CITY OF NEW RICHMOND
THE CITY BEAUTIFUL

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New Richmond, WI 54017
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June 25, 2018

TO ALL MEMBERS OF THE BOARD OF APPEALS

Bob Peirson
Jane Hansen
Bernard Peterson
Sarah Mellerud
Dick Nelson

This is to notify you that there will be a meeting of the Board of Appeals of the Building and Zoning Codes of the City of New Richmond Monday, July 9, 2018 at 4:00 p.m. in the Civic Center, 156 East First Street.

BOARD MEMBERS ONLY: Please notify me, as soon as possible, if you are unable to attend, so I can arrange for an alternate. Thank you.

AGENDA:

1. **Roll Call**
2. **Adoption of Agenda**
3. **Approval of the minutes from the Previous Meeting, September 22, 2015**
4. **Public Hearing to discuss the following:**
   a) A petition for Variance from Jeremy Wilson to allow encroachment of 7.27 feet into the required 20 foot rear yard setback for construction of an elevated deck onto the rear of the principal building. Property is located at 1323 Osprey Court and described as: FKA PAPERJACK CREEK TOWHHOME COMMUNITY LOT 5 INCLUDES PT OUTLOT 1; NKA PAPERJACK CREEK VILLAS (07) LOT 25
5. **Action on Public Hearing**
6. **Communications and Miscellaneous**
7. **Adjournment**

Tanya Batchelor,
City Clerk

If you need a sign language interpreter or other special accommodations, please contact the City Clerk at 246-4268 or Telecommunications Device for the Deaf (TDD) at 243-0453 at least 48 hours prior to the meeting so arrangements can be made.

Copies:

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Mary Jo Brunner
Michael Saltness
Aaron Schulz
Northwest Community Communications
Jeremy Wilson
Eric Roberts
Nathaniel Adams
Kathleen Sampair
MC2 Partners
Rosa Duran
Richard Nysse
Nicole Reiter
Maureen Sondreal
Brittany Johnson
Gregory Mausolf
Macklyn Homes

BOARD OF APPEALS
SEPTEMBER 22, 2015 - 4:00 P.M.

Members Present: Glenn Highum, Bernard Peterson, Mike Kastens, Bob Peirson, and Sarah Mellerud

Others Present: Tanya Reigel, Dan Licht, Beth Thompson, Mike Darrow, Terry Andersen, Steven T'Kach and Steve Pott

The meeting of the Board of Appeals was called to order by Glenn Highum.

Roll call was taken.

Mike Kastens moved to adopt the agenda as presented, seconded by Bernard Peterson and carried.

Mike Kastens moved to approve the minutes from the previous Board of Appeals meeting on August 11, 2015, seconded by Bob Peirson and carried.

Glenn Highum declared the Public Hearing open to consider the following:

a) A Petition from St. Croix County to allow a monopole antenna support structure to be installed at an overall elevation of 130' AGL exceeding the allowed height of 71 MSL by 59'. Property is located at 1445 North Fourth Street, New Richmond.

Dan Licht explained that this request fits the criteria for allowing a variance. The Airport Commission and Plan Commission have approved this monopole. The Federal Aviation Administration has almost finished its approval process. There was discussion regarding the existing water tower at that location. The Plan Commission placed the following condition on their approval: The existing decommissioned water tower shall be deconstructed within one year from the date that the monopole tower construction is complete.

b) A Petition from St. Croix County to allow construction of public safety radio system antennas upon the City water tower at 1245 St. Croix Avenue at a height 23 feet above the height of the water tower exceeding the allowed height of 15 feet above the height of the water tower.

Dan Licht explained this request and that our zoning ordinance encourages locating antennas on the City water towers. Staff will be initiating a change to the zoning ordinance allowing an exemption for public safety antennas. Glenn Highum declared the Public Hearing closed.

Mike Kastens moved to approve the request for a variance for construction of a 130 foot tall telecommunications tower upon the St. Croix County Health Services property based on the following finding:

1. The analysis provided by the applicant demonstrates that the proposed 130 foot height of the tower is the minimum necessary based on the existing elevation and surrounding topography at the proposed site to provide adequate public safety radio system coverage for the City and surrounding areas to protect health safety and welfare.

Motion was seconded by Bob Peirson and carried.

Mike Kastens moved to approve a variance for mounting telecommunications antennas upon the City south water tower property based on the following findings:

1. The height of the antennas upon the City water tower provides for the required signal to serve New Richmond and connect to other antennas that are part of the public safety system.
2. The proposed height of the antennas also minimizes the need for additional antennas and tower locations.

3. The applicant's need to provide for public health safety and welfare justifies a variance for the additional height above the City water tower structure than allowed by the Zoning Ordinance.

Motion was seconded by Sarah Mellerud and carried.

Mike Kastens moved to adjourn the meeting, seconded by Sarah Mellerud and carried.

Meeting adjourned at 4:13 p.m.

Tanya Reigel
City Clerk

The Planning Company

3601 Thurston Avenue
Anoka, MN 55303
763.231.5840
TPC@PlanningCo.com

PLANNING REPORT

TO:	Beth Thompson
FROM:	D. Daniel Licht, AICP
DATE:	25 June 2018
RE:	New Richmond – Lot 25 Paperjack Creek Villas; Variance
TPC FILE:	164.02

BACKGROUND

Mr. Jeremy Wilson owns the single family home located at 1323 Osprey Court. Mr. Wilson purchased the property with the existing house in 2012. The house was constructed by Oevering Homes LLC with a second floor patio door on the rear elevation of the house. Mr. Wilson is proposing to construct a 12 foot by 12 foot deck onto the rear of the house where the patio door is located. The proposed deck encroaches 7.27 feet into the required 20 foot setback. Mr. Roberts has applied for a variance to allow for construction of the proposed deck, which is subject to review and approval by the Board of Appeals in accordance with Section 121-33 of the Zoning Ordinance.

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Exhibits:

- Site Location
- Applicant narrative
- Deck Plan
- Site Plan
- Plat
- Draft variance

ANALYSIS

Comprehensive Plan. The Comprehensive Plan guides the subject site for low density residential uses. The single family dwelling constructed upon the lot is consistent with the land uses guided by the Comprehensive Plan. The development of lots within the City is to be done consistent with performance standards and lot requirements established by the Zoning Ordinance. The intent of the Zoning Ordinance is to allow for complementary arrangement of land uses to avoid compatibility issues and protect public health, safety, and welfare. Setback requirements are established for the purpose of maintaining separation between buildings on adjacent properties and providing open space within the lot.

Zoning. The subject site is zoned PUD, Planned Unit Development District preserved as Section 121-9.B.15 of the Zoning Ordinance. The existing single family dwelling is a permitted use of the PUD District. The proposed deck above grade is integral to the single family structure and considered to be part of the principal building.

Setback. The PUD District establishes a 20 foot rear yard setback requirement for the principal building. The Z4 District established by the Zoning Ordinance update on 1 January 2015 also requires a 20 foot rear yard setback. The existing house is setback 24.73 feet from the rear property line. A patio door was located off of the main floor on the rear wall of the split entry house when it was constructed to allow for a deck to be added in the future. A deck would be allowed, but could be only 4.73 feet in depth beyond the house to comply with the 20 foot rear yard setback requirement. The applicant is proposing a deck that is 12 feet deep that would encroach 7.27 feet into the required rear yard setback and be setback only 12.73 feet from the rear property line.

Criteria. Approval of a variance requires that the applicant demonstrate that special conditions exist that are unique to the property and cause an undue hardship in the development of the property. Section 121-33.D.1 of the Zoning Ordinance states that for the Board of Appeals to grant a variance, it must find that:

a. *Denial of variation may result in hardship to the property owner due to physiographical consideration. There must be exceptional, extraordinary or unusual circumstances or conditions applying to the lot or parcel, structure, use or intended use that do not apply generally to other properties or uses in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that the zoning code should be changed.*

b. *The conditions upon which a petition for a variation is based are unique to the property for which variation is being sought and that such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.*

c. *The purpose of the variation is not based exclusively upon a desire to increase the value or income potential of the property.*

d. *The granting of the variation will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.*

e *The proposed variation will not undermine the spirit and general and specific purposes of the zoning code.*

The front lot line abuts a cul-se-sac turnaround creating in irregularly shaped front yard and making the lot only 92 feet in depth along the west lot line. Most of the lots that do not abut a cul-de-sac within the subdivision are approximately 109 feet in depth. The depth of the subject lot is, however, similar to that of Lot 21 to the south, which has a side lot line measuring only 93 feet between the cul-de-sac and rear property line.

The need for variance for the proposed elevated deck is based more on the dimensions and location of the house constructed upon the lot with a garage forward design off-set to the shallow portion of the lot that moves the entire structure north within the lot. It is the responsibility of the homebuilder (and subsequent property owners) to be informed as to the zoning governing the lot in considering possible construction. Furthermore, a landing at the patio door with steps up to four feet in width could be constructed in compliance with the setback requirement down to an at grade patio to allow recreational access to the rear yard.

The inability to construct a deck opposed to steps down to a patio is not a special condition that satisfies the undue hardship criteria established by the Zoning Ordinance. It must also be noted, however, that in 2014, the Board of Appeals approved a variance to allow construction of an elevated deck onto the rear of the existing home on Lot 21 to the south. The deck constructed onto the house on Lot 21 is only eight feet in depth and encroaches approximately four feet into the required 20 foot setback. The Board of Appeals may regard approval of the variance for Lot 21 as precedence in consideration of the current application The Board of Appeals may also consider that the extent of the precedent is limited to construction of an eight foot deck encroaching approximately four feet into the required rear yard setback.

RECOMMENDATION

The Development Review Committee considered the application at their meeting on 11 June 2018. City staff does not believe that the request for variance demonstrates an undue hardship justifying approval of a variance in accordance with the criteria established by the Zoning Ordinance and does not recommend approval of the application.

POSSIBLE MOTIONS

A. Motion to **approve** a variance allowing construction of an elevated deck onto the rear of the principal building for Lot 25, Paperjack Creek Villas, subject to the following condition:

1. The deck shall be limited to a depth of [8 feet or 12 feet] off the rear elevation of the principal building.

2. The encroachment shall be allowed only for an open deck structure that shall not have a roof or otherwise be enclosed.

B. Motion to **deny** the application for variance based on a finding that:

1. The physical conditions and dimensions of the property are not unique within the subdivision.

2. The applicant has the option to construct stairs to an at-grade patio that would comply with the requirements of the Zoning Ordinance, including the rear yard setback.

C. Motion to **table** the application for further review.

c. Michael Darrow, City Administrator
Jeremiah Wendt, Public Works Director

SUBJECT SITE
LOT 21, PAPERJACK VILLAS
140TH ST
BLUE JAY PL
WREN PL
MARTIN CT
RED HAWK CT
OSPREY CT
FALCON PL
WOOD DUCK LN
ROYAL OAK LN
MALLARD LN
168TH AVE
1
2
11
12
0 100 200 300ft
DISCLAIMER: This map is not guaranteed to be accurate, correct, current, or complete and conclusions drawn are the responsibility of the user.

Legal Description
Lot #25 on provided map. Property located on the north side of the court. Back of property has two lots against it. Home sits 24.73 feet from rear property line.

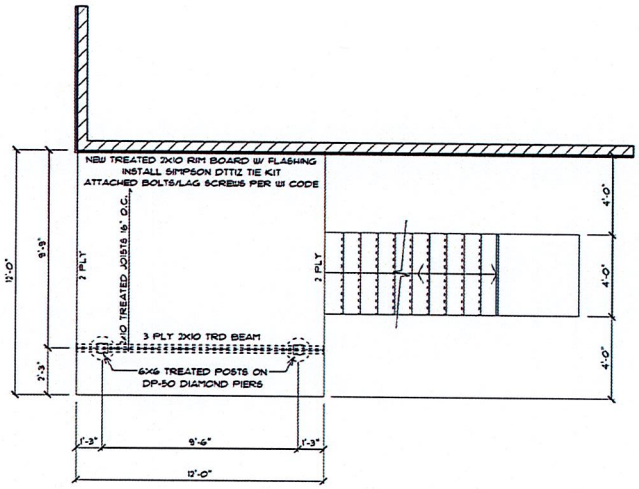
Variance Requested
Requesting to build a 12' x 12' deck off the rear of the home. This exceeds the 20' setback by 7.27 ft. A 4.73 ft deck would be the maximum depth of the deck if the setback were required to be met. The homes behind me appear to be in the same scenario with their homes approximately 25' from the rear property line.

Reason
Loss in property value.

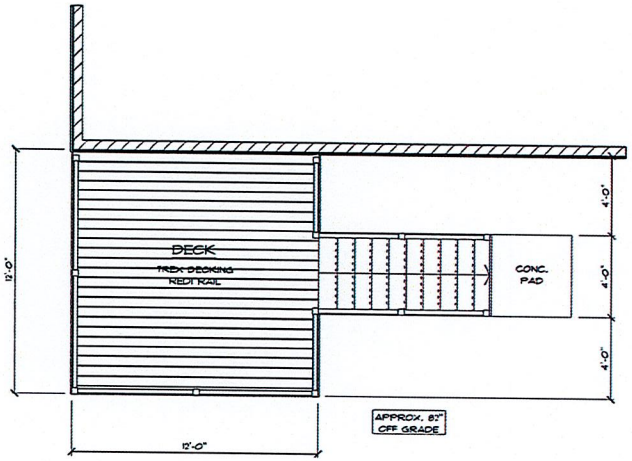
Additional Narrative
The builder of the home, Oevering Homes LLC, placed a patio door on the second floor of the home along with a 12' ledger board for a deck. This is the standard among the homes in my neighborhood. When I purchased the home in 2016, I intended to put a deck on the home. There was no disclosure at the time of purchase that a reasonable sized deck could not placed on the rear of the home due to the setback. If this had been disclosed at the time of purchase, I would probably have reconsidered purchasing this home. Without the ability to have a deck, but having the patio door, I fear loss in value to my home if / when I decide to sell the property.

Considerations for future ordinances:

1) Home sales within the city of New Richmond should require the disclosure of the setback.
2) If new structure being built, maximum size of structure in relation to setbacks should be disclosed at time of purchase.
3) There is no accountability on home builders, such as Oevering Homes LLC, to prevent them from building a home that deceives future buyers. Home building companies should have the ability to file for permanent variance to the property to allow for the building of a deck or be required to change the home plans.



DECK FOUNDATION PLAN



DECK PLAN

Figure 11
ATTACHMENT OF LEDGER BOARD TO BAND BOARD OR BAND JOIST

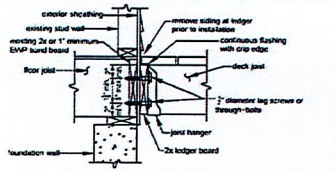
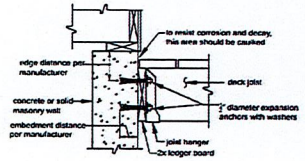
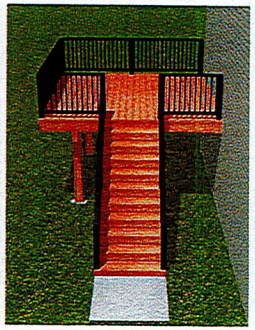


Figure 12
ATTACHMENT OF LEDGER BOARD TO SOLID FOUNDATION



CODE DETAIL



3D VIEWS

ABC Arrow BUILDING CENTER
101 INDUSTRIAL AVENUE
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715.825.3287
jpratt@abc-clc.com

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ALTHOUGH EVERY EFFORT HAS BEEN MADE IN PREPARING THESE PLANS AND CHECKING THEM FOR ACCURACY, CONTRACTOR/HOMEOWNER MUST VERIFY GRADES, FOOTING SIZES, ELEVATIONS, ROUGH OPENINGS, HEADER AND BEAM SIZES AND ALL OTHER DIMENSIONS AND SPECS AND BE RESPONSIBLE FOR THE SAME.

ALL EXTERIORS

WILSON DECK

1323 OSPREY CT. NEW RICHMOND, WI

DRAWN BY:
JOSH PRATT

SCALE:
1/4" = 1'-0"

DATE:
5-10-18

SHEET NUMBER
A-1
SHEET 1 OF 1

PAPERJACK

A PLANNED

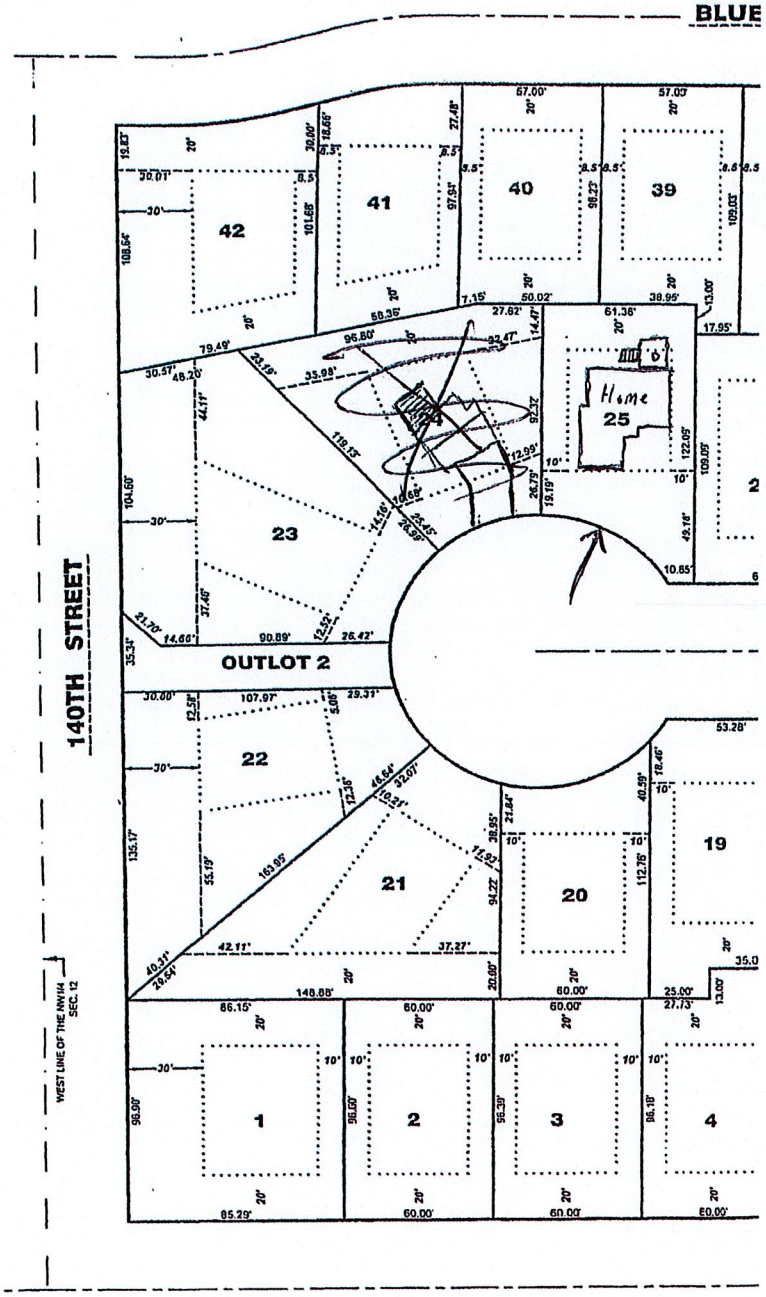
LOCATED IN PART OF THE NW1/4 OF THE NW1/4 OF SECTION 1
WISCONSIN, INCLUDING LOTS 1–47 AND OUTLOT 1 OF TH

BUILDING EI

BLUE

LEGEND

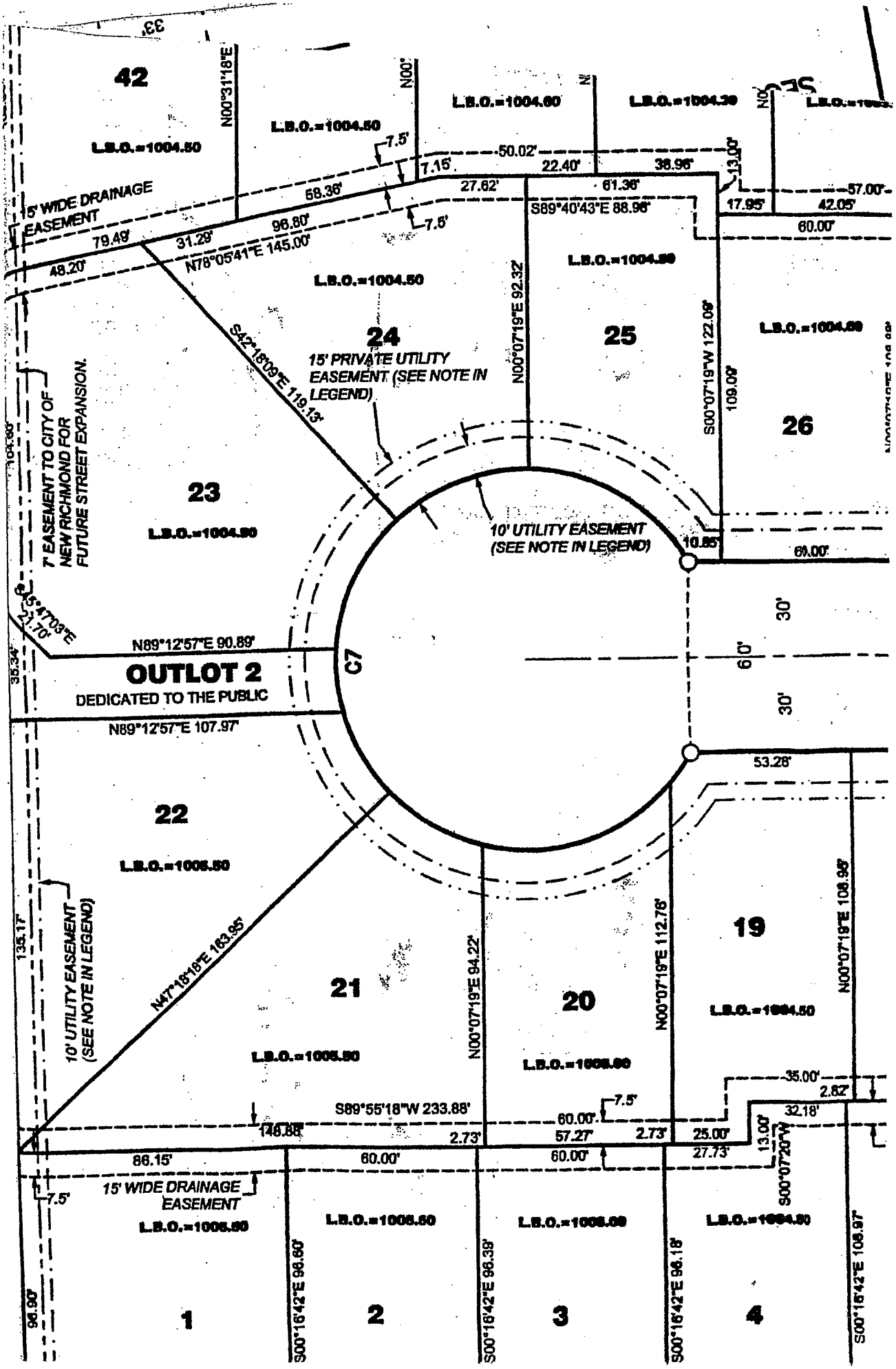
BUILDING SETBACK



SCALE: 1" = 40'

0 40 80

THIS INSTRUMENT DRAFTED BY


42
L.B.O.=1004.50
N00°31'18"E
L.B.O.=1004.50
L.B.O.=1004.50
L.B.O.=1004.50
7.5'
50.02'
7.15'
22.40'
38.96'
13.00'
15' WIDE DRAINAGE EASEMENT
58.36'
27.62'
61.36'
57.00'
17.95'
42.05'
S89°40'43"E 88.96'
60.00'
79.49'
31.29'
96.80'
7.5'
48.20'
N78°05'41"E 145.00'
L.B.O.=1004.50
L.B.O.=1004.50
24
25
26
L.B.O.=1004.50
S42°18'09"E 119.13'
15' PRIVATE UTILITY EASEMENT (SEE NOTE IN LEGEND)
N00°07'19"E 92.32'
S00°07'19"W 122.09'
109.00'
7' EASEMENT TO CITY OF NEW RICHMOND FOR FUTURE STREET EXPANSION.
23
L.B.O.=1004.50
10' UTILITY EASEMENT (SEE NOTE IN LEGEND)
10.85'
60.00'
S5°47'03"E
21.70'
30'
N89°12'57"E 90.89'
C7
60'
OUTLOT 2
DEDICATED TO THE PUBLIC
30'
35.34'
N89°12'57"E 107.97'
53.28'
22
L.B.O.=1006.50
135.17'
10' UTILITY EASEMENT (SEE NOTE IN LEGEND)
N47°18'18"E 163.95'
21
L.B.O.=1006.50
N00°07'19"E 94.22'
20
L.B.O.=1006.50
N00°07'19"E 112.78'
19
L.B.O.=1004.50
N00°07'19"E 108.95'
35.00'
2.82'
S89°55'18"W 233.88'
7.5'
32.18'
148.88'
2.73'
60.00'
57.27'
2.73'
25.00'
13.00'
S00°07'20"W
86.15'
60.00'
60.00'
27.73'
7.5'
15' WIDE DRAINAGE EASEMENT
L.B.O.=1006.50
L.B.O.=1006.50
L.B.O.=1006.50
L.B.O.=1004.50
96.90'
S00°16'42"E 96.60'
S00°16'42"E 96.39'
S00°16'42"E 96.18'
S00°16'42"E 108.97'
1
2
3
4