



Le Sueur County, MN

Thursday, October 19, 2017

Regular Session

Item 3

Ledvina Packet

Staff Contact: Kathy Brockway or Michelle Mettler

VARIANCE STAFF REPORT

GENERAL INFORMATION

APPLICANT/OWNER: Richard Ledvina

911 ADDRESS: 46437 Cape Horn Rd, Cleveland

VARIANCE REQUEST: To allow the applicant to install a new septic tank 0 feet from the structure; construct a septic drainfield 45 feet from the Ordinary High Water Level (OHWL), 6 feet from the structure, 3 feet from the property line; and locate septic system within the bluff.

VARIANCE NUMBER: 17235

PARCEL NUMBER: 01.500.0100

SITE INFORMATION

LOCATION: Lot 4, Cape Horn Subdivision, Section 1, Cleveland Township

ZONING & PURPOSE: Recreational Residential

The intent of the **Recreational Residential (RR) District** is to preserve areas which have natural characteristics suitable for both passive and active recreational usage. Also, it is the intent of this district to manage areas suitable for residential development of varying types, including permanent and seasonal housing. Some non-residential uses with minimal impacts on residential uses are allowed if properly managed under conditional use procedures.

GOALS AND POLICIES: The current Land Use Plan as adopted in 2007 makes reference to water quality.

Goal #3: Improve Water Quality in Le Sueur County.

Objective 1: The County will undertake actions to help protect groundwater as well as surface water features.

Action 2: The County will take leadership in initiating a wastewater or septic replacement program.

Strategy #2.

a. Septic replacement program in areas with space to accommodate this type of improvement program.

GENERAL SITE
DESCRIPTION:

Shoreland, residential

ACCESS:

Existing off Cape Horn Road

LAKE:

Lake Jefferson, Recreational Development lake

Recreational Development Lake - Lakes that usually have between sixty (60) and two hundred twenty five (225) acres of water per mile of shoreline, between three (3) and twenty five (25) dwellings per mile of shoreline, and are more than fifteen (15) feet deep.

ATTACHMENTS

Application, Written Detail of Request, Survey, Surveyor Certification, Aerial photo, Findings of Fact

STAFF FINDINGS

Staff findings per Le Sueur County Ordinance, the following findings have been developed for this request:

1. Variance:	Request:	Required:	Ordinance:	Page:
a. Septic/Pump tank to structure:	0 feet	10 feet	Section 17, Subdiv. 4. D. 1. b.	17-9

Page 1 of 2

b. Septic drainfield to OHWL:	45 feet	75 feet	Section 17, Subdiv. 4. D. 5. b.2.	17-9
c. Septic drainfield to structure:	6 feet	20 feet	Section 17, Subdiv. 4. D. 1. a.	17-9
d. Septic drainfield to property line:	3 feet	10 feet	Section 17, Subdiv. 4. D. 2.	17-9
e. Septic system to bluff:	<u>Within</u>	0 feet- <u>outside</u>	Section 17, Subdiv. 4. D. 9. a. 3.	17-9

2. **Refer to DNR Guidance Letters:**

- a. The Role of the Variances in Shoreland Management Ordinances pg. 9
 - b. Bluffs and Steep Slopes pg. 11
 - c. Non-conforming Lots of Record in Shoreland Areas pg. 19
 - d. Structure Setback Requirements pg. 21
3. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official controls and are consistent with the comprehensive plan.
 4. A Variance may be granted only where the strict enforcement of the official controls will result in a **practical difficulty**.
 5. It is the responsibility of the applicant and/or landowner to prove evidence that a practical difficulty exists.
 6. A determination that a practical difficulty exists upon the consideration of the **findings of fact**.

CONSIDERATIONS

1. The following shall be considered at the hearing:
 - a. There are special circumstances or conditions affecting the land, structures or use referred to in the Variance.
 - b. The granting of the application will not be a detriment to the public health, safety, and general welfare or injurious to property or improvements in the area adjacent to the property of the applicant/landowner.
 - c. Consider sewage treatment and water supply capabilities or constraints of the lot and shall deny the variance if adequate facilities cannot be provided.
2. **Additional Considerations:**
 - a. Property is located within the German/Jefferson Sewer District. Installation deadline 12-31-17.
 - b. Variance would allow the applicant to deviate from the 30-foot required bluff setback. (*Located within bluff.*)
 - c. Proposal will require a Conditional Use Permit for grading, excavating, and filling within a bluff.

CONDITIONS

1. In granting any Variance, the Board of Adjustment may designate such conditions in connection that will secure substantially the objectives of the Ordinance, regulation or provision to which the application is granted.
2. Conditions must be directly related to and bear a rough proportionally to the impact created by the Variance.
3. *If approved*, construction must be completed prior to the Variance expiration, Section 22; Subdivision 7.
4. *If approved*, a **zoning permit** must be purchased prior to starting construction, Section 26.
5. **Extension** must be requested 30 days prior to Variance expiration, Section 22; Subdivision 7.

VARIANCE FINDINGS OF FACT

Name of Applicant: RICHARD LEDVINA

Variance # 17237

Variance Request: TO ALLOW THE APPLICANT TO INSTALL A NEW SEPTIC TANK 0 FEET FROM THE STRUCTURE;
CONSTRUCT A SEPTIC DRAINFIELD 45 FEET FROM THE OHWL, 6 FEET FROM THE
STRUCTURE, 3 FEET FROM THE PROPERTY LINE; SEPTIC TANK AND DRAINFIELD LOCATED IN

- A. No Variance may be granted that would allow any use that is prohibited in the Zoning District in which the subject property is located.
- B. Facts supporting the answer to each question must be documented below, and are hereby certified to be the Findings of Fact of the Board of Adjustment.
- C. A Variance may be granted only where the strict enforcement of the official control will result in a practical difficulty.
- D. It is the responsibility of the applicant / landowner to prove evidence that a practical difficulty exists.
- E. A determination that a practical difficulty exists upon the consideration of the following criteria.

Y N 1. Does the property owner propose to use the property in reasonable manner?

Explain _____

JM JW JD CH FC
☐ ☐ ☐ ☐ ☐

Y N 2. Is the alleged practical difficulty unique to the property?

Explain _____

JM JW JD CH FC
☐ ☐ ☐ ☐ ☐

Y N 3. Were the circumstances causing the practical difficulty created by someone other than the applicant / landowner?

Explain _____

JM JW JD CH FC
☐ ☐ ☐ ☐ ☐

Y N 4. Will the issuance of the Variance maintain the essential character of the locality?

Explain _____

JM JW JD CH FC
☐ ☐ ☐ ☐ ☐

Y N 5. Does the alleged practical difficulty involve more than economic considerations?

Explain _____

JM JW JD CH FC
☐ ☐ ☐ ☐ ☐

F. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official controls.

Y N 6. Is the Variance consistent with and supported by the statement of purposes, policies, goal and objectives in the Ordinance?

Explain _____

JM JW JD CH FC
☐ ☐ ☐ ☐ ☐

Y N 7. Is the Variance consistent with the Comprehensive Plan?

Explain _____

JM JW JD CH FC
☐ ☐ ☐ ☐ ☐

G. IF ALL THE ANSWERS ARE "YES", THE CRITERIA FOR GRANTING THE VARIANCE HAVE BEEN MET.

() APPROVED

() DENIED

CONDITIONS:

Applicant response to conditions:

Agree ()

Disagree ()

Reasons:

Board of Adjustment Chairman

Date

Variance Application

I. Applicant:

Name Richard Ledvina
 Mailing Address 46437 Cape Horn Rd
 City Cleveland State MN Zip 56017
 Phone # 808-357-4276 Phone # _____

II. Landowner:

Name "as above"
 Property Address _____
 City _____ State _____ Zip _____
 Phone # _____ Phone # _____

III. Parcel Information:

Parcel Number 01.500.0030 Parcel Acreage _____
 Township Cleveland Section _____
 Subdivision Cape Horn Lot 4 Block 1

Full Legal Description must be attached.

(Full legal description can be found on deed, not abbreviated legal description from tax statement).

IV. Variance Request: List requested alternative to development standard(s).

- ① Septic tank 2-feet to dwelling ② Drain field 45 ft from lake
 ③ 3 feet from property line and ④ 6 feet to the dwelling
 ⑤ Located in the bluff

V. Description of Request:

a. A full written description of the proposed variance request with detailed information must be attached.

VI. Township Notification:

Township must be notified prior to application. (County Commissioners are not the Township Board.)

Cleveland Township notified on 07/12/17
 (Township Name) (Date)

Board Member John Kluntz regarding the proposed request.
 (Name)

VII. Site Plan - Shall be a Certificate of Survey to include, but not limited to:

- North point
- Lakes
- Well
- Access
- Setbacks
- Rivers
- Septic System
- Easements
- Property lines
- Wetlands
- Proposed Structures
- Road Right-Of-Way
- Streams
- Existing structures - *Within and adjacent to project area.*
- Lot Dimensions
- Ponds
- Location of trees to be removed - *Shoreland Districts.*

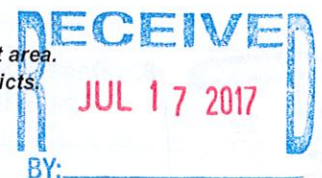
• Impervious Surface

- Required for *Shoreland, Business, & Industrial Districts.*
- Itemized current & proposed impervious surfaces to include total percentages.
- Examples include but are not limited to: *rooftops, sidewalks, patios, decks, driveways, parking lots, storage areas and concrete, asphalt, or gravel roads, or tightly compacted soils.*

*Site shall be physically staked, *then* surveyed.

*Stakes shall be in place at the time of onsite visit/meeting, or the application will be tabled.

*Stakes must remain in place until construction commences.



VIII. Practical Difficulty:

- a. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official controls and are consistent with the comprehensive plan.
- b. A Variance may be granted only where the strict enforcement of the official control will result in a practical difficulty.
- c. It is the responsibility of the applicant and/or landowner to prove evidence that a practical difficulty exists.
- d. A determination that a practical difficulty exists upon the consideration of the following criteria:

- 1. Describe how the Variance request is reasonable compared to the ordinance requirements being varied from.

See attached description for 1-9
on attached sheet

- 2. What are the unique circumstances of this property that prevent compliance with the Zoning Ordinance that will result in a practical difficulty?

- 3. Describe how the unique circumstances causing the practical difficulty were created by someone other than the applicant/landowner.

- 4. How will the request maintain the essential character of the locality?

- 5. Does the alleged practical difficulty involve more than economic considerations?

- 6. Is the request consistent with and supported by the statement of purposes, policies, goals and objectives in the Ordinance?

- 7. Describe how the request is consistent with the Comprehensive Land Use Plan.

- 8. Describe the properties current, and any proposed, onsite sewage treatment and water capabilities.

- 9. Explain why this request is the minimum variance amount to afford relief.

RECEIVED
JUL 17 2017
BY:

IX. Attachments shall include but not limited to:

- | | |
|---|--|
| <input type="checkbox"/> a. Site Plan- survey | <input type="checkbox"/> e. Floor plans and/or blue prints (<i>For structures</i>) |
| <input type="checkbox"/> b. Surveyor Certification | <input checked="" type="checkbox"/> f. Septic System Compliance Inspection |
| <input checked="" type="checkbox"/> c. Access approval | <input checked="" type="checkbox"/> g. Erosion control plan |
| <input checked="" type="checkbox"/> d. Full legal description | <input checked="" type="checkbox"/> h. Description of request |

The Department may request additional information regarding the application.

X. Quantities and Submittal Formats:

- One (1) reproducible copy of the request and all other supporting documents.
- Ten (10)** copies must be submitted for documents larger than 11 x 17, documents in color, aerials or photographs.
- Electronic version of any supporting documents if available.
- Additional copies may be requested as deemed necessary by the Department.

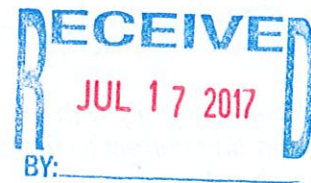
XI. Fees:

Variance: \$ 600
Filing Fee: \$ 46

Variance for Clusters: \$ 600 + \$200 per household
Filing Fee: \$ 46

Additional Fees:

Special Meeting: \$1,200
After-The-Fact meeting fee: Doubled + After-The-Fact Penalty.
After-The-Fact Penalty: \$1,500 OR 10% of the improvement, whichever is greater.



Fees must be paid at the time of application, cannot be accepted by mail, and are non-refundable. Cash or check. Credit cards will not be accepted.

XII. Procedure: See Section 22 of the Zoning Ordinance for full details.

- Pre-application meeting is recommended prior to making application to ensure submittal completion. **Appointment is necessary.**
- Application must be made in person by the applicant and/or landowner prior to 12 P.M. on the date of application deadline. **Appointment is necessary.**
- All required information must be correct and submitted **at the time of application.** or the application will not be accepted.
- Fees **will not** be accepted by mail and must be paid at the time of application.
- Notification will be sent to all landowners within 500 feet of the affected property, (minimum of 10 landowners) as well as the affected Town Board, any municipality within 2 miles, and other applicable agencies.
- Notice will be published in the newspaper of general circulation in the area concerned and the official newspaper of the County.

- g. The Board of Adjustment may conduct an onsite visit to the affected property prior to the scheduled meeting. Any conversation with the Board of Adjustment during the onsite visit is prohibited.
- h. The Board of Adjustment shall hold a public hearing on the proposed Variance at a scheduled Board of Adjustment meeting.
- i. The applicant or representative must appear before the Board of Adjustment in order to answer questions concerning the request, or the application will be tabled.
- j. The Board of Adjustment has the authority to request additional information or designate conditions.
- k. The Board of Adjustment has the authority to determine Variance approval or denial. No Variance may be granted that allow any use that is prohibited in the Zoning District in which the property is located.
- l. The Department shall notify the applicant and/or landowner in writing of the Board of Adjustment decision.
- m. The Department will file a certified copy of any order or decision issued by the Board of Adjustment with the County Recorder.
- n. A zoning permit is required prior to starting construction however zoning permits will not be available the day of the Board of Adjustment meeting. Zoning permit application must be approved prior to obtaining a zoning permit.

XIII. Signatures:

I hereby certify with my signature that all data contained herein as well as all supporting data are true and correct to the best of my knowledge.

[Signature]
Applicant signature

07/12/17
Date

I hereby certify with my signature that all data contained herein as well as all supporting data are true and correct to the best of my knowledge.

[Signature]
Landowner signature

07/12/17
Date

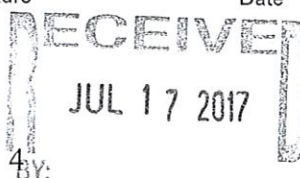
OFFICE USE ONLY

Date received <u>7-17-17</u>	Present Zoning Classification <u>RR</u>	Feedlot within 500' 1000' <u>(N)</u>
Meeting date <u>8-17-17</u>	Lake Classification <u>RD</u>	Erosion Control Plan <u>(Y)</u> <u>N</u>
60 Day <u>9-15-17</u>	Lake <u>Jefferson</u>	Water courses <u>Y</u> <u>(N)</u>
RFPE <u>102280</u>	FEMA Panel # <u>27076000200</u>	Bluff <u>(Y)</u> <u>N</u>
<input checked="" type="checkbox"/> Site Plan -survey	Flood Zone <u>X-outside</u>	Other _____
<input checked="" type="checkbox"/> Surveyor Certificate	<input checked="" type="checkbox"/> Full legal description	<input checked="" type="checkbox"/> Septic _____
<input type="checkbox"/> Floor plans/blue prints	<input type="checkbox"/> Access approval	<input type="checkbox"/> _____
<input checked="" type="checkbox"/> Description of Request	<input type="checkbox"/> Blue Prints	<input checked="" type="checkbox"/> Fee \$ <u>6410</u>
<input type="checkbox"/> Application complete	<u>mem</u>	<u>7-17-17</u>
	Planning & Zoning Department Signature	Date
		Permit # <u>17237</u>

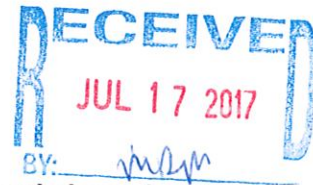
COC
NONC/Waiver
Design

ATF / SPEC MTG

01-15-16



Variance Application



Section V. Description of Request

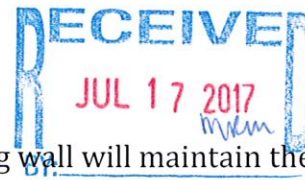
Property was built in 1970's on a very small lot. Property currently has a holding tank with drain field that is not in compliance. Home was bought in December 2015 and currently has family of 4 residing in it year-round. In 2015, home was bought with understanding that Bruender Construction would be placing a cluster system in the area which would have minimal environmental impact to the property address now requesting variance, however, in mid-2017, the landowner of the property was notified by Bruender Construction that the cluster system plan was being abandoned and that the landowner would have to seek other options for septic.

The current situation is that the property is on a small lot with only one location to place a septic system (on a bluff between Lake Jefferson and a community well-roughly 50 ft from well and lake). Option 1 would be to be on a holding tank and have tank pumped when full, however given family of 4 residing at the home, the tank would have to be pumped at least once per week in addition to facing constant threat of tank overflow. Option 2, which I am requesting variance for, would require a mound system built into the bluff, which requires a retaining wall to support the mound system. Also variance for new tank to the dwelling, drain field to dwelling, to the property line and to the lake. The variance is essential given the lack of options for septic placement.

Section VIII. Practical Difficulty

d.

1. Request is reasonable given the very small lot with little options for septic placement. The bluff is the only location on the property that can support placement of the septic (and where the current septic is located). The community well located on the southwestern portion of the property and the lake on the southeastern portion of the property along with setbacks necessitate the location of a mound system and supporting retaining wall (which requires variance approval).
2. The unique circumstance that prevents compliance with zoning ordinance are the lot size, community well location, lake location and bluff all of which are located in the only area on the lot there is room for septic system to be placed.
3. The unique circumstances causing the practical difficulty were created due to the original lot size that the home was allowed to be built on in 1972. Additionally, when the home was bought in 12/2015 for full-time living quarters for my family, Bruender Construction took a down payment for a cluster system that would allow the current septic to become compliant, however Bruender abandoned cluster system plan, thereby necessitating the option for a mound system and supporting retaining wall.



4. The proposed mound system and supporting retaining wall will maintain the essential character of the locality as it will only raise the ground level in the area of the bluff supporting the mound system. Minimal trees and brush will be removed in the process. The structure will also leave nearby properties unaffected. The neighbor bordering the property line of the septic is accepting to the septic plan and is also willing to sell some of his property to me if needed.

5. The practical difficulty does involve more than economic considerations. The only other septic option that wouldn't require variance would be a capped holding tank, however this is highly unreasonable and not recommended given family of 4 living year-round at home. If a capped holding tank option was used, there would be constant threat of overflow into dwelling and outside of dwelling. Furthermore, company who would do the pumping (would be required at least once per week) would not be able to miss a scheduled pumping date (snowstorm, etc), as a one-day delay could result in tank overflow (which would be environmentally unacceptable).

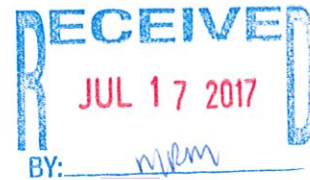
6. The request is consistent with and supported by the statement of purposes, policies, goals and objectives in the Ordinance. More specifically, this plan will not affect agricultural soil and land (goal 1), it will conserve natural resources and protect ecological systems while improving water quality in the Lake Jefferson area (goals 2 and 3). For example, the proposed mound system with the supporting retaining wall will be a much more environmentally efficient septic system than the current one or that of a holding tank. A holding tank would not support a family of four without constant threat of overflow, which would occur both inside the dwelling and outside near the lake and community well (would have to be pumped a minimum of once weekly). Also, the proposed septic system would improve the water quality by providing more dirt fill to allow a septic to be better filtered before entering the water table. This will contribute to improved well water, and Lake Jefferson water quality overall. The septic would be placed on a bluff, however the bluff is not a significant one and also is hidden by trees/brush, which makes any cosmetic concerns minimal for the public (can't be seen by the public from nearby roads or from the lake. Furthermore, the bluff would only be altered in the area of septic placement (current septic/drain field is already placed there anyways). Dirt fill and a retaining wall will be placed with minimal impact to the ecological/environment/bluff area. The retaining wall and septic project may actually preserve the bluff (versus its natural state) by preventing soil erosion from heavy rain fall and melting snow once water diversion mechanisms are in place (part of the septic placement plan).

7. The variance request is consistent with the Comprehensive Land Use Plan by the reasoning stated in #6.

8. The property's current onsite sewage treatment system consists of a tank with drain field, which is currently not in compliance with the ordinance. Current owner explored several avenues for compliance for living in the home year round (primary residence). A down payment was placed on a proposed cluster system in late 2015,

however the contractor for the cluster system abandoned the project. The next option was a mound system with a supporting retaining wall. Holding tanks were not explored due to the need for a septic system that could support a family of four year round.

9. This request is the minimum variance to afford relief as it is the only remaining option given the limited property size, limited bluff setback, and distance constraints from community well and lake. A cluster system proposal was abandoned by the contractor and a holding tank would not be reasonable given the family size living at the property year-round. Unfortunately, a mound system and retaining wall is projected to cost the owner at least \$40,000.00 to complete, which is the most cost efficient and environmentally friendly option at this time.



Le Sueur County

Surveyor Certification

- I. **Applicant:**
Name DERICK LEDUINA
- II. **Property Owner (s), if different from above:**
Name _____
Property Address 46437 CAPE HORN ROAD
City CLEVELAND State MN Zip 56017
- III. **Parcel Information:**
Parcel Number 01.500.0030
- IV. **Quantities and Submittal Formats:**
- One reproducible 8.5" x 11" copy of the request and all other supporting documents.
 - If in color, an aerial, or larger than 8.5" x 11" in size, 10 copies must be submitted.
 - Electronic version of any supporting documents, if available.
 - Additional copies may be requested as deemed necessary by the Planning & Zoning Department.
 - All required information must be correct and submitted at the time of application, or the application will not be accepted.

V. **Site Plan-must be a survey:**

**BUILDING SITE SHALL BE PHYSICALLY STAKED BY THE SURVEYOR
OR THE APPLICATION WILL BE TABLED.**

Site plan shall include but not limited to:

- North point
- setbacks
- property lines
- road right-of-way
- easements
- current & proposed impervious surface-Itemized with percentages (if in shoreland)
- landscape, screening and buffering (if applicable)
- location of significant trees to be removed (if applicable)
- note how disturbed areas will be restored (if applicable)
- lakes
- rivers
- wetlands, ponds
- streams
- well
- existing structures (within and adjacent to project area)
- proposed structures
- lot dimensions
- septic system
- access

- VI. The proposed improvements have been physically staked onsite then surveyed on 5/17/17 to reflect an accurate account of current and proposed conditions of the property identified above.

VII. **Signatures:**

I hereby certify with my signature that all data contained herein as well as all supporting data are true and correct to the best of my knowledge.

[Signature]
Surveyor's signature

07/17/17
Date

43110
Lic #

OFFICE USE ONLY

7-17-17
Date received

[Signature]
Planning & Zoning Authority signature

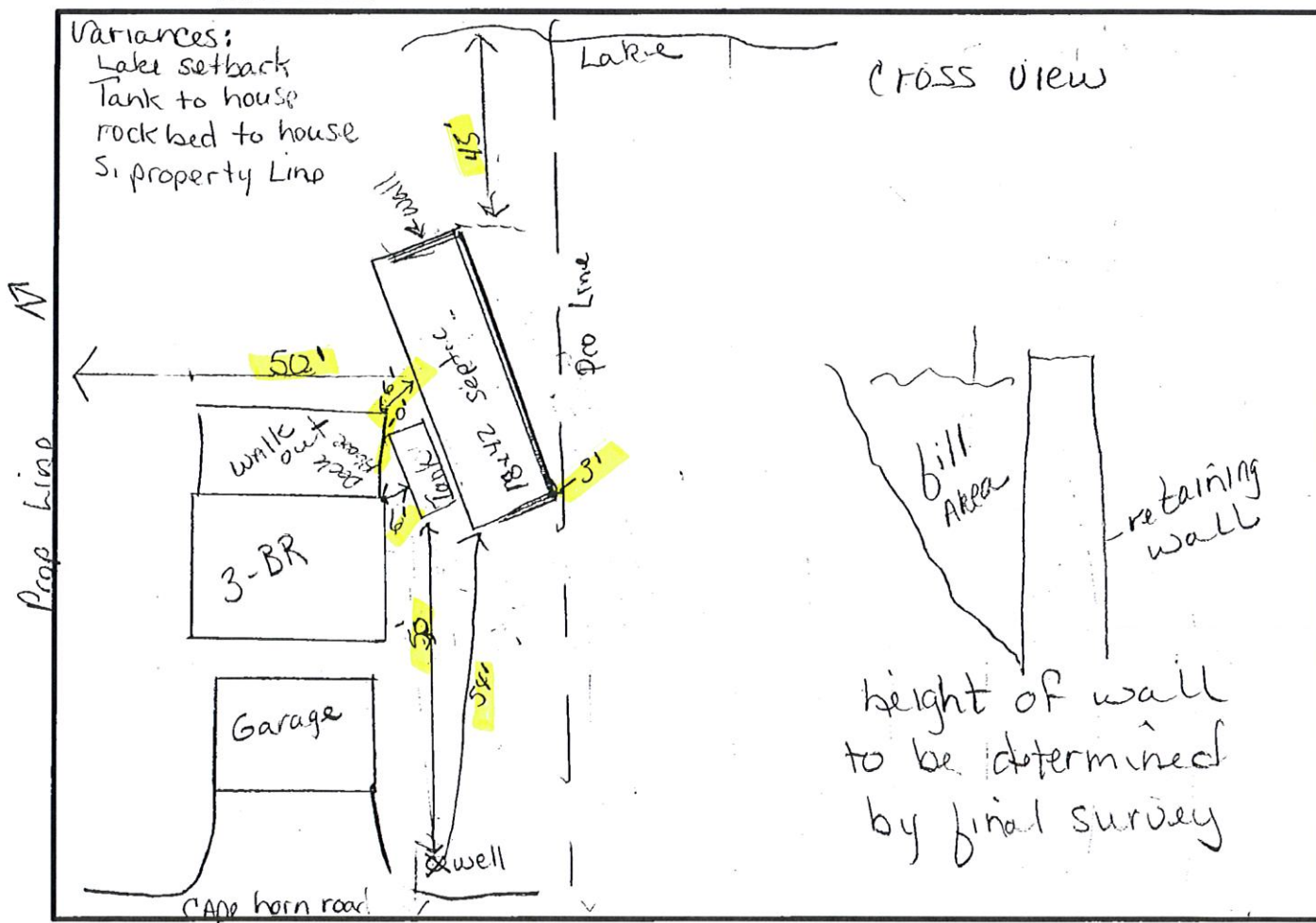
10-01-11



Property Owner: Derick Ledvina

Property Address: 46437 Cape Horn Road, Cleveland, MN 56017

Parcel Number: 01.500.0030



I hereby certify as a State of Minnesota Licensed Septic Contractor that the subsurface sewage treatment system diagramed above was designed/installed in accordance with all applicable requirements of MN Rules Chapters 7080 &/or 7081 and the LeSueur County Zoning Ordinance. The drawing is accurate as of the date at the bottom of this form for the site identified at the top of this form. No determination of the future hydraulic performance can be made due to future water usage over the life of the system.

Septic Designer Signature: _____

Wayne O. James

Septic Designer Company: _____

James Brothers Construction, Inc.

License Number: 73

Certification Number: 855

Date: _____

7/6/17

Septic Installer Signature: _____

Septic Installer Company: _____

James Brothers Construction, Inc.

License Number: 73

Certification Number: _____

Date: _____

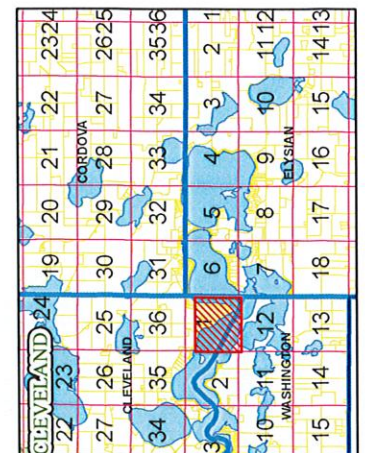
Mailing: 88 South Park Avenue
LeCenter, MN 56057

Physical: 515 South Maple Avenue
LeCenter, MN 56057

Revised: 3/2016

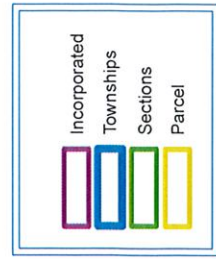
LE SUEUR COUNTY ENVIRONMENTAL SERVICES

NAME: Richard Ledvina
 PID: 01.500.0030
 DATE: 08-04-17
 FIRM #: 27079C0270D
 F-Zone: X-Outside
 RFPE: na
 District: Recreational
 Residential



Map Disclaimer

Reasonable efforts have been made by the Le Sueur County GIS Department to verify that these maps accurately interpret the source data used in their preparation; however, a degree of error is inherent in all maps, and these maps may contain omissions and errors in scale, resolution, rectification, positional accuracy, development methodology, interpretation of source data, and other circumstances.
 *The maps are date specific and are intended for use only at the published scale.
 *These maps should not be used for navigational, engineering, legal, or any other site-specific use.



Coordinate System: NAD 1983 HARN Adj MN Le Sueur Feet

Photo dated April/May 2013

Created By: MRM

LE SUEUR COUNTY
 ENVIRONMENTAL SERVICES
 507-357-8538