

March 30, 2021

TO: Jenny Bourbonais, St. Louis County Land Use Planning Manager  
[bourbonaisj@st.louiscountymn.gov](mailto:bourbonaisj@st.louiscountymn.gov)

RE: Joe Leoni Variance Request at 6234 Juniper Lane, Gilbert, MN  
Response to St. Louis County Board of Adjustment Staff Report

Dear Ms. Bourbonais:

I have received the Staff Report to the Board of Adjustment and I would like to respond in writing and add a few additional exhibits. I really don't believe that the staff understood the flood plain of the West side of this property. Personally, I have seen the West side flood from the Lake to Juniper Lane. My family was friends with Ron Elg. We would visit on many occasions and would witness the flooding. Also I have had a cabin/home on Esquagama for the past 25 years and have experienced the substantial flooding of the entire Lake during the Spring thaw and during periods of substantial rain. As is pointed out by Mr. Saxhaug, the Board should realize that Esquagama is not a standalone lake. It is at the end of a five (5) lake river system. Its outlet to the West is controlled by a damn to prevent flooding downstream to the St. Louis River. Every year our property was flooded by the rising Spring thaw and had been known to flood 50 feet or more from the high water mark. Similar occurrences happened from the run off during substantial rainy periods or from a storm. Many years we had not been able to put in our dock until mid-June, because of the Spring thaw. So building on the West side of the property is not even a possibility as is pointed out by Mr. Saxhaug and Mr. Nemanich. They are experts in their respective fields. Further support of this conclusion is the affidavit of Tim Elg. He has taken care of the property for 30 years and finally from Mark Peterson who physically dug and tested the West side soil to see if it was feasible to set a mound septic system and it was not.

I believe the Board would have been convinced by my application for a variance because it is practically difficult to build on any other portion of the property than the Ridge area I proposed, however I believe the Staff report suggests a conclusion of an alternative building site without proper foundation. Therefore I am submitting additional narrative reports and exhibits to support my position 1. that the variance request is in harmony with the general purpose and intent of the official controls, 2. that a practical difficulty exists in complying with official control, 3. that the requested variance does not alter the essential character of the locality, and 4. that there are many reasonable other factors that need to be taken into consideration in my request for a variance. The additional documentation is as follows:

Letter of Brad Saxhaug and Exhibits: Mr. Saxhaug is a respected and long established contractor and builder in the area. He is familiar with Lake Esquagama and its river system. He was involved in the present location of the proposed home that is subject to this variance. He has extensively walked and viewed the entire property and specifically the West side of the property and unequivocally excludes any home to be built on the west side of the property. He also concludes that the variance property will cause minimal site reconfiguration and it will not cause any erosion . The variance home would definitely improve the appearance of the property and would complement the surrounding homes.

Letter of Tom Nemanich: Mr. Nemanich is a respected and long established bituminous, aggregate and excavating contractor. He has viewed the property and sampled the soil. His experience tells you that it would take engineered pilings to even suggest building a home on the West side of the property. Even if this was done, he would not guarantee a stable base.

Email of Mark Peterson: Mr. Peterson is a licensed septic designer for St. Louis County. In September 2020, he did a site evaluation for the a holding tank and mound system on the property. His soil examination factually told him that the West side of the property showed soil redoximorphic features and indicated high seasonal saturation. Therefore he would not approve a mound system to be placed on the West side of the property. If a mound system cannot be located there, how could a house be built in this location.

Affidavit of Tim Elg: Mr. Elg took care of this property for 30 years and he personally saw yearly flooding of the West side of the property. His affidavit speaks for itself. This is not a proper location to build any building.

In light of the above, I ask that the Board approve my variance.

Respectfully Submitted,



Joe Leoni

**Joseph Leoni | Attorney at Law**

Email: **[jleoni@trentilaw.com](mailto:jleoni@trentilaw.com)**

# **SAXHAUG CONSTRUCTION**

1011 5th Avenue South, Virginia, MN 55792 \*741-7447

March 29, 2021

TO: Board of Adjustment  
St. Louis County  
Hearing of April 8, 2021

RE: Joe Leoni Variance Application  
6324 Juniper Lane  
Land review and development

Dear Board of Adjustment:

I have been working with Mr. Leoni in developing a suitable home at the 6324 Juniper site. I have been a local contractor in the area for 30 years. I have built many commercial, homestead and garage structures in the area and on lakeshore.

I am sure you have seen photos of the property and the original homestead. The existing home (not formally used as a cabin) is suitable, but was built in 1940 and would need an exceptional amount of reconfiguration and work to turn it into a functional home. Also it would only be 25 feet from the shoreline.

The next and most practicable spot to build a home is in the plans submitted to you. The home would be able to utilize the best location for a site on the property. The home could be built with very little damage to the any surrounding vegetation and would not cause any erosion. It would eliminate two very old and outdated structures in the same area. It would enhance the scenic presentation of the peninsula from the lake view. It would not alter the character of the locality because as I mentioned very little land construction will be necessary to build this single story home. Finally, site prep will not cause any disturbance to the existing shorelines.

I have worked on several properties on Esquagama and specifically on a property two homes West of 6324 Juniper. I am familiar with the rise and fall of the water level of this river system. The Board must understand that Esquagama is not a standalone lake. It is part of a river system. It is the last of five (5) lake areas connected by the Esquagama River. Lake Esquagama is the final runoff from this chain of lakes and is regulated by a dam that backs up Lake Esquagama to prevent flooding into the St. Louis River. I have personally seen the lake rise 30-40 feet from the high level mark in the Spring and also in substantial rainy periods. I have walked the entire property several times and have seen the low level portion of the West side of the property. I have reviewed samples of the soil and it is moist. A ridge

runs alongside the East side of the property and creates sometimes a steep slope and towards the back does narrow somewhat. However the property line towards the back does become steeper. This causes additional water runoff to the West side. There does appear to be runoff from Juniper Lane to the back side of the West property. Also, there are visibly very low lying areas in this West part of the property. Finally, you can visibly see a path line/waterway from the lake to Juniper Lane on the West side that visible shows it is prone to Spring flooding. (I have attached an aerial view and a land explorer map and circled the waterway.)

Mr. Leoni did inquire of me if he filled a portion of the back West of the property (325 feet from the lake) for a storage shed if he would have building, soil and flooding problems. The answer was definitely yes, even with class five fill. The nature of the entire West side is that it is visibly low has low spots throughout all the way to Juniper Lane. A shed or garage with a very expensive raised floating slab may avoid flooding and sinking, but to build a home would require a structural engineering plan and most likely pilings. I would not build one for him nor would any reputable builder.

I have reviewed the St. Louis County Board of Adjustment Staff Report. I have reviewed that it is suggested that a home could be built in this location with "some challenges with prep site." It would not be a challenge, it would be a disaster. Pilings would have to be dug possibly up to 8 feet. This would absolutely be below the water level. Additional vegetation would have to be cleared. Erosion and drainage into the water system is highly likely. There would be nowhere to properly drain rain water. I have reviewed the proposed mound system and this would eliminate any homestead building on the tarred road way to the existing home. Thus any proposed home in this area would need to be in the ultimate flooding area as described above.

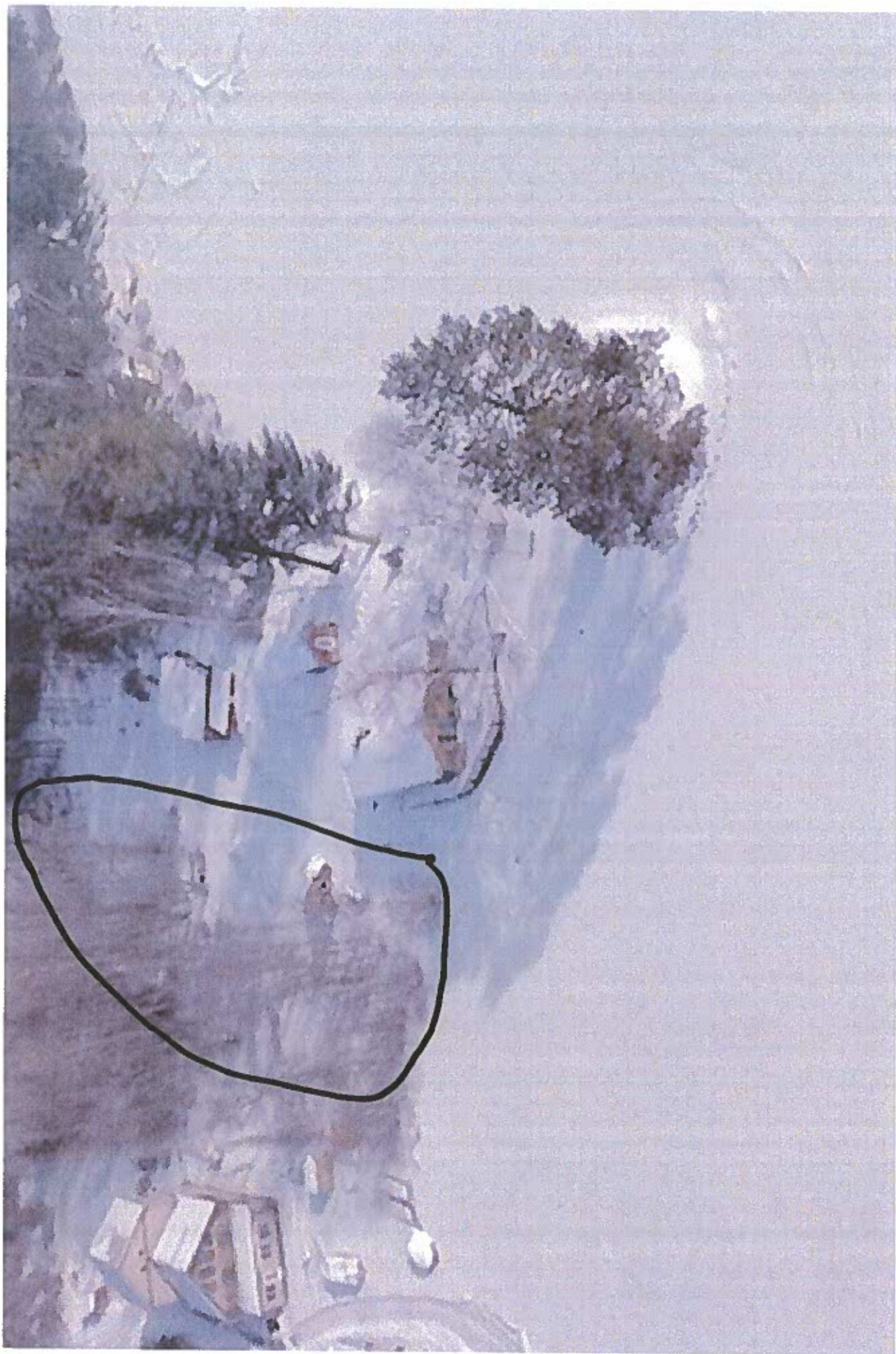
In conclusion, no matter how the property is viewed it is not practicable to build a home on the West side of this property. It would be practically difficult to build a home on this property without the requested variance approval or than to remodel the existing home.

Respectively Submitted,



Bradford H. Saxhaug











*Paving the Way for Over 40 years*  
[mesabibituminous@accessmn.com](mailto:mesabibituminous@accessmn.com)  
PO Box 728 Gilbert MN 55741

Date: 03/27/2021

RE: Joe Leoni Eshquaguma Lake Property(Juniper Lane)

To Whom It May Concern;

For over 66 years my family has been in the bituminous, aggregate and excavating contracting business. I am not an engineer, nor a soil expert, but with 30 years of personal experience in this business I know what will work and what won't. The soils and topography to the West of the Eshquaguma property driveway will not support a home or similar building. This condition exists for almost 200 yards to the North from the lakeshore. Most of that area is near lake level. It is very soft and is wet most of the year. There is drainage from Juniper Lane that runs continuously along the West property line. It would take engineered pilings to securely build a home in this area. Joe Leoni asked me if I would guarantee a stable base by filling this area or excavating and filling the area. I told him I would not as we would be below the lake level, creating a bigger problem.

Sincerely,

Tom Nemanich, MBI

Equal opportunity Employer

## Joe Leoni

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**From:** MARK PETERSON <nickzach1@msn.com>  
**Sent:** Wednesday, March 24, 2021 2:56 PM  
**To:** Joe Leoni  
**Subject:** Suitable septic area

On August 11 2020, I conducted a site evaluation for a holding tank design for property located at 6324 Juniper Lane, Gilbert MN 55741. During the site evaluation, two locations were looked at as possible future septic system areas. (west side and east side of the property entrance road). Soil observations showed soil redoximorphic features fairly close to the ground surface on the west side of the road, indicating high seasonal saturation. The west side of the road is a much lower wet area, possibly even containing wetlands, making it undesirable/unsuitable for a standard septic system. Soil observations on the east side, which is at a higher elevation, indicated more suitable soil for the construction of a future septic system. Therefore, the east side was delineated as the area for future (mound) septic system expansion.

Peterson Septic Design and Inspection  
Mark Peterson

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## AFFIDAVIT OF TIM ELG

1. My father owned the property at 6324 Juniper Lane from 1991 to 2019, then I inherited it.
2. Due to his age and health, I maintained the property for most of those years.
3. Prior to selling the property to Joe Leoni, I informed him that the lake rises significantly in May (ice out), and the entire west side of the property floods.
4. The flooding lasts over a month, and the flooding goes from the waterline all the way to Juniper Lane.
5. I have attached a map and have circled where the flooding occurs.
6. When the water recedes, the ground remains moist most of the year. Also, when we got several days of rain, the same area would flood.
7. My dad always wanted to build a garage in the back part where Joe is thinking of putting a slab for either parking or a shed; however, he always said it was too wet and prone for flooding.
8. In fact, the area in the back of the west lot was simply used for an area to burn brush.
9. I would never build a garage in this area, let alone a house with a basement.


Dated: 3/25/21

  
\_\_\_\_\_  
Tim Elg

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Minn. Stat. § 358.116.

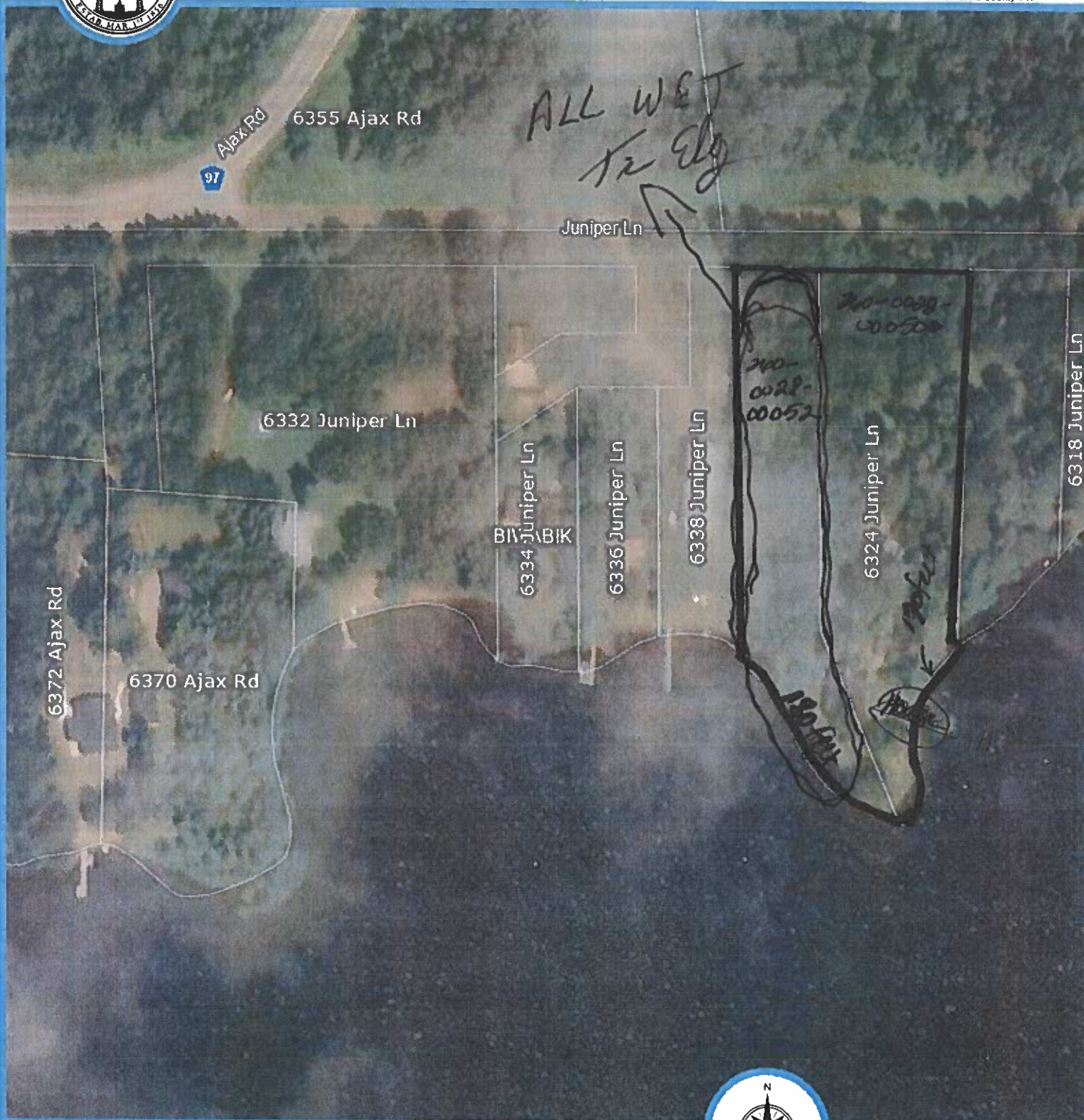
Dated: 3/25/21

  
\_\_\_\_\_  
Signature of Affiant / Tim Elg



# County Land Explorer

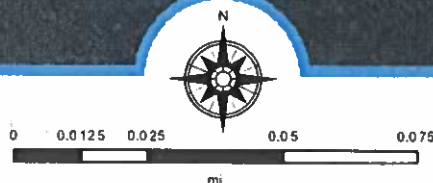
St. Louis County, Minnesota



Title...

default author

Map created using County Land Explorer  
[www.stlouiscountymn.gov/explorer](http://www.stlouiscountymn.gov/explorer)

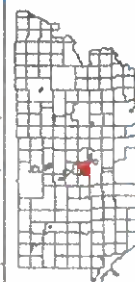


County Land Explorer  
St. Louis County [www.stlouiscountymn.gov/explorer](http://www.stlouiscountymn.gov/explorer) Minnesota

#### Disclaimer

This is a compilation of records as they appear in the Saint Louis County Offices affecting the area shown. This drawing is to be used only for reference purposes and the County is not responsible for any inaccuracies herein

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## Joe Leoni

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**From:** Michelle Claviter-Tveit <Claviter-TveitM@StLouisCountyMN.gov>  
**Sent:** Tuesday, March 23, 2021 10:48 AM  
**To:** Joe Leoni  
**Subject:** Public Hearing Notice for April 8, 2021  
**Attachments:** Applicant Notice Leoni.pdf; 01-Leoni BOA STAFF REPORT.pdf

This message was sent securely using Zix®

Please find attached information pertaining to your upcoming Board of Adjustment hearing. **Please confirm receipt of this email by Friday, March 26, 2021.** If you wish to be provided a hard copy of this notice, report or any other materials, please contact our office. Thank you.

**Michelle Claviter-Tveit**  
Info Specialist II  
St. Louis County  
Planning & Community Development  
201 South 3<sup>rd</sup> Avenue West  
Virginia, MN 55792  
(Office) 218-749-7103 or 1-800-450-9777 ext. 7103  
(P) 218-742-9560 (F) 218-749-7194  
Email: [Claviter-TveitM@stlouiscountymn.gov](mailto:Claviter-TveitM@stlouiscountymn.gov)  
Web: <http://www.stlouiscountymn.gov>

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# Saint Louis County

Planning and Community Development Department • [www.stlouiscountymn.gov](http://www.stlouiscountymn.gov)  
[landuseinfo@stlouiscountymn.gov](mailto:landuseinfo@stlouiscountymn.gov)

**Matthew E. Johnson**  
Director

March 23, 2021

Joe Leoni  
6324 Juniper Lane  
Gilbert, MN 55741

Via email: [jleoni@trentilaw.com](mailto:jleoni@trentilaw.com)

Please be advised that the St. Louis County Board of Adjustment will hear your appeal for a variance on **THURSDAY, APRIL 8, 2021, at 11:05 AM.**

The hearing time is approximate – your case may begin later than the stated time, however, it will never begin earlier than the time shown above.

All meetings of the St. Louis County Board of Adjustment are closed to public attendance until further notice due to the COVID-19 pandemic and the declared emergency. Board of Adjustment meetings will now be held in a virtual format. All meetings will be live streamed via WebEx, giving the public the opportunity to watch and listen, and even speak to the Board of Adjustment. Please also have the option to listen to the meeting live via telephone. These options have been made viable by Minnesota Statutes 13D.021 due to it not being feasible to have Board of Adjustment members, staff, and/or members of the public present at the regular meeting location.

Some or all members of the St. Louis County Board of Adjustment will attend the meeting by telephone or other electronic means. For more information on how to view or participate in the public hearing, please visit the county website at: [www.stlouiscountymn.gov/departments-a-z/planning-development/land-use](http://www.stlouiscountymn.gov/departments-a-z/planning-development/land-use).

Citizens can submit public comments relating to the public hearing using one of the following three methods:

1. **Preferred method:** Email your comments to Jenny Bourbonais, St. Louis County Land Use Planning Manager, at [bourbonaisj@stlouiscountymn.gov](mailto:bourbonaisj@stlouiscountymn.gov). Emails must be received by noon on **Monday, April 5, 2021**, in order to be presented to the Board of Adjustment and viewed online.

☐ **Duluth Office**  
Government Services Center  
320 W 2<sup>nd</sup> St, Ste 301  
Duluth, MN 55802  
Phone: (218) 725-5000  
Toll Free in MN: 1-800-450-9777  
Fax: (218) 725-5029

☒ **Virginia Office**  
Government Services Center  
201 South 3<sup>rd</sup> Avenue West  
Virginia, MN 55792  
Phone: (218) 749-7103  
Toll Free in MN: 1-800-450-9777  
Fax: (218) 749-7194



2. Mail your comments to one of the St. Louis County Government Services address (located in Duluth or Virginia). Your comments must be received in the mail by **Monday, April 5, 2021**, in order to be presented to the Board of Adjustment and viewed online.
3. You will also have the opportunity to raise your "virtual hand" while utilizing the WebEx software during the public hearing. To learn more about WebEx, please visit [www.webex.com](http://www.webex.com).

If you have any questions, please contact Matthew Johnson, St. Louis County Planning and Community Development Director by email at [JohnsonM12@stlouiscountymn.gov](mailto:JohnsonM12@stlouiscountymn.gov) or Jenny Bourbonais, St. Louis County Land Use Planning Manager, at [bourbonaisj@stlouiscountymn.gov](mailto:bourbonaisj@stlouiscountymn.gov).

**Please provide your contact email and phone number to Angela Lepak at [lepaka@stlouiscountymn.gov](mailto:lepaka@stlouiscountymn.gov) or Jenny Bourbonais at [bourbonaisj@stlouiscountymn.gov](mailto:bourbonaisj@stlouiscountymn.gov) so that we can send you an electronic invitation to virtually attend the hearing.**

A copy of the Staff Report regarding your variance request is enclosed. This report has been furnished to members of the Board of Adjustment and is the basis for the presentation which will be made at the public hearing. Please be prepared to present any information relevant to your case at the hearing.

If you have any questions regarding the Planning staff report, please contact me by phone at 218-471-7565 or toll free at 1-800-450-9777, extension 7565 or by e-mail at [EcklundJ@stlouiscountymn.gov](mailto:EcklundJ@stlouiscountymn.gov) prior to the hearing.

Sincerely,

Jared Ecklund, Senior Planner

Enclosures

**\*\*In compliance with the Americans with Disabilities Act, those requiring accommodation for this meeting should notify the Planning Department 72 hours prior to the meeting at (218) 749-7103\*\***

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☐ **Duluth Office**  
Government Services Center  
320 W 2<sup>nd</sup> St, Ste 301  
Duluth, MN 55802  
Phone: (218) 725-5000  
Toll Free in MN: 1-800-450-9777  
Fax: (218) 725-5029

☒ **Virginia Office**  
Government Services Center  
201 South 3<sup>rd</sup> Avenue West  
Virginia, MN 55792  
Phone: (218) 749-7103  
Toll Free in MN: 1-800-450-9777  
Fax: (218) 749-7194





# ST. LOUIS COUNTY BOARD OF ADJUSTMENT STAFF REPORT

Case: 6248

INSPECTION DATE: 3-15-21

REPORT DATE: 2-22-21

MEETING DATE: 3-8-21

## APPLICANT INFORMATION

**APPLICANT NAME:** Joseph Leoni

**APPLICANT ADDRESS:** 6324 Juniper Ln. Gilbert, MN 55741

**OWNER NAME:** Same as above

**SITE ADDRESS:** 6324 Juniper Ln. Gilbert, MN 55741

**LEGAL DESCRIPTION:** THAT PART OF LOT 5 of Esquagama North Beach Plat LYING ELY OF THE FOLLOWING DESCRIBED LINE BEG AT A PT 75 FT E OF NW COR OF LOT 5 ON N LINE THENCE SLY PARALLEL TO W LINE OF LOT 335 FT THENCE SWLY 22DEG7' 87 FT TO SHORELINE and THAT PART OF LOT 5 of Esquagama North Beach Plat LYING ELY OF THE FOLLOWING DESCRIBED LINE BEG AT A PT 75 FT E OF NW COR OF LOT 5 ON N LINE THENCE SLY PARALLEL TO W LINE OF LOT 335 FT THENCE SWLY 22DEG7' 87 FT TO SHORELINE, S27, T58N, R16W (Biwabik)

**PARCEL IDENTIFICATION NUMBER (PIN):** 260-0028-00050 and 260-0028-00052

**VARIANCE REQUEST:** The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow a nonconforming principal structure to be replaced at a reduced shoreline setback where 75 feet is required.

**PROPOSAL DETAILS:** The applicant is proposing a replacement dwelling to be located 50 feet from the shoreline of Lake Esquagama where 75 feet is required. There is currently a dwelling on the property that is located approximately 25 feet from the shoreline. The proposed replacement dwelling would be located in a similar location, but at a shoreline setback of 50 feet rather than the current setback of approximately 25 feet.

## PARCEL AND SITE INFORMATION

**ROAD ACCESS NAME/NUMBER:** Juniper Ln.

**ROAD FUNCTIONAL CLASS:** Local Public Road

**LAKE NAME:** Esquagama Lake

**LAKE CLASSIFICATION:** GD

**RIVER NAME:** N/A

**RIVER CLASSIFICATION:** N/A

**DESCRIPTION OF DEVELOPMENT ON PARCEL:** The development on the property consists of a dwelling, several accessory structures, a well, and a septic system that is also propose to be replaced.

**ZONE DISTRCT:** SMU 11

**PARCEL ACREAGE:** 2.1 ACRES

**LOT WIDTH:** 203 FEET

**FEET OF ROAD FRONTAGE:** 215 FEET

**FEET OF SHORELINE FRONTAGE:** 425 FEET

## PARCEL AND SITE INFORMATION

**VEGETATIVE COVER/SCREENING:** The majority of the property is well vegetated, but there are some areas near the shoreline that lack screening. The proposed development would be visible from the lake.

**TOPOGRAPHY:** The property sits on somewhat of a ridge with the east side of the property located near the top of the ridge and the west edge of the property located on the low side to the toe of the slope. The east side of the property is approximately 8-10 feet above the west side of the property.

**FLOODPLAIN ISSUES:** The southwest portion of the property is fairly low and appears to be at or below the floodplain elevation. FEMA and floodplain ordinance standards will need to be met for redevelopment on the property.

**WETLAND ISSUES:** The southwest portion of the property that is near the floodplain elevation may contain floodplain type wetlands.

**ADDITIONAL COMMENTS ON PARCEL:** The property sits on a small point/peninsula on the shoreline.

## FACTS AND FINDINGS

### A. Official Controls:

1. Zoning Ordinance 62 states that the shoreline setback on a general development lake is 75 feet; the applicant is requesting approval for a reduced shoreline setback of 50 feet.
2. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
3. Objective LU-3.3 the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statute 394.22. Subd.10.

### B. Practical Difficulty:

1. The property is somewhat unique due to the fact that it sits on a point on the shoreline.
  - a. This requires the shoreline setback to be met in multiple directions.
2. The property is located on a ridge with floodplain in the lower portions of the property.
  - a. The floodplain regulations may require development to be located on the higher portion of the property near the east property line.
3. It appears there are locations to meet the shoreline setback and avoid the floodplain.
  - a. These locations may require some excavation and fill to create a suitable building site.
4. The location near the rear of a few accessory structures and parking area on the property may be a suitable location for a replacement dwelling.
  - a. The applicant has stated that these structures would be removed after the proposed dwelling with attached garage are completed.
  - b. This location would allow the shoreline setback to be met and be located above the floodplain elevation.
  - c. This location may require some additional excavation and grading for the proposed structure, which may be necessary regardless of if the new dwelling was constructed in this location.
5. The applicant has started site prep for a garage in a location near the existing accessory structures.

- a. This area may be located below the floodplain elevation, but could be a suitable location for a dwelling as long as floodplain standards are met.
- 6. The property has plenty of depth to allow a dwelling and detached accessory structure to meet the required shoreline setback.
- 7. It does not appear that the proposed septic system would prevent the development from meeting the shoreline setback.

**C. Essential Character of the Locality:**

- 1. The majority of the development in the area appears to meet the shoreline setback, but there are a few structures that are located approximately 50 feet from the shoreline.
- 2. There were variances approved on two properties within this plat. The variances on one property did not include shoreline setback variances.
- 3. The other property had two variances approved on the property for two separate dwellings to be located at a reduced shoreline setback.
  - a. One was approved at 59 feet from the shoreline, the other was allowed at 50 feet from the shoreline.
  - b. This property consists of three platted lots.
  - c. At the time of the approval the practical difficulty indicated that there was limited area to meet the required shoreline setback.

**D. Other Factor(s):**

- 1. Although there may be some challenges with site prep, there does appear to be area on the property where a replacement dwelling could meet all requirements and setbacks.
- 2. St. Louis County Zoning Ordinance 62 states that it shall be the burden of the applicant to demonstrate sufficient practical difficulty to sustain the need for variance. Absent a showing of practical difficulty as provided in Minnesota Statutes and this ordinance, the Board of Adjustment shall not approve any variance.

**NOTE TO PLANNERS-Add as attachments: 1. Zoning/location map 2. Air photo 3. Site sketch 4. Project picture (if applicable) 5. Other pertinent pictures or maps**

**BOARD OF ADJUSTMENT CRITERIA FOR APPROVAL OF A VARIANCE**

- 1. Is the variance request in harmony with the general purpose and intent of official controls?**
- 2. Has a practical difficulty been demonstrated in complying with the official controls?**
- 3. Will the variance alter the essential character of the locality?**
- 4. What, if any, other factors should be taken into consideration on this case?**

## RECOMMENDED CONDITIONS, IF APPROVED

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow a nonconforming principal structure to be replaced at a reduced shoreline setback where 75 feet is required, the following conditions shall apply:

1. The structure shall be unobtrusive (earth-tone) colors, including siding, trim and roof.
2. The stormwater runoff from the proposed structure shall not directly discharge directly into the lake or on adjacent lots.
3. A plan to enhance vegetation and protect the shore impact zone shall be submitted, approved and implemented by the property owner prior to the issuance of a land use permit.
4. Waste shall be disposed of in a manner acceptable to St. Louis County Solid Waste Ordinance 45.
5. The requirements of the Minnesota Wetland Conservation Act shall be followed.
6. The requirements of St. Louis County Floodplain Management Ordinance 43 and FEMA floodplain standards shall be met.
7. The proposal shall adhere to all county, state and federal regulations.