



Le Sueur County, MN

Thursday, May 17, 2018

Regular Session

Item 2

Dunn Packet

Staff Contact: Joshua Mankowski or Michelle Mettler

VARIANCE STAFF REPORT

GENERAL INFORMATION

APPLICANT/OWNER: Gary & Judy Dunn

911 ADDRESS: 46535 Cape Horn Rd, Cleveland, MN

VARIANCE REQUEST: To allow the applicant to construct a septic system drainfield 5 feet from the property line, 3 feet from the attached garage and 16 feet from the neighbors dwelling.

VARIANCE NUMBER: 18035

PARCEL NUMBER: 01.500.0210

SITE INFORMATION

LOCATION: Lot 23 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 does make reference to water quality.

GOAL #2: Le Sueur County should adopt and enforce land use goals and policies that conserve and restore its natural resources, bring protections to the ecological systems of the natural environment, and prevent the premature development of natural resource areas.

Objective 2: Utilize shorelands on Recreational Development Lakes (RD) for housing, but with a focus on development design that protects the resource.

Action 1: Continue utilizing the minimum state shoreland regulations to determine housing densities and development design.

Action 2: Adopt the water quality protections standards and design standards specified under goal #3, actions #1 & #2 to protect lake 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 #1: Undertake fact-finding activities to establish needs and/or authorize Preliminary Engineer Report.

Strategy #2: Determine course of action:

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

b. Cluster and community collection for areas in which space and proper soils characteristics are available for large drainfields;

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.

RFPE: Regulatory Flood Protection Elevation: 1022.86 Lowest floor must be at or above RFPE.

BACKGROUND INFORMATION

Parcel is a non-conforming lot with limited space. Landowners purchased an additional 15 feet that was originally platted for a driveway. Additional space is being utilized for sewage treatment system. Back yard is bluff. Other alternatives would be holding tank or off-site treatment system. Property was located within the German-Jefferson Subordinate Service District. As part of the inventory the septic system was found to be non-compliant. In order to meet the installation deadline, the Dunn's had their existing tanks converted to holding tanks. The tanks were inspected and found to be compliant, and will be used as septic tank and pump tank to be connected to the proposed mound.

ATTACHMENTS

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

STAFF FINDINGS

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

- | 1. <u>Variance:</u> | <u>Request:</u> | <u>Required:</u> | <u>Ordinance:</u> | <u>Page:</u> |
|--|-----------------|------------------|--------------------------------|--------------|
| a. Septic drainfield to property line: | 5 feet | 10 feet | Section 17. Subdiv. 4. D. 2. | 17-9 |
| b. Septic drainfield to structure: | 3 feet | 20 feet | Section 17. Subdiv. 4. D. 1.a. | 17-9 |
| c. Septic drainfield to neighbor's dwelling: | 16 feet | 20 feet | Section 17. Subdiv. 4. D. 1.a. | 17-9 |
2. **Refer to DNR Guidance Letters:**
- | | |
|---|--------|
| a. Administration, Compliance, and Enforcement | pg. 1 |
| b. The Role of the Variances in Shoreland Management Ordinances | pg. 9 |
| 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.

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: GARY & JUDY DUNN

Variance # 18035

Variance Request: TO ALLOW THE APPLICANT TO CONSTRUCT A SEPTIC SYSTEM DRAINFIELD 5 FEET FROM THE PROPERTY LINE, 4 FT FROM THE ATTACHED GARAGE, 16 FEET FROM THE NEIGHBORS DWELLING.

- 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?

Jim M	<input type="checkbox"/>	John W	<input type="checkbox"/>	Jeanne D	<input type="checkbox"/>	Colin H	<input type="checkbox"/>	Fritz C	<input type="checkbox"/>	Majority	<input type="checkbox"/>
-------	--------------------------	--------	--------------------------	----------	--------------------------	---------	--------------------------	---------	--------------------------	----------	--------------------------

Explain _____

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

Jim M	<input type="checkbox"/>	John W	<input type="checkbox"/>	Jeanne D	<input type="checkbox"/>	Colin H	<input type="checkbox"/>	Fritz C	<input type="checkbox"/>	Majority	<input type="checkbox"/>
-------	--------------------------	--------	--------------------------	----------	--------------------------	---------	--------------------------	---------	--------------------------	----------	--------------------------

Explain _____

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

Jim M	<input type="checkbox"/>	John W	<input type="checkbox"/>	Jeanne D	<input type="checkbox"/>	Colin H	<input type="checkbox"/>	Fritz C	<input type="checkbox"/>	Majority	<input type="checkbox"/>
-------	--------------------------	--------	--------------------------	----------	--------------------------	---------	--------------------------	---------	--------------------------	----------	--------------------------

Explain _____

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

Jim M	<input type="checkbox"/>	John W	<input type="checkbox"/>	Jeanne D	<input type="checkbox"/>	Colin H	<input type="checkbox"/>	Fritz C	<input type="checkbox"/>	Majority	<input type="checkbox"/>
-------	--------------------------	--------	--------------------------	----------	--------------------------	---------	--------------------------	---------	--------------------------	----------	--------------------------

Explain _____

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

Jim M	<input type="checkbox"/>	John W	<input type="checkbox"/>	Jeanne D	<input type="checkbox"/>	Colin H	<input type="checkbox"/>	Fritz C	<input type="checkbox"/>	Majority	<input type="checkbox"/>
-------	--------------------------	--------	--------------------------	----------	--------------------------	---------	--------------------------	---------	--------------------------	----------	--------------------------

Explain _____

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?

Jim M	<input type="checkbox"/>	John W	<input type="checkbox"/>	Jeanne D	<input type="checkbox"/>	Colin H	<input type="checkbox"/>	Fritz C	<input type="checkbox"/>	Majority	<input type="checkbox"/>
-------	--------------------------	--------	--------------------------	----------	--------------------------	---------	--------------------------	---------	--------------------------	----------	--------------------------

Explain _____

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

Jim M	<input type="checkbox"/>	John W	<input type="checkbox"/>	Jeanne D	<input type="checkbox"/>	Colin H	<input type="checkbox"/>	Fritz C	<input type="checkbox"/>	Majority	<input type="checkbox"/>
-------	--------------------------	--------	--------------------------	----------	--------------------------	---------	--------------------------	---------	--------------------------	----------	--------------------------

Explain _____

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

ACTION: () APPROVE () DENY

CONDITIONS: _____

Applicant response to conditions: Agree () Disagree ()

Reasons: _____

Board of Adjustment Chairman

Date

Variance Application

I. **Applicant:**
 Name GARY & JUDY DUNN
 Mailing Address 46535 CAPE HORN RD.
 City CLEVELAND State MN. Zip 56017
 Phone # 507-931-6819 Phone # 507-380-1966

II. **Landowner:**
 Name GARY & JUDY DUNN
 Property Address 46535 CAPE HORN RD.
 City CLEVELAND State MN. Zip 56017
 Phone # 507-931-6819 Phone # 507-380-1966

III. **Parcel Information:**
 Parcel Number 01.500.0210 Parcel Acreage _____
 Township CLEVELAND Section _____
 Subdivision Capehorn Lot 23 Block _____

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).
INSTALLATION OF DRAINFIELD. [3] FROM ATTACHED
GARAGE & HOME & [5] FROM PROPERTY LINE &
[10] QND TO NEIGHBORS HOUSE

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 12/13/2017
 (Township Name) (Date)

Board Member PAT McCABE regarding the proposed request.
 (Name)

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

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

WE CANNOT MEET THE PROPERTY LINE OR STRUCTURE SETBACK BECAUSE THE LOT IS TOO SMALL ALSO WE ARE TOO CLOSE TO THE NEIGHBORS HOUSE

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

OUR LOT IS NOT LARGE ENOUGH TO CONSTRUCT A SEPTIC MOUND WITHOUT VARIANCES.

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

THE COUNTY IS REQUIRING A NEW SEPTIC SYSTEM BECAUSE WE ARE IN GERMAN JEFFERSON SEWER DISTRICT.

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

IT WILL NOT CHANGE WHAT IS THERE

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

YES THE OLD SYSTEM WAS FOUND TO BE NON COMPLIANT BY INSPECTION

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

YES ACCORDING TO THE ORDINANCE A NEW SYSTEM IS NECESSARY TO PROTECT GROUND WATER & WATER QUALITY

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

THE GOAL OF THE LAND USE PLAN IS TO PROTECT WATER QUALITY - THIS VARIANCE WILL ALLOW US TO INSTALL A NEW SYSTEM THAT WILL PROTECT WATER QUALITY

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

A VARIANCE IS NEEDED TO INSTALL A NEW MOUND SYSTEM THAT WILL PROTECT GROUND WATER.

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

WE NEED A VARIANCE TO ALLOW OUR NEW SYSTEM TO BE INSTALLED CLOSE TO OUR PROPERTY LINE & STRUCTURES. AND OUR NEIGHBORS HOUSE

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 type="checkbox"/> f. Septic System Compliance Inspection |
| <input type="checkbox"/> c. Access approval | <input type="checkbox"/> g. Erosion control plan |
| <input type="checkbox"/> d. Full legal description | <input type="checkbox"/> h. Description of request |

The Department may request additional information regarding the application.

X. Quantities and Submittal Formats:

- a. One (1) reproducible copy of the request and all other supporting documents.
- b. **Ten (10)** copies must be submitted for documents larger than 11 x 17, documents in color, aerials or photographs.
- c. Electronic version of any supporting documents if available.
- d. 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.

- a. Pre-application meeting is recommended prior to making application to ensure submittal completion. **Appointment is necessary.**
- b. 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.**
- c. All required information must be correct and submitted **at the time of application**, or the application will not be accepted.
- d. Fees **will not** be accepted by mail and must be paid at the time of application.
- e. 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.
- f. 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] Judith M. Dunn 4/11/2018
Applicant signature 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] Judith M. Dunn 4/11/2018
Landowner signature Date

OFFICE USE ONLY

Date received <u>4-11-18</u>	Present Zoning Classification <u>RR</u>	Feedlot within 500' <u>1000'</u> <u>(N)</u>
Meeting date <u>5-17-18</u>	Lake Classification <u>RD</u>	Erosion Control Plan <u>(Y)</u> <u>N</u>
60 Day <u>6-10-18</u>	Lake <u>Liferson</u>	Water courses <u>Y</u> <u>(N)</u>
RFPE <u>1022.80</u>	FEMA Panel # <u>2707AC0270D</u>	Bluff <u>(Y)</u> <u>N</u>
<input checked="" type="checkbox"/> Site Plan -survey <u>4-18</u>	Flood Zone <u>X-outside</u>	Other _____
<input checked="" type="checkbox"/> Surveyor Certificate <u>4-18</u>	<input checked="" type="checkbox"/> Full legal description	<input checked="" type="checkbox"/> Septic _____
<input checked="" type="checkbox"/> Floor plans/blue prints	<input checked="" type="checkbox"/> Access approval	<u>12-2017</u>
<input checked="" type="checkbox"/> Description of Request	<input checked="" type="checkbox"/> Blue Prints	<input checked="" type="checkbox"/> Fee \$ <u>6400</u>
<input checked="" type="checkbox"/> Application complete	<u>Michelle R. Mott</u>	<u>4-17-18</u>
	Planning & Zoning Department Signature	Date
		Permit # <u>18034</u>

COC
NONC/Waiver
Design

ATF/SPEC-MTG

01-15-16

OHWL 10185

CI 4-8-18 HT

Variance Application for Gary and Judy Dunn

We come before the board to request a variance to install a new septic mound system on our property located at 46535 Cape Horn Road, Cleveland Minnesota, Lot 23. We were required by the county to put in a new septic system to stay within the German - Jefferson Sewer District requirements.

My wife and I had been working on getting an up-dated system in our area for many years. We held neighborhood meetings regarding the benefits of a sewer pipeline or a cluster system. When the pipeline failed to pass, we again pursued and invested money in trying to get the installation of a cluster system going. We then struggled for a long time to try and purchase affordable land in which to install it. Even though a land owner wanted two to three times the going rate for his parcel of land that he was willing to sell, we felt we had enough interested parties in our whole neighborhood to possibly make a cluster system affordable.

After returning home in March of 2017, from our winter stay, we then found out that several variances had been given out to some of our neighbors who like us also did not have enough land to install a private system. Even though we were happy for them, by the end of June 2017, it became apparent that now we were not going to have enough people to pursue an affordable cluster system.

During this time, my wife and I had purchased a strip of land next to our home joining it to our parcel of land. With the help of our attorney, we worked with the Le Sueur County Environmental Services and their attorney and late last fall received approval to install a mound system on this land if we could get a variance. Unfortunately by this time it did not allow us enough time to finish the variance process by the deadline. Due to all this, at the end of December 2017, we now had to pay to have our system converted to a holding tank.

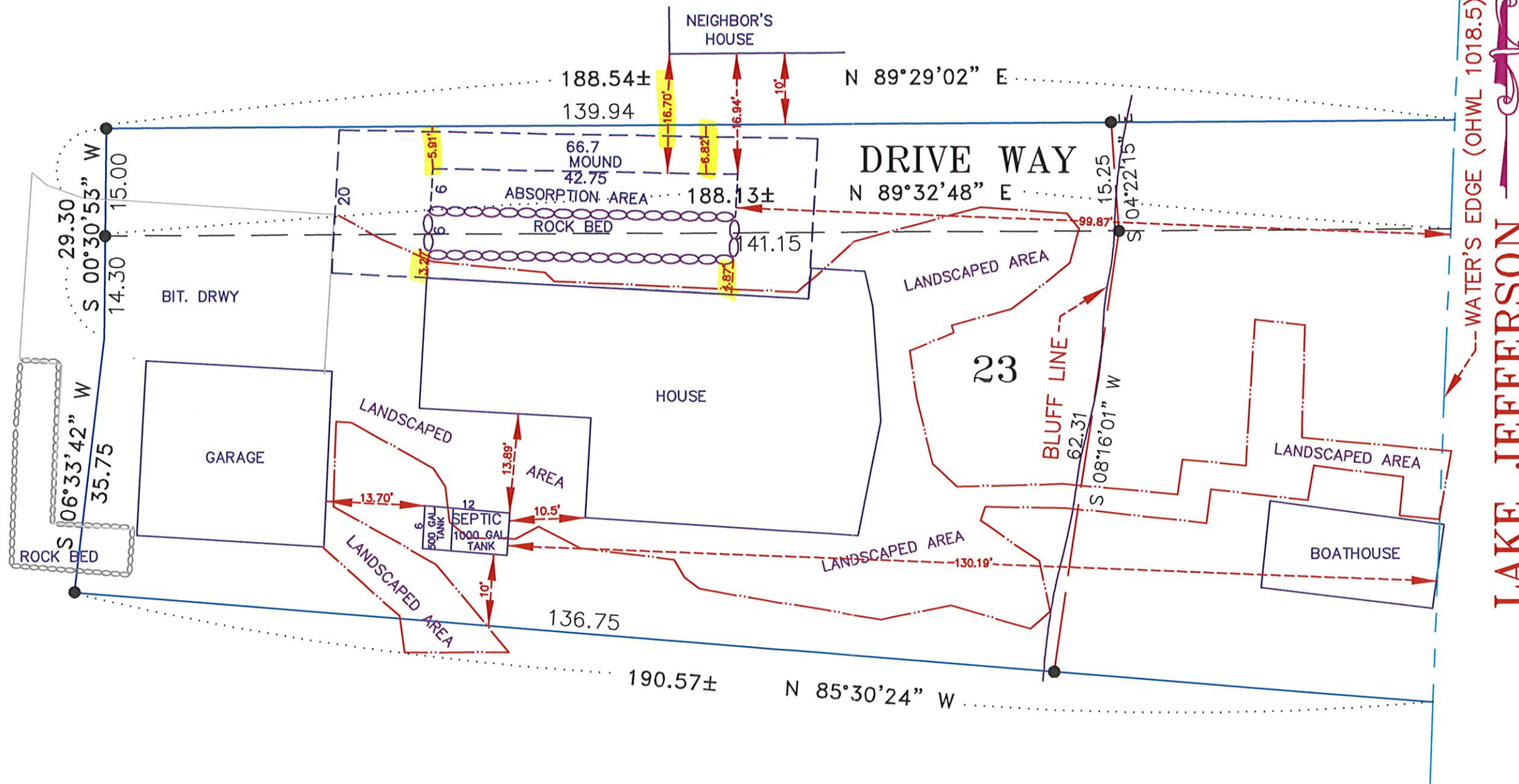
We live in our home year round and wish to continue making it our retirement home. A holding tank makes this very difficult for various reasons; including financially and for the resale value of our property. We ask you for these variances because our proposed mound system dose not meet the setback guidelines for distance to our house, property line, and neighbor's house. We also value the importance of improving the quality of our water and lakes. Thank you for your consideration regarding this matter.

Gary W. Dunn and Judy M. Dunn



CAPE HORN ROAD

CERTIFICATE OF SURVEY

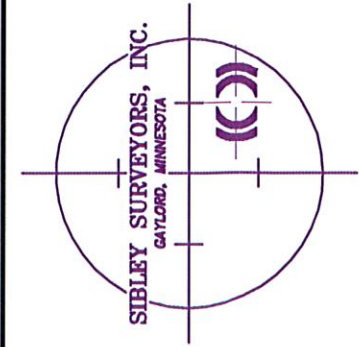


RECEIVED
APR 18 2018
BY: *mkm*

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.

DATE 12/9/17 REGISTRATION NO. 15475
REVISOR: 12/19/17, 4/16/18, 4/18/18
BY: *Gary Dunn*
AVERY GROCHOW, LS

LAND SURVEY FOR
GARY DUNN
LOT 23 & 15' LYING S' OF LOT 22
CAPE HORN
LE SUEUR COUNTY, MINNESOTA
● DENOTES LE SUEUR CO. MONUMENT
○ DENOTES IRON PIPE FOUND
○ DENOTES IRON PIPE SET BY RLS NO. 15475
SCALE: 1 INCH = 20 FEET
Dec., 2017
FILE NO. 3833



Surveyor Certification

I. Applicant:
Name Gary Dunn

II. Landowner:
Name Gary & Judy Dunn
Property Address 46535 Cape Horn Road
City Cleveland State MN Zip 56017

III. Parcel Information:
Parcel Number 01.500.0210

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

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

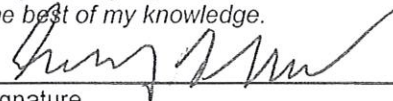
V. Quantities and Submittal Formats:

- a. One (1) reproducible copy of the request and all other supporting documents.
- b. Ten (10) copies must be submitted for documents larger than 11 x 17, documents in color, aerials or photographs.
- c. Electronic version of any supporting documents if available.
- d. Pre-application meeting is recommended prior to making application to ensure submittal completion. Appointment is necessary.
- e. 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.
- f. All required information must be correct and submitted at the time of application, or the application will not be accepted.

VI. Signatures:

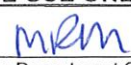
The proposed improvements have been physically staked onsite then surveyed on April 18, 2018 to reflect an accurate account of current and proposed conditions of the property identified above.

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.

 April 18, 2018 15475
Surveyor Signature Date Lic #

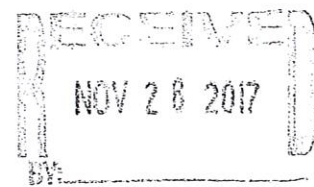
OFFICE USE ONLY




Planning & Zoning Department Signature

01-15-16

1



AGREEMENT

This Agreement dated November 28, 2017 by and between Gary W. Dunn and Judy M. Moser-Dunn, as Trustees or their successors in trust under the Gary W. and Judy M. Dunn Living Trust dated August 19, 1998 ("the Dunns"), and Le Sueur County, Minnesota ("the County") regarding issuance of a septic system permit.

RECITALS

I.

The Dunns' homestead is located at 46535 Cape Horn Road, Cleveland, Minnesota 56017 (the "homestead") and legally described as follows:

Lot 23 of Cape Horn, part of Government Lots 2 and 3, Section 1, in Township 109 North, Range 25 West, in Le Sueur County, State of Minnesota. PID: 01-500-0210

II.

The Dunns acquired fee simple title to a 15 foot strip of land north of Dunns' homestead by Warranty Deed dated July 20, 2016, recorded July 22, 2016, as Document Number 405224, Le Sueur County Recorder and described as follows:

That certain tract of land described as Driveway according to the plat of Cape Horn, part of Government Lots 2 and 3, Section 1, Township 109 North, Range 25 West, Le Sueur County, Minnesota, lying between Lots 22 and 23 of said Cape Horn, described as follows:

Commencing at the Southwesterly corner of Lot 22, Cape Horn, part of Government Lots 2 and 3, Section 1, Township 109 North, Range 25 West, Le Sueur County, Minnesota; thence Southerly along the Westerly line of the Driveway according to said plat, 15 feet to the Northwesterly corner of Lot 23, Cape Horn; thence Easterly along the Northerly line of said Lot 23 to the intersection with the water's edge of Lake Jefferson; thence Northerly along said water's edge to its intersection with the Southerly line of said Lot 22; thence Westerly along the Southerly line of said Lot 22 to the point of commencement.

III.

The Cape Horn Plat dated November 17, 1960, recorded with the Le Sueur County Recorder, in Book B of Plats, page 20, referenced the strip of land referenced above as a Driveway ("the Driveway").

IV.

The Driveway was not dedicated to the public nor is it used as a Driveway.

V.

The Dunns seek from Le Sueur County Environmental Services a permit ("the permit") to install a septic system both on their homestead and the Driveway.

VI.

The County requires from the Dunns an Agreement to hold the County harmless and to indemnify the County from any future claims by third parties contesting the issuance of the permit to the Dunns for the installation of a septic system partially located on the Driveway.

VII.

The Dunns agree to hold the County harmless and to indemnify the County from any future claims by third parties contesting the issuance of the permit for a septic system partially located on the Driveway.

In consideration of the foregoing, the parties agree as follows:

1. **Indemnification and Hold Harmless Agreement.** The Dunns hereby agree to indemnify and hold the County harmless from any and all future costs, damages, claims, liabilities and expenses including reasonable attorneys fees suffered by or claimed against the County based on any future claims by third parties contesting the issuance of the permit for a septic system partially located on the Driveway.
2. **Permit Issuance.** The County agrees to issue the permit to the Dunns for the installation of a septic system partially located on the Driveway subject to the Dunns' submission of an application for a variance and compliance with the applicable County ordinances permitting installation of a septic system.
3. **Time is of the essence of this Agreement.** This Agreement is made and executed under and in all respects to be governed and construed by the laws of the State of Minnesota. This Agreement shall be binding upon the inure to the benefit of the successors and assigns of each of the parties hereto.
4. **Enforceability of Agreement.** If for any reason any portion or section of this Agreement shall be declared void and unenforceable by any Court of law or equity, it shall

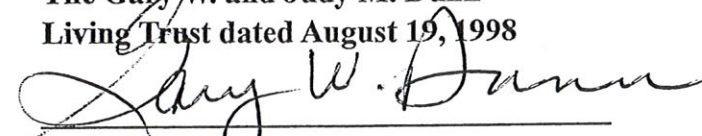
only affect such particular portion or section of this Agreement and the balance of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.

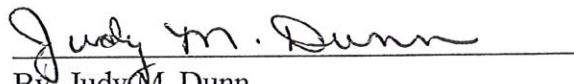
5. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but such counterparts when taken together shall constitute one Agreement.

6. **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties and supersedes any prior oral or written agreements between the parties. There are no verbal agreements that change this Agreement and no waiver of any of its terms will be effective unless any writing executed by the parties.

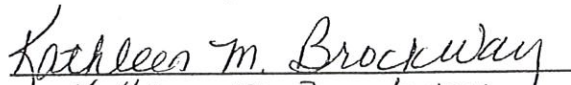
IN WITNESS WHEREOF, the Dunns and the County have executed this Agreement to be effective as of the date set forth above.

**The Gary W. and Judy M. Dunn
Living Trust dated August 19, 1998**

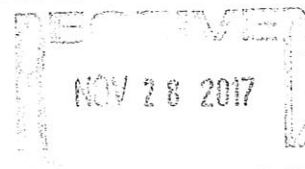

By: Gary W. Dunn
Its: Trustee


By: Judy M. Dunn
Its: Trustee

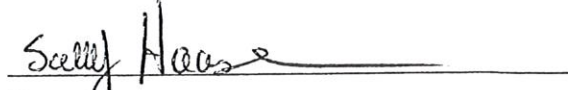
Le Sueur County, Minnesota


By: Kathleen M. Brockway
Its: Zoning Administrator

STATE OF MINNESOTA)
)SS.
COUNTY OF LE SUEUR)



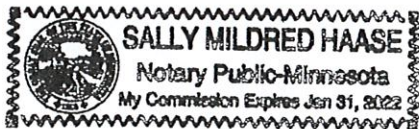
On this 17 day of November, 2017, before me appeared Gary W. Dunn, to me personally known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.


NOTARY PUBLIC



STATE OF MINNESOTA)
)SS.
COUNTY OF LE SUEUR)

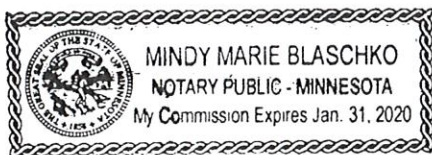
On this 17 day of November, 2017, before me appeared **Judy M. Dunn**, to me personally known to be the person described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.



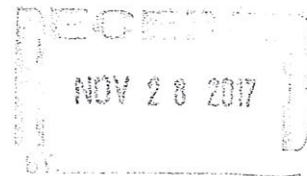
Sally Haase
NOTARY PUBLIC

STATE OF MINNESOTA)
)SS.
COUNTY OF LE SUEUR)

On this 28th day of November, 2017, before me appeared Kathleen M. Brackway, the zoning Administrator of Le Sueur County, Minnesota, to me personally known to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.



Mindy Blaschko
NOTARY PUBLIC



Gary L. Monahan

ATTORNEY AT LAW
419 North Main Street
Le Sueur, Minnesota 56058
Telephone: 507-665-3329
FAX: 507-665-3320
Email: gary@monahanlaw.us
Website: MonahanLaw.us

November 20, 2017



Brent Christian
Le Sueur County Attorney
Christian, Keogh, Moran & King
65 South Park Avenue
P.O. Box 156
Le Center, Minnesota 56057

Re: Gary W. and Judy M. Dunn Living Trust dated August 19, 1998 / Le Sueur County, Minnesota

Dear Brent:

Enclosed herewith, relative to the above captioned matter, please find the Agreement by and between Gary W. Dunn and Judy M. Moser-Dunn, as Trustees or their successors in trust under the Gary W. and Judy M. Dunn Living Trust dated August 19, 1998 and Le Sueur County, Minnesota signed and notarized by Gary W. Dunn and Judy M. Dunn.

Please circulate the Agreement to Kathy Brockway for her review, approval and notarized signature and return a fully executed copy of same to my office.

If you have any questions or concerns, please do not hesitate to contact my office.

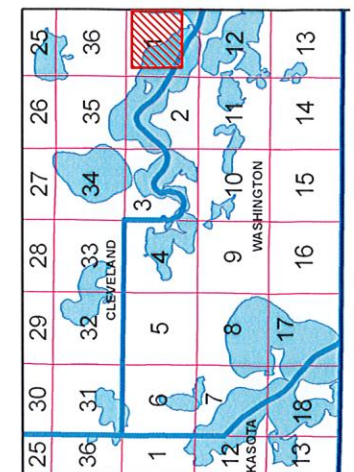
Very truly yours,


Gary L. Monahan

GLM:mjs
Enc.

LE SUEUR COUNTY ENVIRONMENTAL SERVICES

NAME: Dunn
 PID: 01.500.0210
 DATE: 05-07-18
 FIRM #: 27079C0270D
 F-Zone: X-outside
 RFPE: 1022.86
 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. 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 2017

Created By: MRM



LE SUEUR COUNTY
 ENVIRONMENTAL SERVICES
 507-357-8538