

**OFFICIAL PROCEEDINGS OF THE
RICE COUNTY BOARD OF ADJUSTMENT
Commissioner's Room / Government Services Building
Thursday, January 7, 2021 at 6:30 PM**

I. Call to Order

A. Roll Call

The meeting was called to order electronically by Chair Michael Streiff at 6:30 p.m.

Members present were: Michael Streiff, Preston Bauer, Charlie Peters, Jill Ellingson, John McCarthy.

Staff present were: Director Julie Runkel, Zoning Administrator Trent McCorkell, Planning Technician Julia Hogan, Administrative Coordinator Anna Aguilar.

Others present: see Registrant List.

B. Motion by Preston Bauer, seconded by Charlie Peters, Reading of the Notice.

RESULT: Approved, AYES: Michael Streiff, Charlie Peters, Preston Bauer, Jill Ellingson, John McCarthy, NAYS: None

C. Motion by Charlie Peters, seconded by Jill Ellingson, Approval of the Agenda.

RESULT: Approved, AYES: Michael Streiff, Charlie Peters, Preston Bauer, Jill Ellingson, John McCarthy, NAYS: None

D. Motion by Jill Ellingson, seconded by Preston Bauer, to approve the minutes of December 10, 2020.

RESULT: Approved, AYES: Michael Streiff, Charlie Peters, Preston Bauer, Jill Ellingson, John McCarthy, NAYS: None

II. House Keeping Items

A. Election of 2021 Board of Adjustment Chair

Motion by Charlie Peters, seconded by Preston Bauer, to approve the election of Mike Streiff as the Chair of the Board of Adjustment for 2021.

RESULT: Approved, AYES: Michael Streiff, Charlie Peters, Preston Bauer, Jill Ellingson, John McCarthy, NAYS: None

CP - I nominate MS.

PB - I will second that nomination.

CP - I will motion MS as Board of Adjustment Chair with a unanimous ballot.

PB - I will second the motion.

B. Election of 2021 Board of Adjustment Vice Chair

Motion by Charlie Peters, seconded by Preston Bauer, to approve the election of Jill Ellingson as the Vice Chair of the Board of Adjustment for 2021.

RESULT: Approved, AYES: Michael Streiff, Charlie Peters, Preston Bauer, Jill Ellingson, John McCarthy, NAYS: None

PB - Just forward thinking, I was planning on nominating CP as Vice Chair for the Planning Commission.

CP - Either works for me. I would then nominate JE as Vice Chair of the Board of Adjustment.

PB - I second that nomination.

JE - I will accept that nomination.

C. Appointment of 2021 Board of Adjustment Secretary

In the past, Environmental Services Staff have been delegated to perform secretarial duties for the Board of Adjustment.

Motion by Charlie Peters, seconded by Jill Ellingson, to delegate the Board of Adjustment secretary duties to Environmental Services Staff for 2021.

RESULT: Approved, AYES: Michael Streiff, Charlie Peters, Preston Bauer, Jill Ellingson, John

McCarthy, NAYS: None

CP - I motion that Staff continues as Secretary.

JE - I second that.

D. 2021 Meeting Schedule

Motion by Charlie Peters, seconded by Preston Bauer, to approve the 2021 Meeting Schedule as presented by Staff.

RESULT: Approved, AYES: Michael Streiff, Charlie Peters, Preston Bauer, Jill Ellingson, John McCarthy, NAYS: None

AA - Currently the schedule is drafted as the first Thursday of every month. If there are any objections, we can discuss changing some of the dates. Otherwise, if you are in agreeance, we can go forward with the schedule as drafted.

PB - You said the first Thursday of every month, correct?

AA - Correct, sometimes we have a exception where a meeting date will fall on a second Thursday, but as it is drafted, the 2021 schedule is for the first Thursday of every month.

CP - I motion to approve the meeting schedule as drafted starting at 6:30p.

PB - I will second that.

E. Public Comment Time Limit

The public comment time limit for the 2020 Rice County Board of Adjustment meetings was 3 minutes per person.

Motion by Preston Bauer, seconded by Charlie Peters, to approve a 3 minute time limit per person for individual public comment at the 2021 Rice County Board of Adjustment meetings.

RESULT: Approved, AYES: Michael Streiff, Charlie Peters, Preston Bauer, Jill Ellingson, John McCarthy, NAYS: None

PB - I think the 3 minute time limit is sufficient for our meetings. I motion to keep the 3 minute Public Comment time period.

CP - I will second that motion.

III. New Business

1. Variance/Bentson - Section 15, Shieldsville Township

Brett Tupy, on behalf of landowners Dave & Rose Bentson, has applied for 25-ft variance from the 30-ft bluff setback limitation for a new home to be located 5-ft from a bluff. The property is described as: Lot 12, Block 1 of Wildwood, Section 15, Shieldsville Township, Rice County, Minnesota. The property address is: 9368 Dodd Rd, Kilkenny, MN 56052. PID#: 09.15.1.01.012. The property is Zoned RDS, Recreational Development Shoreland.

Motion by Preston Bauer, seconded by Jill Ellingson, to approve the Variance request with the following conditions and findings for Brett Tupy, on behalf of landowners Dave & Rose Bentson. The property is located in Section 15 of Shieldsville Township.

RESULT: Approved, AYES: Michael Streiff, Charlie Peters, Preston Bauer, Jill Ellingson, John McCarthy, NAYS: None

CONDITIONS OF APPROVAL – Tupy (Benston)

1. The variance is to allow for a home located on the bluff area as shown on the submitted site plan, subject to compliance with all other Ordinance regulations.
2. Approved site plan shall be followed.
3. Other than a 10-ft wide path for lake access the shore impact zone (land within 50-ft of the lake) and land on the bluff area shall be established and maintained in a non-mowed natural vegetative buffer condition.
4. No additional grading shall occur on the bluff area. Existing areas of the bluff that have been graded shall be seeded and stabilized as soon as possible.
5. At least eight trees of a species native to Rice County shall be planted and maintained on the property between the home and Hunt Lake. Trees shall have an initial planting height of 3-ft.

and shall be allowed to grow thereafter.

6. Variance shall be considered void if building permits are not obtained and construction commenced within one year of the variance approval.
7. Failure to comply with the terms of this variance may result in termination of the Variance.

Hearing Minutes:

Zoning Administrator Trent McCorkell (TM) presented the request to the Board of Adjustment (BOA).
PB - Is that bluff a natural setting or has fill been brought in? Also is there any other lots like this in the area?

TM - The bluff seems to be fairly natural. Most of the homes around Hunt Lake were done many years ago. The newest is the one you see in the background of the photos which was done in the early 2000's. I believe there is a Road Right-of-Way variance on that one. The road curves closer to the lake/bluff area in that location. This subdivision is one that was platted many many years ago.

CP - There is no variance on the lot to the West? If the house was to move back, they would need a road variance? This one would be no closer to the lake then the neighboring houses?

TM - The proposed house appears to be in line with the neighboring houses, but the slope changes across the area a bit. This lot appears to have a shorter, steeper area then the neighboring properties. The road comes along over to the side and then goes up quite a ways from here. If the house moved back, it would still have plenty of distance from the road. the neighboring house needed a road variance because it comes along the side of it.

CP - It looks like this lot gets narrower as it goes back towards the road.

TM - It does some. There are long, narrow lots on this side of the lake.

The BOA asked the applicant, Brett Tupy (TP), to come forward to add comments or answer questions regarding the request.

TP - (*Proposed builder for the home*) The client is trying to take advantage of a walk-out for resale value and consistency with the homes that are to the East and West. They are not trying to get any closer to the lake then the neighboring homes. If they are farther back, they are on a flat ground, and for a Rambler you are fatigued with resale. They are building a nearing retirement home and the proposed floor plan is a one-level and if we were to build it up past the bluff line, we would have a full basement situation.

MS - The design is trying to stay relative to others in the area and optimize for market demand and what the site will allow by putting in a walkout style home.

TP - They are not asking to getting closer than the other two homes next to it. We are actually farther back on the bluff then the other two that are there. We are just trying to keep it consistent.

MS - Are you aware of the 7 conditions?

TP - Yes and we have no objections.

JM - It appears looking at the survey and on Beacon, the bluff seems to be steeper on this lot then the neighboring ones, and could have a higher risk for erosion. You are requesting a walkout on a one-level with a basement walkout?

TP - Having a walk-out would be consistent with the neighboring homes. The neighboring properties have what appears to be a lesser grade on the bluff because their walkouts are already created. We are just trying to maintain consistency. When the yard is finished, we will definitely stabilize that hill with natural vegetation to control erosion on the bank. Currently you can see erosion on the bluff in the photos. We can regrade and plant that. We are physically trying to maintain consistency with the neighboring houses.

PB - How much excavation or grading do you plan on doing with the bluff? The conditions state that no additional grading with occur in the bluff area.

TP - We would only disturbed the area around the house. You only need a 10 to 7-ft perimeter around the house. We have no intentional grading planned for the bluff. We can try to restore based on whatever you decide or want done. If you want the bluff planted with seed or if you want it graded and planted. If you want it untouched, we will leave it untouched. The client just wants to create the home with the view they pictured when buying the lot while maintaining consistency with the neighboring homes. I am not sure the client was aware of any bluff ordinance setback when purchasing the lot. If you do not want us to touch the bluff, we will leave it along. If you want us to plant or grade it, we are amicable either way.

TM - I want to make sure we are all understanding the bluff area. From the peak of the bluff, 5-ft back

from this area will not be graded, is that what I am understanding?

TP - It does not have to be. We will have enough area to grade behind the house.

MS - And that is the way the conditions are written, correct?

TM - Yes, from the peak break point and 5-ft back from that, nothing would happen. After the 5-ft, that is where the grading would happen. I just want to make sure that the walkout type home is still accommodated in the area and that they were not planning on bringing the walkout out into the slope of the bluff.

JM - Is the walkout on the West or West side of the house?

TP - Right now, there is an area that the client cutaway to get access to the flat area by the lake. The walkout would occur in that back corner of the home. The grades on the property to the West are high and draining. There would be more of a quarter walkout towards the pathway that got cut down.

JM - I will make a statement, that bothers me. We can talk about it more during the discussion.

CP - I, too, am concerned about what has already occurred on the bluff. Maybe you, as the builder, were not involved in that at all but looking at the sluffing of the bluff, what you are trying to do is above that. We would like to see stabilization of the bluff area, what was done before and the erosion you can see that has taken place. If you can guarantee what you are doing is out of the bluff area and 5-ft back and you will stabilize what has already been done, we would be happier with this.

TP - We agree to all of that. The conditions shown in the photos were present the first time I visited the site. The clients may not have been aware of what the County requires when building a house. We are planning to stay out of that area but will do whatever we need to in the bluff area to stabilize that bank. If it is erosion control or seeding, we can take care of it.

CP - JM, is that the main concern?

JM - That is a concern and the walkout will have an apron on it I am guessing, correct?

TP - The apron will not affect the bluff. The floor plan has a great room on the back of the house that creates the farthest back portion of the house and then there is an indent for a master bedroom deck and another indent on the back for the house for a dining room deck. Neither of the proposed decks extend out past the back of the house. The farthest portion of the line affecting the bluff, we have already accounted for both proposed decks inside of that distance. There are no additional requests for a deck or an apron to go past the current survey line that we have submitted with the building permit. The floor plans we have submitted include the decks with corners of the house that have been removed to make space for the decks. There will be no aprons that go past the back of the house because they are accounted for in the areas under the proposed decks that do not extend past the rear of the home.

JM - I am concerned about the Southeast corner where the walkout is going to occur. I am assuming there will be a patio. Are you saying that the actually building is going to be set back to account for that?

TP - Do you have the blue prints to look at?

TM - The survey is included in the packet but the building plans were not submitted with the variance request.

TP - Looking at the survey drawing, there is a great room to the back of the house. The great room created the farther back portion of the house. The dining room and master bedroom are setback about 12-ft closer to the road, so the back of the house will have two covered decks with one requesting to be screened and the other open. The back of the decks are in line with the back of the great room on this floorplan design, so there will be no apron that extends past the rear line of the great room of the house because they are under the overhang of the decks that are in line with the rear of the home. There are no future plans to have an apron go into that bluff line. There is nothing planned to go past what the client is currently requesting.

JM - My concern about the survey is the eastern side of the house or footprint. It shows 40-ft with a 12-ft inset and then coming out 12-ft then 15-ft, back in 12-ft and then 13-ft going West. I am assuming the 12-ft portion on the East side is where the walkout will occur. It appears that occurs quite a ways into the bluff area.

TP - I am pulling up the survey to follow along. On the survey where it says full basement walkout, the two indents, the 12-ft x 13-ft and the 12-ft x 12-ft, those are intended to be covered decks at this time. The grade is too high on the deck that is behind the garage, the 12-ft x 13-ft, so there is only a lookout window in that location. On the 12-ft to the East that is running parallel with the proposed house, not perpendicular, that is where the patio door is proposed to be in the lower level, so the patio will be under the 12' x 12' area.

JM - The patio will be under the deck area?

TP - Yes, underneath. The proposed house floor plan has two proposed covered decks to cover the 12-ft x 13-ft knockout and the 12-ft x 12-ft knockout. The patio will be under the 12-ft x 12-ft knockout but

nothing past the proposed perimeter of the house.

JM - So the patio will be in the center of the house, not on one side or the other? or not the patio but the walkout?

TP - No, the box out on the back of the house is the great room for the lakeshore views. The 12-ft x 12-ft and 12-ft x 13-ft insets on either side of the great room are for proposed decks. On grade level, the 12-ft x 13-ft will just be grade with a screened deck above that. The 12-ft x 12-ft will have a covered deck above it. We are proposing a support pole at the 12-ft x 12-ft corner and the patio will be in the 12-ft x 12-ft inset but nothing past it.

MS - It is definitely hard to follow verbally. Does Staff have a plan on file?

TM - Everything included in the packet is what was submitted with the variance application. We are looking to see if we have a building permit or a building plan on file at this time,. My understanding is that the walkout portion is going to be near the cutout that was previously created to access the lake with the covered deck being 5-ft back from the bluff.

TP - That is correct.

PB - The applicant is aware of the 7 conditions?

TP - Both I and the landowners have read them and we have no issues.

CP - So everything that will be built is at least 5-ft back from the bluff line. The walkout patio is actually under a roofline, if I am understanding correctly, 5-ft back from the bluff. So the patio will not be out into that 5-ft area near the bluff, is that correct?

TP - Everything will occur at least 5-ft back from the bluff.

Chair Streiff opened the public testimony portion of the item to the public and no one spoke.

Chair Streiff closed the public testimony portion of the item to the public.

Discussion:

JM - I am concerned about the bluff and the top of the bluff. I would prefer to see a proposed grading plan, but I know that is not a requirement of the variance process.

PB - We have our conditions and the concerns have been documented regarding the bluff and the shoreline. I am confident they will be abide by the conditions and the concerns.

JE - I agree. I think the builder is putting forth a lot of effort to make the lot useable and put it into a better state then it was found.

CP - I agree that I do not like the previous work done lower on the bluff, but the builder is reputable and will follow the 7 conditions and is willing to try and stabilize that bluff.

PB - I will make a motion for approval with the 7 conditions.

JE - I will second that.

The Board of Adjustment reviewed the variance application and found that the applicant has established that all of the following criteria from Section 503 of the Zoning Ordinance amendment are met by this proposal:

- *Proposed use is allowed in the property's zoning district;*
- *Request is in harmony with the general purpose and intent of the Zoning Ordinance and consistent with the Comprehensive Plan;*
- *Applicant proposes to use the property in a reasonable manner not permitted by the Ordinance;*
- *The request stems from circumstances unique to the property, not one created by the landowner;*
- *If granted, this variance will not alter the essential character of the locality nor have any significant impact on the surrounding properties;*
- *This is the minimum variance necessary to afford relief;*
- *Adequate sewage treatment and water capabilities can be provided;*
- *The variance would have no significant impact on public health or safety; and*
- *Special privileges are not conferred to the applicant that are denied owner of other lands, structures, or buildings in the same district*

The findings were read by Bauer with the conditions as stated above and with the following additions by staff:

TM: There are existing home on either side of the proposed area. The bluff is slightly different but it is a similar setback situation. The conditions are requiring tree replacement to replace some of the trees that have already been removed and the conditions deal with some of the current excavation that has occurred on the bluff to try and get that back in place.

Motion made, seconded, and approved unanimously.

2. **Variance/Gillen - Section 21, Webster Township**

Tonya & Eddie Gillen have applied for a variance to allow for a new driveway to be constructed on an existing slope exceeding 18%. The property is described as: Part of the S1/2 of the NW1/4 of Section 21, Webster Township, Rice County, Minnesota. PID#: 02.21.2.50.002. The property is Zoned A, Agricultural.

Motion by Preston Bauer, seconded by Jill Ellingson, to approve the Variance request with the following conditions and findings for Tonya & Eddie Gillen. The property is located in Section 21 of Webster Township.

RESULT: Approved, AYES: Michael Streiff, Charlie Peters, Preston Bauer, Jill Ellingson, John McCarthy, NAYS: None

CONDITIONS OF APPROVAL – Gillen

1. The variance is to allow for the construction and regrade of a driveway on a slope exceeding 18%, subject to all other ordinance requirements.
2. Approved site plan shall be followed.
3. Variance shall be considered void if grading is not commenced within one year of the variance approval.
4. Failure to comply with the terms of this variance may result in termination of the Variance.

=====

Hearing Minutes:

Zoning Administrator Trent McCorkell (TM) presented the request to the Board of Adjustment (BOA). PB - Do you think it is necessary to have a condition for erosion management control on this?

TM - Currently there is not a final grading plan for the driveway. That is normally addressed during the building permit process.

The BOA asked the applicant, Tonya & Eddie Gillen (TG & EG), to come forward to add comments or answer questions regarding the request.

TG - It is an existing field drive that goes back to our proposed home location. There is just a short area that is kind of steep that we would like to level out so it is a smoother transition from the house to the road.

PB - Are you aware of the 4 conditions?

TG - Yes, we are.

Vice Chair Peters opened the public testimony portion of the item to the public and the following spoke: Lance Langford - We are the property directly to the North of the proposed driveway. My question is with the existing field drive. It is currently right on the property line. Our property actually goes into part of that field entrance. If you go back to the photo of Dent Avenue from the roadway, there is a wood post there that is set back about 5 or 6-ft North of the actual property line. When we put that in, we put in it so it would not block the entrance for tractors with hay binds to and from the fields. Is the County variance for driveways 20 or 25-ft from opposing property lines?

TM - I do want to point out that there is a survey included in the packet for this application, so the property lines should be well identified for this. The survey was done in December of 2020. There is no County setback for a driveway from a neighboring property line.

Vice Chair Peters closed the public testimony portion of the item to the public.

Discussion:

CP - It looks like a long driveway and a steep slope but I know their previous property and they had the

same challenges. They did a good job with that driveway.
PB - I will make a motion to approve this item with the 4 conditions.
JE - I will second that.

The Board of Adjustment reviewed the variance application and found that the applicant has established that all of the following criteria from Section 503 of the Zoning Ordinance amendment are met by this proposal:

- *Proposed use is allowed in the property's zoning district;*
- *Request is in harmony with the general purpose and intent of the Zoning Ordinance and consistent with the Comprehensive Plan;*
- *Applicant proposes to use the property in a reasonable manner not permitted by the Ordinance;*
- *The request stems from circumstances unique to the property, not one created by the landowner;*
- *If granted, this variance will not alter the essential character of the locality nor have any significant impact on the surrounding properties;*
- *This is the minimum variance necessary to afford relief;*
- *Adequate sewage treatment and water capabilities can be provided;*
- *The variance would have no significant impact on public health or safety; and*
- *Special privileges are not conferred to the applicant that are denied owner of other lands, structures, or buildings in the same district*

The findings were read by Bauer with the conditions as stated above and with the following additions by staff:

TM: It would be very difficult or impossible on this property to put the home on the flat area near the roadway and still be able to maintain parcel split requirements due to the road frontage requirements.

Motion made, seconded, and approved unanimously.

3. **Variance/Hager - Section 27, Walcott Township**

Wes Hager has applied for a 15-ft variance from the 20-ft rear yard setback limitation for a shed to be located 5-ft from the south property line. The property is described as: Part of the NW1/4 of the NE1/4 of Section 27, Walcott Township, Rice County, Minnesota. The property address is: 4507 250th St E, Faribault, MN 55021. PID#: 15.27.1.25.003. The property is Zoned A, Agricultural.

Motion by John McCarthy, seconded by Charlie Peters, to table the Variance request for Wes Hager until the February 4, 2021 Board of Adjustment meeting. The property is located in Section 27 of Walcott Township.

RESULT: Approved, AYES: Michael Streiff, Charlie Peters, Preston Bauer, Jill Ellingson, John McCarthy, NAYS: None

Hearing Minutes:

Zoning Administrator Trent McCorkell (TM) presented the request to the Board of Adjustment (BOA).

TM - The original notice for the item only lists the South property line but in further discussions with the applicant after that, he expressed the need for the 5-ft from the West property line. That has been added into the Staff Report.

PB - Is there a current survey on this?

TM - There was one when the lot was created, but I am not sure if there is a more current one.

CP - The property to the South is owned by the applicant but the property to the West is not?

TM - That is correct.

The BOA asked the applicant, Wes Hager (WH), to come forward to add comments or answer questions regarding the request.

WH - I would like to put the proposed shed in this location, particularly towards the South property line because I own the property behind it and it would not impact anyone's line of site or other buildings.

That back parcel is non-conforming so will never be built on.

CP - You are aware of the 5 conditions?

WH - Yes.

CP - You agree with them?

WH - Yes, nothing has changed since the original construction.

PB - I want to make sure that you identify the property lines to make sure you are not building on someone else's property, 5-ft is fairly close.

WH - Yep, when we split this property we had a survey done and a marker was placed in that corner that we are going off of.

JM - The second property, that you referred to as parcel B, to the South, why is that not buildable.

WH - There is no road or right of way access to that parcel.

JM - Is there a conservation easement on that property?

TM - This property was split prior to our current ordinance so there were different regulations on how items were split. Overall it is not buildable because of the density in that quarter-quarter section. There are already 2 homes existing in that quarter-quarter. We did look into combining the two parcels but that is not an option due to how it was done, when it was done, and the size of the parcels.

JM - On your responses to #5 on the variance criteria form, you said there will be doors on the East and West side of the shed, what type of doors are they?

WH - There will not be doors on the West side of the shed. There will only be doors facing East, two overhead doors and one walk-in service door.

JM - I don't have an issue with the 5-ft setback to the South but I am concerned about the setback to the West primarily because I don't know what the future use of that property may be. The property owner may want to develop that portion if it is permissible under the zoning ordinance. I support the 5-ft setback towards your property but I am concerned about the setback to the West side.

WH - My plan is to put the shed as far back in that corner because it butts up to the Jenny-O Turkey Store's woods and as far as I am aware, they do not plan on developing it and it does not have a road access down there at the corner. I am not saying that they could get an access from the South but I thought that would be a little far and if they were to develop it, they would have to clear out the woods and I didn't think that would be practical which is why I requested the 5-ft variance from the West property line because I didn't think I would affect them ever building anything there.

Vice Chair Peters opened the public testimony portion of the item to the public and no one spoke.

Vice Chair Peters closed the public testimony portion of the item to the public.

Discussion:

CP - TM can you show the broader aerial? Does Jenny-O have a turkey facility there?

TM - Yes. The road access for this parcel is just to the South out of the photo, but this is the turkey barns.

PB - Was the neighboring property owner notified?

TM - A notice of hearing did go out to the landowner but the original notice just mentioned the variance to the South property line. The applicant expressed the need for the West variance after the notice went out. If there is concern about the impact of that variance request, there is the option to table the item to allow a more complete notice to go out to the neighbor.

JM - I motion to table.

CP - I second to table to further notify the additional variance request.

Motion made, seconded, and approved unanimously to table this item until February 4, 2021.

4. **Variance/Mitchell - Section 21, Wells Township**

Barbara Mitchell has applied for a 30-ft variance from the 120-ft Lake setback limitation to allow for a new house in a Planned Unit Development (PUD) to be built 90-ft from Roberds Lake also requested is a variance to allow for removal of the existing lakeshore vegetation and grading to remove the top 7-ft of elevation within the shore impact zone of Roberds Lake. The property is described as: Lot 5, Block 2, Winjums West Shore Addition, Rice County, Minnesota. PID#: 10.21.2.26.006. The property is Zoned GDS, General Development Shoreland.

Motion by Charlie Peters, seconded by Preston Bauer, to approve the variance request with the following conditions and findings for Barbara Mitchell. The property is located in Section 21 of Wells Township.

RESULT: Approved, AYES: Michael Streiff, Charlie Peters, Preston Bauer, Jill Ellingson, John McCarthy, NAYS: None

CONDITIONS OF APPROVAL – Mitchell

1. The variance is to allow for a home to be located 90-ft from Roberds Lake as shown on the submitted site plan, subject to compliance with all other Ordinance regulations.
2. Grading of soil between the proposed home and the shore impact zone (37.5-ft from the lake) is allowed but no grading in the shore impact zone is permitted.
3. A detailed drainage plan must be developed and then implemented showing runoff water is handled in a manner that will not have negative impacts on the lake, steep slope area and neighboring properties.
4. Vegetation removal in the shore impact zone shall be limited to that required for a stairway system to access the lakeshore. A maximum area of 10-ft in width for vegetation removal.
5. Other than the up to 10-ft wide path for lake access the shore impact zone (land within 37.5-ft of the lake) shall be maintained in a non-mowed natural vegetative buffer condition.
6. Variance shall be considered void if building permits are not obtained and construction commenced within one year of the variance approval.
7. Failure to comply with the terms of this variance may result in termination of the Variance.

Hearing Minutes:

Zoning Administrator Trent McCorkell (TM) presented the request to the Board of Adjustment (BOA). TM - We did receive concerns from the County Water Planner related to the request to grade within the Shore Impact Zone (SIZ). The neighboring property did grade out the SIZ but that was not permitted and we are looking into the options on how to best address that. As the conditions are drafted, approval of this item would not include grading within the SIZ. They would be able to grade further back and be located closer, but not grade within the SIZ. Without grading, they would be allowed to do a stair system down to the dock area.

JM - Does the neighboring property, that you pointed out, have a variance?

TM - I am not sure of the exact distance but a variance was requested to be within the 120-ft setback. The request was similar to this one with regards to the distance from the lake. Because this is a Planned Unit Development (PUD), there is a 120-ft setback requirement. If it were the regular Roberds Lake setback it would be 75-ft.

PB - Can you go back to the shore impact zone view?

TM went back to slide showing the shore impact zone.

PB - The conditions addressed that that is not an option, grading within the SIZ?

TM - They are written to addressing the approval of the lake setback variance but not the grading of the SIZ. It was requested by the applicant to grade within the SIZ, so if you were to proceed with the conditions as written, you would be approving part of the variance and denying part of it.

The BOA asked the applicant, Barbara Mitchell (BM), to come forward to add comments or answer questions regarding the request.

BM - We are requesting the 30-ft setback because is it in line with the neighboring homes. Lot 4's variance request was approved at 78-ft and that included their deck. Our property, to build where we are proposing, the requested setback would put our home in line with Lot 4. Lot 6, the property to the East, had a variance approved last month to proceed with a 100-ft setback but their property is longer than ours. It is all stacked out right now and the homes all pretty much in line. We have been very intentional about the requests we are making. Our lot has approximately a 10-ft ditch to the front for water runoff, so we are not allowed to build within that area. If we were to build following the 125-ft setback, our house would be in the road. We are requesting the 30-ft setback to try and stay in line with the other houses and not block anyone's view but still account for that 10-ft in front of our house while still having some sort of a driveway. Regarding the grading request and what has been done on lot 4 and the research I have done to get where we are. My husband and I purchased this lot as a walkout and we planned our home as a walkout. Our home was approved by the Architectural Control Committee. In working with our builder, some questions were raised earlier on. We engaged in conversations with the excavator who did most of the lots within the PUD. We ended up deciding to go with another excavator and a few more

questions were raised. So before proceeding with the development of necessary documentation, we have come to the Board with our variance request because that is what the ordinance requires. I have had several conversations with County Staff in regards to the ordinance and the process to be followed. We are trying to abide by the process. There have been some conversation amongst the neighbors and other builders and people involved in the PUD and it seems there was an assumption that because the building permit was approved that included that the SIZ could be removed to provide for proper drainage and to accommodate the walkout. When I spoke with the County, that is not information that was relayed to me, so here we are. We are asking to cut down and grade the SIZ to stay in line with Lot 4. I am not sure of Lot 6's plans to build a walkout. If they do, they are going to have the same issue. They have not at this time requested any variances to do so, and we are not sure if they will be asked to do so as part of the process. We are very unnerved bringing these issues to the County because we know that the result could have negative consequences on our neighbors and we wanted to come into the PUD and the community as a good neighbor. It is unfortunate that we are having to go through the process the way that we are but we are trying to follow the ordinance and the guidelines set forth by the County. I think that is important for you to know when considering whether or not we can take down the shoreline to accommodate our walkout. As part of the walkout, we will comply with any additional requirements for erosion control, water control, and stabilization of the slope. We are even planning on lifting our home up a couple of feet so we remove less dirt. That is how we came up with the 7-ft that we are requesting that includes us lifting the house which gives us steps into our future retirement home which we were not originally planning. We are wanting main floor living with a walkout which adds to resale value. We bought this lot with a walkout in mind and now we are up against these issues. We are only requesting to be allowed to do what has been allowed on Lot 4. Even though the County Water Planner has some concerns about taking down the lake shore, I think that it makes sense that if our lots were more level and equal that that would make water run off less into the lake so it can soak into the ground instead run down the slope. The drop off between our Lot 5 and Lot 4, when they cut it, it was about 7-ft. They have put some dirt back in but there is a slope on Lot 4 from our property that, I believe, is within the 10-ft setback from our property. We would potentially have slopes on three sides if we are not allowed to take the shoreline down to match Lot 4. I have some questions and concerns about the conditions, but we can get into that more later if the Board does not approve our request to cut down the shoreline. The conditions were drafted to partially approve and partially deny our request. I am hoping you consider to allow us to move forward with our current plans to take down the shoreline. If we are not allowed to take down the shoreline, I would like to have further comment in regards to the vegetation that is there right now but I can save that for later if you would prefer. TM mentioned that some of the homes built in this development are built as walkouts, so I can share with you that Lots 1 and 2, because of their topography, are both on slab. Lot 3 is still available for purchase. Lot 4 is a walkout. We, on Lot 5, would like to have a walkout. Lot 6, I do not know if they are planning to build a walkout but it would be interesting if they were not. Lot 7 is an access lot for future development. Lots 8 and 9 are walkouts. Lot 10 is for sale. Lot 11 is a walkout and Lot 12 not a walkout. Just so you know that our request is in line with the other properties in the PUD.

PB - Are you familiar with the 7 conditions?

BM - I am familiar with them but I do not agree with all of them.

PB - With what you envisioned for the lot, was that part of the initial plan in discussion with the seller or the builder about excavating in the SIZ?

BM - There were conversations with the realtor and promises or representations that our lot would be sloped at the same time Lot 4 was done and that the seller was going to do that. That obviously did not occur. This all started happening in September which led to these conversations. But yes, to answer your question, yes, it was represented to us that this could be a walkout and that the area would be sloped. That the seller would take care of that. It was indicated that RAW construction would do the sloping for us. There was no reason for us to think, until we decided to use a different excavator, there was no reason for us to believe that we could not build the home we intended on this lot.

CP - I am going to make the comment that the excavator, RAW construction, took for granted that they could do some grading which they could not do based on the ordinance. We are going to look further into the lot next to you and try to address that issue. With the 7 conditions as written, we have granted variances on the other lots for setbacks from the lake but no shoreland grading variances have been granted on any of the lots.

BM - The other lots that came forward for variances only requested variances for the setback. My understanding is that the other variances that should have been requested were not but somehow they were allowed through the building permit process. I have looked at the requirements on the building

permit and it says specifically that a building permit will not be issued until all zoning requirements are approved. If you look at the other variances that were allowed, the conditions of approval indicate that the approved site plan will be followed. I find that to be very confusing. If the general information provided says that the zoning requirements must be pre-approved but you issue a condition that says an approved site plan will be followed. I have asked a couple of County Staff which is it? Is it if you get a site plan pre-approved you automatically can take down the shoreline or do you need to have the variances approved before you cut down the shoreline? I was told you need to request the variances and they are part of the building permit process. We are stuck between a rock and a hard place. We are doing the right thing following the County ordinances and if we are not approved, I am going to be very sad. We are following the rules and doing things the right way and we have every intention of protecting the shoreline and replacing vegetation and stabilizing it. We are already considering all of that and the excavator we would like to use, also does shoreland stabilization. We have already started those conversations. I don't understand the County's process and why it can be done one way but when you come in and request a variance to the ordinance that it could be denied. If someone could explain that to me, especially if there is going to be a possible denial of our request to take down the shoreline. I have been trying to answer that questions and have reached out to whomever I thought could answer that question and I still don't have the answer.

CP - We have had a lot of variances in this PUD and all have been setbacks from the lake. None for the grading within the SIZ. Some of the grading has probably been done on the sly after permits have been issued.

TM - It does appear that there was some work done on the lot to the West that was not permitted. Again, we are looking in the options for addressing that. There are a number of options that range from entirely regrading, variances, or revegetation. We are exploring those options for that. Generally site plans that are submitted do not show the extent of grading. Even looking at the site plan submitted for this variance, it shows a house location and it shows distance to the lake and property lines. One is left to what grading is proposed. There are house drawings showing a walkout but none of the drawing or the site plan, even with this one which knows exactly what they want to do, show removal of the SIZ down to the lake. As for following the site plan, that is for a location. The site plan does not show grading. I do not have the site plans that were submitted for the other lots, but I assume they were similar and did not show any type of grading that should have been shown if they were proposing that work.

JM - Does the County regulation require the proposed contours is someone plans on grading the property?

TM - Those are not normally included on site plans. The site plans do ask for grading but if there is not extensive grading shown on a site plan, it is assumed that it the grading is only at the home location.

BM - I am looking at the Grading and Filling document for the County and it says a detailed site plan and an erosion control plan must be submitted. I did contact a couple County Staff to see if I could review what was provided for Lot 4 and I was that there was nothing. All we are asking for is consideration for us to take our lot down as well so we are not sloped on three sides, actually four with the ditch in the front. We will have a slope on all sides of our house at different grades which will decrease our resale value of the house and give our lot the worst route to access the lake because of the steeper slope.

Vice Chair Peters opened the public testimony portion of the item to the public and no one spoke.

Vice Chair Peters closed the public testimony portion of the item to the public.

Discussion:

CP - We have allowed a lot of basic setback variances in this area. I don't think the SIZ should be touched. It looks like this lot and Lot 4 have the steepest slope, and it seems Lot 4 did something they were not supposed to.

PB - Lot 4 would have been denied if they requested that during the variance process. They are in violation of impacting the SIZ with the excavation they have done with no variance.

JM - I can understand the applicant's quandary. I am a little opposed to making the site conform to a building instead of making the home conform to the site. I do understand their reasoning. A number of variances have been approved in the past and I can understand the setback request. I definitely support leaving the SIZ alone.

TM - The PUD setback is 120-ft. That is the only setback that is different than the standard 75-ft lake setback. The side setbacks are 10-ft and the road right-of-way is a 20-ft setback.

JR - Just to clarify, when this development was approved as a PUD, it had a grading plan with it for the road, the lots, etc. That was intended for the homes to be built to the lot as they are, not for the lots to be made to fit the homes. Variances that have been granted are for the setback to the lake only, not so they can do additional grading down by the shore. The granted variances are strictly for the house location. There has been some confusion on the 120-ft versus the 75-ft lake setback. The closest granted variance is no closer than 75-ft. The grading that occurs now is only supposed to be for the house itself. No additional grading of the lot is to be done and that goes along with the building permit. There are some corrections that need to be done to Lot 4, but we have not approved additional grading on any of these sites beyond the house location.

CP - I motion to approve the setback variance with the 7 conditions as written with no SIZ grading.

PB - I second the motion to approve the lake setback variance.

The Board of Adjustment reviewed the variance application and found that the applicant has established that all of the following criteria from Section 503 of the Zoning Ordinance amendment are met by this proposal:

- *Proposed use is allowed in the property's zoning district;*
- *Request is in harmony with the general purpose and intent of the Zoning Ordinance and consistent with the Comprehensive Plan;*
- *Applicant proposes to use the property in a reasonable manner not permitted by the Ordinance;*
- *The request stems from circumstances unique to the property, not one created by the landowner;*
- *If granted, this variance will not alter the essential character of the locality nor have any significant impact on the surrounding properties;*
- *This is the minimum variance necessary to afford relief;*
- *Adequate sewage treatment and water capabilities can be provided;*
- *The variance would have no significant impact on public health or safety; and*
- *Special privileges are not conferred to the applicant that are denied owner of other lands, structures, or buildings in the same district*

The findings were read by Peters with the conditions as stated above and with the following additions by staff:

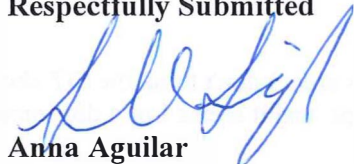
TM: The shore impact zone is designed to protect the lake by preserving the natural slope and vegetation closest to the water. If you were to allow grading and removal of vegetation, it can have a significant impact on the lake shore and the visibility from the water. The rules are designed that the visibility from the water is to look upon a fairly natural situations and not directly into home sites.

Motion made, seconded, and approved unanimously.

IV. Adjournment

Hearing no other items before the BOA, a motion was made by McCarthy, second by Bauer, to adjourn the meeting at 8:23 pm. Motion carried 5-0.

Respectfully Submitted



Anna Aguilar
Administrative Coordinator

Board of Adjustment Chair


Michael Streiff