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**DATE:** December 9<sup>th</sup>, 2020 PC Agenda Item **3.B**

**TO:** Planning Commission Chair and Commissioners

**FROM:** Joe Hartmann, Associate Planner

**SUBJECT: Planning Case #20-017 – No Public Hearing Required**  
**Applicant:** Kye Samuelson  
**Property Location:** 3493 Siems Court  
**Request:** Variance

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### **Requested Action**

Kye Samuelson (“Applicant”) has submitted a land use application for a variance to construct an accessory structure at 3493 Siems Court (“Subject Property”). The Applicant is requesting a variance for flexibility with a proposed accessory structure’s height and size within the Ordinary High Water Level (OHWL) setback. The Subject Property is zoned R-1, Single Residential District, is located in the Shoreland Management District, and is guided as Low Density Residential on the Land Use Plan.

### **Variance Flexibility Requested**

A variance is requested for:

1. Proposed accessory structure height: currently proposed at nine (9) feet and five (5) inches tall, eight (8) feet tall is allowed by ordinance.
2. Proposed accessory structure area, currently proposed at 93.5 square feet, sixty-four (64) square feet is allowed by ordinance.

### **Background**

#### **1. Overview of Request**

At the October 7<sup>th</sup> Planning Commission meeting the Applicant requested a variance to build a 120 square foot accessory storage structure that encroached 18 inches into the Shore Impact Zone of Lake Johanna. The proposed accessory structure exceeded the eight (8) foot height limitation at ten (10) feet, six (6) inches. The Planning Commission voted to table that request to allow the Applicant to submit revised plans that would better conform to the provisions of the Shoreland Ordinance.

The Applicant took the Planning Commissions comments under consideration and submitted revised plans for a smaller structure that would not encroach into the Shore Impact Zone. However, the proposed structure still requires a variance due to the proposed height and area that exceeds current ordinance standards.

The Applicant proposes adding new conditions of approval to the request that would set performance standards for the structure and recognizes that this would set a precedent for future structures located near the shore to follow (Attachment E).

For example, the Applicant proposing the use of language such as calling the overall structure a ‘floating shed’ that would require future residents to meet certain conditions unique to this specific scenario. On the Subject Property, the Applicant notes that the site features 100% drainage and runoff beneath the existing structure, with runoff uninhibited by any foundation or any non-natural elements, which could be a condition of approval for future applications. They also request an optional requirement for the addition and maintenance of vegetation around the future structure for environmental and aesthetic purposes.

The Planning Commission is being asked to determine if a variance request for flexibility with the Shoreland Management District setback requirements should be approved for the new proposed accessory structure. This structure requires flexibility from the restrictions for City Code within Shoreland Management Districts. The evaluation of the proposal should be based on the provisions within the Zoning Code and the Requirements for a Variance in Section 1355.04, Subd. 4 and the Continuation of Nonconforming Uses in Section 1350.02.

A revised application should be reviewed in the same manner as required for a new application. Any structural alteration or changes to the original plan require that all procedures shall apply as if a new application were being requested.

## **Plan Evaluation**

### **Chapter 13, Zoning Regulations Review**

#### **1. *District Provisions (R-1 Single Family Residential District) – Section 1320.06***

##### *Lot Size and Dimensions*

The minimum lot width required for the Subject Property is ninety-five (95) feet and the minimum lot length is 130 feet. The minimum lot size is 14,000 square feet. The Subject Property meets the minimum lot width and length requirements for the R-1 District as well as the minimum lot area requirement. The property is approximately 16,152 square feet in area and, including the deck structure near the shore, maintains a structure coverage of 24.8%, a FAR of 0.26, and an impervious surface coverage of 31.3%. The maximum structure coverage allowed is 25%, the maximum FAR allowed is 0.30, and the maximum impervious surface coverage allowed is 35%. If approved for this variance, the property would be beneath the maximum structure coverage, FAR, and impervious coverage allowed under City Code.



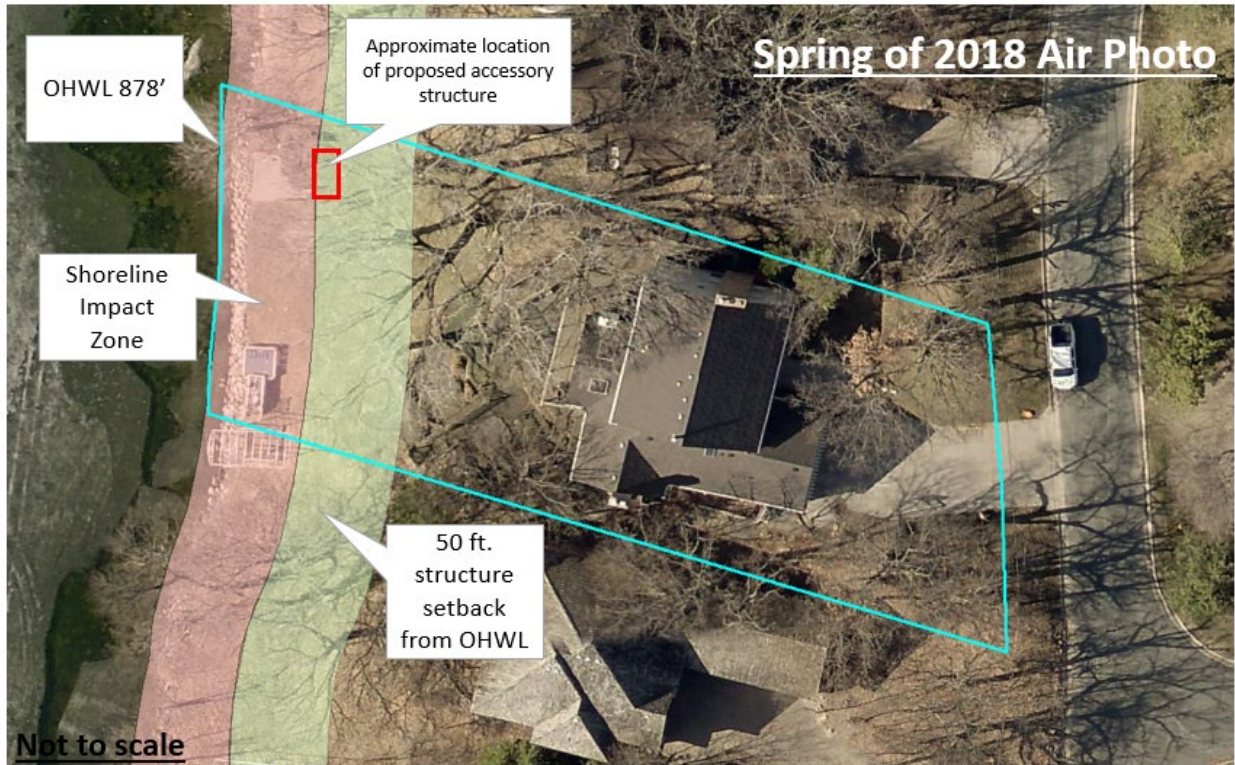
Aerial Photo of the Subject Property and accessory structure location.

### *Structure Setbacks - Flexibility Requested*

The Subject Property is located within a Shoreland Management District, which impacts the rear setback of the property. Shoreland Management Districts overlay existing zoning districts of the City shown on the official zoning map. The Shoreland Management District classifies Lake Johanna as a General Development Lake, which determines certain setback requirements from the lakeshore. The rear of the Subject Property faces Lake Johanna, which has a setback of fifty (50) feet from the Ordinary High Water Level (OHWL). Minnesota Statutes 103G.005 Subd. 14 defines the OHWL as:

*“...the elevation delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial...”*

The OHWL of Lake Johanna is 878 feet above sea level according to Minnesota Department of Natural Resources. The Shore Impact Zone is the land located between the OHWL and a line parallel to it at a setback of 50 percent of the structure setback. In other words, the Shore Impact Zone is the twenty-five (25) feet nearest to the shore within the 50 foot rear yard setback of the OHWL. The proposed structure would be located 25.2 feet from the OHWL setback just outside the Shore Impact Zone on top of where an existing landing structure is located.

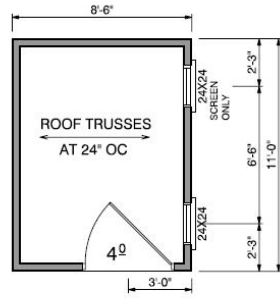


Shoreline Impact Zone and 50' structure setback.

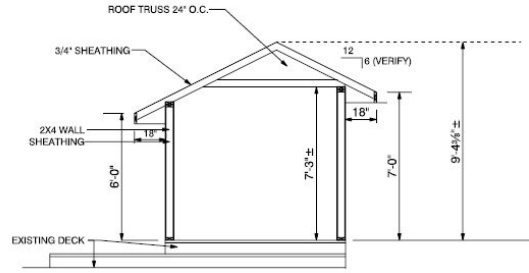
## **2. General Regulations – Section 1325.01**

### *Accessory Structures*

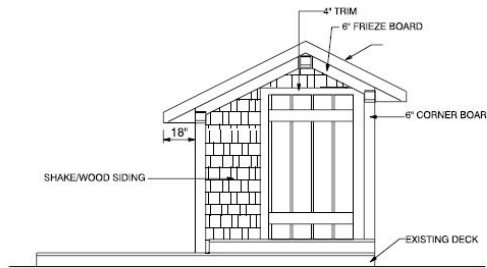
According to City Code Section 1325.01 Subd. 5, B, the exterior finish of accessory structures shall be compatible in appearance and material used with the principal structure served by the accessory structure. The Applicant is requesting a design that matches the exterior finish of the principal structure of the house. The contractor who will build the proposed structure, Scherer Brothers, has confirmed the wall load calculation needs and the truss load on the structure, confirming that there are no additional structural needs for wall and roof framing that would affect the outward appearance of the structure. Staff is recommending as a condition of approval that to the extent practical, the exterior materials of the proposed accessory structure shall be consistent or complementary in color, texture and quality with those on the principal structure.



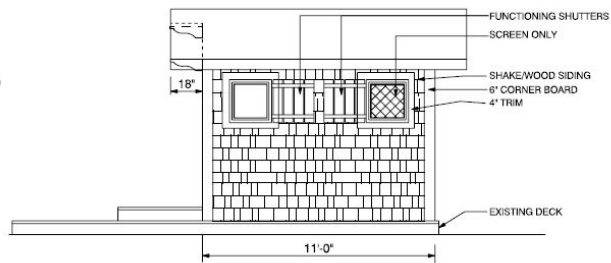
FLOOR PLAN 1/4" = 1'-0"



WALL SECTION 1/4" = 1'-0"



FRONT ELEVATION 1/4" = 1'-0"



SIDE ELEVATION 1/4" = 1'-0"

Floor plans and elevations for the proposed storage structure

### 3. Shoreland Regulations – Section 1330

Under City Code Section 1330.03 Subd. 5, lakeshore lots may be permitted up to one (1) accessory storage shed within the required structure setback from the OHWL, provided that it is not located within the Shore Impact Zone; does not exceed sixty-four (64) square feet in size and eight (8) feet in height measured to the highest point of the structure; and is not designed or used for human habitation and does not contain a water supply or sewage treatment facilities. Measured from the base of the landing to the highest point of the structure, the proposed structure would exceed the 8 foot height limitation at nine (9) feet, five (5) inches tall. The structure proposed would measure 8.5 feet by 11 feet, or 93.5 square feet, which exceeds the 64 square foot maximum allowed within code.

City Code Section 1330.03 Subd. 7 states that in Shore Impact Zones and on steep slopes, limited clearing of trees and shrubs for access to the shoreline, and cutting, pruning, and trimming of trees is allowed provided that a minimum of seventy-five (75) percent of the Shore Impact Zone be left in its natural state. There is a thirty (30) foot grade difference every 100 feet, which creates a steep slope to transport lake items up to store in the garage. The Applicant stated in their original narrative that the grade in the rear of the property is difficult enough to have warranted the construction of a switchback grass trail for a golf cart to bring elderly family members from the driveway down to the lake. This would make it difficult to locate an accessory storage structure elsewhere on the property. The proposal would prevent clearing of trees and shrubs for access elsewhere in the back yard and maintain the Shore Impact Zone.



Topographic Overlay of 3493 Siems Court, depicting the change in elevation on the Subject Property.

City Code Section 1330.03 Subd. 7 continues that, “the minimal amount of vegetation shall be altered and sufficient vegetative cover shall remain to screen cars, dwellings and other structures when viewed from public waters. Except for the removal of invasive species, clear cutting of vegetation shall be prohibited. Native vegetation shall be restored insofar as feasible after any construction project is completed to retard surface runoff and soil erosion.” The Applicant mentioned within their original narrative that the existing deck would be unobtrusive by adding natural, deep-rooting vegetation around specific areas near the proposed storage structure, creating more coverage and reducing phosphorous runoff. The Applicant argues that this would protect the shoreland after development by reducing the runoff that would otherwise cause water pollution and decreasing the need for additional stormwater treatment infrastructure.

#### **4. Variance Review Requirements – Section 1355.04**

The role of the Planning Commission is to determine and consider how the facts presented to them compare with the city’s articulated standards. The Commission should base their decision on the facts presented and then apply those facts to the legal standards contained in city ordinances and relevant state law. Neighborhood opinion alone is not a valid basis for granting or denying a variance request. While the Planning Commission may feel their decision should reflect the overall will of the residents, the task of considering a variance request is limited to evaluating how the variance application meets the statutory practical difficulties factors. Residents can often provide important facts that may help in addressing these factors, however, unsubstantiated opinions and reactions to a request do not form a legitimate basis for a variance decision.

The Planning Commission may impose conditions when granting variances as long as the conditions are directly related and bear a rough proportionality to the impact created by the variance. For instance, if a variance is granted to exceed the minimum OHWL setback requirement

within the Shore Impact Zone, any conditions attached should presumably relate to mitigating the effect of the encroachment.

Deviations from the requirements for accessory structures in exceptional and unusual circumstances may be permitted after Planning Commission review and City Council approval in accordance with Section 1355.04 Subd 5 and with documentation showing the unusual circumstances justifying the proposed deviation and plans for the proposed accessory structure.

The Planning Commission will need to determine, using the following variance findings and criteria, whether there are practical difficulties with complying with the zoning regulations. If the Applicant does not meet all three factors of the statutory test, then a variance should not be granted. Variances are only permitted when they are in harmony with the general purposes and intent of the ordinance. Below are the Applicant's findings of fact.

1. Purpose and Intent. The variance request shall comply with the purpose and intent of the provisions of the City's Zoning Regulations and with the policies of the City's Comprehensive Plan.

*The Subject Property is zoned R-1, Single Residential District, is located in the Shoreland Management District and is guided as Low Density Residential on the Land Use Plan.*

2. Practical Difficulties. The Applicant for a variance shall establish that there are practical difficulties in complying with the provisions of the Arden Hills Zoning Regulations. The term "Practical Difficulties" as used in the granting of a variance means:

- a. *Reasonable Use.* The property owner proposes to use the property in a reasonable manner not permitted by the Zoning Ordinance.

*According to the Applicant, the storage of recreational water equipment for a single family home is a reasonable use of an accessory structure within the Shoreland Management District.*

- b. *Unique Circumstances.* The plight of the property owner is due to circumstances unique to the property not created by the landowner.

*According to the Applicant, there is a thirty (30) foot grade difference every 100 feet, which creates a very steep slope to transport lake items up to store in the garage. This is unique to the property, making it difficult to place the storage structure elsewhere.*

- c. *Character of Neighborhood.* The variance, if granted, will not alter the essential character of the neighborhood.

*According to the Applicant, the storage shed would be 30 feet below the adjoining neighbors, The Applicant is proposing to add landscaping to assist in screening the structure and making it inconspicuous and blended to the landscape.*

3. Economic Consideration. Economic consideration alone does not constitute a practical difficulty.

*According to the Applicant the proposed variance is not based on economic consideration.*

4. Access to Sunlight. Inadequate access to direct sunlight for solar energy systems shall be considered a practical difficulty.

*A solar energy system is not proposed.*

## **Findings of Fact**

The Planning Commission must make a finding as to whether or not the proposed application would adversely affect the surrounding neighborhood or the community as a whole based on the aforementioned factors. Staff offers the following findings for consideration:

### *General Findings:*

1. City Staff received a land use application for a request to build an accessory structure for storage at the Subject Property 3493 Siems Court.
2. Storage of personal items is a permitted use for an accessory structure in the R-1 Single Family Residential District.
3. The Subject Property has a steep downward slope in the rear yard that prevents the Applicant from building on much of the site.
4. The Subject Property meets the minimum lot size, width, and length requirements for the R-1 District.
5. The Applicant is requesting flexibility with the maximum height and size restrictions for an accessory storage shed located within the Ordinary High Water Level (OHWL) setback requirement for Lake Johanna.
6. The rear yard setback requirement for a proposed accessory structure is determined by the OWHL of Lake Johanna.
7. The proposed structure is located 25.2 feet within the OHWL setback from Lake Johanna which is 50 feet.
8. The proposed storage structure would be located outside the Shore Impact Zone of Lake Johanna.
9. One (1) storage shed is permitted with the OHWL setback requirement of Lake Johanna as long as it does not exceed 64 square feet in size and eight (8) feet in height and is not within the Shore Impact Zone.
10. The proposed structure exceeds the height at nine (9) feet five (5) inches tall and exceeds the area dimension at 93.5 square feet.
11. The proposed structure would otherwise conform to all other requirements and standards of the R-1 district.
12. A variance may be granted if enforcement of a provision in the zoning ordinance would cause the landowner practical difficulties.

## **Additional Review**

### *Residential Building Inspector*

The Residential Building Inspector has reviewed the plans and has no additional comments at this time. A Zoning Permit will be required prior to construction.

### *Engineering Staff*

Engineering Staff reviewed the proposal and has no additional comments at this time.

### *Rice Creek Watershed District*

The Rice Creek Watershed District has reviewed the proposed project and determined that no permit will be required.



*Minnesota Department of Natural Resources*

The DNR has reviewed the plans and has no additional comments on this time as the City of Arden Hills is the permitting agency.

**Options and Motion Language**

Staff has provided the following options and motion language for this case. The Planning Commission should consider providing additional findings of fact as part of the motion to support their recommendation for approval or denial.

1. Recommend Approval with Conditions: Motion to recommend *approval* of Planning Case 20-017 for a Variance at 3493 Siems Court, based on the findings of fact and the submitted plans, as amended by the conditions below:
  1. A Zoning Permit for an accessory structure shall be issued prior to commencement of construction.
  2. The exterior materials of the proposed addition shall be consistent or complementary in color, texture and quality with those visible on the existing structure.
  3. The Applicant shall add landscaped screening to assist in screening the structure from adjacent properties. Planning staff shall review and approve the screening plan prior to the issuance of Zoning Permit..
  4. The proposed accessory structure shall conform to all other standards and regulations in the City Code.
2. Recommend Approval as Submitted: Motion to recommend *approval* of Planning Case 20-017 for a Variance at 3493 Siems Court, based on the findings of fact and the submitted materials.
3. Recommend Denial: Motion to recommend *denial* of Planning Case 20-017 for a Variance at 3493 Siems Court, based on the following findings: *findings to deny should specifically reference the reasons for denial and why those reasons cannot be mitigated.*
4. Table: Motion to *table* Planning Case 20-017 for a Variance at 3493 Siems Court: *a specific reason and information request should be included with a motion to table.*

**Notice**

Although a variance does not require a public hearing, a public meeting notice was prepared by the City and mailed to properties within 500 feet of the Subject Property. Minnesota statute does not clearly require a public hearing before a variance is granted or denied, however, after consulting with the City Attorney, staff agree that the best practice is to allow a public forum on all variance requests. A public forum allows the city to establish a record and elicit facts to help determine if the application meets the practical difficulties factors.

**Public Comments**

Staff have received one (1) comment regarding this variance request. The resident stated that they did not object to the request.

### **Deadline for Agency Actions**

The City of Arden Hills extended the deadline for application processing for an additional 60 days on November 23<sup>rd</sup> ending on January 24, 2021 unless voluntary extensions are made. The Applicant has submitted revised plans on November 18, 2020 and staff received a completed application on November 30<sup>th</sup>. With consent of the Applicant, the City may extend the review period beyond the initial 120 days.

### **Attachments**

- A. Land Use Application
- B. Location Map
- C. Setback Illustration
- D. Re-submitted Plans
- E. Variance Request Letter