

APPLICATION FOR A VARIANCE/APPEAL

Racine County, Wisconsin

Owner: Centurian LLC

Applicant/Agent: DeMark, Kolbe + Bradick, S.C. Attorney Christopher J. Conrad

Address: 3008 Knollcrest Drive P.O. Box 54 Burlington, WI 53105 Wood Dale, IL

Date petition filed: 11/11/21 Hearing Date: 12-7-2021

Phone (Hm) (Wk) 262-896-9720

Municipality: Town of Burlington

Zoning district(s): R-4

TO THE ZONING BOARD OF ADJUSTMENT/APPEALS: Please take notice that the undersigned ~~was denied a~~ ~~permit for~~ seeks an appeal of the Zoning Administrator for: A variance for adding 74 square feet of living space to a structure existing in a shoreland setback. See attached for further explanation.

at site address 3008 Knollcrest Drive, Section 27, T 3 N, R 19 E Lot(s) 23 & 24 Blk Subd/CSM Assessor's Plat No. 4 Halls Point Villa Parcel Id.# 002-03-19-27-434-000 in Racine County, Wisconsin, for the reason that the application failed to comply with Chapter 20 (Zoning) of the Racine County Code of Ordinances with respect to Wis. Stat. §59.629 as it relates to shoreland zoning

Applicant is subject to: Wis. Stat. §59.629

of the Racine County Zoning Ordinance.

Check applicable below: (Underline or circle the word "all" or "partially" below, as needed)

- X Property is all partially located in the shoreland area of Brown's Lake
X Project is all partially located in the shoreland area of Brown's Lake
✓ Property is all partially located in the floodplain area of Browns Lake
Project is all/partially located in the floodplain area of
Property is all/partially located in a wetland area. Project is all/partially located in a wetland area.

Indicate below or attach separate pages showing how your application meets the legal criteria for a variance.

1) Explain how the Ordinance creates an unnecessary hardship and in the absence of approval no feasible use can be made of the property. Serious questions exist as to whether or not there has been any violation of a county ordinance. It is the uncertainty of this legal status that was subject to long discussions between the homeowner and the corporation counsel where the availability of a variance because of State Statute §59.629 was agreed upon.

2) Describe the exceptional, extraordinary or unusual circumstances that are unique to this lot or structure. The homeowner added 74 square feet of living space to a structure within a shoreland setback. The new living space used to be occupied by a cantilevered deck. The footprint of the structure did not change. Altering the living space would necessitate deconstruction of the entire front facade of the structure and removing and re-engineering of the roof, along with other associated, but as yet unknown, consequences.

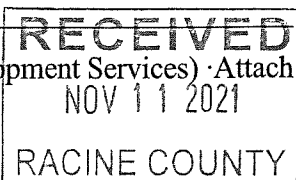
3) Describe how the approval would not create substantial detriment to adjacent property or materially impair or be contrary to the purpose and spirit of zoning or the public interest. The new construction fulfilled the legislature's goal of shoreland protection and rejuvenating and removing old, unsightly and outdated concrete structures in a setback while improving the facade of the residence. Statements from adjacent neighbors who have all verbally approved of the construction have been requested.

4) Explain how the request is not based on economic gain or loss and is not self-imposed. The homeowner had already planned extensive remodeling when unknown structural defects were discovered. The homeowner discussed these defects and potential cures with Burlington Building Inspector Jack Daams. Mr. Daams agreed reconstruction would be more efficient than remodeling and the homeowner misunderstood these conversations as zoning approval. See attached for further explanation.

Owner/Applicant's Signature

Date 11/11/21

Fee pd: \$150.00 Ck# 70561 (Payable to Racine County Development Services) Attach required documentation
Republication fee



APPLICATION FOR A VARIANCE/APPEAL

Racine County, Wisconsin

Owner: Centurion LLC

Applicant/Agent: DeMark, Kolbe + Brodek, S.C.

Address: P.O. Box 54

Date petition filed: 10-7-21 Hearing Date: 11-2-21

Wood Dale, IL 60191

Municipality: Burlington

Phone (Hm)      (Wk) 262-886-9720

Zoning district(s): R-4

TO THE ZONING BOARD OF ADJUSTMENT/APPEALS: Please take notice that the undersigned was denied a permit or seeks an appeal of the Zoning Administrator for: to allow a single-family residence with attached garage and associated open sided structures (not constructed per zoning permit approval) to remain in nonconforming locations

at site address 3008 Knollcrest Drive, Section 27, T 3 N, R 19 E Lot(s) 23+24 Blk      Subd/CSM Assr's Plat 4 Wells Point Villa Parcel Id.# 002031927434000 in Racine County, Wisconsin, for the reason that the application failed to comply with Chapter 20 (Zoning) of the Racine County Code of Ordinances with respect to: a portion of the single-family residence and associated open sided structures have insufficient shore yard setbacks

Applicant is subject to: Art VI Div. 7 R-4 Urban Residential District 1; Sec 20-10 Compliance; Sec. 20-11 violations; Sec 20-61 Required permits; Sec. 20-188 Continuance of preexisting nonconforming structure; Sec. 20-188.1 Expansion of nonconforming principal structure within the shoreland setback; Sec. 20-1917 Reduction and joint use and Sec. 20-1045 Shoreland setbacks and exempt structures, of the Racine County Zoning Ordinance.

Check applicable below: (Underline or circle the word "all" or "partially" below, as needed)

- Property is all/partially located in the shoreland area of Browns Lake
- Project is all/partially located in the shoreland area of Browns Lake
- Property is all/partially located in the floodplain area of Browns Lake
- Project is all/partially located in the floodplain area of
- Property is all/partially located in a wetland area.  Project is all/partially located in a wetland area.

Indicate below or attach separate pages showing how your application meets the legal criteria for a variance.

1) Explain how the Ordinance creates an unnecessary hardship and in the absence of approval no feasible use can be made of the property. See Attached

2) Describe the exceptional, extraordinary or unusual circumstances that are unique to this lot or structure. See Attached

3) Describe how the approval would not create substantial detriment to adjacent property or materially impair or be contrary to the purpose and spirit of zoning or the public interest. See Attached

4) Explain how the request is not based on economic gain or loss and is not self-imposed. See Attached

Owner/Applicant's Signature      Date     

Fee paid: \$ 450.00 Check # 70512 (Payable to Racine County Planning) • Please attach required documentation  
+ 150.00 + 70561

Rec'd 11-11-2021

## MEMORANDUM IN SUPPORT OF REQUEST FOR VARIANCE

3008 Knollcrest Drive, Burlington, WI

### I. BACKGROUND

This request for variance seeking approval of the homeowner's addition of 74 square feet of living space to a structure within a shoreland setback zone, comes before the Board from an uncommon path. The request is being submitted by the homeowner after substantial and detailed consultation with the Racine County Department of Public Works and Development Services and the Racine County Corporation Counsel as the best and most effective manner to resolve a potential zoning issue.

Although not directly relevant to the request for a variance, there is an underlying legal issue that led to detailed discussions between the homeowner and corporation counsel. Because both the homeowner and corporation counsel agree that a variance is available should this board choose to grant it, and because both parties acknowledge that the granting of a variance would render that legal issue moot, it was the consensus of all involved that making this request was the best way to proceed.

### II. FACTS

On October 2, 2019, the homeowner submitted a permit application that called for extensive remodeling of an existing structure on the shore of Browns Lake.

The permit was issued, and after commencing repairs, the homeowner found numerous previously unknown defects in the structure, not the least of which was a floor to ceiling brick fireplace built on the first floor without any foundational support. After construction began it was discovered this fireplace caused significant deflection of the supporting elements of the structure. After discussing these dangerous structural deficits with the building inspector for the City of Burlington, Jack Daams, it was agreed that the homeowner would be better off replacing rather than repairing the home's structural elements. The homeowner believed this conversation with Mr. Daams constituted approval to replace the compromised structure on the otherwise (mostly) solid foundation and proceeded with more extensive than originally contemplated construction, redesigning the above ground structure and turning area that used to be part of a cantilevered deck facing Browns Lake into living space.

Subsequent to substantial completion of this reconstruction, a complaint was filed with the Department of Zoning. The Department investigated and raised three potential violations, two of which have been resolved.<sup>1</sup>

---

<sup>1</sup> The initial inquiry questioned whether or not the current structure violated height restrictions. Based upon additional measurements, it was determined that the height of the new structure complies with local ordinances. The original inquiry also questioned whether the owner had installed excess impermeable surface. This concern has been remediated by the homeowner's installation of a Wisconsin DNR compliant rain garden more than sufficient to

The unresolved issue involves differing opinions on whether or not the conversion into living space of what had previously been a cantilevered deck constitutes an encroachment within the 75 foot setback from the lake. There is no dispute that the foundation of the structure, itself, remains unchanged. When the homeowner redesigned the home as a result of the structural problems, the homeowner turned approximately 8 linear feet of cantilevered deck into enclosed living space, adding 74 square feet of space to the structure. The Department believes that even though the footprint of the structure did not change, the addition of living space within the 75 foot shoreland setback requires a variance, and the homeowner now asks this board for a variance based upon two separate grounds.

First, the homeowner believes that since the footprint of the structure remains unchanged the addition of the living space, now integral to the new structure, is of such minor scope of such a massive cost to alter that a variance is appropriate.<sup>2</sup> This small area that used to be approximately 8 linear feet of deck, cantilevered 4 feet towards the lake, was turned into a small portion of a two story "great room" that is integral to the new structure. There is no way that this small area can simply be eliminated without major changes to two stories of the structure along at least one side, and re-engineering and replacing the entire roof of the home.

The second reason a variance should be granted is because the homeowner is entitled to an offset for any encroachment into the shoreland setback as the homeowner removed a substantial concrete retaining wall that pre-existed the homeowner's purchase of the property, and extended from the existing home to the lake shore. Removal of this retaining wall as well as various concrete paths, stairs and landings that had previously existed within the setback area constitutes mitigation that can be used as an "offset" to any deck related encroachment under Wisconsin law. During meetings between the homeowner, Racine County Corporate Counsel, and the Department of Zoning, it was agreed that there is no dispute that this mitigation presents a separate basis for a variance. It was then agreed that the homeowner would apply to this board for a variance based upon the homeowners' belief that no violation occurred, but the agreement of all parties that if a violation occurred, it would be offset by the removal of structures that encroached both further and more significantly into the setback area.

### **III. CALCULATION OF THE OFFSET**

Wisconsin Statutes are silent as to the specific manner of calculating any offset. There is no formula that provides that for "x" square footage of removed material within the setback, a homeowner gets a credit for "y" feet of encroachment. Determination of the

---

handle runoff from the lot. The homeowner spent over \$11,000 designing and installing this rain garden, which benefits not only the subject property, but the area in general, which has previously suffered from drainage issues.

<sup>2</sup> While we will not get into the depths of the potential legal issues involved, the homeowner firmly believes that there has been no violation of any zoning ordinance. Because both the homeowner and the County agree that a variance is available, that issue is not being presented. The homeowner simply wants to preserve its rights to assert that legal argument if a variance is not granted.

offset is discretionary. The purpose of the setback restrictions, however, are to protect the shoreline. In this case, the unchanged existing foundation of the residence already encroached into the setback area. The new living space added only 74 square feet to the structure, but over an area that was a previously existing cantilevered deck. Both the prior deck and new living space are supported by the unchanged foundation.

The removed retaining wall, stairs, and landing areas, in contrast, went from the foundation towards the water's edge. The homeowner removed over five linear feet of retaining wall closest to the water and completely removed a sweeping path of concrete steps and landings, replacing those structures with a wooden stairway that was built much closer to the unchanged foundation. These new stairs were also constructed in a much more compact manner, to cover less space within the setback area. All of this "reclaimed space" has been professionally landscaped by the property owner. In effect, the homeowner remediated that portion of the structure that was the most intrusive into the setback area.

## **V. SUMMARY**

The homeowner, the Department of Zoning and Corporation Counsel have all worked diligently to resolve any concerns regarding the construction. The spirit of this cooperation leads to this request for a variance which, if granted, would conclude any zoning issues with respect to the property in question.



Current  
Structure



Prior  
Structure

RECEIVED  
NOV 14 2014  
FACING COUNTY

Survey submitted in conjunction with zoning permit application

PLAT OF SURVEY  
-OF-

LOTS 23 AND 24, TOWNSHIP OF BURLINGTON ASSESSOR'S PLAT NO. 4 (ALSO KNOWN AS HALL'S POINT VILLA UNRECORDED SUBDIVISION) LOCATED IN THE SOUTHEAST 1/4 OF SECTION 27, TOWNSHIP 3 NORTH; RANGE 19 EAST OF THE FOURTH PRINCIPAL MERIDIAN, TOWNSHIP OF BURLINGTON, RACINE COUNTY, WISCONSIN.

SURVEY FOR: SEBASTIAN MADEJ  
SURVEY LOCATION: 3008 KNOLLCREST DRIVE

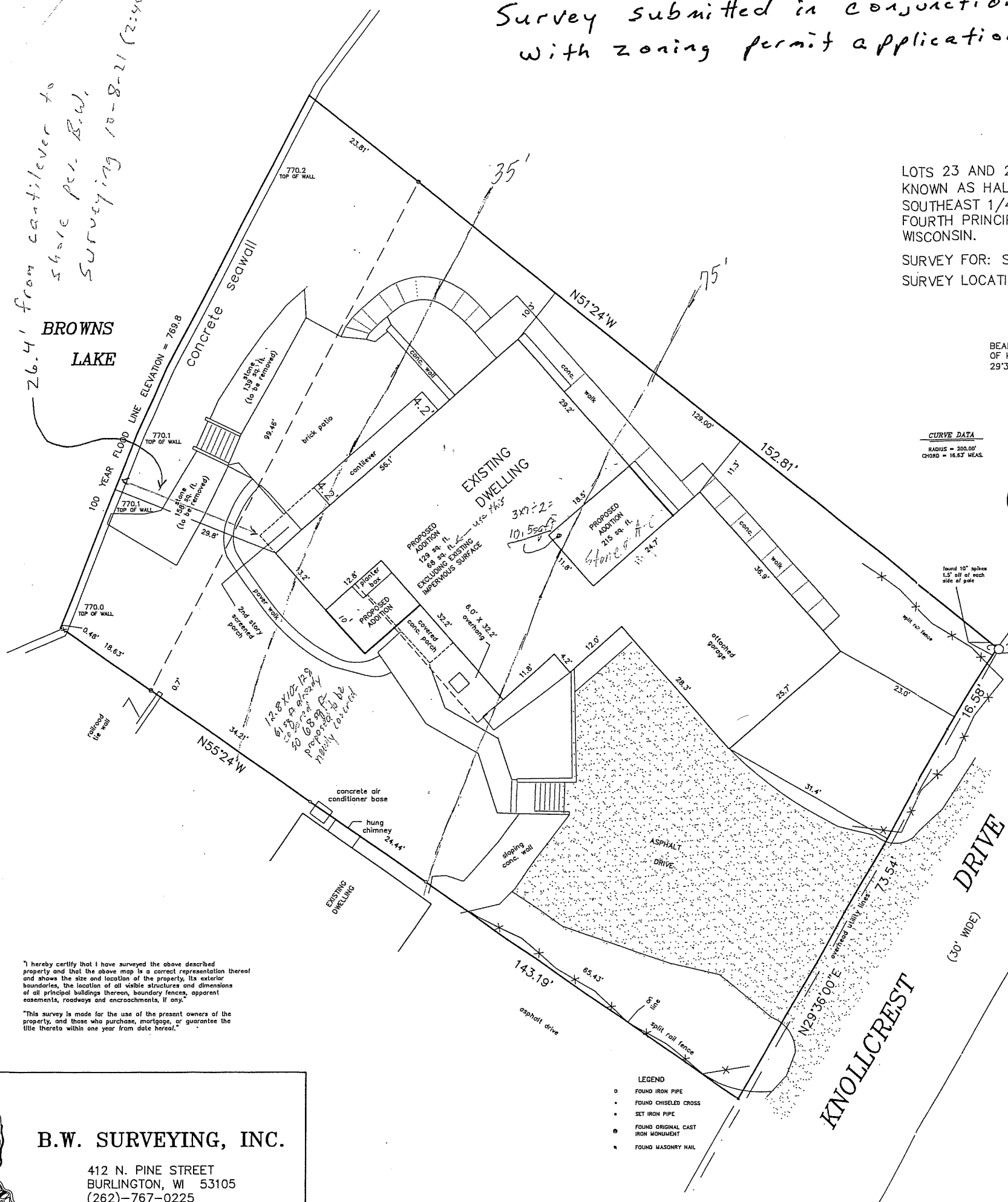
ELEVATION DATUM = NAVD88  
BEARINGS HEREON RELATE TO THE NORTHWESTERLY LINE OF KNOLLCREST DRIVE, ASSUMED BEARING NORTH 29°36'00" EAST.

CURVE DATA  
RADIUS = 300.00'  
CHORD = 16.87 MEAS.

*idz2/14*

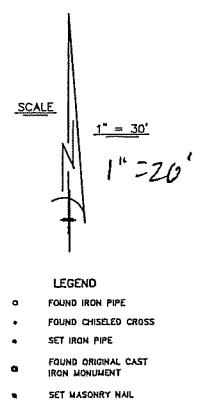
3008 Knollcrest Dr - 9-18-19

2 add - 120 sq ft + 160 sq ft  
one w/in 75'  
Over 40% imp. surface currently  
- Need imp. surface current + proposed  
- Need mitigation for add. w/in 75'  
75' + recorded  
- No steel/wood deck @ shoreline  
- No prop patio to S of prop steel/wood deck  
- will be removing flagstone  
- will get BW to do survey w/ imperv. surface + flood plan  
- will have prop. landscaper do plans for mitigation



LOT AREA	14,106 sq. ft.
30% OF LOT	4,232 sq. ft.
DWELLING, CANTLEVER AND OVERHANGS	3,158 sq. ft.
ASPHALT DRIVE	2,096 sq. ft.
CONCRETE WALK	475 sq. ft.
PAVER WALK	89 sq. ft.
CONCRETE WALL	159 sq. ft.
CONCRETE WALK AND STONE WALL	238 sq. ft.
TOTAL EXISTING IMPERVIOUS SURFACE	6,215 sq. ft. = 44% imp. surface
IMPERVIOUS SURFACE TO BE ADDED	283 sq. ft.
IMPERVIOUS SURFACE TO BE REMOVED	297 sq. ft.
PROPOSED IMPERVIOUS SURFACE POST CONSTRUCTION	6,201 sq. ft. = 44% imp. surface

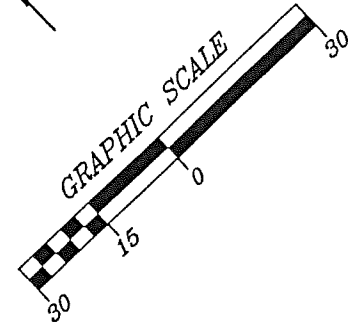
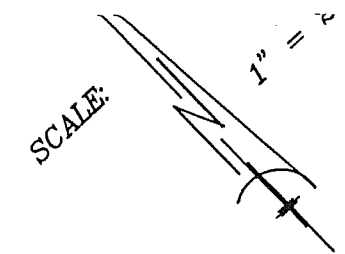
- can do this under the one-time lateral expansion of  $\approx 200$  sq ft  
- must do mitigation for add's w/in 75' + record @ ROD  
- Not increasing imperv. surface per BW's calculations  
- Brad @ Breezy Hill Nursery working on landscaping w/ mitigation plan (per 9-30-19 phone call)



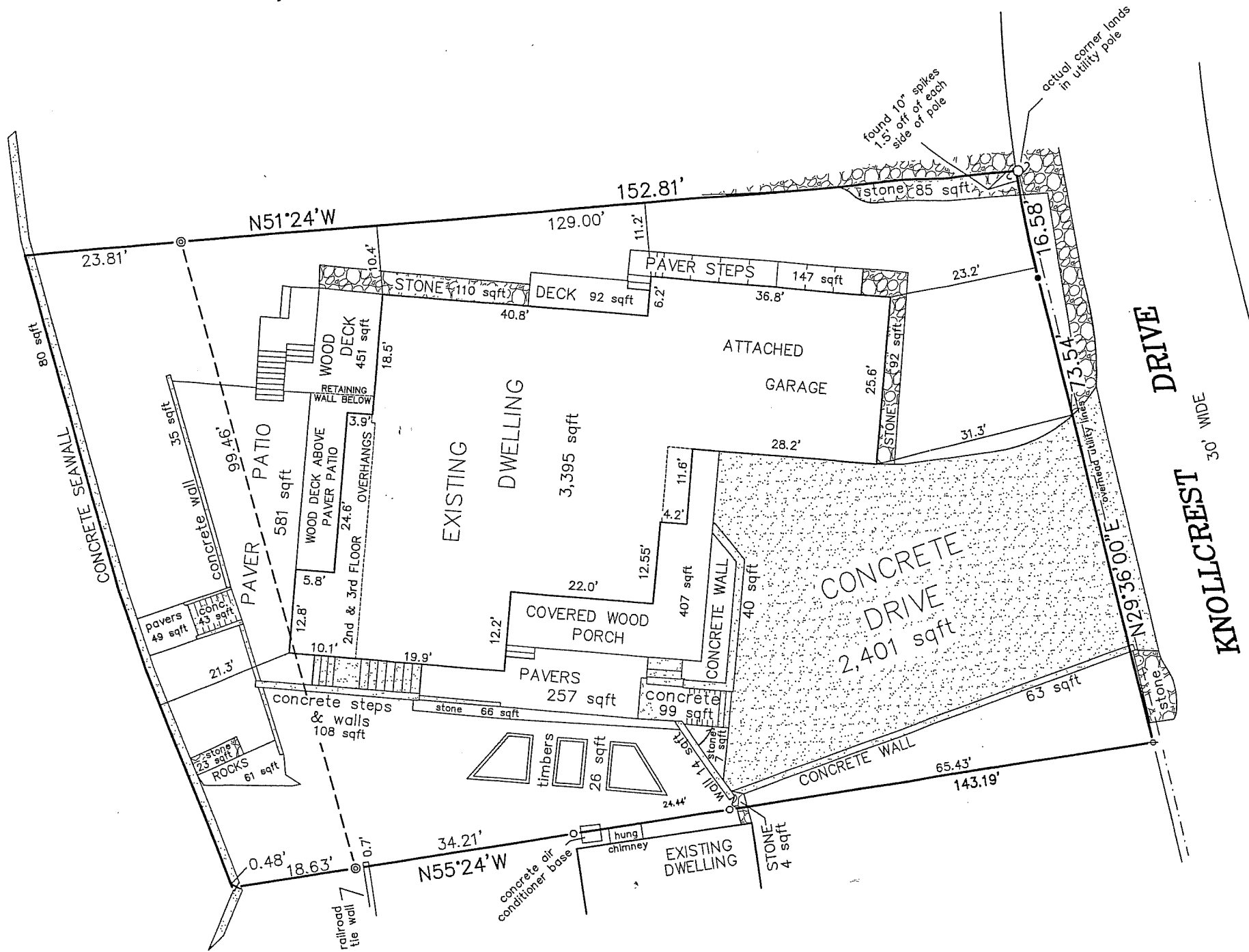
"I hereby certify that I have surveyed the above described property and that the above map is a correct representation thereof and shows the size and location of the property, its exterior boundaries, the location of all visible structures and dimensions of all principal buildings thereon, boundary fences, apparent easements, roadways and encroachments, if any."  
"This survey is made for the use of the present owners of the property, and those who purchase, mortgage, or guarantee the title thereto within one year from date hereof."

**B.W. SURVEYING, INC.**  
412 N. PINE STREET  
BURLINGTON, WI 53105  
(262)-767-0225

1st as-built survey



ROWNS LAKE



THIS IS NOT AN ORIGINAL PRINT UNLESS THIS SEAL IS RED.

ROBERT J. WETZEL S-1778

I have surveyed the above described property and it is a correct representation thereof of the property, its exterior structures and dimensions as shown, if any, apparent to the owners of the property. I do not guarantee the accuracy of the survey.

March 23, 2021



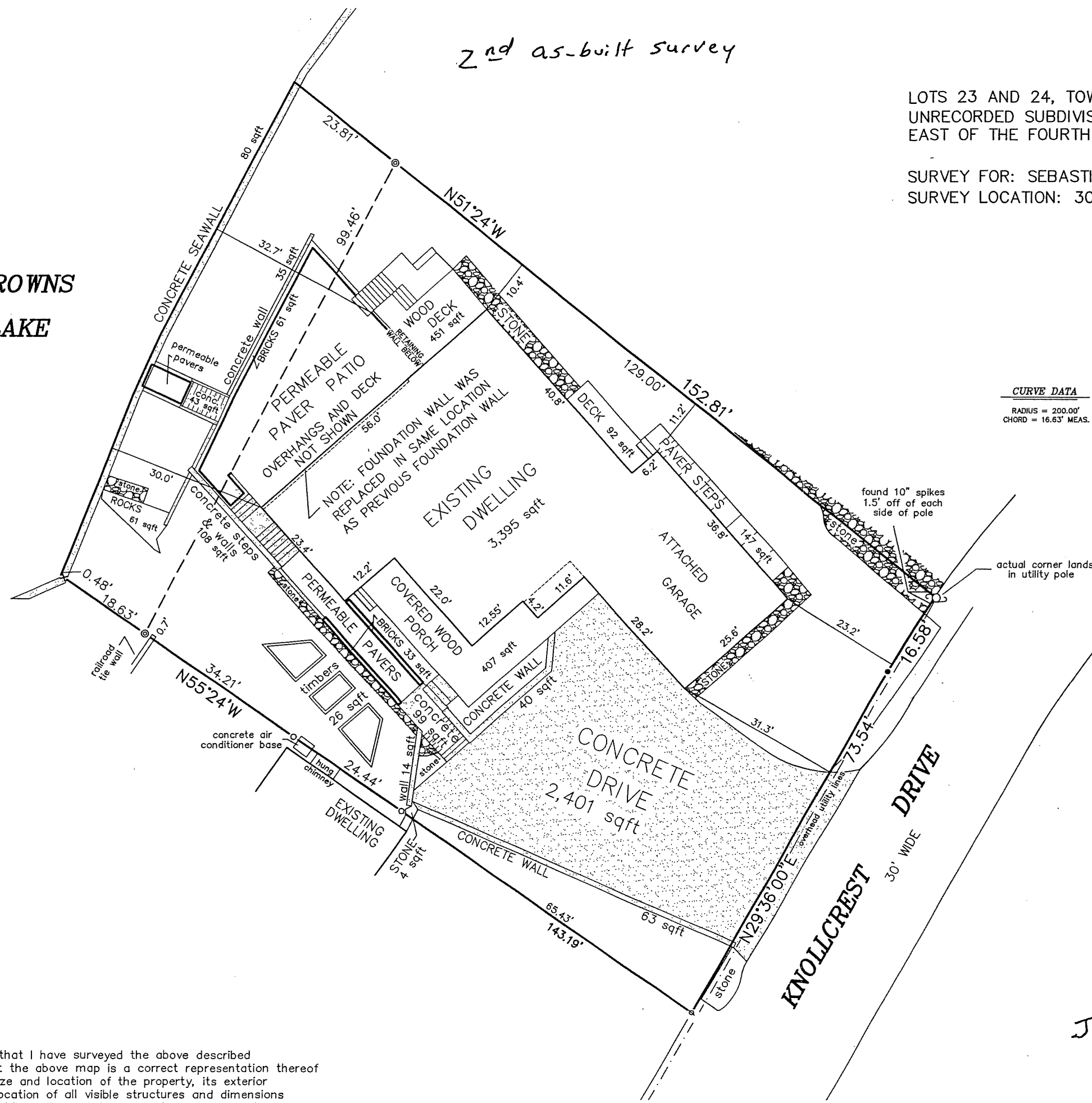
PLAT OF SURVEY  
-OF-

2<sup>nd</sup> as-built survey

LOTS 23 AND 24, TOWNSHIP OF BURLINGTON ASSESSOR'S PLAT NO. 4 (ALSO KNOWN AS HALL UNRECORDED SUBDIVISION) LOCATED IN THE SOUTHEAST 1/4 OF SECTION 27, TOWNSHIP 3 NC EAST OF THE FOURTH PRINCIPAL MERIDIAN, TOWNSHIP OF BURLINGTON, RACINE COUNTY, WISC

SURVEY FOR: SEBASTIAN MADEJ  
SURVEY LOCATION: 3008 KNOLLCREST DRIVE

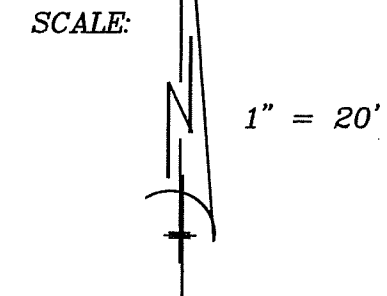
BROWNS  
LAKE



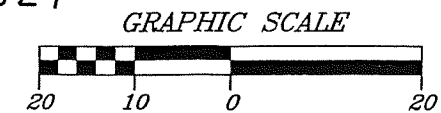
CURVE DATA  
RADIUS = 200.00'  
CHORD = 16.63' MEAS.

PEAK ELEVATION = 815.7  
LOWER LEVEL ELEVATION = 775.3 (FRONT AND R  
FIRST FLOOR ELEVATION = 784.2 (WEST SIDE)

LOT AREA: 14,10  
IMPERVIOUS SURFACE:  
EXISTING IMPERVIOUS:  
PRIOR TO CONSTRUCTIC



June 7, 2021



I hereby certify that I have surveyed the above described property and that the above map is a correct representation thereof showing the size and location of the property, its exterior boundaries, the location of all visible structures and dimensions of all principal buildings thereon, boundary fences, apparent encroachments, roadways and encroachments, if any."

This survey is made for the use of the present owners of the property, and those who purchase, mortgage, or guarantee the