



**CITY OF ORONO**  
RESOLUTION OF THE CITY COUNCIL

NO. 6715

**A RESOLUTION  
APPROVING VARIANCE FROM  
MUNICIPAL ZONING CODE  
SECTIONS 78-330, 78-1125, 78-1279, 78-1434, 78-1680**

**FILE NO. 16-3885**

**WHEREAS, Hans Bergh and Sharon Bergh, a married couple (hereinafter the "Applicants"), are the owners of the property located at 2800 Shadywood Road and legally described as:**

Tract C, Registered Land Survey No. 1196. Together with a non-exclusive easement for driveway purposes as shown in Deed Document No. 998572 and an easement for driveway purposes as created by Deed Document No. 1000236, as amended by Document No. 1441410 (as determined by Court Order Document No. 1461153); (hereinafter the "Property");

**WHEREAS, on November 17, 2016, the Applicants have made application to the City of Orono for variances to Orono Municipal Zoning Code Section 78-330 to allow redevelopment of the Property which has a lot area of 36,785 square feet where 43,560 square feet is required; a lot width of 127' measured from the channel to the side lot line where 140' in width is required; and a rear setback of 24 feet for the new detached garage where a 30 foot setback is required; and**

**WHEREAS, the Applicants have made application to the City of Orono for a variance to Orono Municipal Zoning Code Section 78-1125 to allow fill material to extend less than 15 feet from the house elevated above the floodplain on fill; and**

**WHEREAS, the Applicants have made application to the City of Orono for a variance to Orono Municipal Zoning Code Section 78-1279 and 78-1680 to allow the detached garage to be constructed 40 feet from the OHWL where a 75 foot setback is required; and**

**WHEREAS, the Applicants have also made application to the City of Orono for variances to Orono Municipal Zoning Code Section 78-1434 to permit the reconstruction of an existing nonconforming building with an upward expansion to increase the total peak height 3.5 feet; and**

**WHEREAS, on December 12, 2106 pursuant to City Code Section 78-912, the City Council voted 5 to 0 in favor of waiving the Planning Commission's review of the application; and**



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**WHEREAS**, on December 12, 2012 and January 9, 2017, after published and mailed notice in accordance with Minnesota Statutes and the City Code, the City Council held public hearings, at which time all persons desiring to be heard concerning this application were given the opportunity to speak thereon; and

**WHEREAS**, on December 12, 2016, the City Council directed preparation of findings for approval of the variances; and

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of Orono, Minnesota hereby approves the requested variances as described above based on one or more of the following findings of fact concerning the Property:

**FINDINGS OF FACT:**

1. This application was reviewed as Zoning File #16-3885. The analysis contained within staff memos and the exhibits attached to the aforesaid memos, all minutes from the above mentioned meetings, and any and all other materials distributed at these meetings are hereby incorporated by reference.
2. The Property is located in the LR-1B One Family Lakeshore Residential Zoning District.
3. The Property contains 0.84 acres in area and has a defined lot width of 127 feet.
4. The Property is within Tier 1 and hardcover is limited to 25% according to the Stormwater Quality Overlay District.
5. Applicants have applied for the following variances:
  - a. Lot area variance
  - b. Lot width variance
  - c. Rear yard setback variance
  - d. Upward expansion of a nonconforming building (with respect to footprint size)
  - e. Lake setback
  - f. Hardcover within 75 foot setback
  - g. 15-foot floodplain fill requirement
6. In considering this application for variances, the Council has considered the advice and recommendation of the Planning Commission and the effect of the proposed variances upon the health, safety and welfare of the community, existing and anticipated traffic conditions, light and air, danger of fire, risk to the public safety, and the effect on values of property in the surrounding area.



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**ANALYSIS:**

1. "Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance . . . ." The applicant proposes to construct a new residence and detached garage on a residential property which is in line with the intent of the ordinance.
2. "Variances shall only be permitted . . . when the variances are consistent with the comprehensive plan." In addition to the residential guiding of the Property, the Comprehensive Plan has directives which are put in place to protect the lake, limit massing and hardcover. The proposed plan for a new residence and detached garage results in neither an increase in structural coverage (over the permitted 15% level) nor hardcover above 25%.
3. "Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. 'Practical difficulties,' as used in connection with the granting of a variance, means that:
  - a. *The property owner in question proposes to use the property in a reasonable manner, however, the proposed use is not permitted by the official controls.*

The Applicants propose to construct a new home and detached garage on the Property in conformance with the FEMA floodplain regulations lowest floor and MCWD's lowest opening requirements. In order to do so they are elevating the new structures on fill material. With the lake setbacks applied, the property is not wide enough to meet the requirement that the fill material extend 15 feet from the perimeter at the lowest floor elevation. In staff's opinion, this criterion is met. The detached garage will be constructed in the same footprint location as an existing detached garage. The proposed 3.5 foot increase in peak height is a combination of the owners' proposed 3 foot side wall height increase and the ½ foot floor elevation required by code. The new home will meet the LR-1B district setbacks, height, massing, and the property will comply with the Tier 1 hardcover requirements.
  - b. *The plight of the landowner is due to circumstances unique to his property not created by the landowner.*

Portions of the Property have a 1% annual chance of flooding. The Applicants are proposing to elevate the structure in a conforming manner and location to meet the flood regulations; the relative narrowness of the Property creates a difficulty in meeting the 15-foot fill extension requirement. The location of the existing nonconforming detached garage encroaches 5.7 feet into the rear yard. Shadywood Road and the bridge over the channel are approximately 17 feet higher than grade of the Property.



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c. *The variance, if granted, will not alter the essential character of the locality.*

The Property across the channel is vacant and owned by Hennepin County. The proposed home and garage will likely not result in a negative impact on the character of the neighborhood. The Property is not apparently visible from Shadywood Road, and the existing tree and fenceline along the channel provide screening.

4. "Economic considerations alone do not constitute practical difficulties." Economic considerations have not been requested.
5. "Practical difficulties also include but are not limited to inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth-sheltered construction as defined in Minn. Stat. § 216C.06, subd. 2, when in harmony with Orono City Code Chapter 78." This criterion is not applicable.
6. "The board or the council may not permit as a variance any use that is not permitted under Orono City Code Chapter 78 for property in the zone where the affected person's land is located." The proposed use is residential therefore conforms to the permitted uses of the District.
7. "The board or council may permit as a variance the temporary use of a one-family dwelling as a two-family dwelling." This criterion is not applicable.
8. "The special conditions applying to the structure or land in question are peculiar to such property or immediately adjoining property." The home and garage must be elevated out of the area of 1% annual chance of flooding. Orono Code requires the elevated fill extend at least 15 feet from the structure's perimeter; due to the effective width of the Property the 15-foot fill extension is not feasible. The resulting plan is not out of conformance with the general neighborhood and will not result in a negative impact to the adjacent properties. The setbacks proposed for the detached garage will not result in a negative impact to adjacent properties.
9. "The conditions do not apply generally to other land or structures in the district in which the land is located." The Property is unique in that there are lakeshore setbacks on two sides, and it is situated below Shadywood Road. Additionally, the proposed home and garage are located partially within the area of 1% annual chance of flooding.
10. "The granting of the application is necessary for the preservation and enjoyment of a substantial property right of the applicant." This criterion is met.



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11. "The granting of the proposed variance will not in any way impair health, safety, comfort or morals, or in any other respect be contrary to the intent of this chapter." This criterion is met.
12. "The granting of such variance will not merely serve as a convenience to the applicant, but is necessary to alleviate demonstrable difficulty." Due to the lakeshore setbacks there does not appear to be enough width available on the Property to result in a functional width home which conforms to the 15-foot fill requirement. The nearly in-kind reconstruction of the existing detached garage is located in a logical spot on the Property. The site constraints serve as a practical difficulty.

**CONCLUSIONS, ORDER AND CONDITIONS:**

Based upon one or more of the above findings, the Orono City Council hereby grants variances to the following:

- Orono Municipal Zoning Code Section 78-330 to allow redevelopment of the Property which has a lot area of 36,785 square feet where 43,560 square feet is required; a lot width of 127' measured from the channel to the side lot line where 140' in width is required; and a rear setback of 24 feet for the new detached garage where a 30 foot setback is required; and
- Zoning Code Section 78-1125 to allow fill material to extend less than 15 feet from the house elevated above the floodplain on fill; and
- Zoning Code Section 78-1279 and 78-1680 to allow 1,665 square feet of hardcover including the detached garage to be constructed 40 feet from the OHWL where a 75 foot setback is required; and
- Zoning Code Section 78-1434 to permit the reconstruction of an existing nonconforming building with an upward expansion to increase the total peak height 3.5 feet, subject to the following conditions:
  1. Council approval is based on the survey by Advance Surveying & Engineering Co., dated October 28, 2016 and building plans submitted by the Applicants and annotated by City staff, attached to this Resolution as **Exhibits A & B**. Any amendments to the plans which are not in conformity with City codes may require further Planning Commission and City Council review.
  2. Authorities granted by this resolution run with the Property not with the Applicants, but are permissive only and must be exercised by obtaining a building permit for the new construction and commencing construction of said project. A framing inspection must be



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completed within one year of the date of Council approval, or the variance will expire on that date (January 9, 2018).

3. An as-built survey/elevation certificate will be required to verify conformance with the building permit and the floodplain regulations.
4. Violation of or non-compliance with any of the terms and conditions of this resolution shall constitute a violation of the zoning code, shall automatically terminate any authority granted herein, and shall be punishable as a misdemeanor.
5. The undersigned Applicants have read, understand and hereby agree to the terms of this resolution and on behalf of the Applicants and the Applicants' heirs, successors and assigns, hereby agree to the recording of this resolution in the chain of title of the Property.

ADOPTED by the Orono City Council on this 9<sup>th</sup> day of January 2017.

ATTEST:

  
\_\_\_\_\_  
Diane Tiegs, City Clerk

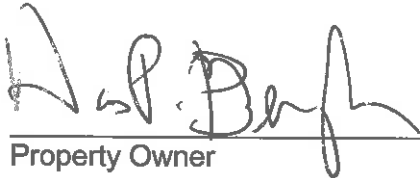
CITY OF ORONO:


  
\_\_\_\_\_  
Dennis Walsh, Mayor



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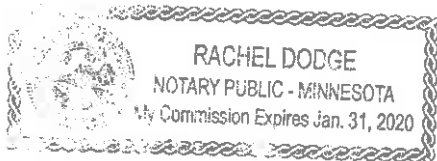
NO. 6775

  
\_\_\_\_\_  
Property Owner

  
\_\_\_\_\_  
Property Owner

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

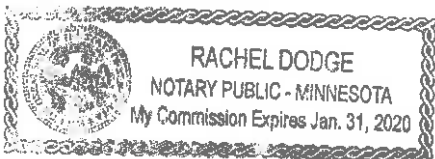
This instrument was acknowledged before me this 10<sup>th</sup> day of January, 2017, by Hans Bergh, husband of Sharon Bergh.



  
\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

This instrument was acknowledged before me this 10<sup>th</sup> day of January, 2017, by Sharon Bergh, wife of Hans Bergh.



  
\_\_\_\_\_  
Notary Public

SHEET NO. S1

PROPOSED SURVEY  
DRAWING NUMBER 160579 JR

ADVANCE SURVEYING  
DATE SURVEYED: SEPTEMBER 26, 2010  
FIELD VERIFIED: OCTOBER 27, 2010  
DATE DATED: OCTOBER 28, 2010

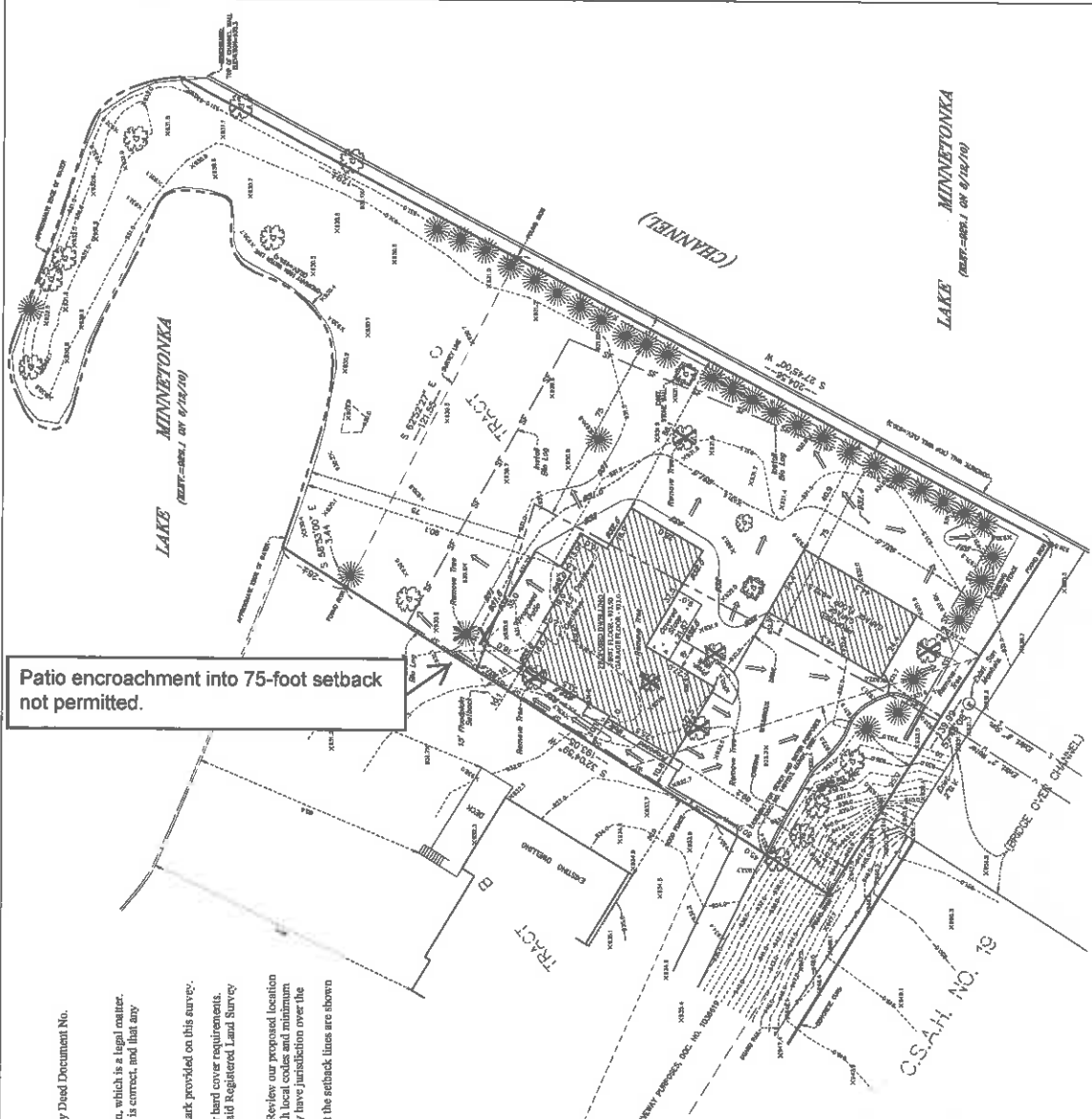
PLEASE VERIFY THIS SET, IN ACCORDANCE WITH THE PROFESSIONAL SURVEYOR'S OATH AND AS A CONDITION OF THE CONTRACT, THAT THE SURVEYOR HAS NOT BEEN UNDER THE INFLUENCE OF ANY DRUGS OR ALCOHOLIC BEVERAGES AT ANY TIME DURING THE PERFORMANCE OF THIS SURVEY.  
DATE: OCTOBER 28, 2010

**Advance**  
Surveying & Engineering, Co.  
6000 South Hwy. No. 101  
Minnetonka, Minnesota 55345  
Phone (952) 472-7904  
FAX: (952) 472-7900

CLIENT NAME (JOB ADDRESS)  
**SHARON & HANS BERGH**  
2800 SHADYWOOD ROAD  
ORONO, MN

DRAWING ORIENTATION & SCALE  
0 20' 40'

DATE	REVISION DESCRIPTION
11/7/10	ADDED 941.5 CONTOUR LINE
11/27/10	CHANGING TO FLOODPLAIN PRESERVATION
11/11/10	FLOOD ELEVATIONS
11/25/10	ADDITIONAL GRADING



**LEGAL DESCRIPTION:**  
Tract C, Registered Land Survey No. 1195.  
Together with a non-exclusive easement for driveway purposes as shown in Deed Document No. 998572 and an easement for driveway purposes as created by Deed Document No. 1006236, as amended by Document No. 1441410 (as determined by Court Order Document No. 1461153).

**LIMITATIONS & NOTES:**

- Showing the length and direction of boundary lines of the above legal description. The scope of our services does not include determining what you own, which is a legal matter. Please check the legal description and easement descriptions with your records or consult with competent legal counsel. If necessary, to make sure that it is correct, and that any matters of record, such as easements, that you wish shown on the survey, have been shown.
- Showing the location of existing improvements we deemed important.
- Showing new monuments or verifying old monuments to mark the corners of the property.
- Setting new monuments on the site at selected locations to give some indication of the topography of the site. The elevations shown relate only to the benchmark provided on this survey. We set this benchmark and check at least one other feature shown on the map when determining other elevations for use on this site.
- Showing the location of all monuments and their bearings and distances on the lot for your review, and for the reviewer obtain governmental agencies as may have jurisdiction over hard cover requirements. (Document No. 1461153, in addition to items shown the survey, records reflect that they may block the view of Lake Minnetonka from adjoining Tract B of said Registered Land Survey No. 1195).
- Note that all building dimensions and building dimensions to the property lines, are taken from the siding and/or stucco of the building.
- While we show a proposed location for this home or addition, we are not as familiar with your plans before construction begins. Also, we are not as familiar with local codes and minimum requirements as the local building and zoning officials in this community are. Be sure to allow this survey to said officials, or any other officials that may have jurisdiction over the proposed improvements and obtain their approvals before beginning construction or planning improvements to the property.
- While we show the building setback lines per the City of Orono web site, we suggest you show this survey to the appropriate city officials to be sure that the setback lines are shown correctly. Do this BEFORE you use this survey to design anything for this site.

**STANDARD SYMBOLS & CONVENTIONS:**

- 1/2" Diameter 1/2" ID pipe with plastic plug bearing State License Number 9235, set, unless otherwise noted.

**GRADING & EROSION CONTROL NOTES:**  
**BEFORE FINAL PLAN AND/OR CONSTRUCTION:**  
Final cut, final fill, final erosion control measures shall be approved by the Commissioner of the Minnesota Department of Natural Resources before final construction begins.  
Final cut, final fill, final erosion control measures shall be approved by the Commissioner of the Minnesota Department of Natural Resources before final construction begins.

A temporary rock, concrete or other erosion control measure shall be established at each slope point to the end of the slope. The erosion control measure shall be established at the top of the slope and shall be maintained until the permanent erosion control measure is in place. The erosion control measure shall be maintained until the permanent erosion control measure is in place.

**EROSION CONTROL MEASURES:**  
When an erosion control measure is installed, a double row of all faces shall be placed to prevent erosion. The erosion control measure shall be placed in accordance with Minnesota Department of Natural Resources erosion control standards. The erosion control measure shall be placed in accordance with Minnesota Department of Natural Resources erosion control standards.

A separate contractor shall be placed for disposal of hazardous waste. Hazardous waste shall be disposed of in accordance with MPCA requirements.

Concrete track without shall be in the plastic lined ditch shown on the plan for "1" and dispose of washings as solid waste.

Sediment control devices shall be regularly inspected and after each rainfall event, silt shall be checked and removed as necessary to provide down stream protection.

Streets and other public ways shall be impounded daily and if filter or silt has been deposited it shall promptly be removed.

If necessary, vehicles, that have used on their wheels, shall be cleaned before entering the site in the rock entrance area.

Minimum shall be applied to disturbed areas in context that is needed.

Portable toilet facilities shall be placed on site for use by workers and shall be properly maintained.

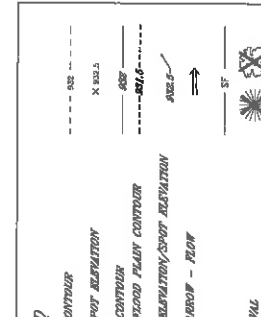
If it becomes necessary to pump the construction during construction, pump discharge shall be into the adjacent areas on the site. The discharge shall be into the adjacent areas on the site before it enters the site.

Temporary erosion control shall be installed on site within 14 days after the site is first disturbed. The erosion control shall be installed on site within 14 days after the site is first disturbed.

**SETBACKS & CONVENTIONS:**  
When final grading has been completed but before placement of soil or soil as "soil" survey shall be done per City of Orono requirements to insure that grading was properly done.

When any required grading has been completed, and/or existing shall be completed including any erosion control blankets, for steep areas.

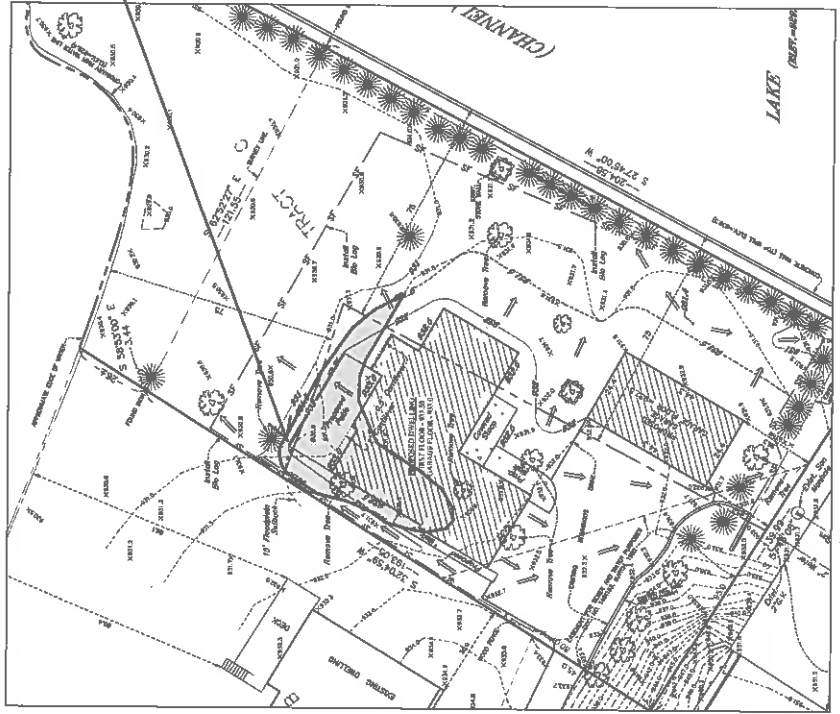
When turf is established, all pipes and later installation and other erosion control devices shall be deposited of and adjacent streets, alleys and walks shall be cleaned as needed to deliver a site that is erosion resistant and clean.



**LEGEND**

- EXISTING CONTOUR
- PROPOSED CONTOUR
- PROPOSED FLOOD PLAIN CONTOUR
- PROPOSED ELEVATION/SPOT ELEVATION
- ★ BENCHMARK
- ☀ TRUE NORTH





PROPOSED FILL AREA WITHIN FLOOD PLAIN (831.5)

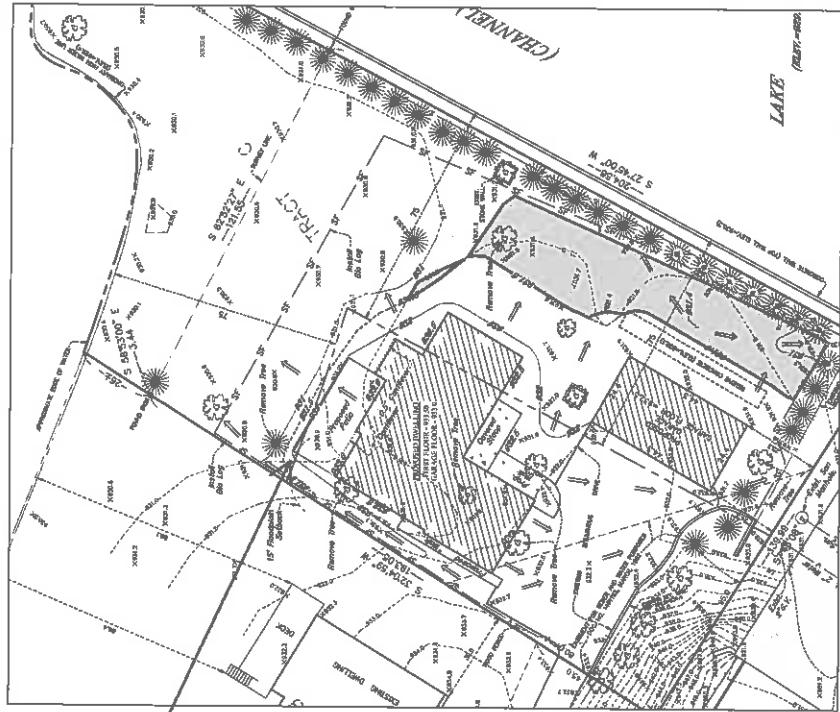
**LEGEND**

- EXISTING CONTOUR
- EXISTING SPOT ELEVATION
- PROPOSED CONTOUR
- PROPOSED FILL AREA WITHIN FLOOD PLAIN

**VOLUME CALCULATION**

PROPOSED FILLING OF FILL WITHIN FLOOD PLAIN ELEVATION = 831.5

SCALE: 1" = 40'



PROPOSED CUT BELOW FLOOD PLAIN (831.5)

**LEGEND**

- EXISTING CONTOUR
- EXISTING SPOT ELEVATION
- PROPOSED CONTOUR
- PROPOSED CUT AREA BELOW FLOOD PLAIN

**VOLUME CALCULATION**

PROPOSED FILLING OF CUT WITHIN FLOOD PLAIN ELEVATION = 831.5

SCALE: 1" = 40'

Patio encroachment within 75-foot setback not permitted.

DATE: 11/15/16	REVISION DESCRIPTION: CUT/FILL VOLUME & LOCATION	GRAPHIC ORIENTATION & SCALE: 0 20' 40'	CLIENT NAME / JOB ADDRESS: SHARON & HANS BERGH, 2800 SHADYWOOD ROAD, ORONO, MN	ADVANCE SURVEYING & ENGINEERING, INC. 5000 SOUTH HWY. NO. 101, MINNEAPOLIS, MN 55438	DATE SURVEYED: SEPTEMBER 28, 2016	SHEET TITLE: FLOOD PLAIN CUT/FILL MAP	SHEETING: S1
				PROJECT NO: 1605773	FIELD DRAWN: OCTOBER 27, 2016	DRAWING NUMBER: 1605773 JR	
				DATE PLOTTED: NOVEMBER 1, 2016			
				DATE: NOVEMBER 1, 2016			