

**WAUKESHA COUNTY DEPARTMENT OF PARKS AND LAND USE  
APPEAL FOR VARIANCE  
STAFF REPORT**

**DATE:** September 9, 2020

**FILE NO.:** BA61

**OWNERS:** Andre Deriaz  
2111 E. Ivanhoe Place, Apt. 510  
Milwaukee, WI 53202

**TAX KEY NO.:** DELT 0809.010

**LOCATION:**

The subject property is described as Part of Lots 8 and 9, Block A, of Elmhurst Addition, located in the NE ¼ of Section 23, T7N, R18E, Town of Delafield. More specifically, the property is located at W291 N2173 Elmhurst Drive. The property has frontage on Pewaukee Lake.

**REQUEST:**

Variances from **Section 3(o) Non-conformance to Offset** provisions and **Section 37(c) Delafield Shoreland Overlay District Shore Setback** requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to construct a second story addition, deck and a balcony to the existing residence.

**ZONING CLASSIFICATION:** R-3 Residential, DSO Delafield Shoreland Overlay and C-1 Conservancy Overlay Districts.

**LOT CONFIGURATION:**

The property is approximately 14,270 square feet in size, with approximately 67.88 ft. of frontage on Elmhurst Dr. and approximately 74.6 ft. of frontage on Pewaukee Lake. The property is served by sewer and a private well. The existing and required average lot width, average lot depth and lot size are shown in the following table.

	Average Lot Width	Average Lot Depth*	Lot Size
Existing	71.2 ft. +/-	222.4 ft. +/-	14,270 sq. ft.
Required	84 ft. (for lots served by sewer)	n/a	14,000 sq. ft.

\*excluding the established road right-of-way of 20 ft. from the centerline

**PREVIOUS BOARD OF ADJUSTMENT ACTION ON THE SUBJECT PROPERTY:**

On October 26, 1972, in BA72:065, the Board approved a variance from the offset provisions of the Ordinance to allow a prior owner to remodel the second story of the residence. The proposed improvements appear to have been constructed.

On April 4, 1979, in BA79:013, the Board approved variances from the road setback, offset and floor area ratio provisions of the Ordinance to allow a prior owner to replace an 18' x 20' detached

garage on the property. A Deed Restriction was filed with the Register of Deeds that states that the petitioner would, at his expense, remove any portion of the proposed garage that would be needed in the event that the road is expanded. The detached garage was constructed and is still present on the lot.

**PENDING ACTIONS:**

The previous owner submitted a Certified Survey Map (CSM) for review and approval to remove an internal lot line. The CSM was conditionally approved on May 14, 2020, subject to a number of conditions. The owner is working with his surveyor to satisfy the conditions of approval, prior to recording the document with the Register of Deeds.

**PROPOSAL AND STAFF ANALYSIS:**

The property, which is located on Elmhurst Drive, on the south side of Pewaukee Lake, contains a two story, single-family residence, lakeside deck, detached garage, boathouse and storage shed. The lot is served by private well and public sewer.

The petitioners are proposing to reconstruct the deck, no closer to the shore than the existing deck, add a balcony off of the second floor and vertically expand the residence in conjunction with an interior remodeling project. The vertical expansion would add 190 square feet of living space on the second floor, including an additional bathroom, within the existing footprint. The roofline of the structure will increase by approximately seven (7) feet as part of the proposal.

The table below summarizes the existing and proposed improvements. A site plan showing existing improvements is attached as Exhibit A and a site plan showing proposed improvements is attached as exhibit B. Building plans showing the proposed improvements are attached as Exhibit C.

	Acc. Bldgs. (sq. ft.)	Basement (sq. ft.)	1 <sup>st</sup> floor (sq. ft.)	2nd floor (sq. ft.)	Beds	Baths
Existing	1,084	1,080	1,080	890	3	2
Proposed	1,084	1,080	1,080	1080	3	3

The proposed deck, balcony and vertical expansion require variances from the Delafield Shoreland Overlay District requirements, and the vertical expansion requires a variance from the nonconformance to offset provisions as summarized in the following table:

PROVISION	SFPO	EXISTING	NON-CONFORMING? 3(o)	PROPOSED	REQUIRED	VARIANCE/ SPECIAL EXCEPTION?
ROAD SETBACK	3 (h) (1) (C)	91'	N	91'	25' (Min)	N
OFFSET (NE)	3 (h) (3) (A)	4.74' (Res and deck)	Y	4.74' (res) 5' (deck)	10' (Min) res 5' (Min) deck	Y For residence
OFFSET (SW)	3 (h) (3) (A)	36.97' (res) 21.35' (deck)	N	36.97' (res) 26.14' (deck)	10' (Min) res 5' (Min) deck	N
TOTAL BUILDING FOOTPRINT	3 (j) (5) (B)	2,164 SF	N	2,164 SF	2,497 SF (17.5% Max)	N
BLDG HEIGHT	3 (i)	24'	N	30' 9 3/16"	42' (Max)	N
SHORE SETBACK	3 (h) (2)	75.5' (res) 64' (deck)	N	75.5' (res) 64' (deck) 71.5' (balcony)	75' (res) 35' (deck/balcony)	N
IMPERVIOUS SURFACE	3 (t)	4,389 SF (30.76%)	Y	4,377 SF	4,389 SF (30.76% Max)	N
DSO SHORE SETBACK	37 (c)	75.5' (res) 64' (deck)	Y	75.5' (res) 64' (deck) 71.5' (balcony)	112.5' (res) 75' (deck/balcony)	Y

**PETITIONERS' COMMENTS:**

The petitioners' comments are attached as Exhibit D.

**STAFF RECOMMENDATION:**

The Planning and Zoning Division staff recommends **conditional approval** of the request for variances from the Delafield Shoreland Overlay District (DSO) shore setback requirements and **denial** of the nonconformance to offset provisions of the Waukesha County Shoreland and Floodland Protection Ordinance to construct a second story addition, deck and a balcony to the existing residence. This recommendation is based upon the analysis of the below tests for a variance and the criteria to be considered for a special exception, as analyzed below. We recommend that the approval of the deck and balcony be subject to the following conditions:

1. Prior to the issuance of a Zoning Permit, documentation shall be submitted to the Waukesha County Planning and Zoning Division that an approved Certified Survey Map removing the internal lot line has been recorded with the Waukesha County Register of Deeds office.
2. The deck must be located a minimum of five (5) feet from the northeast lot line.

**AREA VARIANCE TEST CRITERIA ANALYSIS**

State law, case law, and County ordinances require that the petitioner demonstrate that their request meet the following tests for a variance. The below Staff analysis assesses the merits of the subject application relative to the tests:

- 1. Compliance with the ordinance would cause the owner to experience an unnecessary hardship. Unnecessary hardship is proven by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome. A property owner bears the burden of proving that the unnecessary hardship is based on special conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner. Hardships should not be financial or economic in nature. Variances are intended to provide only the minimum amount of relief necessary, and the purposes of the Ordinance shall be observed.**

The proposed deck and balcony conform to the required offsets and shore setback, based on averaging, however, they do not conform to the DSO shore setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance. The existing deck is curved and the owner desires to square off the corners and bring the deck up to current building code standards. The deck will be no closer to the shore than the existing deck, and will be reduced in size, by eliminating the projection on the west side of the deck. The improvements would be allowed by right, if not for the DSO requirements.

The Delafield Shoreland Overlay District is intended to create a consistent pattern of development along the Pewaukee Lake shoreline. The current residence which was constructed in 1940 is nonconforming to the DSO provisions, as it is located closer to the shore than both directly adjacent homes. The proposed vertical expansion will add bulk and will further perpetuate a nonconforming structure.

The existing residence has been vacant for the last two years, according to the petitioner. The residence is in need of repair, and according to the petitioner, people have been coming onto the property without their permission, causing a safety issue.

The petitioners estimated cost of improvements is \$150,000, which exceeds the assessed value of the existing residence (\$141,000). The petitioners could rebuild in a conforming location, which would allow for a larger footprint. Staff has identified an approximately 3,500 square foot conforming building envelope in which a new residence could be constructed. With a total building footprint allowance of 2,164 square feet, a sizeable residence can be constructed by right, with a maximum height of 42'. Alternatively, the existing residence contains a 1,080 square foot, unfinished basement, which could be utilized for additional living space, without the need for a vertical expansion.

The neighboring residence to the east does appear to be an outlier on this street in being located so close to the road and setback considerably from the lake. However, the above variance standard states that only the minimum relief necessary shall be granted. It has not been demonstrated that the subject petition is seeking the minimum relief necessary to avoid unnecessary hardship. Any subsequent request for shore setback relief would have to be examined on its own merits.

Due to the available options to rebuild a conforming residence, no justification beyond personal circumstance has been provided to demonstrate that an unnecessary hardship is present.

- 2. The granting of the variance will not adversely affect the general public interest/welfare or be detrimental to nearby properties/improvements or the natural resources in the area. Lack of local opposition does not mean a variance will not harm the public interest.**

The proposed deck is no closer to the shore than the existing deck, and will be reduced in size. The proposed balcony is elevated above the deck, and is further from the shore than the closest extent of the deck. Both directly adjacent properties have patios that can be utilized for averaging purposes, however, the DSO requires a minimum 75' shore setback for improvements. Both improvements comply with the general shore setback requirements of the Ordinance.

If the relief requested for the residence is granted, it could have an adverse impact to nearby properties and the general public welfare. Granting the requested offset relief will result in perpetuating a non-conforming structure, while also adding bulk, and could serve an averaging point available to adjacent lots, potentially leading to a more non-conforming pattern of lakeside development. With an offset of less than 5', an expansion of the residence is not appropriate as maintenance, proper drainage, natural light shadowing on adjacent properties are negative consequences that are perpetuated and potentially worsened. In addition, the expansion of a severely non-conforming residence may negatively impact the adjacent property to the east from a building separation standpoint should current or future owners wish to re-build in the future. The conditional approval of the deck and balcony and denial of the vertical expansion meets the purpose and intent of the Ordinance.

Respectfully submitted,

*Jacob Heermans*

Jacob Heermans  
Senior Land Use Specialist  
Phone: 262-548-7790

Reviewed and approved by:

*Jason Fruth*

Jason Fruth  
Planning and Zoning Manager

Exhibits: A-D

# EXHIBIT "A"

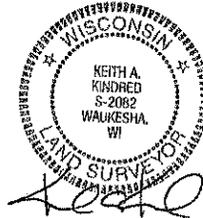
Existing

## CERTIFIED SURVEY MAP NO.

BEING A PART OF LOT 8 AND LOT 9 OF BLK A, ELMHURST ADDITION, LOCATED IN THE THE NE. 1/4  
OF THE NE. 1/4 OF SECTION 23, T.7N., R.18E., TOWN OF DELAFIELD, WAUKESHA COUNTY,  
WISCONSIN

100 YEAR FLOOD 854.6 COUNTOUR  
NGVD 29 PER FEMA FIRM MAP NO.  
55133C0187G REV. NOV. 5, 2014

**PEWAUKEE LAKE**  
O.H.W.M. ELEV = 853.67  
PER WIS. DNR DELINEATION ON  
CSM No. 10073 AND NOTED ON  
CSM No. 10513

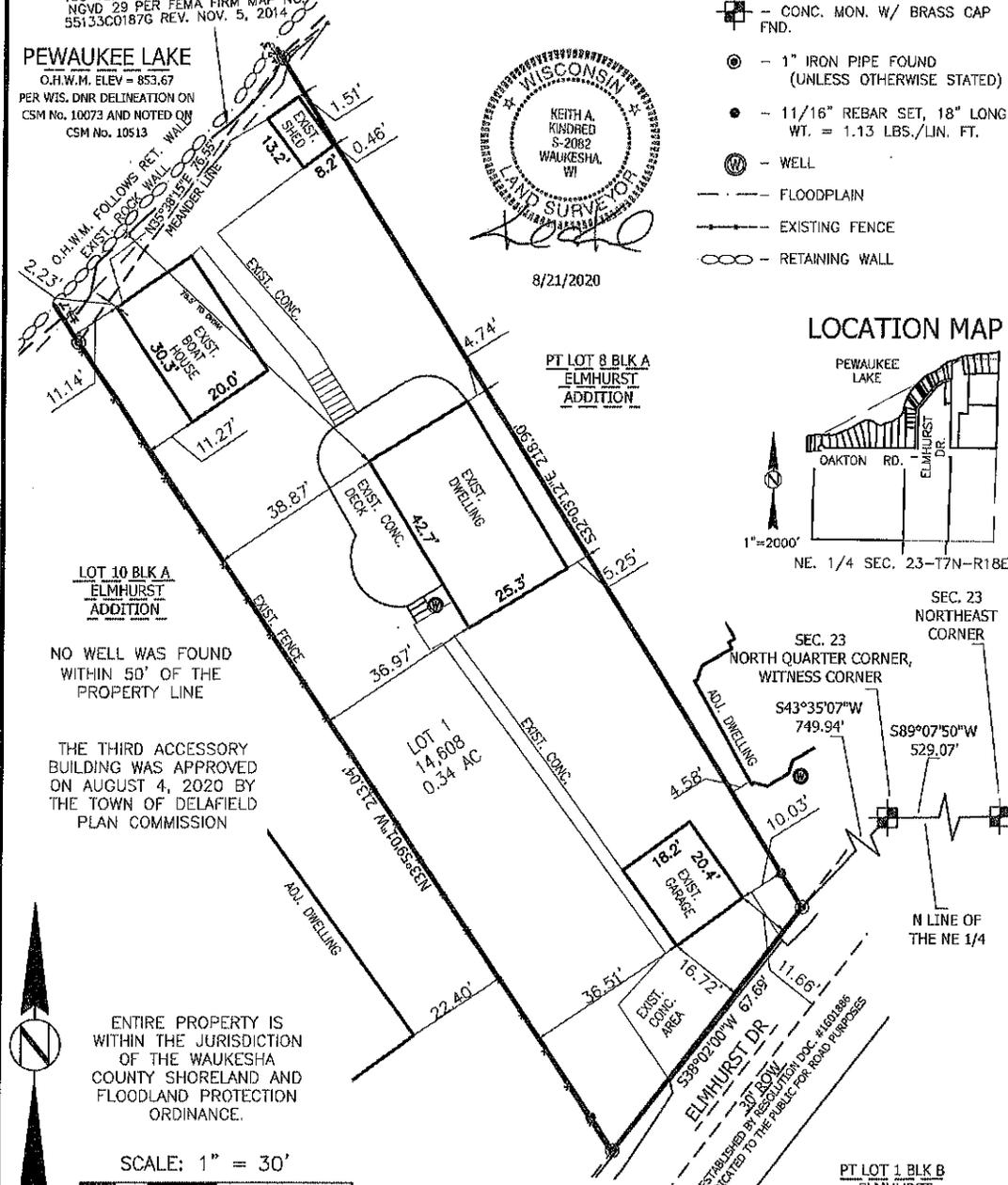
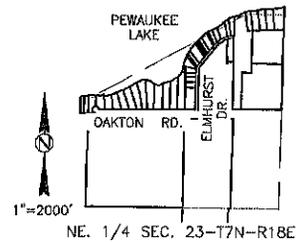


8/21/2020

**LEGEND**

- CONC. MON. W/ BRASS CAP FND.
- 1" IRON PIPE FOUND (UNLESS OTHERWISE STATED)
- 11/16" REBAR SET, 18" LONG, WT. = 1.13 LBS./LIN. FT.
- WELL
- FLOODPLAIN
- EXISTING FENCE
- RETAINING WALL

**LOCATION MAP**



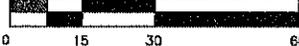
**LOT 10 BLK A  
ELMHURST  
ADDITION**

NO WELL WAS FOUND  
WITHIN 50' OF THE  
PROPERTY LINE

THE THIRD ACCESSORY  
BUILDING WAS APPROVED  
ON AUGUST 4, 2020 BY  
THE TOWN OF DELAFIELD  
PLAN COMMISSION

ENTIRE PROPERTY IS  
WITHIN THE JURISDICTION  
OF THE WAUKESHA  
COUNTY SHORELAND AND  
FLOODLAND PROTECTION  
ORDINANCE.

SCALE: 1" = 30'



BEARINGS ARE REFERENCED TO THE PLAT OF  
ELMHURST ADDITION, NORTH LINE OF THE NE  
1/4 OF SECTION 23-7-18 AS S89°07'50"W.

ANY LAND BELOW THE  
OHWM OF A LAKE OR  
A NAVIGABLE STREAM  
IS SUBJECT TO THE  
PUBLIC TRUST IN  
NAVIGABLE WATERS  
THIS IS ESTABLISHED  
UNDER ARTICLE IX,  
SEC 1, OF THE STATE  
CONSTITUTION

**SURVEY FOR:**  
ANDRE DERIAZ  
W291N2173 ELMHURST DR  
PEWAUKEE, WI  
53072

**SURVEYOR:**  
(KEITH A. KINDRED, PLS  
S-2082)  
SEH, INC.  
501 MAPLE AVE.  
DELAFIELD, WI 53018  
(414) 949-8919



PHONE: 414.949.8962  
501 MAPLE AVENUE  
DELAFIELD, WI 53018-9351  
www.sehinc.com

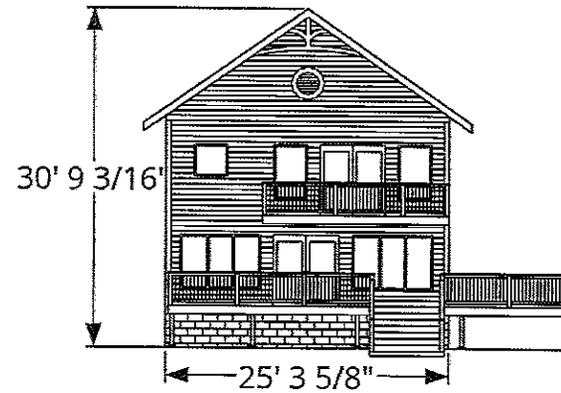
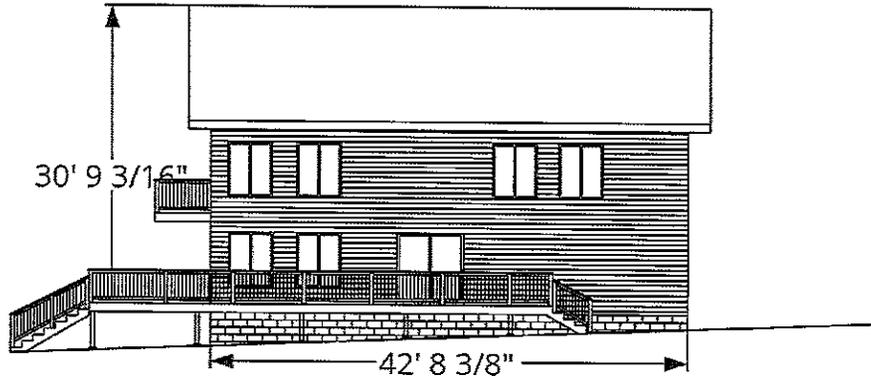






# EXHIBIT "C"

SketchUp



Revisions By:

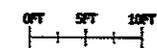
NEW 2D SIDE &  
FRONT VIEW

TITLE SHEET

OWNER: ANDRE DERIAZ  
W291N2173 ELMHURST DR  
PEWAUKEE WI, 53072

DRAWN BY:  
ANDRE DERIAZ  
DATE:  
AUGUST 3, 2020  
SCALE:  
N/A  
SHEET #

A - 4



## EXHIBIT "D"

Deriaz Variance Request

Describe the proposed construction/request and use in detail:

**Our intention with this house is to make it our forever home. We would like to modernize this house by doing a remodel and these three updates. We would like to add square footage to the second floor to match the footprint of the house, reduce the size of the deck by three inches on the East side of the house, and add a balcony to the second floor on the lake facing side of the house. The reason we would like to add square footage to the second floor is to add a second bathroom. With our plans to have our family here and grow it is much more feasible to have two bathrooms for a family to get ready in the morning than just one. We would like to reduce the size of the deck because it will conform to the 5' distance from the lot line. It will also give us the opportunity to update the railing on the deck, so it is safe and up to code. We would like to add the balcony to the second floor off the master bedroom so that we can have a way to get outside from the second floor and enjoy the lake view. It will also be very esthetically pleasing to see from the lake. While we are doing these updates, we will also be redoing all of the windows and insulation to reduce our energy consumption. Overall, we would like to do these updates to increase the beauty and safety of the house, which will increase the neighborhoods safety and beautification, while maintaining the existing structure.**

1. Compliance with the ordinance would cause the owner to experience an unnecessary hardship. Unnecessary hardship is proven by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome. A property owner bears the burden of proving that the unnecessary hardship is based on special conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner. Hardships should not be financial or economic in nature. Variances are intended to provide only the minimum amount of relief necessary, and the purposes of the Ordinance shall be observed.

**We would like to reuse as much of the existing structure as possible to maintain our Green approach to life. The current structure has a good amount of reusable lumber in it that would make this small extension possible. If we were to rebuild we would run into the same issue many builders are facing in our area right now with little to no access to building materials due to the COVID-19 pandemic and likely not have the Green approach we would like to have. Since, this property that has been sitting vacant for 2 years and has endured many years of neglect before that. It has brought down the economic worth of the neighborhood and has been endangering the safety of the adjacent neighbors. One of the major safety issues we have been facing is that there have been people who have been coming on to our property while we have not been there. This was something that was brought to our attention by a neighbor. This remodel is something that needs to be done sooner than later to ensure the safety, increase economic value, and aesthetic of the neighborhood.**

2. The granting of the variance will not adversely affect the general public interest/welfare or be detrimental to nearby properties/improvements or the natural resources in the area. Lack of local opposition does not mean a variance will not harm the public interest.

## EXHIBIT "D"

Environmental factors and our neighborhood's happiness are two things we are defiantly taking into consideration as we would like to move forward with our plan. Noise pollution is something that is next to impossible to avoid when doing construction. Instead of demolishing the existing structures and building new everything we will be decreasing the amount of noise pollution exponentially by only remodeling and adding a small extension to the second floor. Along with decreasing the amount of noise that this project could be making we will be keeping the neighborhood a quieter, less stressful place for families. Stormwater runoff and erosion are some things that needs to be taken into consideration when demolishing a house and rebuilding a new foundation with all of the bare soil that will be present. With our plan to only remodel and extend the second story we are removing any stormwater runoff or erosion negative effects that could come of us doing a new rebuild on the property.