

**Marshall County Planning & Zoning
STAFF REPORT
October 28, 2025**

Issue #1 Variance for Building(s) Setback

OWNER/APPLICANT: Tania Henning

PROPERTY DESCRIPTION: Lot 12 in the Plat of Lots 1A, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 12A of Gangle's subdivision in Gov't Lot 5 of Section 22, T126N, R55W

CURRENT ZONING: Lake Front Residential (R-3)

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

REQUEST: The petitioner is asking to allow the deck to be 0 feet from the South property line, instead of the 7ft requirement and also to allow the structure to be 20ft from the normal high-water mark instead of the 50ft requirement; all per the Marshall County Zoning Ordinance.

HISTORY/ISSUE(S):

1. The Lots were purchased by the applicant on September 11, 2024.
 - a. Mack Land Surveying completed a survey for the property owners previously due to a shed encroaching on the State Land lying to the South by 33.2'.
 - i. The shed was approved via variance on November 19, 2024.
2. The deck in question was built on the lot prior to obtaining a building permit.
 - a. Applicant stated on the variance application that the deck was built to help shore up the existing retaining wall and to provide a seating area.
 - b. A letter was sent by the Zoning Director to the applicants in regard to the structure on 9/11/25.
 - i. Upon response from the applicant, an email was sent to Roy Lake State Park in regard to the structure.
 - c. 10/1/25 – The legal notice sent to the newspaper on 9/26/25 for publication was not included in the 10/1/25 issue.
 - i. Zoning Director rewrote legal notice to reflect new meeting dates and sent to the newspaper for publication the following week. Adjacent landowner letters were also updated and mailed again.
 - d. 10/17/25 – Zoning Director sent a follow up email to the State Park reminding of the updated meeting date.
 - e. 10/23/25 – Rebecca Hedlund, District Park Supervisor, called and stated she would not be able to attend the meeting, but stated they had some concerns regarding the retaining wall which extends into the State's property.
 - f. Any further updates will be given as received, or disclosed at the hearing scheduled for 10/28/25.
3. The road lying to the East is maintained by the State Park, and is as span of 66'. The Road lying Northeast is a public road with varying road spans (see plat) and is maintained by the County.

- a. The County maintains up to the entrance of the State Park.
4. Lot 12 has an average depth of approximately 128.74ft and a width of 40.91ft. Lot 12A has an average depth of approximately 125.56ft and an average width of approximately 33.62ft.
5. An email, as well as a letter, was sent to RoyLake@state.sd.us on both 9/26/25 and 10/2/25.
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: 25ft.**
7. According to the SDDENR Measured Lakes website at the time of writing this report; <https://apps.sd.gov/NR65LakeInfo/public.aspx>,
 - a. The outlet elevation is 1,795.2', and the Ordinary High-Water Mark is measured at 1,795.7ft.
 - i. Note: website information shows that the OHWM is currently sitting above outlet level.
 - ii. **Note Website Disclaimer:** *Though we make efforts to provide and maintain accurate, complete, usable, and timely information at our websites the user should understand that the information is not guaranteed to be correct or complete. Conclusions or actions taken (based upon the maps and the information contained therein) is the sole responsibility of the user.*
 - b. It is also important to take into consideration the large amount of water that has been accumulated over the last few months and how that could also affect the OHWM.
8. Marshall County Ordinance requires new structures to be placed a minimum of 7ft from a property or lot line and 50ft from the normal high-water mark.
9. One written comment and no objections have been received prior to the writing of this staff report.
10. Staff Recommendation – **If the Board were to see no issue with this variance application and would consider this request to be a unique situation, a 7' variance to the property line setback and a 30' variance to the normal high-water mark setback, would be recommended. Additionally, to adopt the facts and the recommended findings of the Planning Commission listed in the staff report.**
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 property line variances to lake lots in the past, when the neighbors had no objections.
 - i. Similar property line variances allowed – 6' for D. & A. Vietor 6/24, 5' for Dan Brake 6/23, 5' for K. Buck 5/12
 - 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 – 33' for D. Siefkes 9/22, 31' for D. & K. Docter 10/2020 and 28.5' for T. Satrang 5/24

- c. The Board would consider approving other similar requests meeting the unique circumstances.
- 12. 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.
- 13. The granting of this variance would confer upon the applicant special privilege denied to others in the R-3 District.

Action Item – If the Board were to see no issue with this variance application and would consider this request to be a unique situation, a 7' variance to the property line setback and a 30' variance to the normal high-water mark setback, would be recommended. Additionally, to adopt the facts and the recommended findings of the Planning Commission listed in the staff report.

NOTICE OF HEARING - APPLICATION FOR VARIANCE

Notice is hereby given that the Marshall County Planning & Zoning Board will meet on October 28, 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.

Tania Henning has requested a variance for an existing deck on the property described as Lot 12 in the Plat of Lots 1A, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 12A of Gangle's subdivision in Gov't Lot 5 of Section 22, T126N, R55W. The petitioner is asking to allow the deck to be 0 feet from the South property line, instead of the 7ft requirement and also to allow the structure to be 20ft from the normal high-water mark instead of the 50ft requirement; all per the Marshall County Zoning Ordinance.

Erin Collins-Miles
Planning & Zoning Administrator

Published once at the approximate cost of

For publication: October 8, 2025

1T (Oct 8)
**NOTICE OF HEARING
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MARSHALL COUNTY APPLICATION FOR VARIANCE

DATE: 9-22-2025

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) Deck within approx. 20' from

of a (circle applicable): Twp Rd, County Rd, Federal or State Hwy, Other Rd, Lot Line or
High Water Mark. 0 ft from State Park

Structure would be located on (legal description): Lot 12 of Gangles
Subdivision in Gov't Lot 5 section 22 T126N, R55W

Reason: Building a deck that will help to shore up
the existing retaining wall and provide a seating
area.

Applicant Name: Dan & Tania Henning Phone: (701) 308-0191

Address: P.O. Box 259 Milnor, ND 58060

Applicant Signature: Dan Henning

Owner Signature (if different than applicant): _____

For Internal Office Use Only:

Date Received: 9/29/25 Fees (non-refundable): \$150.00 Paid: ☒ YES ☐ NO

Inspection Report: See Staff report

Date of Hearing by Planning and Zoning Commission: October 28th 2025

Action taken by Planning and Zoning Commission: _____

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

October 2, 2025

Dear Property Owner,

Notice is hereby given that the Marshall County Planning & Zoning Board will meet on October 28, 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.

You were previously notified of the hearing taking place on October 14, 2025, but the newspaper mistakenly left the notice out of the October 1st edition, therefore changing the meeting date in order for Zoning to meet appropriate publication and notification deadlines.

Tania Henning has requested a variance for an existing deck on the property described as Lot 12 in the Plat of Lots 1A, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 12A of Gangle's subdivision in Gov't Lot 5 of Section 22, T126N, R55W. The petitioner is asking to allow the deck to be 0 feet from the South property line, instead of the 7ft requirement and also to allow the structure to be 20ft from the normal high-water mark instead of the 50ft requirement: all per the Marshall County Zoning Ordinance.

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
Planning and Zoning Director

Sent to the following adjacent landowners on 9/26/25 & 10/2/25:

1. Marshall County Highway Shop c/o Dustin Hofland – 10844 423rd Ave. Britton, SD 57430
2. Karleen Josephson – 1502 East 18th St. Sioux Falls, SD 57104
3. Dept. of Game, Fish & Parks c/o Habitat Section 523 E Capitol Ave. Pierre, SD 57501

4. Road – Roy Lake State Park 11545 Northside Drive RoyLake@state.sd.us – sent on 9/26/25 & 10/2/25
5. Gary Gangle – 11624 SD HWY 25 Lake City, SD 57247
6. John & Kelly Forman – 1632 51st St. S, APT. #321 Fargo, ND 58103

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Sincerely,



Erin Collins-Miles
Planning and Zoning Director

Sirs;

I am the next door neighbor
of the Hennings's. I am all in
favor of your approving the
variance for the Hennings's
deck.

Loren Josephson

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Erin Collins-Miles
Planning & Zoning Administrator

Published once at the approximate cost of

For publication: October 1, 2025

Missed in paper



Erin Collins-Miles
Planning & Zoning/E911/Drainage Director
Phone: 448.7540
Email: mc zoning@venturecomm.net

911 Vander
Horck
PO Box 9
Britton, SD 57430

September 11, 2025

Tania Henning
324 2nd St.
Milnor, SD 58060

0' from State Park boundary/pin
20' from HW mark
15' from N prop pin

To whom this may concern,

I am aware that deck has been placed or constructed on the property described as Lot 12 in the Plat of Lots 1A, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 12A of Gangle's subdivision in Gov't Lot 5 of Section 22, T126N, R55W. I am writing to make you aware that construction or placement of any buildings or structures of any kind is prohibited without first acquiring a building permit through Marshall County. Per our ordinance; No building, structure or driveway shall be erected, partially erected, moved, added to, or structurally altered without a permit issued by the Zoning Administrator. Please contact my office as no permit is on file for you in regard to this structure.

Upon receipt of this letter, please fill out the permit enclosed and contact my office to confirm that you are complying with the Zoning Ordinances set forth by Marshall County. Failure to comply could result in further action being taken.

Please find the following document enclosed:
Building Permit Application

If you have any questions, please contact my office.

Sincerely,

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

COPY

Tania Henning



Hazardous Materials. A material which is defined in one or more of the following categories:

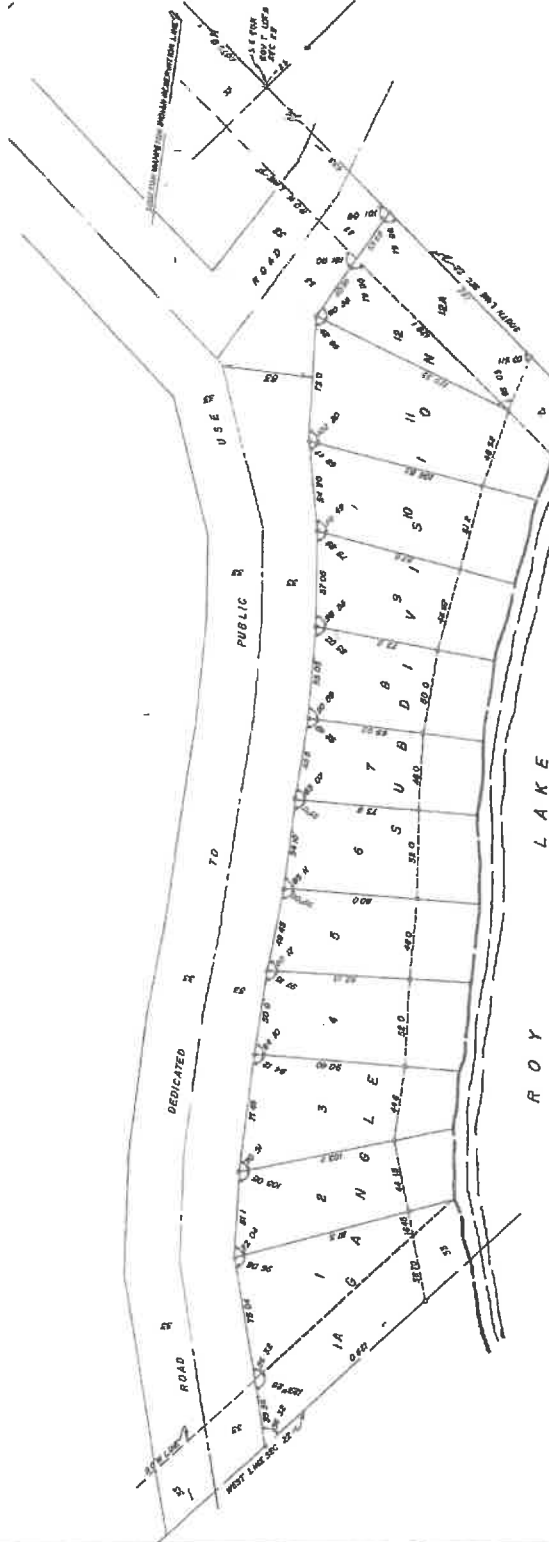
1. **Ignitable:** A gas, liquid or solid which may cause fires through friction, absorption of moisture, or which has low flash points. Examples: white phosphorous and gasoline.
2. **Carcinogenic:** A gas, liquid or solid which is normally considered to be cancer causing or mutagenic. Examples: PCBs in some waste oils.
3. **Explosive:** A reactive gas, liquid or solid which will vigorously and energetically react uncontrollably if exposed to heat, shock, pressure or combinations thereof. Examples: dynamite, organic peroxides and ammonium nitrate.
4. **Highly Toxic:** A gas, liquid or solid so dangerous to man as to afford an unusual hazard to life. Examples: parathion and chlorine gas.
5. **Moderately Toxic:** A gas, liquid or solid which through repeated exposure or in a single large dose can be hazardous to man. Example: Atrazine.
6. **Corrosive:** Any material, whether acid or alkaline, which will cause severe damage to human tissue, or in case of leakage might damage or destroy other containers of hazardous materials and cause the release of their contents. Examples: battery acid and phosphoric acid.

Height of Building. The vertical distance from the established average sidewalk grade or street grade, or finished grade at the building line, whichever is the highest, to the highest point of the building.

High Water Mark. The elevation established by the South Dakota Water Management Board pursuant to SDCL 43-17. In those instances where the South Dakota Water Management Board has not established a high water mark the Board of Adjustment may consider the elevation line of permanent terrestrial vegetation to be used as the estimated high-water mark (elevation) solely for the purpose of the administration of this ordinance. When fill is required to meet this elevation, the fill shall be required to stabilize before construction is begun.

Home Occupation. An occupation conducted in a dwelling unit provided that:

3-1



PLAT OF

LOTS 1A, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,
12 AND 12A OF GANGLE'S SUBDIVISION
IN GOV'T LOT 5 OF SEC 22 T126N R55W
OF THE 5TH PM, MARSHALL COUNTY,
SOUTH DAKOTA

John D. B. Bland
REGISTERED ENGINEER & LAND SURVEYOR
SCALE 1" = 40' MAY 11 1972
- MCHN PM

MARSHALL COUNTY WEB VIEWER



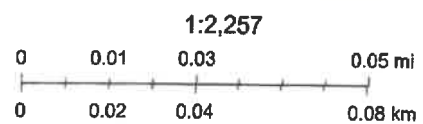
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PLAT

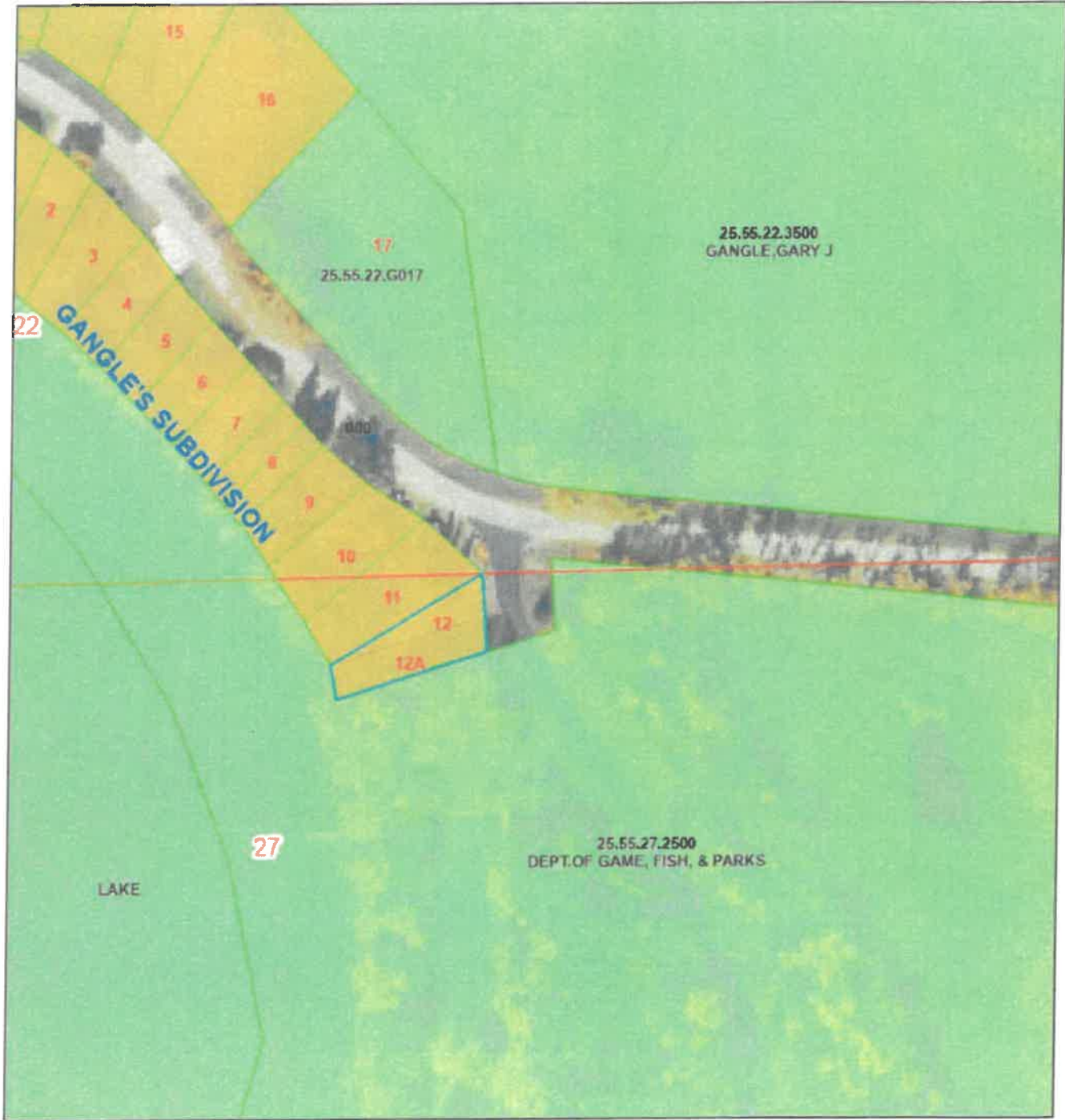
GANGLE'S SUBDIVISION

TOWNSHIPS

SECTIONS



MARSHALL COUNTY WEB VIEWER



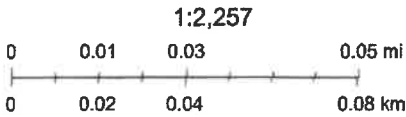
10/30/2024, 12:24:13 PM

ZONING

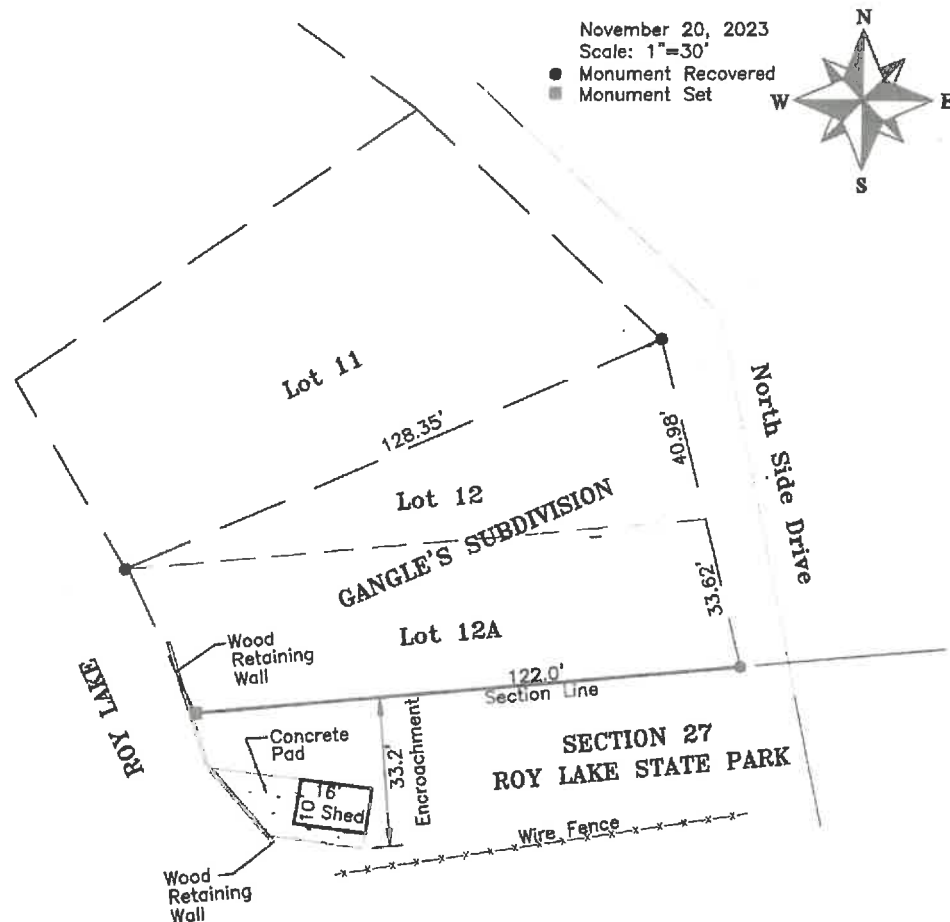
- Agricultural District
- Lake Front Residential District

PLAT

- TOWNSHIPS
- SECTIONS
- PARCELS



Survey of
The boundary between Roy Lake State Park in
Section 27, and Lots 12 and 12A of of Gangle's
Subdivision in Government Lot 5 of Section 22,
Township 126 North, Range 55 West of the 5th
P.M., Marshall County, South Dakota.



Sketch from 2024 variance file

MACK
Land Surveying LLC

Cell: (605) 880-3108 • Phone: (605) 878-2007
808 South Maple • Watertown, SD 57201

Marty Mack
Registered Land Surveyor
Certified Federal Surveyor



Marty W. Mack

In reference to 2024 variance File

Good morning Erin

Sorry I didn't get back to you sooner.

Like I was telling you over the phone, that this is a one time specific "ok" from the state. Any other modifications that were to deviate from the standard zoning rules need to be requested in a separate case by case situation. In short, this is to not set a precedence for future cases. If the shed were to be in lot 12a we would have an objection. We expect that the location of the structure would not interfere with use of the road right-of-way for utilities or park maintenance.

Shawn Hendricks | District Park Supervisor
South Dakota Game, Fish and Parks
11545 Northside Drive | Lake City, SD 57247
605.448.5701 | shawn.hendricks@state.sd.us



From: Erin Collins-Miles <mczoning@venturecomm.net>
Sent: Thursday, November 7, 2024 8:26 AM
To: GFP-ROY LAKE <RoyLake@state.sd.us>
Subject: Re: [EXT] URGENT: Variance - Building Close to road
Importance: High

Good morning,

I was just wondering if you had any comment for me to add to the file for the meeting today. It starts at 9:00 AM.

Let me know, thank you!

Have a great day,

Erin Collins-Miles

Planning & Zoning/E911 Addressing/Drainage Director
Marshall County
605.448.7540
PO Box 9
911 Vander Horck
Britton, SD 57430
<http://marshall.sdcounties.org/>

Henning – Variance



