

Marshall County Planning & Zoning
STAFF REPORT
May 20, 2025; POSTPONED
June 3, 2025

Issue #1 Variance for Building Setback

OWNER/APPLICANT: Joe and Anna Meissner

PROPERTY DESCRIPTION: Lot 5 in the Plat of Lots 1-6 in Steiner's Addition in Gov't Lot 4 in Section 13, T126N, R54W

CURRENT ZONING: Lake Front Residential (R-3)

SURROUNDING ZONING: Lake Front Residential (R-3) and Agricultural (Ag)

REQUEST: Pertaining to the Lot line closest to the road; the petitioner is asking to place the home 20 feet from the right-of-way line, instead of the 30ft requirement. From the closest protruding eve or edge of the structure(s) to the high-water mark, the petitioner is asking to construct the house and deck at 20 feet instead of the 50ft requirement; making note that the structure does not meet the setback from the high-water mark from any point of the structure on the North side (please see file for greater detail); all per the Marshall County Zoning Ordinance.

HISTORY/ISSUE(S):

1. The applicants have owned the Lot in question since August 18, 2022.
2. The lot currently sits empty, noting that the Lot drops down substantially on the water side.
3. Lot 5 has an average depth of approximately 92.5ft and a width of approximately 105.3ft. Note that the dimensions of the home in which they wish to place on the lot is 46x56, which does not include a deck and stairs that measure 10x24.
 - a. In reference to the dimensions of the structure listed on the plans provided, the home has a proposed square footage of 2,576.
 - b. Per information I received via email, the building permit notes 1,500 sq. ft. for size of the home. The upstairs living area is 1456, as is the downstairs.
 - c. **NEW** The variance was postponed on 5/20/25 to allow for enough time for the property to be re-staked and for adjacent landowners to view the proposed area for the project.
 - d. **NEW** Zoning Director, Commissioner Kilker and Josh Kraft went out to the property after it was staked for the second time on 5/23/25.
4. As stated in the legal notice for this application, the home and deck would not meet the high-water requirements from any point of the structure on the North side as it has been requested. Upon receiving information involving the high-water mark, I did some further research on outlet elevation and the ordinary high-water mark.
 - a. At the time of measuring, the water was 2" from outlet level.
 - b. I was informed on 5/12/25 that the water is sitting right at the outlet.
 - i. This information shows that the water typically sits at this level, and has been as such for quite some time, according to other surrounding property owners. The SD DENR website also showed similar information.
 - ii. According to the SD Dept. of Envir. & Natural resources website when viewed on 5/13/25, the outlet elevation is 1,822.5ft and the Ordinary High-Water Mark shows a measurement of 1,823.7ft. As of 10/16/24 the high-water was measuring at 1,822.07 ft. <https://apps.sd.gov/NR65LakeInfo/public.aspx>

- c. Also, when measuring, it was noted that the deck would, if built as requested, be 45' from the NE corner of the structure straight down to the water. The NW corner of the deck would sit at approximately 35' from the water.
 - i. Also note on the engineer's drawings that measurements provided on the site plan does not include 25' +/- of water front property.
 5. Engineers drawing shows that the deck on the North side of the proposed home will be in line with the home on Lot 6 to the East and will not impede their view if built as requested.
 6. Note that there is a principal structure located less than fifty (50) feet from the normal high-water mark on properties contiguous to the lot or parcel upon which a proposed structure is to be constructed, the setback from the normal high-water mark will be established utilizing a sight line that averages the setback of the principal structures on the adjoining lots. Average setback: **49ft.**
 7. The road lying South of the Lot is a private road.
 - a. Variances to the road right-of-way line setback are not typically required off of private roads, but one was approved back in 2023 for David & Claudia Eiel for a shed.
 - i. BP No. 22-23
 8. Marshall County Ordinance requires new structures to be placed a minimum of 30ft from a road right-of-way line and a minimum of 50ft from the normal high-water mark.
 9. *Two written comments were received prior to the May 20, 2025 meeting. One letter was received prior to the June 3, 2025 meeting.*
 10. Staff Recommendation – **10' variance to the right-of-way line setback, and at the closest point of the proposed structure(s), a 30' variance to the normal high-water mark setback.**
 11. The Board could table, deny or approve the request. If the Board chooses to approve the variance, it could use the following findings, similar to those used in previous approvals of setback requirements in R-3 District.
 - a. The Board has granted similar right-of-way line variances to lake lots in the past, when the neighbors had no objections.
 - i. Similar right-of-way line variances allowed – 16' for D. Eiel 6/23, 10' for R. Heitman 4/25 (public), 6.5' for R. Heitmann 4/25 (public) & 16' for R. Tchida 7/24 (public).
 - b. The Board has granted similar high-water mark variances to lake lots in the past, when the neighbors had no objections.
 - i. Similar high-water mark variances allowed – 38' for D. Stapleton 6/13, 25' for C. McMaken 6/17, 22' for R. Renner 6/21, 20' for R. Tchida 7/24 & 18' for Bosse Family Cabin 8/23
 - c. The Board would consider approving other similar requests meeting the unique circumstances.
- If the Board chooses to deny the variance, it could use the following findings, similar to those used in previous denials of setback variances.
- a. The lot and situation are not so unique to necessitate the relaxation for the setback requirement.
 - b. The granting of this variance would confer upon the applicant special privilege denied to others in the R-3 District.

Action Item – 10' variance to the right-of-way line setback, and at the closest point of the proposed structure(s), a 30' variance to the normal high-water mark setback.

SISSETON OFFICE

PO Box 9
520 2nd Ave. East
Sisseton, SD 57262

WEBSTER OFFICE

PO Box 615
21 West 6th Ave.
Webster, SD 57274



DELANEY | NIELSEN | SANNES P.C.

Please reply to the Sisseton Office

Gordon P. Nielsen

Thomas L. Sannes

David A. Geyer

Kent Delaney,
of Counsel

June 2, 2025

Marshall County Planning & Zoning Commission
P.O. Box 9
Britton, South Dakota 57430

RE: Joe and Anna Meissner Variance for Building Setback

Dear Marshall County Planning & Zoning Commission:

Be advised that my office represents Steven Steiner in relation to the variance for building setback requested by Joe and Anna Meissner for their Clear Lake Property. Be advised my client objects to the variance requested by Mr. and Mrs. Meissner for the following reasons:


First, Mr. Steiner supports the objection to the high water mark setback as stated previously by Gary and Mary Carlson. Gary and Mary have been great neighbors, and Mr. Steiner shares their concern that the setback will interfere with their line of sight and would be a detriment to their property.

Second, Mr. Steiner opposes the right of way setback from the existing private road on the grounds of safety as well as utility for the snow removal. With regards to safety, my client operates a business out of his nearby property. He is concerned that the setback variance would reduce the visibility that pedestrians and occupants of the property would have from the road as well as operators on the road which would cause a safety hazard. With regards to the utility of the snow removal, Mr. Steiner is hired by several of the occupants of cabins further down the road to remove the snow in the winter time and the 20 foot setback would not be sufficient in Mr. Steiner's opinion to accommodate a heavy snow load occurrence. Mr. Steiner is concerned that if the set back is only 20 feet from the road, that he or anybody else removing snow would be subject to liability for damage to the structure due to flying snow during the removal process. Additionally, the 20 feet setback would not provide the adequate distance for the snow to be stored in the ditch during a heavy snow load situation.

For these reasons listed, Mr. Steiner is objecting to the above stated variance.

Sincerely,

DELANEY, NIELSEN & SANNES, P.C.



David A. Geyer

DAG:aw

cc: Client



Outlook

Re: Meissner Variance File

From David Eiel <eielde0204@gmail.com>**Date** Fri 5/16/2025 7:00 PM**To** Erin Collins-Miles <mczoning@venturecomm.net>

To: Marshall County Planning & Zoning Commission
Variance Request Comment - Lot 5 Steiner's Addition

We understand the need for variance to be considered, such as our June 2023 16 feet road set back for a small shed.

In reviewing the two (2) proposed variance requests for Lot 5 Steiner's Addition of:

- 30 feet (60%) variance request to the high-water mark line
- 10 feet (30%) variance request to the right-of-way set-back

Totaling 40 feet out of the normal lake lot set-back total of 80 feet. The two variance requests for one lot seem excessive. Raising concerns and potential impacts for at least the road right-of-way.

The road, impacted by the right-of-way variance request, provides access to seven family homes and cabins. Setting the structure/house 10 feet closer to the road raises concerns with:

- Parking and overflow parking onto the road.
- Snow Removal - which often involves heavy equipment.

Thank you for listening to our concerns

David Eiel
Claudia Eiel

On Thu, May 15, 2025 at 3:34 PM Erin Collins-Miles <mczoning@venturecomm.net> wrote:

You are very welcome.

Have a great day!

Erin Collins-Miles
Planning & Zoning, Drainage, E911 Director
Marshall County

[605.448.7540](tel:605.448.7540)mczoning@venturecomm.netmarshall.sdcounties.org/planningzoning/PO Box 9, [911 Vander Horck St. Britton, SD 57430](#)

On 2025-05-15 15:07, David Eiel wrote:

Thank you.

On Thu, May 15, 2025, 12:17 PM Erin Collins-Miles <mczoning@venturecomm.net> wrote:

Good afternoon!

I have included the direct link to the Meissner variance file in this email. Please let me know if you have any questions.

Thank you!

MEISSNER LINK:

[SKM_C300i25051512060](#)

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Have a great day!



Erin Collins-Miles
Planning & Zoning, Drainage,
E911 Director
Marshall County



[605.448.7540](tel:605.448.7540)



mczoning@venturecomm.net



marshall.sdcounties.org/planningzoning/



PO Box 9, [911 Vander Horck St. Britton, SD](#)

[57430](#)



Outlook

Lake lot zoning

From Mary Carlson <maryjocarlsn84@icloud.com>**Date** Sun 5/18/2025 10:25 PM**To** mczoning@venturecomm.net <mczoning@venturecomm.net>

Erin,

We are writing due to some concerns of the variance to the development of lot 5 in the Steiner's edition. We are looking for clarification of the exact location of the deck and house regarding lake side. The variance states it is requesting 30 feet variance from high water. But it also states 20 feet from high water mark. We have concerns about line of sight that maybe an issue from our property at the 20 feet distance.

We will be present at the meeting for clarification.

Thank you

Mary and Gary Carlson

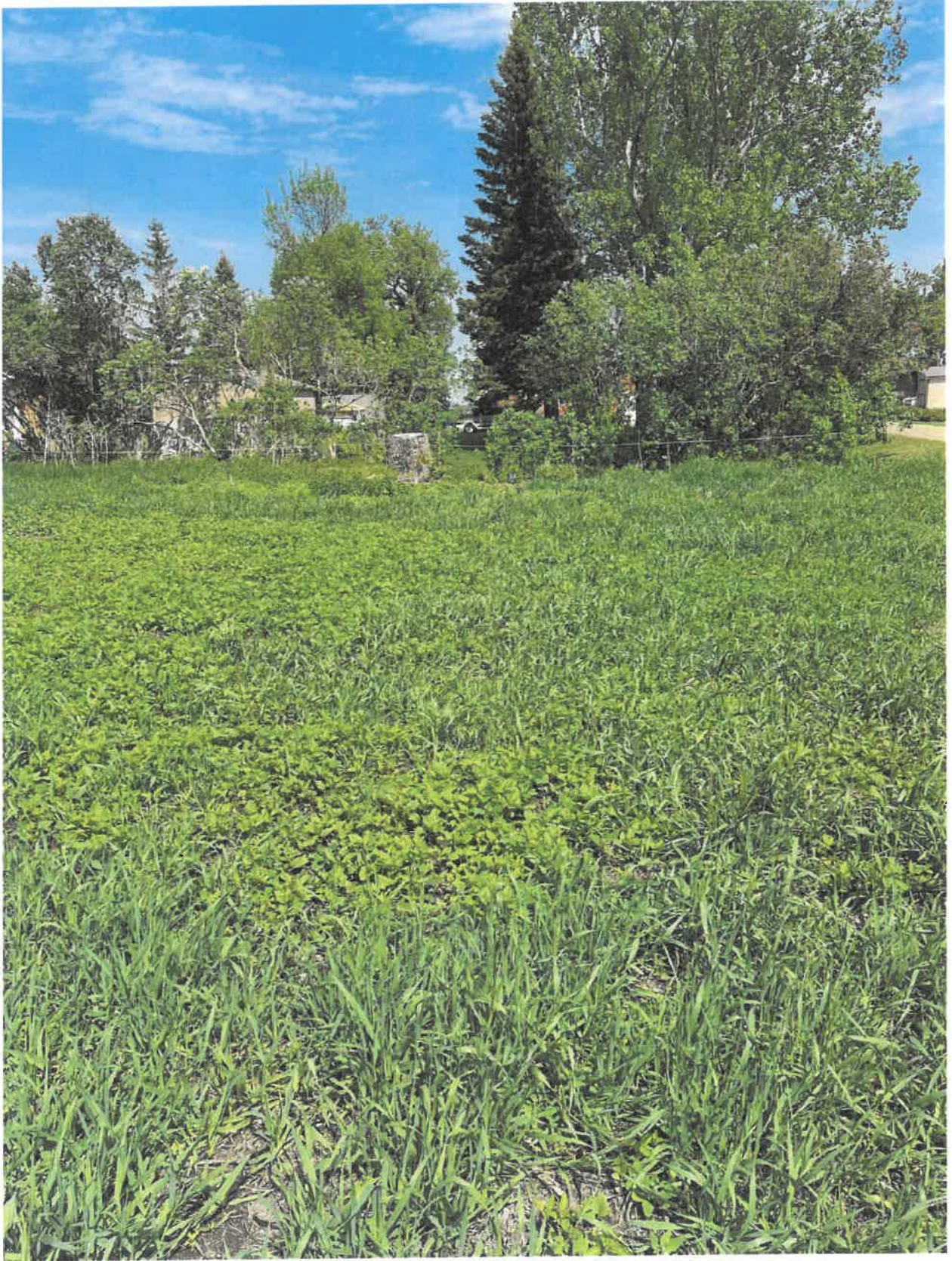
Sent from my iPhone











MARSHALL COUNTY APPLICATION FOR VARIANCE

DATE: 4-28-2025

To: Marshall County Planning and Zoning Commission
PO Box 9
Britton, SD 57430

The undersigned do hereby request a variance from the Marshall County Zoning Ordinance to build (or set) Build within 30' of High Water 20' of Road of a (circle applicable): Twp Rd, County Rd, Federal or State Hwy, Other Rd, Lot Line or High Water Mark.

Parcel ID 25.54.37 K106

Structure would be located on (legal description): Sec 13 Township 126N Range 54W
Lot 5 Steve's Addition in Gov't Lot 4

Reason: Construction of new home. Line of site road

Applicant Name: Joe; Anna Meissner Phone: 665 470-0589 Josh
761 202 6288 Joe
Address: 6681 56th Ave S. Fargo, ND 58104
Applicant Signature: Josh JKoff for Joe Meissner
Owner Signature (if different than applicant): _____

For Internal Office Use Only:

Date Received: 4/28/25 Fees(non-refundable): \$150.00 Paid: YES NO
Inspection Report: See Staff report

Date of Hearing by Planning and Zoning Commission: May 20, 2025

Action taken by Planning and Zoning Commission: _____

*Kilker motioned; Medhaug seconded to **POSTPONED until June 3, 2025**, a variance to place the home 20 feet from the right-of-way line, instead of the 30ft requirement, and to construct the house and deck at 20 feet instead of the 50ft requirement from the high-water mark setback. This motion allows for enough time for the property to be re-staked and for adjacent landowners to view the proposed area for the project; per the Marshall County Zoning Ordinance and to adopt the facts and the recommended findings of the Planning Commission listed in the staff report. A roll call vote was taken; Medhaug – Aye, Luttrell – Absent, Kilker – Aye, Bender – Aye, Schuller – Aye. Motion carried.*

MARSHALL COUNTY PLANNING & ZONING BOARD
P.O.BOX 9
BRITTON, SOUTH DAKOTA 57430
605.448.7540

May 20, 2025

Joe & Anna Meissner
6681 56th Ave. S
Fargo, ND 58108

To whom this may concern,

This letter is to inform you of the decision made by the Marshall County Planning & Zoning Board in regard to your variance application.

After review and county commissioner hearing held in the Commissioners Chambers on May 20, 2025, your application for a variance to the normal high-water mark, per the Marshall County Zoning Ordinance; is hereby: **POSTPONED until June 3, 2025.**
Please see below for detail:

*Kilker motioned; Medhaug seconded to **POSTPONED until June 3, 2025**, a variance to place the home 20 feet from the right-of-way line, instead of the 30ft requirement, and to construct the house and deck at 20 feet instead of the 50ft requirement from the high-water mark setback. This motion allows for enough time for the property to be re-staked and for adjacent landowners to view the proposed area for the project; per the Marshall County Zoning Ordinance and to adopt the facts and the recommended findings of the Planning Commission listed in the staff report. A roll call vote was taken; Medhaug – Aye, Luttrell – Absent, Kilker – Aye, Bender – Aye, Schuller – Aye. Motion carried.*

Kilker Motioned; Bender seconded to postpone a building permit for the following applicant: Joe & Anna Meissner – Lake Township. All members present voted aye. Motion carried.

If you have any questions, please contact my office at the above-mentioned phone number or send me an email.

Sincerely,

Erin Collins-Miles

Erin Collins-Miles
Planning and Zoning/E911/Drainage Administrator

Marshall County Planning & Zoning
STAFF REPORT
May 20, 2025

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 8. Marshall County Ordinance requires new structures to be placed a minimum of 30ft from a road right-of-way line and a minimum of 50ft from the normal high-water mark.
 9. *Two written comments have been received prior to the writing of this staff report.*
 10. Staff Recommendation – **10' variance to the right-of-way line setback, and at the closest point of the proposed structure(s), a 30' variance to the normal high-water mark setback.**
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Action Item – 10' variance to the right-of-way line setback, and at the closest point of the proposed structure(s), a 30' variance to the normal high-water mark setback.

NOTICE OF HEARING - APPLICATION FOR VARIANCE

Notice is hereby given that the Marshall County Planning & Zoning Board will meet on May 20, 2025 at 9:00 a.m. at the North Marshall Firehall meeting room, concerning the following application for variance from the Marshall County Zoning Ordinance.

Joe and Anna Meissner have requested a variance to place a house which includes a second story deck and stairs on the property described as Lot 5 in the Plat of Lots 1-6 in Steiner's Addition in Gov't Lot 4 in Section 13, T126N, R54W. Pertaining to the Lot line closest to the road; the petitioner is asking to place the home 20 feet from the right-of-way line, instead of the 30ft requirement. From the closest protruding eve or edge of the structure(s) to the high-water mark, the petitioner is asking to construct the house and deck at 20 feet instead of the 50ft requirement; making note that the structure does not meet the setback from the high-water mark from any point of the structure on the North side (please see file for greater detail); all per the Marshall County Zoning Ordinance.

Erin Collins-Miles
Planning & Zoning Administrator

Published once at the approximate cost of

For publication: May 7, 2025

1T(May 7) NOTICE OF HEARING APPLICATION FOR VARIANCE

Notice is hereby given that the Marshall County Planning & Zoning Board will meet on May 20, 2025 at 9:00 a.m. at the North Marshall Firehall meeting room, concerning the following application for variance from the Marshall County Zoning Ordinance.

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Published at an approximate cost of \$10.73 and can be viewed free of charge at www.sdpublicnotices.com.

MARSHALL COUNTY PLANNING & ZONING COMMISSION
P.O.BOX 9
BRITTON, SOUTH DAKOTA 57430
605.448.7540

May 2, 2025

Dear Property Owner,

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As an adjacent landowner, you are being notified of the hearing. If you have any questions, please contact my office. Any comments or concerns should be stated in writing and forwarded to my office or expressed at the scheduled hearing.

Sincerely,

Erin Collins-Miles

Erin Collins-Miles
Planning and Zoning Director

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Sincerely,

Erin Collins-Miles

Erin Collins-Miles
Planning and Zoning Director

Sent to the following adjacent landowners on 5/2/25:





1. Game, Fish & Parks c/o Habitat Section – 523 E Capitol Ave. Pierre, SD 57501
2. Steven Steiner – 11706 442nd Ave. Lake City, 57247
3. Gary & Mary Carlson – 104 8th Ave. Britton, SD 57430
4. David & Claudia Eiel – 441224 117th St. Lake City, SD 57247

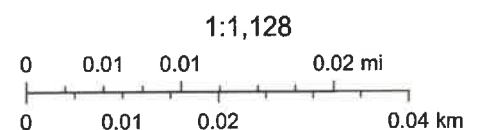
MARSHALL COUNTY WEB VIEWER



5/2/2025, 2:09:16 PM

PLAT

-  STEINER'S ADDITION
-  TOWNSHIPS
-  SECTIONS
-  PARCELS

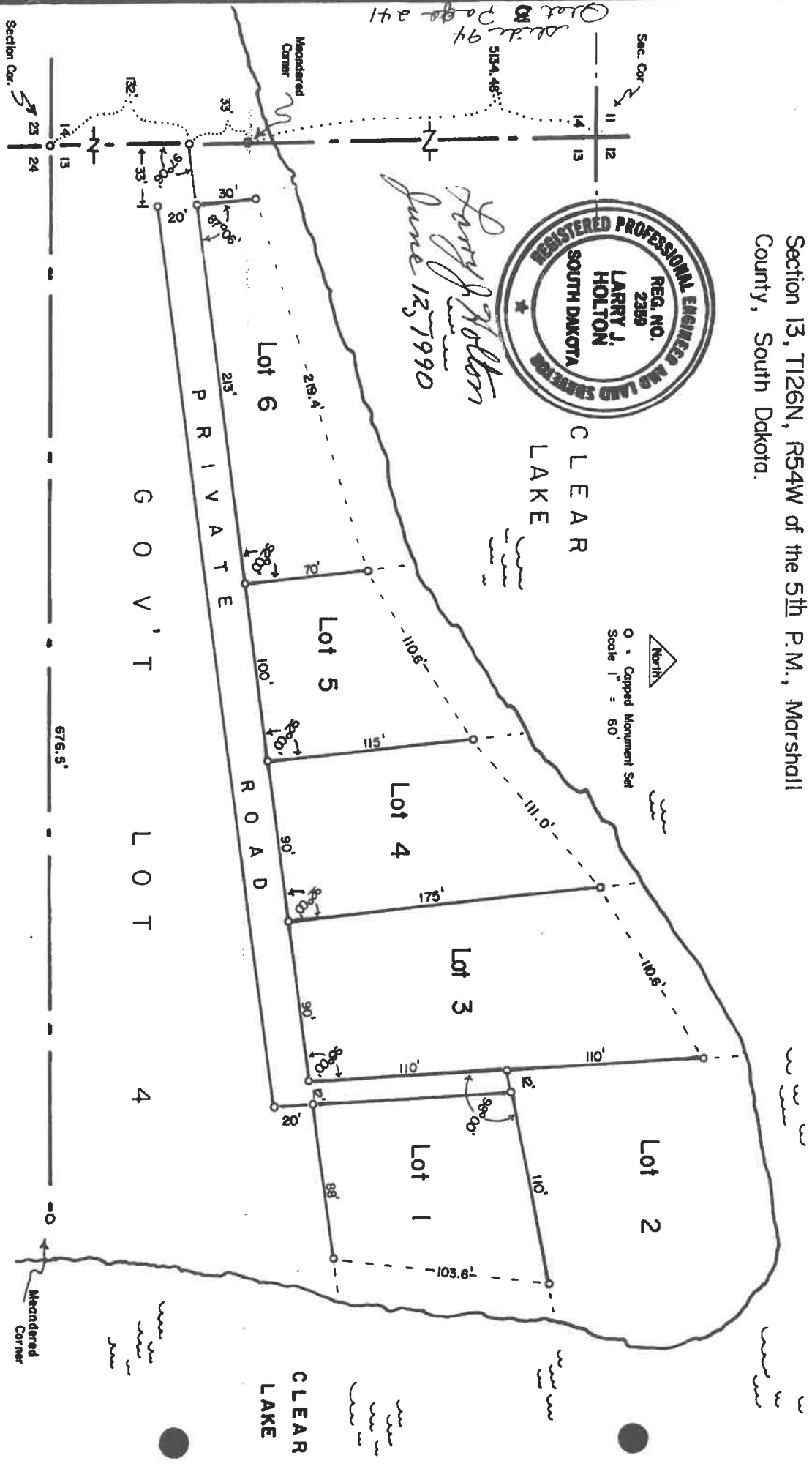


PLAT OF

Lots 1-6 in Steiner's Addition in Gov't Lot 4 in
 Section 13, T126N, R54W of the 5th P.M., Marshall
 County, South Dakota.



Larry J. Holton
 June 12, 1990





These drawings are based upon information provided to us by the customer and are not a contract. The drawings are not a permit drawing prepared by an architect and may not meet applicable state and local building codes which vary widely. The customer should consult their contractor and/or local building inspector to determine any changes to meet the state and local building code requirements. Customer is responsible for obtaining local building officials for the required building permits. We assume no responsibility for claims or damages arising from any errors, omissions, or omissions of any drawings.

PROPERTY OF SCOTT'S LUMBER
NO COPIES CAN BE MADE WITHOUT PERMISSION
NOTE THAT THE CUSTOMER IS RESPONSIBLE FOR VERIFICATION OF ALL MEASUREMENTS



**Scott's
Lumber**

767 Vander Horck, Britton, SD

PHONE:

(605) 448-5282

FAX:

(605) 448-5278

www.ScottsLumber.com

DRAWN BY: orlin.punt@scottslumber.com

PLOT DATE: Monday, April 28, 2025

JOB: Meissner, Joseph & Annalee Res *

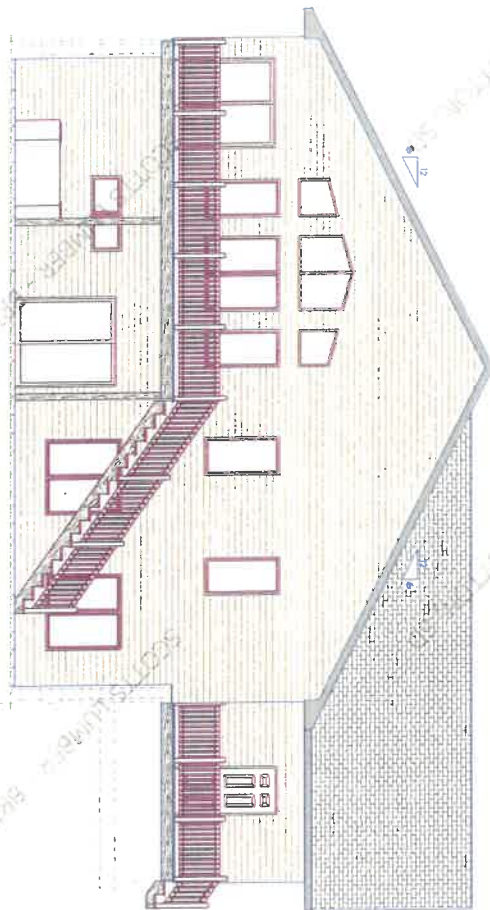
SALESMAN:

Joeh.kraft@scottslumber.com

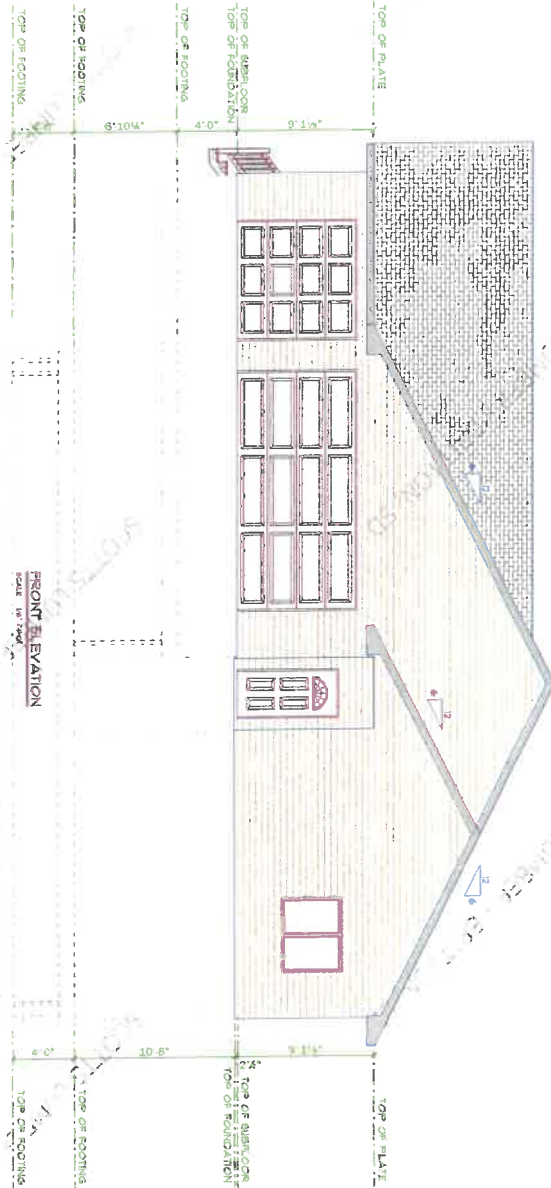
PAGE:

1

REAR ELEVATION



FRONT ELEVATION



ELEVATION			
Revision	Date	By	Done
0	02/28/2025	OP	OP
1	02/28/2025	OP	OP
2	02/28/2025	OP	OP
3	02/28/2025	OP	OP
4	02/28/2025	OP	OP
5	02/28/2025	OP	OP

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Scott's Lumber

767 Vander Horck, Britton, SD

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DRAWN BY: orlin.punt@scottslumber.com
PLOT DATE: Monday, April 28, 2025
JOB: Melsener, Joseph & Annalee Res.
SALESMAN:
Josh.kraft@scottslumber.com

PAGE:
2



ELEVATION			
Revision	Date	By	Drawn
0	02/28/2025	OP	OP
1	03/11/2025	OP	OP
2	03/11/2025	OP	OP
3	03/11/2025	OP	OP
4	04/23/2025	OP	OP
5	04/23/2025	OP	OP

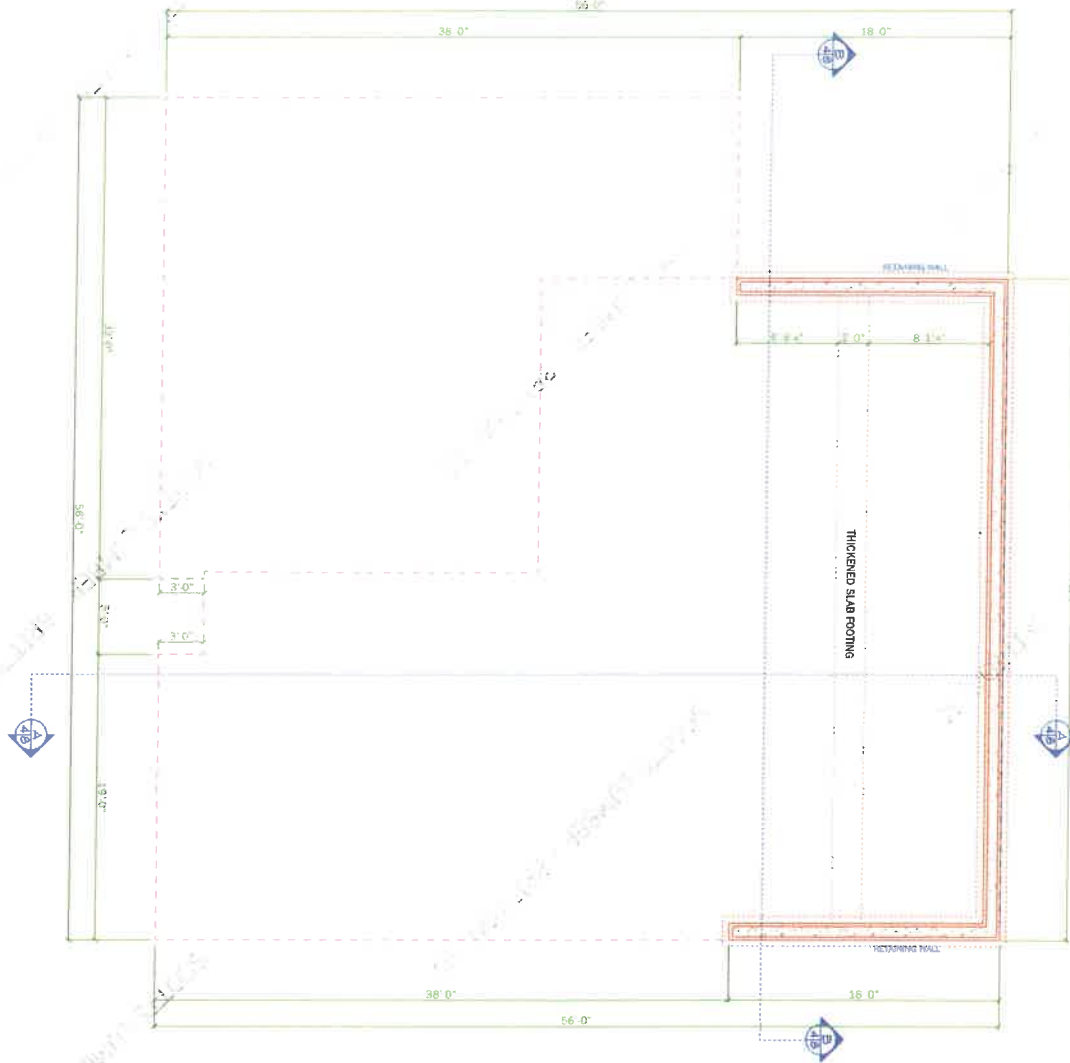
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DRAWN BY: orlin.punt@scottslumber.com
PLOT DATE: Monday, April 28, 2025
JOB: Milsener, Joseph 4 Annalee Res *
SALESMAN: Josh.kraft@scottslumber.com



CONCRETE NOTES:

- 8" x 48" ICF FOUNDATION WALL.
- REFER TO LOCAL OR IBC CODES FOR THE FOLLOWING:
- FOOTING WIDTH AND DEPTH.
- REBAR SIZE, QUANTITY, AND LOCATIONS FOR ALL FOOTING, FOUNDATION WALLS AND CONCRETE FLOOR.
- REFER TO CROSS SECTIONS FOR FLOOR LOCATIONS.

FOUNDATION PLAN			
SCALE: 1/4" = 1'-0"			
Revision	Date	Drawn By	Checked By
1	02/28/2025	CP	CP
	03/17/2025	CP	CP

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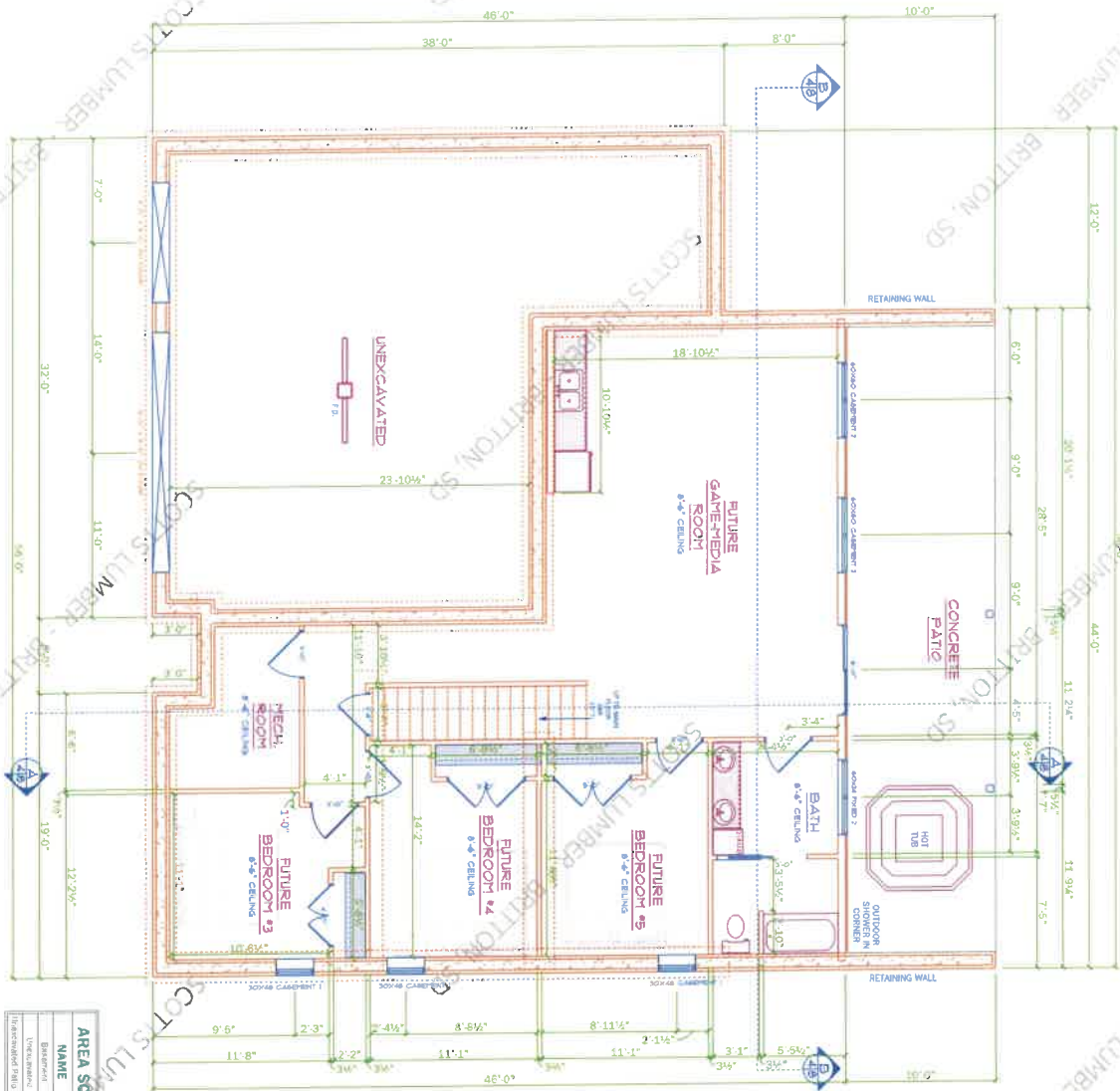
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PAGE:
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AREA SCHEDULE	
NAME	AREA
Basement	150.2 sq. ft.
Unexcavated	545.2 sq. ft.
(Unexcavated Pkg. Area)	295.1 sq. ft.

REVISION		
Revision	Date	By
0	02/28/2025	CP
1	03/11/2025	CP
2	03/11/2025	CP
3	04/21/2025	CP
4	04/23/2025	CP
5	04/23/2025	CP

CONCRETE NOTES:

- 8" x 48" ICF GARAGE FOUNDATION WALL.
- 8" x 128" ICF BASEMENT WALLS.
- REFER TO LOCAL OR IBC CODES FOR THE FOLLOWING:
- FOOTING WIDTH AND DEPTH.
- REBAR SIZE, QUANTITY, AND LOCATIONS FOR ALL
- FOOTING, FOUNDATION WALLS AND CONCRETE FLOOR.
- REFER TO CROSS SECTIONS FOR FLOOR LOCATIONS.
- CONTRACTOR TO FIELD VERIFY FLOOR DRAIN SIZE AND
- LOCATION WITH OWNER.
- RETAINING WALL HEIGHT AND LENGTH WILL BE DETERMINED
- BY THE SLOPE OF GRADE.

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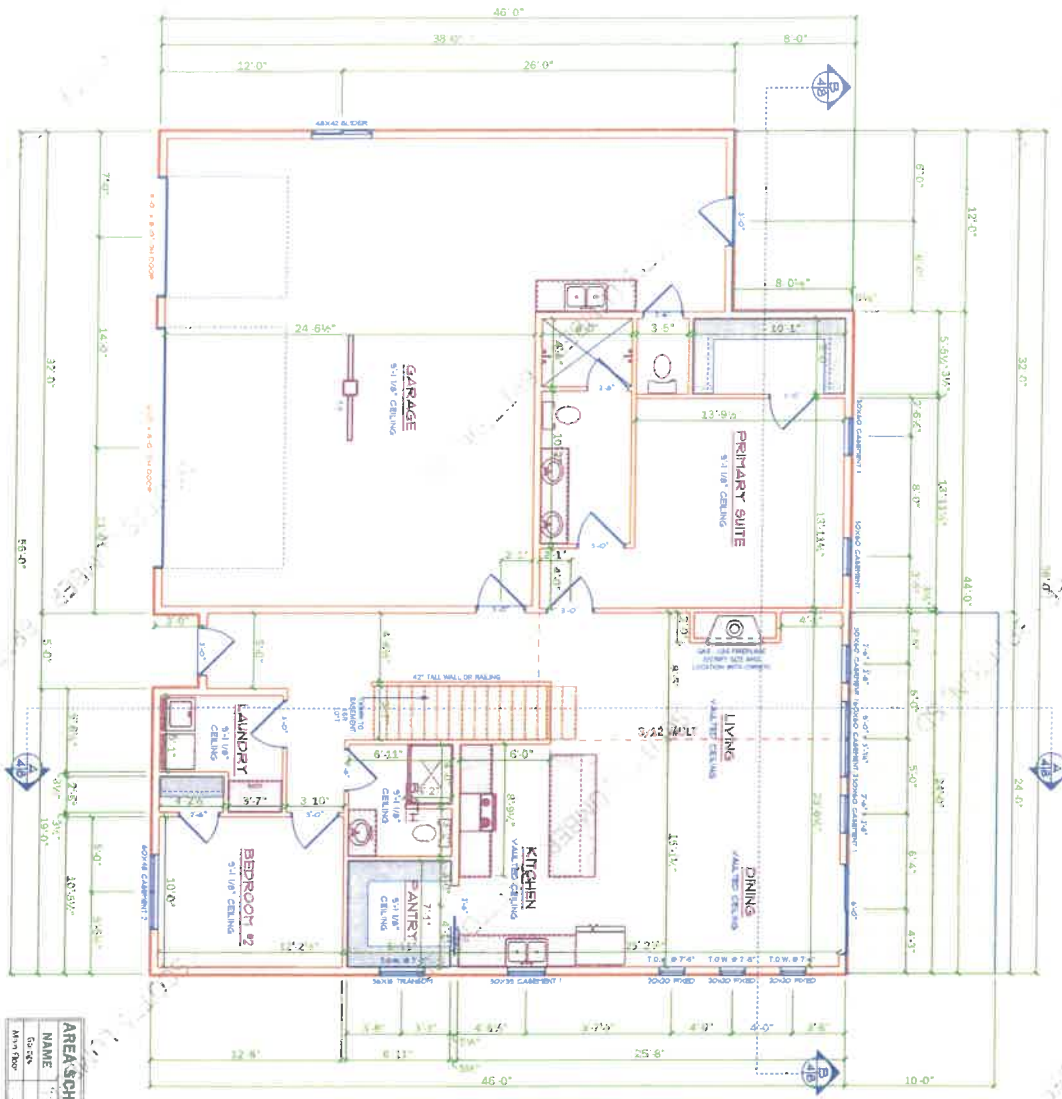
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PLOT DATE: Monday, April 28, 2025

JOB: Meissner, Joseph & Amalee Res.

SALESMAN: Josh.kraft@scottslumber.com

PAGE: 5



AREA SCHEDULE	
NAME	AREA
Garage	294.72
Primary Suite	138.81
Living	360.00
Dining	100.00
Kitchen	100.00
Pantry	49.00
Bed Room	100.00
Laundry	25.00
Front Porch	15.36
Back Porch	15.36

MAIN FLOOR PLAN			
Revision	Date	By	Check
1	04/24/2025	JP	

NOTES:

- 9'-1 1/8" CEILING
- EXT. WALLS 2X6 STUD 16" o/c
- VAPOR BARRIER, INSULATION, 7/16" SHEATHING AND HOUSE WRAP.
- HORIZ. LAP SIDING
- FLOOR:
 - TOP OF 24" ENGINEERED FLOOR TRUSS FLUSH WITH TOP OF SINGLE 2X SILL PLATE. (FLOOR SYSTEM DROPPED BETWEEN CONCRETE WALLS)
 - 3/4" T&G SUBFLOOR
- TOP OF WINDOWS AT 7'-0"
- DO NOT FRAME OPENINGS IF THIS PLAN DOES NOT HAVE R.O.'s LISTED OR LOCATED BY THE OPENINGS.
- ROOF:
 - ENGINEERED TRUSSES 24" o/c
 - 3/12, 6/12, and 8/12 PITCH
 - 24" OVERHANG
 - 15/32" SHEATHING AND ROOF PAPER
 - ASPHALT SHINGLES

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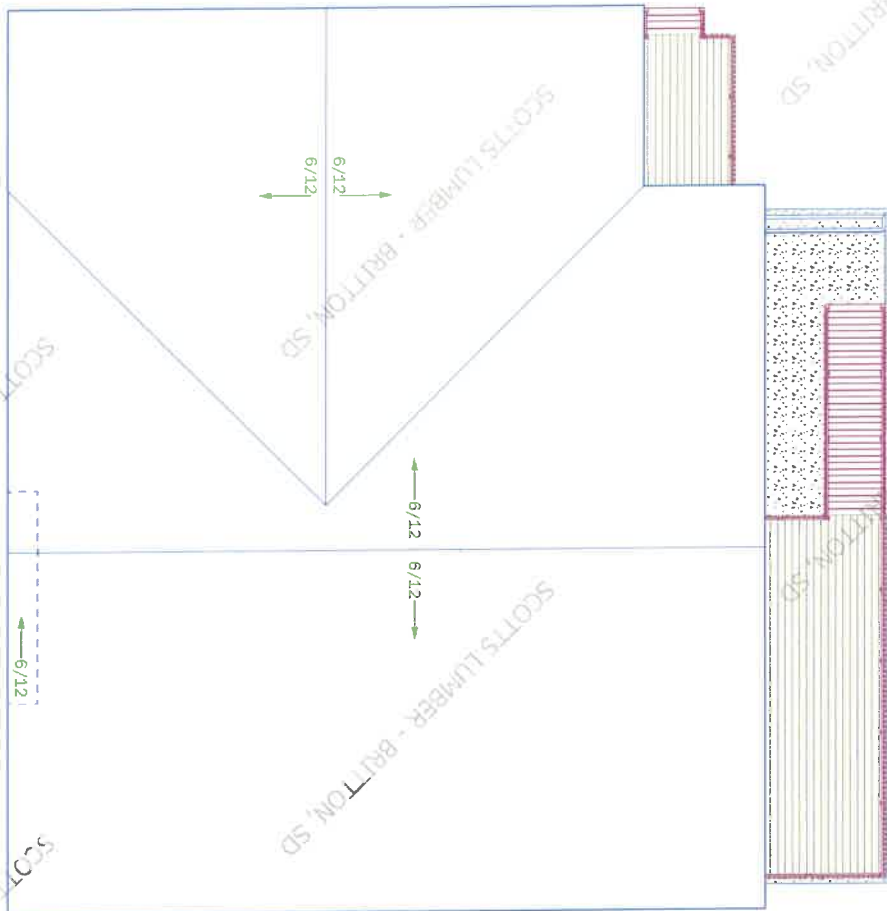
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ROOF PLAN			
LIVING ROOF 1.0 H/L			
Revision	Date	By	Done
0	03/10/2025	OP	OP
1	03/10/2025	OP	OP
2	03/10/2025	OP	OP
3	04/10/2025	OP	OP
4	04/10/2025	OP	OP

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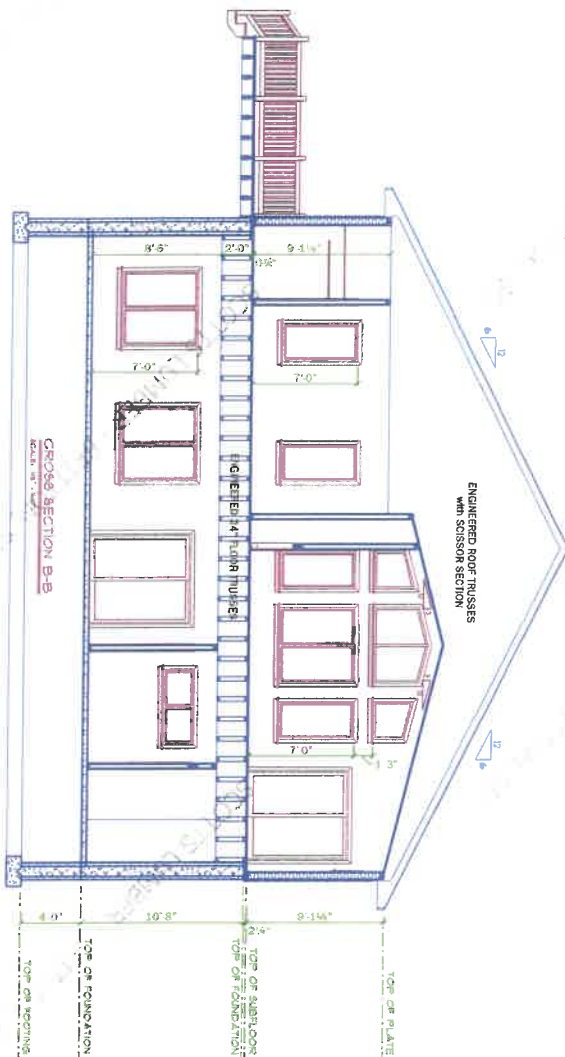


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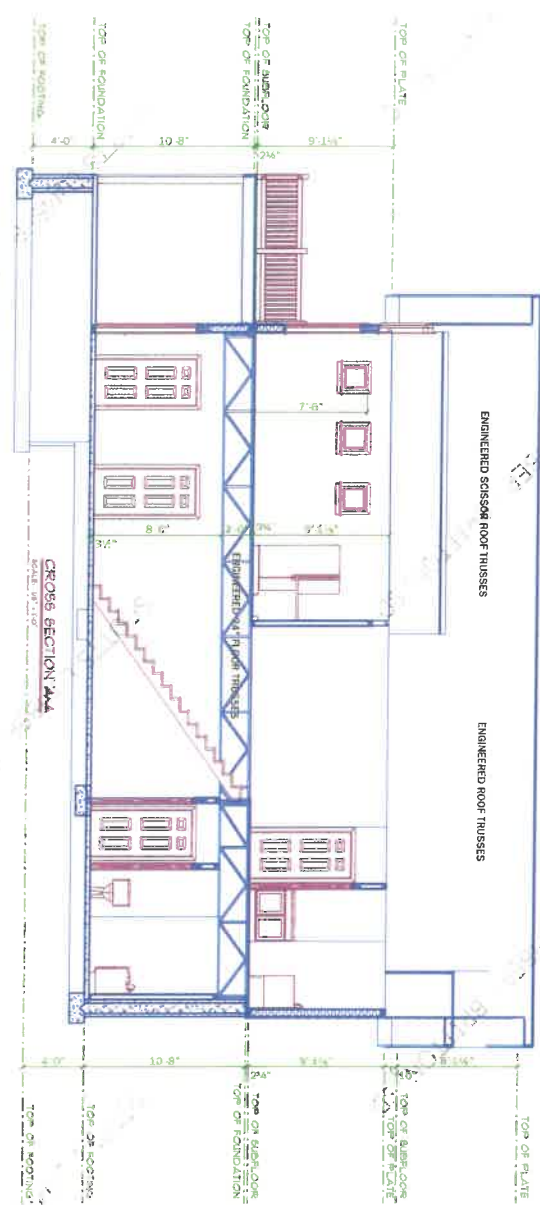
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JOB: Meissner, Joseph & Annales Res #
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CROSS SECTION B-B

CROSS SECTION			
Revision	Date	Drawn by	Check by
0	01/28/2025	OP	
1	03/11/2025	OP	
2	03/17/2025	OP	
3	04/27/2025	OP	
4	04/29/2025	OP	
5	04/29/2025	OP	



CROSS SECTION A-A



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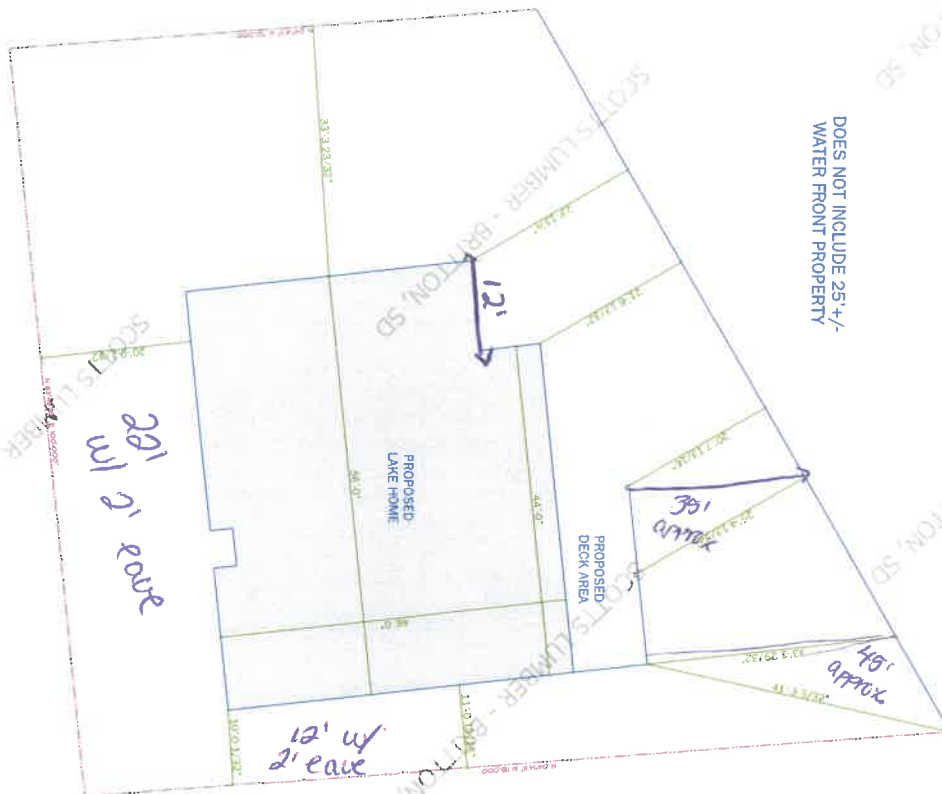
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Joseph & Annalee Meissner Res #3
 DATE: Monday, April 28, 2025
 SCALE: 1/16" = 1'-0"

Deck-10x24
 House-46x56

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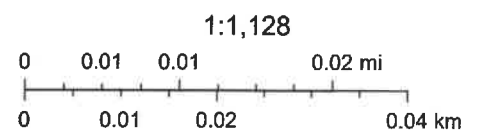
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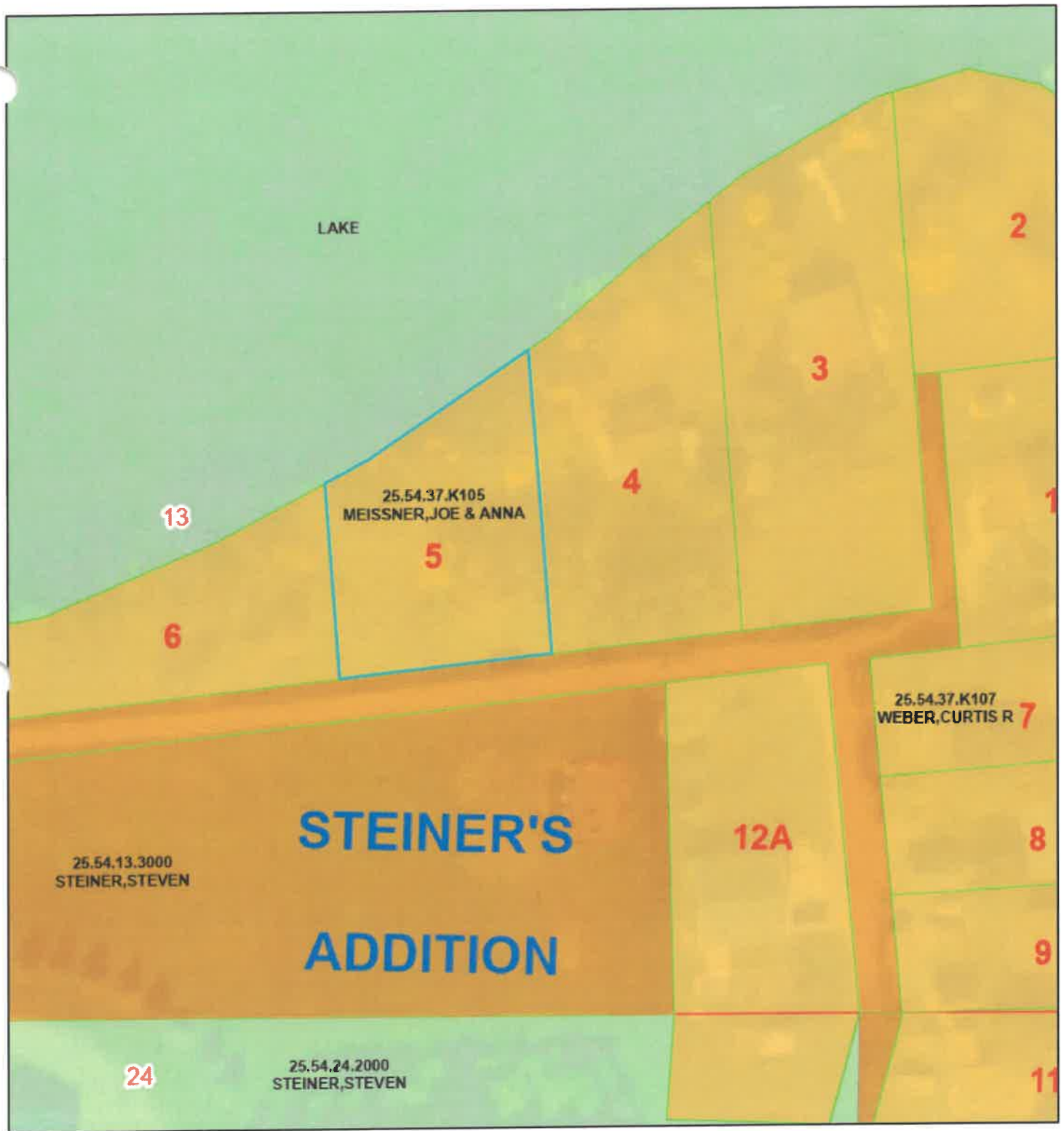
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PLAT

- STEINER'S ADDITION
- TOWNSHIPS
- SECTIONS
- PARCELS



MARSHALL COUNTY WEB VIEWER



5/15/2025, 11:56:50 AM

ZONING

 Agricultural District

 Lake Front Residential District

PLAT

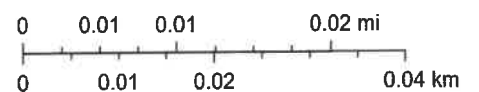
STEINER'S ADDITION

 TOWNSHIPS

 SECTIONS

 PARCELS

1:1,128



Variance – Meissner











