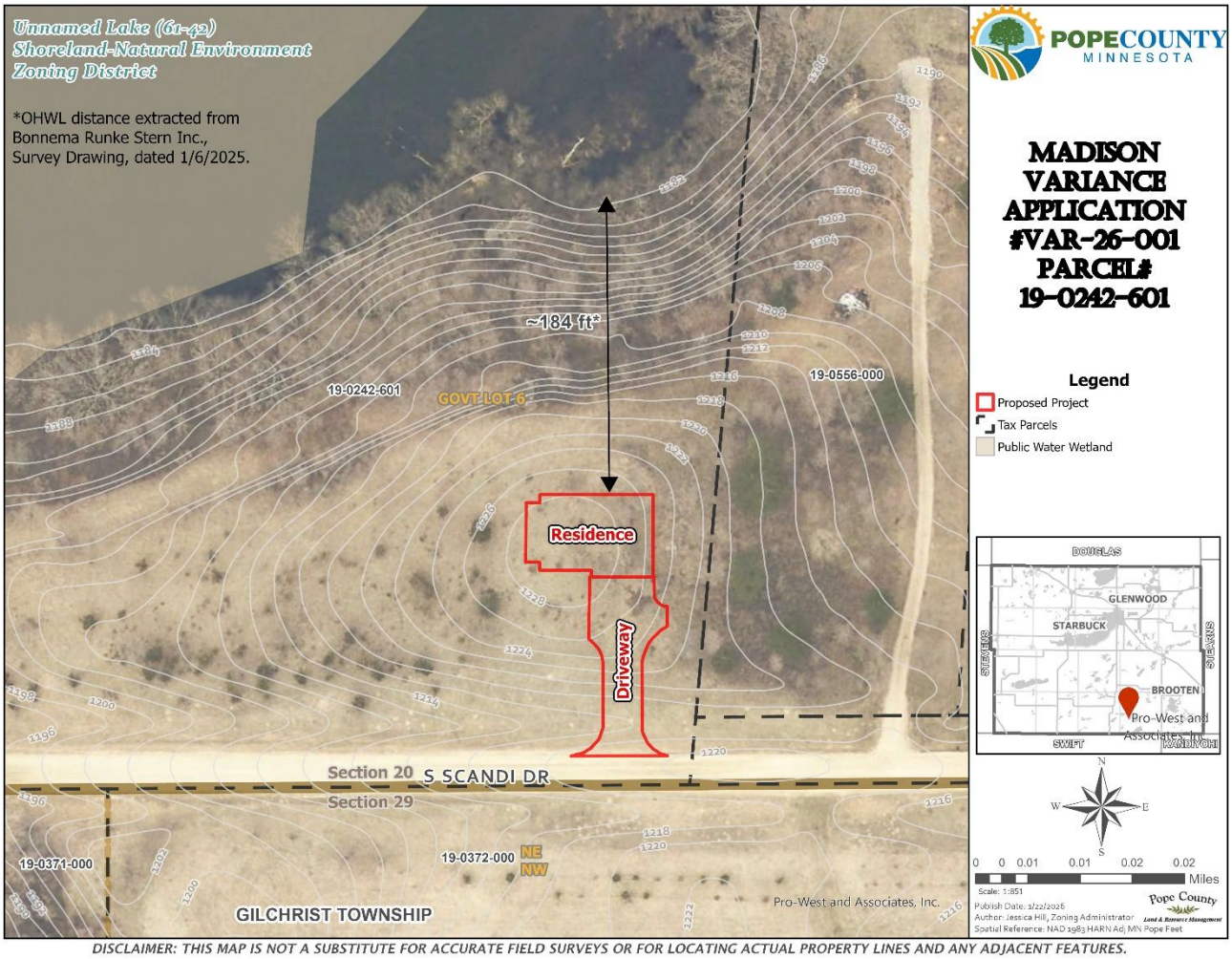
Applicant Information

Applicant: Payton & Brittany Madison

Application: Variance (VAR-26-001)

Zoning: Shoreland-Natural Environment (S-NE)

Location: Part of Government Lot 6, Section 20, Township 123 (Gilchrist), Range 37, Pope County, Minnesota.



DISCLAIMER: THIS MAP IS NOT A SUBSTITUTE FOR ACCURATE FIELD SURVEYS OR FOR LOCATING ACTUAL PROPERTY LINES AND ANY ADJACENT FEATURES.

Background

Property owner is seeking a variance from:

- "The 200-foot structure setback from the Ordinary High Water Level (OHWL) of a Natural Environment Lake; and"
- "The 30-foot setback from the top of bluff (Bluff Impact Zone)."

The proposed single-family residence would encroach into both required setback areas.

The parcel is located in Gilchrist Township and has shoreline on both an unnamed Natural Environment lake and Scandinavian Lake (Recreational Development). It is burdened by two shoreland zoning districts. Because the Natural Environment district imposes the more restrictive OHWL setback (200 feet), that standard applies.

Applicable Statutes

Local Ordinance

- Pope County Land Use Controls Ordinance
  - Section 4.4 Shoreland-Natural Environment District (S-NE)
    - Section 4.4.4 Setbacks

      A. Structure Setbacks: 200 feet from Ordinary High Water Level

      G. Right-of-way line of town road, public street, other legal roads or streets not classified: 40 Feet
    - Section 4.6.5 Placement, Height, and Design of Structures

      A. Placement of Structures and Subsurface Sewage Treatment Systems on Lots

      1. OHWL Setbacks: Structures, and subsurface sewage treatment systems (SSTS) must meet the following setbacks from the Ordinary High Water Level (OHWL), except that one water-oriented accessory structure, designed in accordance with Section 4.6.17 of this ordinance, may be set back a minimum distance of ten (10) feet from the OHWL:

Zoning District	Structure Setback from OHWL (feet)	SSTS Setback from OHWL (feet)
S-NE	200	150

      3. **Additional structure setbacks:** Structures must also meet the following setbacks, regardless of the waterbody classification:

Setback from:	Setback (feet)
Top of Bluff	30
Side Yard	10
Unplatted cemetery	50
Right-of-way line of federal, state, or county highway	50
Right-of-way line of town road, public street, other legal roads or streets not classified	40

- Section 11.6 Variance from Standards

State Statute/Rule

- Minnesota Statute Chapter 394 Planning, Development, Zoning *(enabling legislation)*
  - 394.27 Subd 7 *Variances; practical difficulties*
- Minnesota Administrative Rules Chapter 6120, *Shoreland and Floodplain Management*
  - 6120.3300 Zoning Provisions

    Subp. 3. ***Placement and height of structures and facilities on lots****. When more than one setback requirement applies to a site, structures and facilities must be located to meet all setbacks. The placement of structures and other facilities on all lots must be managed by shoreland controls as follows:*

    A. Structure setbacks. The following minimum setbacks presented in the following table for each class of public waters apply to all structures, except water-oriented accessory structures and facilities that are managed according to item H:

    (1) Structure setback standards

Class	*Ordinary high water level setback (feet)*		*Setback from top of bluff (feet)*
	Unsewered	*Sewered*	
Natural environment	*150*	*150*	*30*

    C. Bluff impact zones. Structures and accessory facilities, except stairways and landings, must not be placed within bluff impact zones.

  - 6120.3900 Subp. 3 Variances: *Variances may only be granted in accordance with Minnesota Statutes, chapters 394 or 462, as applicable. They may not circumvent the general purposes and*

intent of the official controls. No variance may be granted that would allow any use that is prohibited in the zoning district in which the subject property is located. Conditions may be imposed in the granting of variances to ensure compliance and to protect adjacent properties and the public interest. In considering variance requests, boards of adjustment must also consider whether property owners have reasonable use of the lands without the variances, whether existing sewage treatment systems on the properties need upgrading before additional development is approved, whether the properties are used seasonally or year-round, whether variances are being requested solely on the basis of economic considerations, and the characteristics of development on adjacent properties.

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 structure to be located where it will not meet the required setbacks from the OHWL and will be located in a bluff impact zone. The key question is whether a conforming building site exists on the parcel. Based on the Certificate of Survey (See Supplemental Information, Attachment 2), a conforming building envelope appears to exists. The requested location reflects applicant preference rather necessity.

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. In this particular case, there is an established building envelope where a structure could be placed in conformance

with standards (See Supplemental Information, Attachment 2). However, it is the applicant's preference to locate the structure further back on the property where it will encroach into both the OHWL and Bluff Impact zone setback standards. Staff finds that a practical difficulty does not arise from unique physical characteristic of the parcel, as a conforming building area exists.

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. Topographic and vegetive alterations of bluff features can affect stormwater flows, slope stability and have a visual impact from, a public boating perspective.

Relating to the narrative presented in support of the variance request, staff does not agree that the forty (40) foot setback from the road, as prescribed in ordinance, is unreasonably close causing a safety concern. There are plenty of examples of residences, not just around Scandinavian Lake, but throughout the county that are located at forty (40) feet from a roadway. As a matter of fact, the Board of Adjustment is often asked to waive that minimum distant standard to allow a structure to be closer to the road. The applicant should produce evidence of the safety concern.

Regarding soil disturbance and erosion impacts, the applicant should produce facts to substantiate this claim. It would be helpful if the claim was supported by a detailed stormwater management study and engineered analysis of the site including quantities of material to be excavated, graded, relocated and/or removed from the site.

Regarding other variances issued, a review of permitting and development history of the adjacent and nearby parcels does reveal that there have been variances issued to the OHWL setback distance but that there have been no variances issued relating to the setback distance from a bluff or encroachment into the Bluff Impact zone.

Staff Recommendation

Based on information provided in the application materials and review of the site, staff does not find that the applicant has demonstrated that a practical difficulty as required under Minnesota Statute 394.27, Subd. 7. Staff therefore recommends denial of the variance request. However, additional testimony presented during the public hearing may provide further information for the Board's consideration.

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:**

   Findings: The Minnesota DNR Shoreland Rules Ch 6120 as well as the Pope County Land Use Controls Ordinance regulate the size and location of structures in shoreland designated areas. The purpose of the requirements is to preserve neighborhood character and aesthetics as well as for the protection of surface water resources and personal property.

   Approval: The proposed structure would be similar in scale and character to surrounding development and would not significantly alter neighborhood character.

   Denial: Proposal to locate a residential structure in a bluff impact zone is in conflict with local ordinance and Minnesota Administrative Rule.

2. **Use of property/structure is a reasonable use:**

   Findings:

   Approval: The proposed residential use is permitted in the zoning district.

   Denial: The requested location is not necessary for reasonable use of the property, as a conforming building site exists.

3. **Character of locality and detriment to neighboring properties:**

   Findings: Granting the variance will not change the character of the locality or be a detriment to the neighboring properties.

   Approval: The variance will not alter the essential character of the locality.

   Denial: Encroachment into the Bluff Impact Zone may undermine the intent of shoreland protections and create precedent inconsistent with the character of regulated shoreline development.

4. **Plight of the landowner is due to circumstances unique to the property and not self-created:**

   Findings:

   Approval: The parcel contains unique topographic constraints limiting conforming development.

   Denial: Regardless of unique topographic features that may be evident on the parcel, a conforming building envelope exists on the parcel.

REPORT APPENDIX

- **Routing Sheet** *(Comments, concerns and conditions)*
- **Public Notice**
- **Supplemental Information**
  - **Attachment 1:** *Variance Application (Payton and Brittany Madison, 16 January 2026)*
  - **Attachment 2:** *Certificate of Survey (Bonnema Runke Stern, 8 July 2025)*
  - **Attachment 3:** *Project Narrative (Payton and Brittany Madison, 16 January 2026)*
  - **Attachment 4:** *Site Visit Photos (L&RM Staff, 17 February 2026)*

Routing Sheet

Comments, Concerns and Conditions

Agency

MN DNR *COMMENTS:*

Payton and Brittany Madison Variance
Parcel 19-0242-601
Unnamed Wetland/Scandinavian Lake

DNR has reviewed the Payton and Brittany Madison variance application. The applicant has requested a variance to construct a new home 12 feet from the top of bluff and within the bluff impact zone (BIZ). This is a deviation of 18 feet, or 60% from the required setback of 30 feet. The bluff impact zone is 20 feet from the top of bluff. Additionally, the proposed structure does not meet the 200-foot setback from the Ordinary High Water Level (OHWL) of Public Water 61-42, a natural environment classified waterbody.

We recommend denying the variance. It appears that the property has an adequate building envelope, and the applicants have reasonable alternatives that would not require a variance. Design preferences are not justification for granting a variance. The driveway approach could be shortened from 40 feet to 10 feet, resulting in a 48-foot-long driveway-all setbacks would be met. Establishing trees along the township road right-of-way could create a visual and physical barrier to address safety concerns.

State law only allows variances if all three practical difficulties criteria are met. If any of these criteria are not met, then the variance must be denied. State law also does not allow approving variances solely for financial reasons. The decision to approve or deny a variance requires a rational explanation, based on facts, not on proposed conditions of approval. Conditions may be considered, but only after a decision is made to approve.

Please send the notice of decision, with findings, within 10 days of the decision. If you have any questions, please call, or email me.

Thank you for your consideration,

Emily Siira
Area Hydrologist | Ecological and Water Resources

Minnesota Department of Natural Resources
23070 N. Lakeshore Drive
Glenwood, MN 56334
Phone: 320-634-7345
Email: emily.siira@state.mn.us
mndnr.gov

DEPARTMENT OF NATURAL RESOURCES

County Department

Assessor	No comment received.
Attorney	No comment received.
E911 Addressing	*COMMENTS: The Pope County E911 Rural Addressing Ordinance, Section 2.2.B. states, "Notice of New Construction. Every owner of real property in Pope County on which a structure is erected or placed after the effective date of this Ordinance shall notify the PCRA of the structure and obtain an E-911 address to be displayed as required per this ordinance."* *PROPOSED CONDITIONS: Applicant must apply for an E911 address in accordance with the Pope County E911 Rural Addressing Ordinance, Section 2.2.B.*
WCA Officer	*Erosion control measures should be in place during and after construction to protect the wetland fringe around the lake from sedimentation.* *PROPOSED CONDITIONS: Erosion control & stormwater management plan.*

Township

Gilchrist	*COMMENTS: Please attached comments from the Gilchrist Town Board. Joseph White – Clerk/Treasurer 02-10-2026.* *The Gilchrist Town Board discussed at the February 10, 2026 regular town board meeting the Payton & Brittany Madison variance proposal asking for relief from the top of bluff and Ordinary High-Water Level (OHWL) setback standards on parcel #19-0242-601owned by Berge JT Rev Living Trust on S. Scandi Dr.* *After reviewing and discussing the information, the Gilchrist Town Board would like to question as to whether there is a legitimate hardship in applying for the variance, or if the house could be moved slightly to meet the setbacks. The town board has permitted Madison/Berge to add a new driveway approach to the area if Gilchrist Township driveway requirements are followed, which White had emailed Jess Berge.* *The town board would like the Pope County Board of Adjustment to follow David Green's recommendations. The town board would not like to set a precedence in the township allowing a variance if there is not a legitimate hardship and the house could be moved to follow current Pope County Land Use Controls Ordinances, which would help to preserve the environment and the natural beauty of the area's trees and hills formed by the glaciers so long ago.* *Gilchrist Township Supervisors:* *John Tvedt 320-278-3537 Kris Clark 320-979-7861* *Dan Anderson 320-278-3734*

Thanks,

Joe White

Gilchrist Township Clerk/Treasurer

1309 Douglas St.

Alexandria, MN 56308

651-895-5227

jnwhite20@yahoo.com

Other Comments Received

No comment received.

Public Notice

POPE COUNTY LAND & RESOURCE MANAGEMENT
POPE COUNTY COURTHOUSE
130 E. MINNESOTA AVENUE
GLENWOOD, MINNESOTA 56334
(320) 634-7791

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

Notice is hereby given that a Public Hearing will take place in conjunction with the Board of Adjustment meeting to be held at 6:00 pm or shortly thereafter on Thursday, February 26th, 2026 in the Pope County Courthouse, 3rd Floor Board Room, to consider the following variance request.

Description of Request: Variance hearing on the application by Payton & Brittany Madison (VAR-26-001, Parcel#19-0242-601), if granted would allow applicants relief from the top of bluff setback standard and the structure setback to the ordinary high water level standard in a Shoreland-Natural Environment (S-NE) zoning district per section 4.4.4.A, 4.4.4.C, 4.6.5.A.1 and 4.6.5.A.3 of the Pope County Land Use Controls Ordinance.

Legal Description/Site Location: Part of Government Lot 6, Section 20, Township 123 (Gilchrist), Range 37, Pope County, Minnesota.

Public participation will include an opportunity to:

1) submit written concerns and comment prior to the scheduled meeting. All such communications will be shared with the Board of Adjustment prior to or during the meeting;
2) submit concerns and comments via Pope County's Public Comment web map, go to https://www.popecountymn.gov, at the top of the page hover over Government, then under Board of Adjustment/Planning Advisory Commission, select Submit a Public Comment or type in the following link to access the Public Comment web map: (https://popecounty.maps.arcgis.com/apps/webappviewer/index.html?id=22a203912a864a77b4cdabe672e35e3f)
3) opportunity to review the staff prepared report via Pope County website;
4) observe and/or participate by providing verbal comments in the Public Hearing portion of the Board of Adjustment meeting.

Interested parties and citizens may contact the Land and Resource Management office for further information as to how to participate in the meeting. ***Notices of Decision*** *will be posted* ***online*** *shortly after decision making at the following Pope County webpage:*

- *https://www.popecountymn.gov/land-resource-management/boa-pac-notices-of-decision/*

Thank you for your patience and consideration in this matter.

Dated: February 6, 2026
By: Jessica Hill, Zoning Administrator, Land & Resource Management

Supplemental Information

Supplemental Information Attachment 1:

Variance Application
(Payton and Brittany Madison, 16 January 2026)

VAR-26-001

POPE COUNTY MINNESOTA

VARIANCE APPLICATION

L&RM FORM 18

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VARIANCE APPLICATION

A variance allows a modification or variation of the provisions of the Pope County Land Use Controls Ordinance where it is determined that, by reason of exceptional circumstances, the strict enforcement of any provision of the ordinance would cause the landowner "practical difficulty" (see Practical Difficulty Test on the following page).

Variances from official zoning controls are defined under Minnesota Statute 394.27 and require the landowner to prove the property could not otherwise be used or enjoyed in the proposed way by complying with the Pope County Land Use Controls Ordinance and there will be no negative impact on surrounding properties.

Prior to submission of this application, please discuss your variance request with the Land and Resource Management department.

Applicant Information

Applicant Names	Payton & Brittany Madison
[redacted]	

Property Description

Property Address	S Scandi Dr	City	Glenwood	State	MN	Zip	56334
Township Name	Gilchrist	Section	20	Twp	123	Range	37

Parcel No.	19-02422-601	Associated Parcel No.	- -

Project Narrative

What is the variance application for?	Reduced setback from bluff impact zone and OHW setback

Provide written justification for request including discussion of how any potential conflicts with existing nearby land uses will be minimized:

See attached.

Pope County Land & Resource Management
130 East Minnesota Ave. | Glenwood, Minnesota 56334 |
Phone: (320) 634-7791 | Email: pub.lrm@popecountymn.gov
Website: https://www.popecountymn.gov/land-resource-management/

Practical Difficulty Test

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.

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.

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.

Questions	Yes/No
Does your project satisfy all three factors of the Practical Difficulty Test?	Yes
Please state how your project satisfies all three factors in the space provided below:	
See attached.	

Pope County Land & Resource Management
130 East Minnesota Ave. | Glenwood, Minnesota 56334 |
Phone: (320) 634-7791 | Email: pub.lrm@popecountymn.gov
Website: https://www.popecountymn.gov/land-resource-management/

Supplemental Information Attachment 2:

Certificate of Survey
(Bonnema Runke Stern, 8 July 2025)

This drawing prepared by:

Bonnema Runke Stern Inc.

Professional Land Surveyors

4566 Hwy 71 NE - Suite 1

Willmar, MN 56201

Office (320) 231-2844 Fax (320) 231-2827

Requested by: **Payton & Brittany Madison**

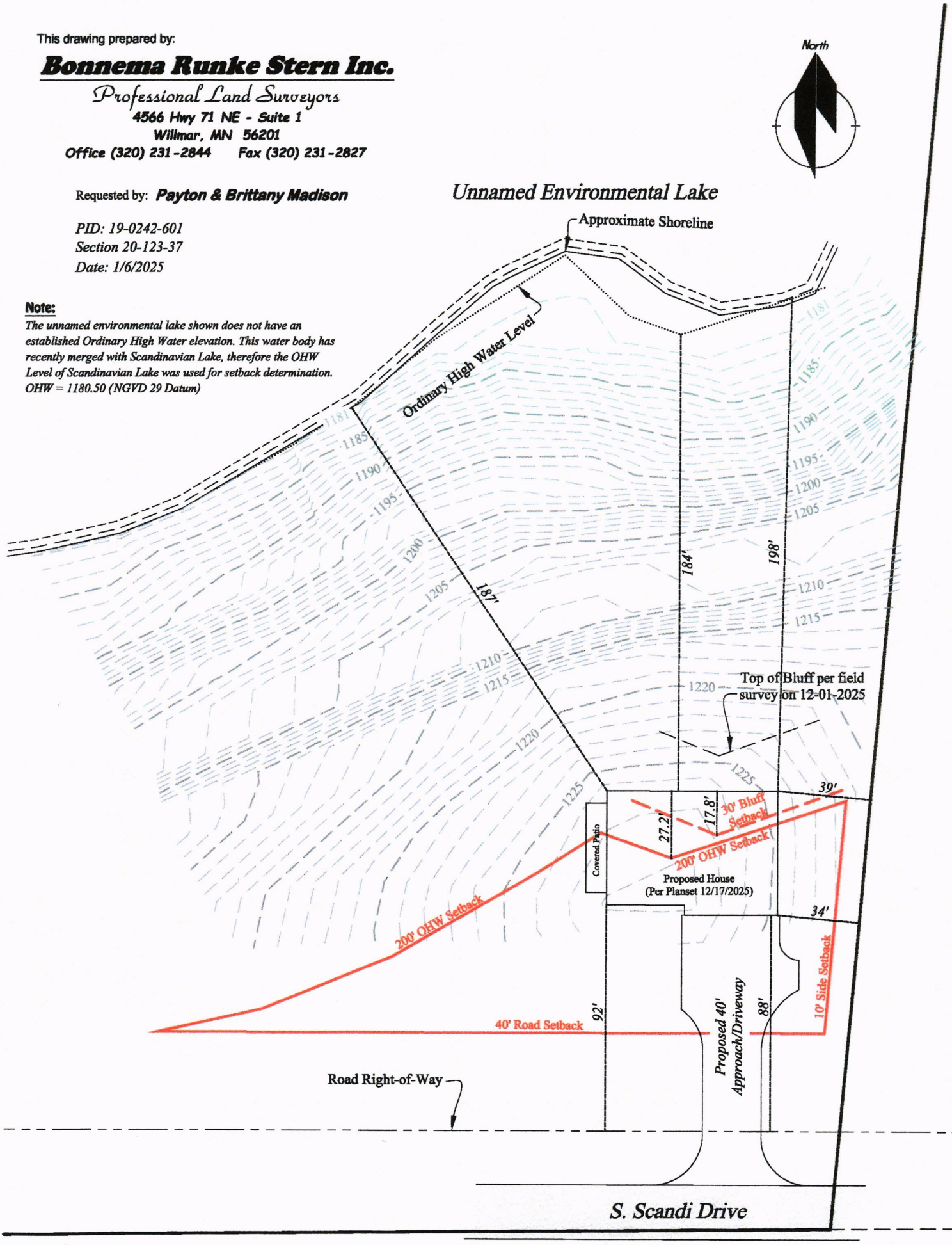
PID: 19-0242-601

Section 20-123-37

Date: 1/6/2025

Note:

The unnamed environmental lake shown does not have an established Ordinary High Water elevation. This water body has recently merged with Scandinavian Lake, therefore the OHW Level of Scandinavian Lake was used for setback determination. OHW = 1180.50 (NGVD 29 Datum)



Supplemental Information Attachment 3:

Project Narrative
(Payton and Brittany Madison, 16 January 2026)

Provide written justification for request including discussion of how any potential conflicts with existing nearby land uses will be minimized:

We are requesting a bluff impact zone setback variance and an Ordinary High Water (OHW) setback variance to allow construction of a new single-family residential home on property located in Gilchrist Township, section 20, Pope County, Minnesota, on unnamed environmental lake.

The requested variances are necessary due to practical difficulties related to the physical characteristics of the property and placement of the county-designated building envelope. The existing building envelope forces the proposed home location unreasonably close to the township road, resulting in a minimal front yard setback and creating safety concern. This roadway serves as the only public water access to Lake Scandinavian and experiences increased traffic, making adequate separation from the road important for both safety and functionality.

Locating the home within the current building envelope would also create drainage challenges and require greater soil disturbance. The proposed home location, while requiring the requested variances, allows water to flow naturally away from the structure and makes use of terracing created by existing roadbeds on the property. These terraces slow and redirect runoff, preventing direct flow toward the unnamed lake, thereby reducing potential erosion and protecting water quality.

The requested variances represent the minimum relief necessary to allow reasonable use of the property. The home has been positioned as far from the bluff impact zone and OHW as practicable while still addressing safety, drainage, and environmental concerns. No additional variance relief is being requested beyond what is necessary to accommodate a reasonable residential use.

Any potential conflicts with nearby land uses will be minimized. The proposed single-family residence is consistent with existing residential development along the shoreline and will not introduce new or incompatible land use. Setbacks, building height, and design will remain consistent with neighboring properties. The placement of the home will not obstruct views, interfere with access, or negatively impact drainage patterns on adjacent properties. Also, by providing an extended buffer zone greater than the 10' required will greatly reduce water drainage onto our neighbors to the east.

Additionally, similar variances have been granted in the immediate vicinity including approval of a significantly larger OHW setback variance for a neighboring property to the east in 2021. The current request is more modest and aligns with prior approvals and the established character of the area.

Approval of the requested variances will allow the property to be developed in a safe, environmentally responsible, and reasonable manner while maintaining the intent of Pope

County's shoreland and bluff protection standards and minimizing any potential impacts to neighboring properties and surrounding land uses.

Please state how your project satisfies all three factors in the space provided below:

1. Reasonableness

The requested variances represent the minimum relief necessary to allow safe and reasonable use of the property. The proposed home placement minimizes encroachment into the bluff impact zone and the OHW setback to the greatest extent possible while maintaining appropriate distance from the township road and meeting safety, access, and livability standards.

Granting the requested variances will result in less soil disturbance and improve storm water management compared to construction within the current building envelope. The existing terracing from old roadbeds slows runoff and reduces direct water flow toward the environmental lake. The proposed location minimizes environmental impact to the bluff and shoreline while protecting water quality.

Similar variances have been granted to neighboring properties, including the adject property to the east, in 2021 including an OHW setback variance of approximately 100 ft. Our request for a 30 ft OHW variance is significantly less than has previously been approved in the immediate area and is consistent with past decisions and the character of the neighborhood.

Lastly, this residential home proposal is in alignment with the county's comprehensive plan and its desire for development of non-farm homesteads in rural areas.

2. Uniqueness

The practical difficulties are related to the physical characteristics of the property and the location of the county-designated building envelope. The current building envelope places the home location unreasonably close to the township road, resulting in a minimal front yard setback and creating safety concerns due to increased traffic associated with the only public water access road on Lake Scandi. We are expecting our first child to arrive in June 2026 and feel our proposal allows for adequate separation from the road for both safety and practicality. Additionally, following attendance at the Gilcrest Township meeting on December 11, 2025, approval was granted for a new driveway in accordance with county guidelines. These guidelines require that the driveway be constructed with an appropriate slope. Constructing the residence any closer to the township road would create an excessively steep driveway, which could increase water runoff and potentially cause erosion of the township road.

The construction of the home within the existing building envelope would not allow proper drainage away from the structure and would increase soil disturbance. Shifting the residence further to the south would necessitate further excavation to the southeast corner of the residence, creating an artificial slope and increasing the potential for excessive water runoff affecting neighboring properties and the township road.

In addition, the proposed location, which requires the requested variances, allows water to flow away from the home naturally and utilizes existing terracing created by old roadbeds on the property. The bluff on this property is unique in the sense it has been interrupted with multiple terracing. These established terraces help divert run off and prevent direct water flow to the lake, providing improved environmental protection.

Placing the proposed residence closer to the township road would also create a visual obstruction for the adjacent property, resulting in unsafe conditions for exiting their property onto the township road.

The setback requirements outlined in the site plan rely on generic bluff criteria and fail to consider the unique ecological characteristics of the site. While the rules define the "top of bluff" as the higher point of a 50-foot segment with an average slope exceeding 18 percent, accurately surveying and delineating this exact line on a complex or irregular natural landscape can require professional interpretation, leading to a subjective opinion.

3. Essential Character

The proposed variances will not negatively impact neighboring properties. The structure will be consistent with surrounding residential development and will not adversely affect views, drainage, privacy, or access. Should the variance be denied, the proposed residence would be out of character with the surrounding area, where all existing homes are located at least 250 feet from the township road.

Approval of the requested variances will allow the property to develop in a safe, environmentally responsible, and reasonable manner while maintaining the intent of the shoreland and bluff protection standards.

Supplemental Information Attachment 4:

Site Visit Photos
(L&RM Staff, 17 February 2026)