



Dane County Planning & Development

Division of Zoning

GUIDELINES FOR VARIANCE APPLICATIONS

DANE COUNTY BOARD OF ADJUSTMENT

Introduction

The County Zoning Ordinance is adopted and enacted by the Dane County Board of Supervisors. The Dane County Board of Adjustment is the body that reviews and makes decisions on requests for variances from the County Zoning Code. The Board of Adjustment is comprised of five citizen members. The Board of Adjustment's general grant of authority is found in Section 59.694, Wis. Statutes, as follows:

“The Board of Adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.”

A zoning ordinance cannot anticipate every land use question that will arise in a community. The Board of Adjustment's authority to grant a variance gives the ordinance limited flexibility. The Board of Adjustment acts as a quasi-judicial administrative arm of the County Board. It is the Board of Adjustment's duty to preserve the zoning ordinance without modification as far as possible while ensuring substantial justice for the individual. The variance procedure allows the general rules to be varied in response to unusual circumstances, which constitute a legal hardship.

The Board of Adjustment uses a “three-step” test to determine if an appeal warrants the granting of a variance. A description of the three-step test for variance appeal hardships can be found below.

Additional Information Regarding Standards Followed by the Dane County Board of Adjustment in Considering Variance Applications

1. It is the responsibility of the applicant who is seeking the variance to provide "proof" that strict enforcement of zoning regulations will result in a legal hardship. A variance cannot be granted as a convenience to the property owner.
2. The legal hardship must come from the zoning regulations. A self-imposed hardship cannot serve as justification for a variance; i.e., the problem was self-created by the action or negligence of the applicant; the applicant commenced work on a project without first obtaining required permits or had failed to inform him/herself on permit requirements, etc.
3. The legal hardship or difficulty stated as the reason why a variance is necessary must be particular to the zoning parcel in question and different from that of other area parcels. The applicant for a variance must clearly show the Board that the request is due to the very unusual qualities of the property.
4. The expenditure of money does not constitute a legal hardship. In other words, the courts do not recognize financial hardship as a basis upon which a Board of Adjustment can give a variance (i.e., the fact that a structure erected in violation of the Zoning Code would be expensive to move, that an alternative location which would be in compliance with zoning regulations might be somewhat more expensive on which to build, etc.). The courts have uniformly held that, when a hardship was created by the applicant's own acts, they are not entitled to relief.

Dane County Zoning -- Variance Application Guidelines, Page 2 of 2

5. Zoning violations by others in the area, nonconformity of structures on other properties or other variances given in the area do not automatically entitle an applicant to the approval of his or her variance request. What constitutes a legal hardship and substantial justice is a matter to be determined by the Board from the facts and circumstances of each individual appeal.
6. In granting variances, the Board of Adjustment may impose special conditions to ensure that the public welfare will not be damaged.
7. Under certain fact circumstances, a variance may be approved on the basis that it is necessary in order to secure the applicant the right of rights that are enjoyed by other property owners in the same area.
8. A variance will not be granted simply because there is no objection to it or because those who do not object outnumber those who do.

VARIANCE APPLICATION INSTRUCTIONS

THE FOLLOWING INFORMATION MUST BE SUBMITTED BEFORE ANY VARIANCE APPLICATION WILL BE ACCEPTED:

- A. A written statement which includes:
 1. Name and address of applicant (and agent, if any).
 2. Address, location, tax parcel number, and legal description of the property.
 3. Detailed description of the proposed project (new building, alteration or addition to existing building, etc.)
 - B. Completed "Variance Application" form describing alternatives and listing hardships. Your appeal must meet all three of the "steps" to be approved. SEE 3-Step Test BELOW.
 - C. Site plan: A detailed site plan, prepared by a Registered Land Surveyor, is required in most cases. It must be accurate, drawn to an easily measurable scale, and must show all lot lines and dimensions, locations and dimensions of all existing and proposed structures (including any additions and alterations) and their setbacks from lot lines. The site plan must include the location of any septic system, well, driveway, accessory building and other physical features of the property. Other information may be required, such as topographic data, calculation of percentages of lot coverage, etc.
 - D. Floor plans and elevations of the existing and/or proposed structure(s) -- may be preliminary.
 - E. **A letter from the Town Clerk or Administrator, acknowledging that the applicant or agent has informed the Town of their intent to apply for a Variance. (Required by Dane County Board of Adjustment directive of 09/28/1997: Staff may not accept a Variance Appeal application without a letter from the Town. Explanation: Board action on an Appeal may be delayed if the Town has not had an opportunity for input.)**
- A pre-application meeting with the Assistant Zoning Administrator is strongly encouraged prior to applying for a variance.
 - Public hearings are scheduled once per month. An annual schedule of the Board of Adjustment, including deadline dates for applications, is available on the County website.
 - VARIANCE APPLICATION FEE IS \$500.00, payable to Dane County Zoning.

NOTE: If Appeal is granted, a Zoning Permit must be obtained within one year, or variance(s) will expire.
Dane County Ordinance 10.26(9)



Dane County Planning & Development

Division of Zoning

Three-Step Test to Qualify for a Variance:

The Dane County Board of Adjustment uses the following "Three Step Test" as standards by which it judges the "legal hardship(s)" presented by the applicant when considering variance appeals. The Board includes Findings of Fact and Conclusions at Law when it takes action on an appeal, using specific language from **each** of the three requirements.

To qualify for a variance, your property must meet the following requirements:

1. Unnecessary Hardship

Strict application of an ordinance requirement (dimensional standard) must result in unnecessary hardship. Wisconsin case law describes hardship as being present where, in the absence of a variance, no reasonable use can be made of the property. In some more extreme cases, open space uses may be the only reasonable use of a property, while in others a scaled down home and some relaxation of a setback requirement may provide a reasonable use. The zoning board will balance public interests in preserving the objectives of the ordinance and private interests in a property in determining which uses are reasonable. If a parcel as a whole (but not necessarily each portion of the parcel) provides some reasonable use for its owner, then this test is not met and a variance cannot be granted. An applicant may not claim hardship because of conditions which are self-imposed or created by a prior owner (for example, excavating a pond on a vacant lot and then arguing that there is no suitable location for a home). Courts have determined that loss of profit or financial hardship do not, by themselves, justify a variance. Decks and similar minor accessory structures are not essential to the reasonable use of property and are not eligible for variances.

2. Hardship Due to Unique Physical Limitations of the Property

Hardship must be due to unique physical limitations of the property, i.e. compliance with ordinance requirements is prevented by limitations (steep slopes, wetlands, etc.) that are not generally shared by other properties. The circumstances of an applicant (growing family, need for larger garage, etc.) are not a factor in deciding variances. Nearby ordinance violations, prior variances or lack of objections from neighbors do not provide a basis for granting a variance. Minor property limitations that prevent ordinance compliance and are common to a number of properties should be addressed by amendment of the ordinance.

3. No Harm to Public Interests

A variance may not be granted which results in harm to public interests. In applying this test, the board must consider impacts of your proposal and the cumulative impacts of similar projects on the interests of the entire community. These interests are listed as objectives in the purpose statement of an ordinance and may include general public health, safety and welfare as well as more specific issues such as environmental protection, clean drinking water and other concerns.

In addition to passing the 3-step test, you must also demonstrate that no other alternatives that would not require relief from zoning regulations exist. An existing alternative demonstrates that relief is not warranted.

Source: Zoning Board Handbook for Zoning Boards of Adjustment/Appeals by Michael D. Dresen and Lynn Markham, published July 2001 by the Land Use Education Center, The College of Natural Resources and cooperative Education, University of Wisconsin – Stevens Point, pp.42-43



Dane County Planning & Development

Division of Zoning

Appeal No. _____

Date Received _____

Date of Public Hearing _____

VARIANCE APPLICATION:

Owner: Erik Johnson

Mailing Address: 4525 Fox Bluff Lane
Middleton, WI 53562

Phone Number(s): 608-213-1081

Email Address: ejohnson@hycite.com

Assigned Agent: Burse Surveying & Engineering, INC

Mailing Address: 2801 International Lane, Suite 101
Madison, WI 53704

Phone Number(s): 608-250-9263

Email Address: mburse@bse-inc.net

To the Dane County Board of Adjustment:

Please take notice that the undersigned was refused a permit by the Dane County Zoning Division, Department of Planning and Development, for lands described below for the reason that the application failed to comply with provisions of the Dane County Code of Ordinances: Chapters 10 – Zoning, 11 – Shoreland, Shoreland-Wetland & Inland-Wetland, 17 – Floodplain Zoning, and/or 76 – Airport Height Regulations. The owner or assigned agent herewith appeals said refusal and seeks a variance.

Parcel Number: 0709-053-2100-0 Zoning District: Shoreland Acreage: 3.627

Town: Town of Westport Section: 5 1/2 N 1/4 SW

Property Address: 4525 Fox Bluff Lane, Middleton, WI 53562

CSM: 6937 Lot: 3 / Subdivision: Fox Bluff Block/Lot(s): Lot 7 & Prt 6

Shoreland: / N / Floodplain: / N / Wetland: / N / Water Body Lake Mendota

Sanitary Service: Public / Private (Septic System)

Current Use: Single Family Residential

Proposal: See Owners Statement

NOTE: You are encouraged to provide a complete and detailed description of the existing use and your proposed project on an attached sheet.

REQUIRED BY ORDINANCE

Section	Description	Required	Proposed or Actual	Variance Needed

PRESENTING YOUR CASE TO THE BOARD OF ADJUSTMENT:

An Area Variance may be authorized by the Dane County Board of Adjustment to vary one or more of the dimensional or physical requirements of the applicable ordinance in connection with some proposed construction.

The burden will be on you, as property owner or authorized agent, to provide information upon which the board may base its decision. At the hearing, any party may appear in person or may be represented by an agent or attorney. You or your agent must convince the zoning board to make a ruling in your favor. The board must make its decision based only on the evidence submitted to it at the time of the hearing, including the staff report. Unless you or your agent is present, the board may not have sufficient evidence to rule in your favor and may then deny your application.

Please answer the four questions below. You are encouraged to attach a separate sheet, labeling the answers (1) through (4), to provide enough detail to support your appeal:

(1) Describe alternatives to your proposal such as other locations, designs and construction techniques. **Attach a site map showing alternatives you considered in each category below:**

(A) Alternatives you considered that comply with existing standards: If you find such an alternative, you can move forward with this option with a regular permit. If you reject compliant alternatives, provide the reasons you rejected them.

See Attached Owners Statement

(B) Alternatives you considered that require a lesser variance: If you reject such alternatives, provide the reasons you rejected them.

See Attached Owners Statement

(2) Will there be an unnecessary hardship to the property owner to strictly comply with the ordinance?

Unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose (leaving the property owner without any use that is permitted for the property) or would render conformity with such restrictions unnecessarily burdensome.

An applicant may not claim unnecessary hardship because of conditions which are self-imposed or created by a prior owner (for example, excavating a pond on a vacant lot and then arguing that there is no suitable location for a home or claiming that they need more outbuilding space than that permitted to store personal belongings). Courts have also determined that economic or financial hardship does not justify a variance. When determining whether unnecessary hardship exists, the property as a whole is considered rather than a portion of the parcel. The property owner bears the burden of proving unnecessary hardship.

See Attached Owners Statement

(3) Do unique physical characteristics of your property prevent compliance with the ordinance? If yes, please explain. **The required Site Plan and/or Survey submitted with your application must show these features.**

Unique physical limitations of the property such as steep slopes or wetlands that are not generally shared by other properties must prevent compliance with the ordinance requirements. The circumstances of an applicant (growing family, need for a larger garage, etc.) are not a factor in deciding variances. Nearby ordinance violations, prior variances, or lack of objections from neighbors do not provide a basis for granting a variance.

See Attached Owners Statement

(4) What would be the effect on this property, the community or neighborhood, and the general public interest if the variance were granted? Describe how negative impacts would be mitigated. **The required Site Plan and/or Survey submitted with your application must show any proposed mitigation features.**

These interests may be listed as objectives in the purpose statement of an ordinance and may include: Promoting and maintaining public health, safety and welfare; protecting fish and wildlife habitat; maintaining scenic beauty; minimizing property damages; ensuring provision of efficient public facilities and utilities; requiring eventual compliance for nonconforming uses, structures and lots; drainage; visual impact; fire safety and building code requirements; and any other public interest issues.

See Attached Owners Statement

REQUIRED PLANS AND SPECIFICATIONS:

In addition to providing the information required above, you must submit:

1. **Site Plan:** Complete and detailed plans of your lot or lots, drawn to a standard and easily readable scale. **In most cases, a survey by a Registered Land Surveyor is needed.** The Site Plan/Survey should include the following, as applicable, as well as any unique existing features of the lot and any proposed mitigation features, as described above:
 - Scale and North arrow
 - Road names and right-of-way widths
 - All lot dimensions
 - Existing buildings, wells, septic systems and physical features such as driveways, utility easements, sewer mains and the like, including neighboring properties and structures.
 - Proposed new construction, additions or structural alterations.
 - For property near lakes, rivers or streams:
 - Location of Ordinary High Water Mark (OHWM) Elevation
 - Location of Floodplain Elevation
 - For property near Wetlands, a Wetland Boundary determination by a qualified professional consultant may be required.
 - Topographic survey information may be desirable or necessary.
 - Setbacks from any existing or proposed structures (building) to lot lines, right-of-way lines, Ordinary High Water Mark, and/or Wetland Boundary, as applicable.
 - For setback from Ordinary High Water Mark Variance Appeals, the setbacks of the two neighboring structures from the OHWM may be required.

2. Floor Plans and Elevations: Professionally-prepared plans and elevations are not required, but the plans submitted must be drawn to a standard and easily readable scale, must show each story of the building or structure, and must include all parts of existing and proposed structures, including any balconies, porches, decks, stoops, fireplaces and chimneys. Exterior dimensions must be included. Show all exit door locations, including sliding doors, and any windows or other features that are pertinent to your appeal. The plans may be a preliminary version, but are expected to represent your actual proposal for the use of your lot.

Please consult with the Assistant Zoning Administrator regarding required plans for non-conventional structures such as signs, construction cranes, etc.

3. Town Acknowledgment: Obtain a signed, dated memo or letter from the Town Clerk or Administrator of the Town where the variance is needed, acknowledging that you have informed them of your intention to apply for the variance(s). You probably will need to appear before the Town Board and/or Plan Commission, which will provide advisory input requested by the Board of Adjustment.

APPLICANT SIGNATURE:

The undersigned hereby attests that all information provided is true and accurate, and further gives permission to Planning & Development staff and Board of Adjustment members to view the premises, in relation to the Appeal request made herein, during reasonable daylight hours.

Signature Required: _____ Date: _____

Print Name: Erik Johnson

Specify Owner or Agent: Owner

Agent must provide written permission from the property owner

STAFF INFORMATION:

Date Zoning Division Refused Permit (if different from filing date)

Filing Date

Filing Materials Required:

Site Plan

Floor Plans

Elevations

Fee _____ Receipt No. _____

Town Acknowledgement Date

Notices Mailed Date

Class II Notices Published Dates

Site Visit Date

Town Action Received Date:

Public Hearing Date

Action by B.O.A. _____

Approved by: _____ Date: _____

Director, Division of Planning Operations, Department of Planning and Development

Owners Written Statement

Owners Address: Erik Johnson
4525 Fox Bluff Lane
Middleton, WI 53562

Property Address: Erik Johnson
4525 Fox Bluff Lane
Middleton, WI 53562
Tax ID # 0709-053-2100-0
Legal Description: Lot 3 CSM 6937, Lots 1, 2 & 3 of CSM 6004, Assessor's Plat
of Fox Bluff Lot 7 & Prt Lot 6 Descr Sec 5-7-9 Prt N1/2 SW ¼ GOVT LOT 3&4

Detailed Description of the Proposed Project: Alteration to an existing boat house

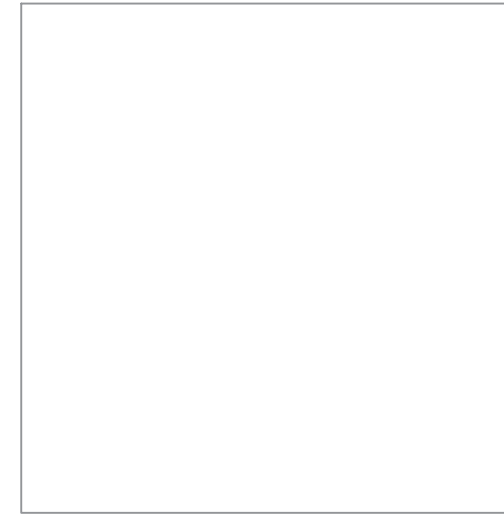
Owners Statement:

#1 – 4525 Fox Bluff Lane – I would like to put wood siding on the concrete block boathouse to better match the architecture of the new home. I also want to put a new roofing system in order to remove the internal post supports in order for my pontoon boat to fit inside.

I believe we meet the criteria for why they should approve a variance. The criteria is as follows:

- 1) Unnecessary hardship- The boat house is already built, to keep the building structurally sound and last longer, by improving the roof structure. To make this now in compliance to meet current requirements would be unnecessary and cause a much larger disturbance to the natural area around the boat house.
- 2) Hardship due to unique physical limitations- This does not apply as improving the roof structure, since the building is already existing has no impact on the physical limitations of the property. We are not increasing the size, just improving the look and lake side appeal.
- 3) No harm to public interest- This would only improve public interest as it is updating and modernizing the existing building. The lake side view will be a much-improved look.

PROJECT:



FOX BLUFF BOAT HOUSE
4525 FOX BLUFF LANE
MIDDLETON, WISCONSIN 53562

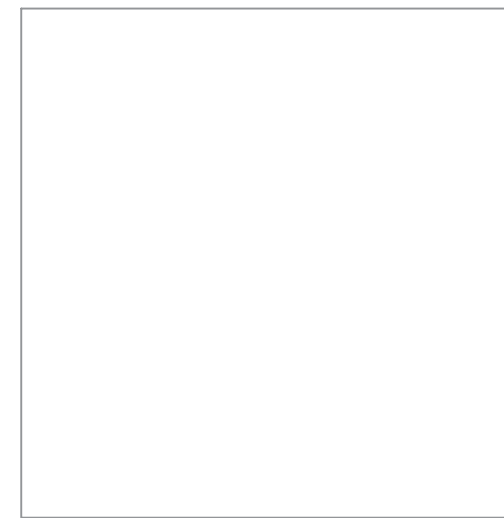
GENERAL CONTRACTOR:



Corporate Contractors, Inc.

CORPORATE CONTRACTORS, INC.
3800 GATEWAY BOULEVARD, SUITE 200
BELOIT, WISCONSIN 53511

OWNER:



ERIK & AMY JOHNSON
4525 FOX BLUFF LANE
MIDDLETON, WISCONSIN 53562

GENERAL NOTES:

REVISION LOG:

REVISION #	DESCRIPTION
0	INITIAL ISSUE
1	CHANGE WALL CLADDING
2	CHANGE LIGHTING
3	CHANGE LIGHTING & CABINETS
4	REDUCE PLUMBING SCOPE OF WORK

PLAN KEY:

GENERAL

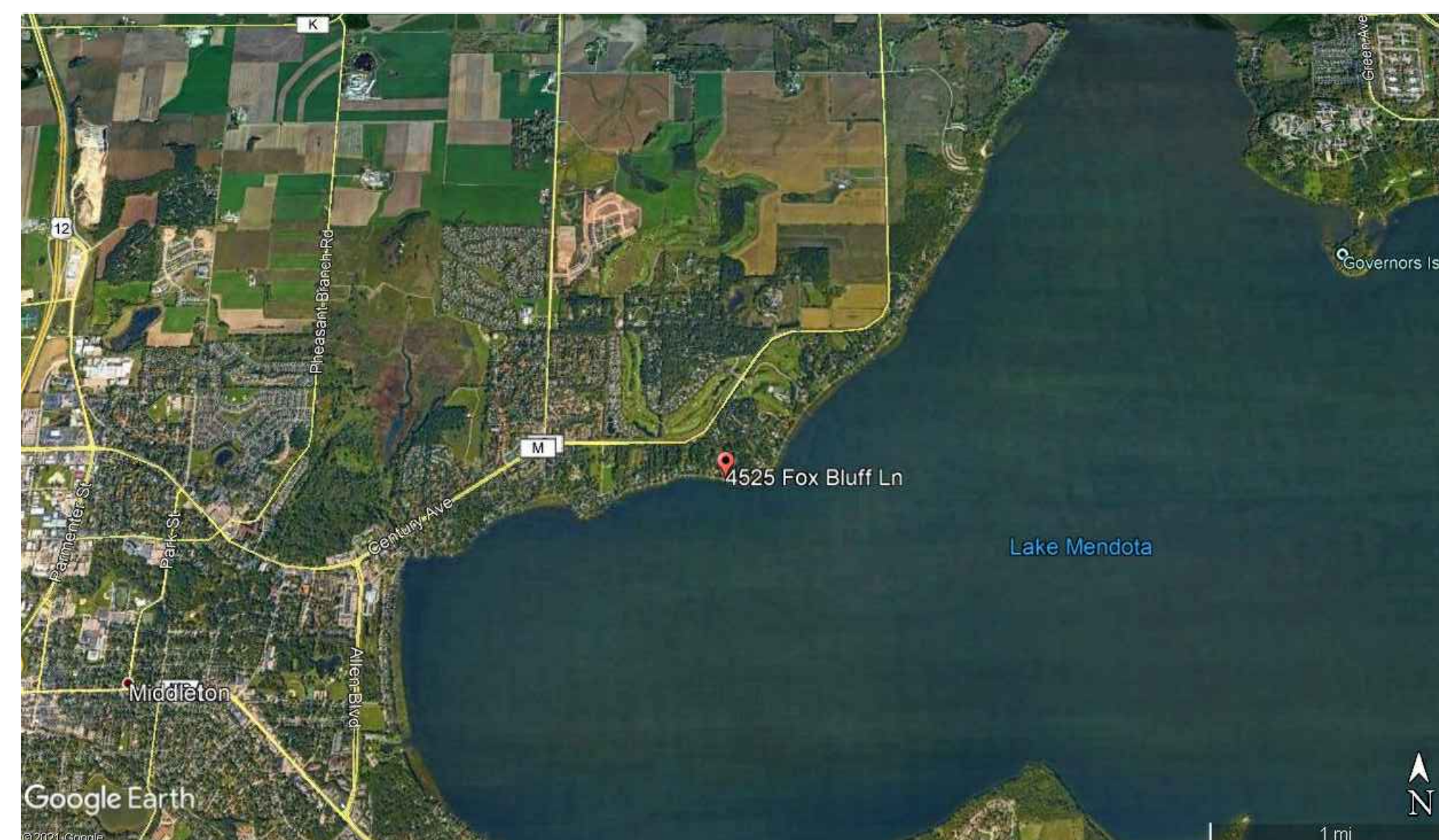
G001 COVER

ARCHITECTURAL

A100 FLOOR PLAN

A110 RENDERINGS

AREA MAP:



AERIAL IMAGE:



OWNER:
ERIK & AMY JOHNSON
4525 FOX BLUFF LANE
MIDDLETON, WISCONSIN

FOX BLUFF BOAT HOUSE
4525 FOX BLUFF LANE
MIDDLETON, WI

REVISIONS:
REVISION 1 - 5/4/2021
REVISION 2 - 9/13/2021
REVISION 3 - 9/21/2021
REVISION 4 - 1/17/2022

ISSUE DATE:
4/23/2021

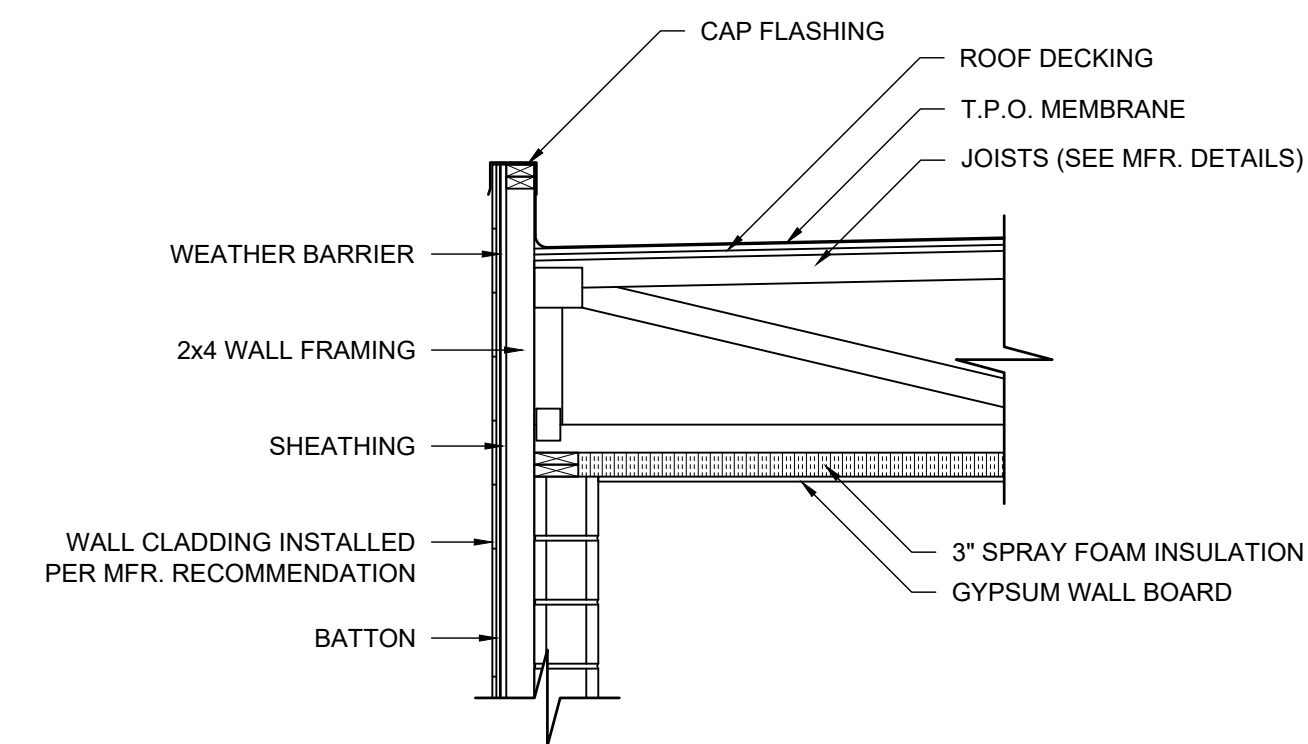
JOB NUMBER:

SHEET:

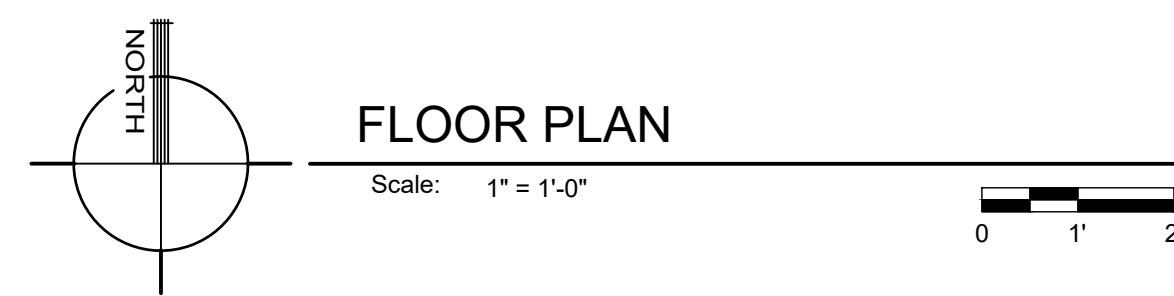
FLOOR PLAN

A100

- 06. WOODS & PLASTICS
 - INSTALL NEW CABINETS & COUNTERTOP PER PLAN
- 07. THERMAL & MOISTURE
 - INSTALL FOAM INSULATION IN EXISTING C.M.U.
 - INSTALL NEW COMPOSITE SIDING TO MATCH HOUSE
 - ROOF:
 - REMOVE EXHAUST & PATCH ROOF
 - INSTALL BALLAST (VERIFY IF EXISTING STRUCTURE CAN BEAR LOAD)
 - CCI TO INSPECT & DETERMINE IF ADDITIONAL WORK IS NEEDED
- 08. DOORS & WINDOWS
 - NEW DOORS & WINDOWS PER PLAN
- 09. FINISHES
 - PAINT INTERIOR SLATWALL, BLOCK & EXPOSED WOOD CEILING (JOISTS/DECK)
 - PAINT EXPOSED FOUNDATION
- 10. SPECIALTIES
 - INSTALL BOAT TRACK SYSTEM PER PLAN & MANUFACTURER'S RECOMMENDATIONS
- 22. PLUMBING
 - ENSURE FUNCTIONAL HOSEBIBS
- 23. HVAC
 - INSTALL HEATER TO MAINTAIN 55° IN WINTER
- 26. ELECTRICAL
 - INSTALL ADDITIONAL OUTLETS
 - REPLACE INTERIOR LIGHTING (MATCH GARAGE FIXTURES)
 - NEW EXTERIOR LIGHTING
 - REWORK SECURITY CAMERAS & ADD INTERIOR TEMPERATURE SENSOR



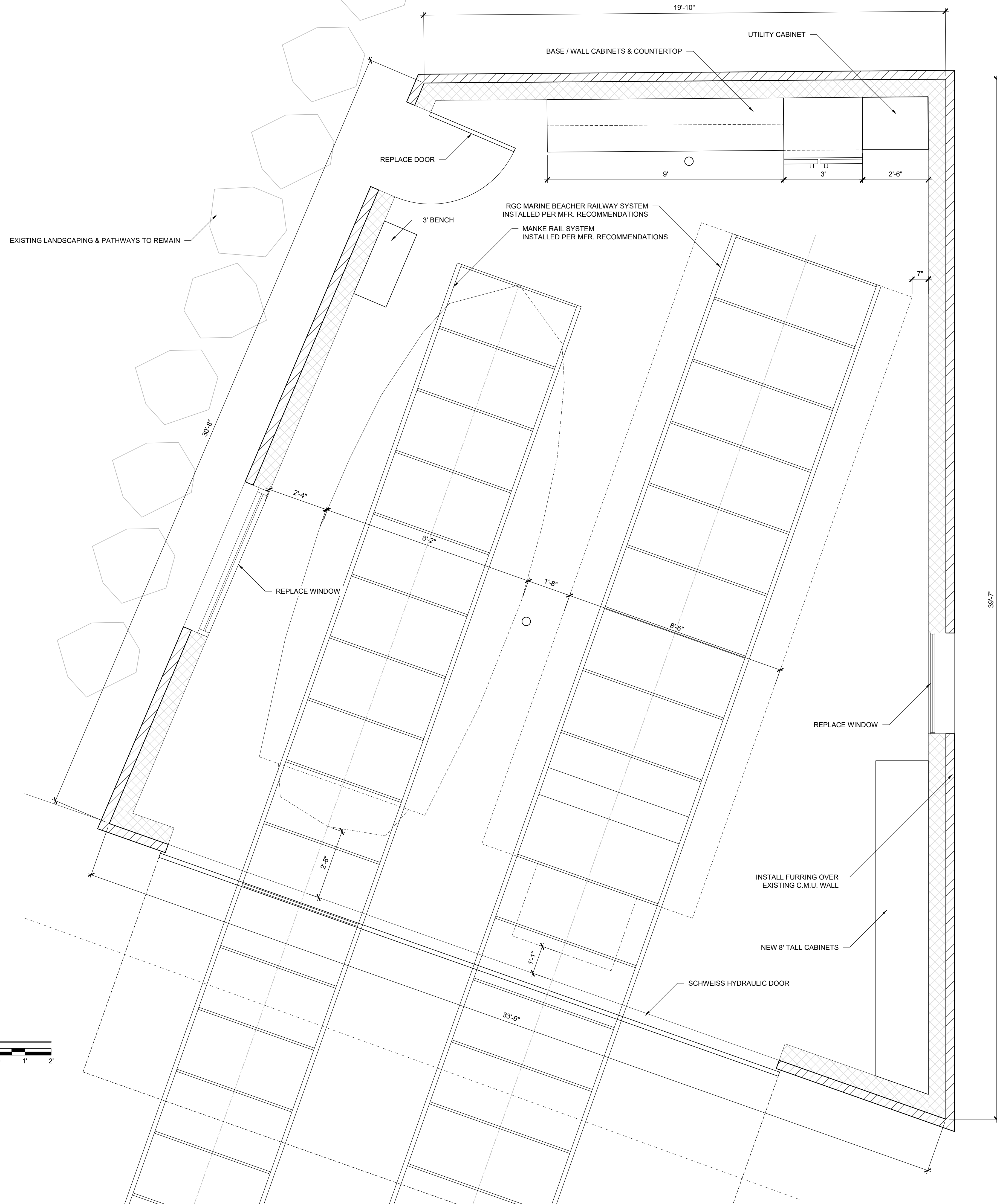
01 PARAPET DETAIL
A100 1/2" = 1'-0"



FLOOR PLAN

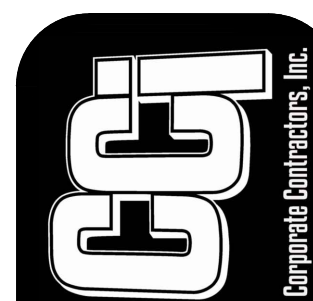
Scale: 1" = 1'-0"

0 1 2'



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THESE DRAWINGS ARE INTENDED TO BE FOR SCHEMATIC DESIGN ONLY.
LOCAL AUTHORITIES & GOVERNING BUILDING CODES SHALL BE USED
FOR CONSTRUCTION



OWNER: **ERIK & AMY JOHNSON**
4525 FOX BLUFF LANE
MIDDLETON, WISCONSIN

FOX BLUFF BOAT HOUSE
4525 FOX BLUFF LANE
MIDDLETON, WI

REVISIONS:

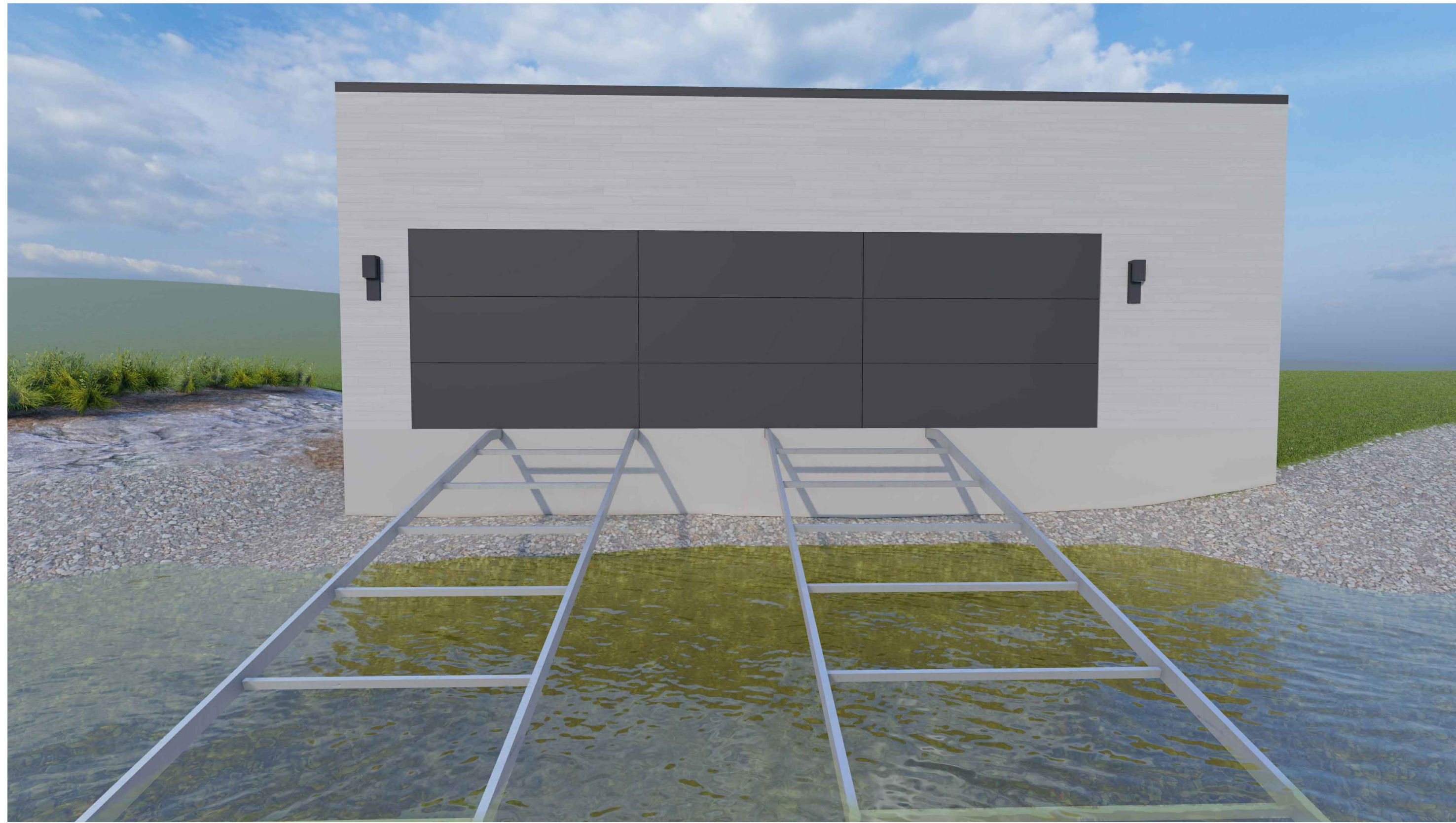
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REVISION 3 - 9/21/2021
REVISION 4 - 1/17/2022

ISSUE DATE:
4/23/2021

JOB NUMBER:

SHEET:

FLOOR PLAN
A100



01
A110

LOOKING NORTH
NOT TO SCALE



02
A110

LOOKING NORTHEAST
NOT TO SCALE



03
A110

LOOKING SOUTHEAST
NOT TO SCALE



04
A110

BIRDS EYE LOOKING SOUTH
NOT TO SCALE

- NOTES:
- FINAL TILE LAYOUT T.B.D.
 - EXISTING BUILDING DIMENSIONS TO BE FIELD VERIFIED
 - EXISTING LANDSCAPING TO REMAIN (REPAIR / REPLACE AS NEEDED IF AFFECTED BY CONSTRUCTION)
 - MATCH EXISTING HOUSE COMPOSITE SIDING, METAL PANELS & TRIM PROFILES / COLORS

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OWNER:
ERIK & AMY JOHNSON
4525 FOX BLUFF LANE
MIDDLETON, WISCONSIN

FOX BLUFF BOAT HOUSE
4525 FOX BLUFF LANE
MIDDLETON, WI

REVISIONS:
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ISSUE DATE:

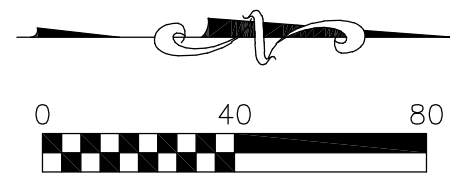
4/23/2021

JOB NUMBER:

SHEET:

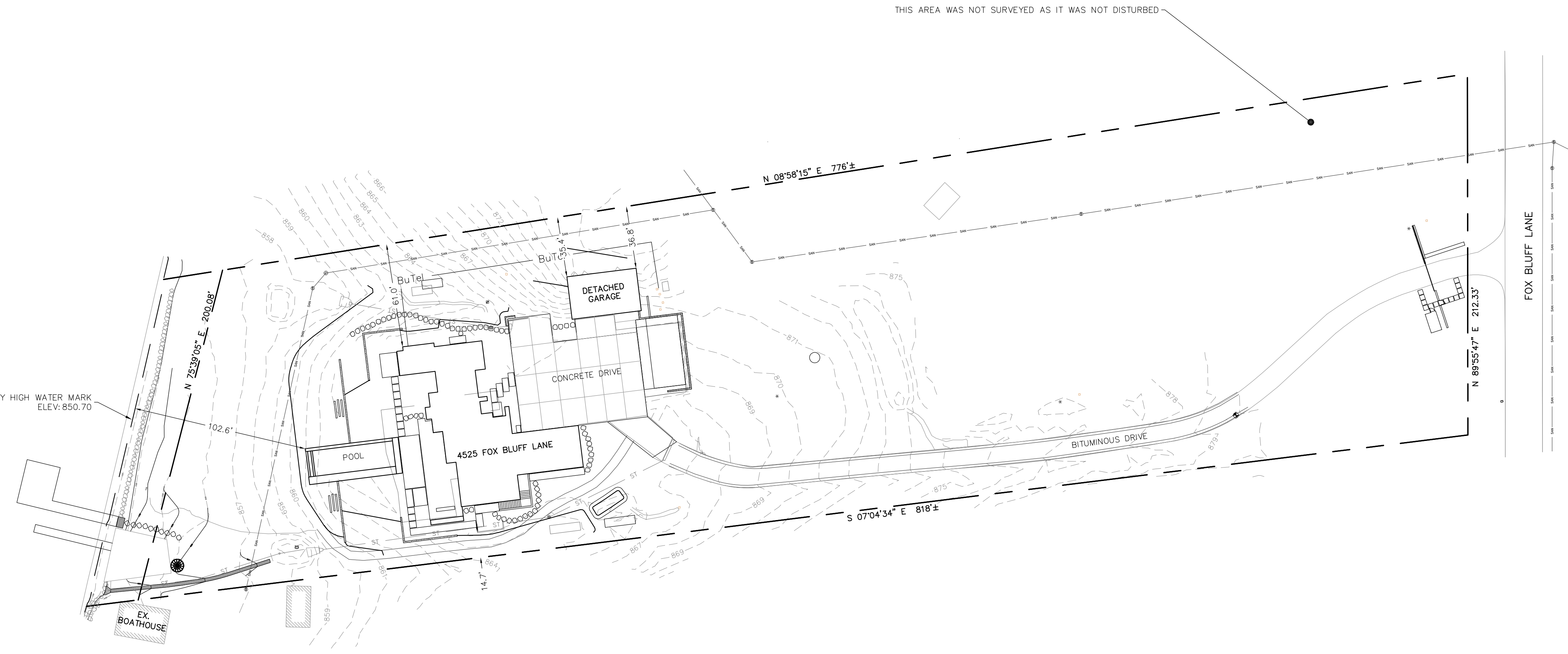
RENDERINGS

A110



LAKE MENDOTA

ORDINARY HIGH WATER MARK
ELEV: 850.70



Burse
Surveying and Engineering, Inc.

2801 International Lane, Suite 101
Madison, WI 53704
Phone: 608-250-9263
Fax: 608-250-9266
e-mail: mburse@BSE-INC.net
www.bursesurveyengr.com

APPROVALS	PROJECT ENG:	MLB
	DESIGNED BY:	CRB
	EXAMINED BY:	CRB
	CHECKED BY:	PDF
	APPROVED:	MLB

FOX BLUFF RESIDENCE

4525 Fox Bluff Lane
Town of Westport, Dane County, WI

Erik Johnson
4525 Fox Bluff Lane
Middleton, WI 53562

PROJECT #: BSE1958
PLOT DATE: 01/25/2022

REVISION DATES:

ISSUE DATES:
01/25/2022

SITE PLAN AND
EXISTING CONDITIONS

Burse
Surveying and Engineering, Inc.

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DRAWING NUMBER
C800

Town Board

Dean A. Grosskopf, Chair
Terry Enge
Kenneth R. Sipsma
Mark A. Trotter
John Cuccia



Kennedy Administration Building
5387 Mary Lake Road
Waunakee, WI 53597
Office: (608)849-4372 * Fax: (608)849-9657
www.townofwestport.org

Thomas G. Wilson
Attorney/Administrator/Clerk-Treasurer

Robert C. Anderson
Utility, Finance, IS Manager, Deputy
Clerk/Treasurer

Jessica J. Frey
Executive Assistant

January 18, 2022


Eric Johnson
4525 Fox Bluff Lane
Middleton WI 53562

Re: Dane County BOA Variance

Dear Mr. Parker,

The Town of Westport acknowledges your intent to file with the Dane County BOA for your variance request.

Respectfully,



Robert Anderson
Deputy Clerk