

**OFFICIAL PROCEEDINGS OF THE
RICE COUNTY BOARD OF ADJUSTMENT
Commissioner's Room / Government Services Building
Thursday, March 1, 2018 at 9:15 p.m.**

I. Call to Order

- A. Roll Call - The meeting was called to order by Chair Michael Streiff at 9:15p.m. Members present were: Michael Streiff, Preston Bauer, Tom Sammon, Charlie Peters. Staff present were: Director Julie Runkel, Zoning Administrator Trent McCorkell, Planner Nicole Bonde-Jones, Administrative Coordinator Anna Aguilar. Others present: see sign-in sheet.

B. Reading of Notice

Motion by Peters, seconded by Bauer, to read the notice into the minutes.

RESULT:	Approved [Unanimous]
AYES:	Streiff, Bauer, Sammon, Peters

C. Motion by Bauer, seconded by Peters, to approve the agenda as presented.

RESULT:	Approved [Unanimous]
AYES:	Streiff, Bauer, Sammon, Peters

D. Motion by Sammon, seconded by Bauer, to approve the minutes of February 1, 2018.

RESULT:	Approved [Unanimous]
AYES:	Streiff, Bauer, Sammon, Peters

II. New Business

1. Variance - Tuma - Section 36, Wheatland Township

Jack & Dorothy Tuma have applied for a 30-ft variance from the 100-ft setback to allow for a new home to be located 70-ft from a protected watercourse. The property is described as: Part of the SW1/4 of the SW1/4 of Section 36, Wheatland Township, Rice County, Minnesota. The property address is: 7950 Union Lake Trail, Lonsdale, MN 55046. PID #: 01.36.3.50.001. The property is Zoned UR, Urban Reserve.

Motion by Sammon, seconded by Peters, to approve the variance request with the following conditions and findings for Jack & Dorothy Tuma. The property is located in Section 36 of Wheatland Township.

RESULT:	Approved [Unanimous]
AYES:	Streiff, Bauer, Sammon, Peters

CONDITIONS OF APPROVAL - Tuma

1. The variance is to allow for a replacement home to be located 70-ft from Heath Creek, subject to compliance with all other Ordinance regulations.
2. Approved site plan shall be followed.
3. The existing house shall be removed prior to a final certificate of occupancy being issued for the new home.
4. Variance shall be considered void if building permits are not obtained and construction

commenced within one year of the variance approval.

5. 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)

The BOA asked the applicants, Jack & Dorothy Tuma (JT & DT), to come forward to add comments or answer questions regarding the request.

JT - We would like to have the house in the same spot as the one we already have. It has nice elevation, it is high and dry. I am trying to stay out of the old septic system and stay far enough away from the well.

MS - You have read the 5 conditions that are apart of the approval?

TM gave copy of conditions to applicant.

JT - Yes, good. When do we find out?

MS - Right now, we are going through the process.

Chair Streiff opened the public testimony portion of the item to the public and the following spoke:

Jim Duban (JD) - Wheatland township clerk. The township has no problems with this variance. It is just the way the land lays and he is putting a house basically on the same footprint it is already on.

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

Discussion:

TS - I move for approval with the 5 conditions. The elevation of the house is way above the stream.

CP - I'll 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 Sammon with the conditions as stated above and with the following additions by staff:

TM: Just pointing out that it is a replacement home. The stream winds through the property limiting the location of a new home.

Motion made, seconded, and approved.

2. Variance - Wolfe - Section 31, Forest Township

Lynn Wolfe has applied for a 30-ft variance from the 30-ft bluff setback requirement and 62-ft and 90-ft variances from the 100-ft Lake Mazaska setback requirements to allow for a deck to be located at the bluffline and 38-ft from Lake Mazaska and for a retaining wall to be located 10-ft from Lake Mazaska. The property is described as: Part of the SW1/4 of the NW1/4 of Section 31, Forest Township, Rice County, Minnesota. The property address is: 6551 143rd St W #48, Lonsdale, MN 55046. PID #: 06.31.2.25.946. The property is Zoned RDS, Recreational Development Shoreland..

Motion by Peters, seconded by Bauer, to approve the variance request with the following conditions and findings for Lynn Wolfe. The property is located in Section 31 of Forest Township.

RESULT:	Approved [Unanimous]
AYES:	Streiff, Bauer, Sammon, Peters

CONDITIONS OF APPROVAL - Wolfe

1. The variance is to allow for a 300-sqft deck 38-ft from Lake Mazaska and 0-ft from a bluff area, and also to allow for a 4-ft high wooden retaining wall 10-ft from Lake Mazaska and on a bluff slope, subject to compliance with all other Ordinance regulations.
2. The approved site plan shall be followed.
3. Proper building permits shall be obtained prior to any onsite construction.
4. Four trees of a species native to Rice County shall be planted and maintained by the cabin owner along the slope between the deck and Lake Mazaska. Trees shall be a minimum of 4-ft in height at the time of planting. Tree species and location needs to be approved by the Rice County Environmental Services Office prior to planting. Planting must be completed no later than August 1, 2018 and trees shall be allowed to grow as a limited screening to Lake Mazaska thereafter.
5. Variance shall be considered void if building permits are not obtained and construction commenced within one year of the variance approval.
6. Failure to comply with the terms of this variance will result in termination of the Variance.

Hearing Minutes:

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

TM - The DNR submitted concerns and I had a discussion with them. They had concerns that the wall in the water was the one being proposed for replacement and they would not approve that. Instead of having a lakeshore buffer planting which doesn't seem very possible, I proposed a condition with tree planting requirements along the bluff. I did have blanks in

condition #1 because the size of the deck and height of the wall was not clear or not easily determined by the plan submitted.

MS - This is after-the-fact? Or already in process?

TM - Yes, it appears that most of the work is done. I am not sure what is left for proposal of that wall area. That would be a question for the applicant and we should clarify that within the conditions. Much of the construction you saw that was new was in this area (*pointed to area on aerial photo*) and with that deck platform that looks like is has been started. I am not sure if there is addition work proposed or not.

PB - Is the lower deck, platform area allowed currently?

TM - Right now, none of the work is permitted but it's there.

PB - I mean under the current standards. I know we have a lot of variances here but it does not look like that is indicated on here.

TM - It would require a variance. The closest variance distance I have is 10-ft back. I did not measure the lower platform when I was out there.

MS - That lower deck area would not be in violation of the DNR though right?

TM - The lower deck area would require a variance. If the variance wasn't approved, it would have to be removed. It does not appear there was anything there before, so the lower deck is new where as the wall appears to be built in front of an existing wall. The lower deck does appear to be newly built over a grassed area there.

The BOA asked the applicant, Lynn Wolfe (LW), to come forward to add comments or answer questions regarding the request.

Lynn Wolfe (LW) & John Wolfe (JW) - We are new members of the Lake Mazska co-op. We did not know we were in violation when we started building the deck and we were informed by Trent. We have been trying to resolve it since last September. The wall and the deck towards the water, that is not a deck. We have a lot of elderly people who come to the lake to fish and there is an old walkway that runs down along the lakeside that comes down slower. It is 37 steps straight down on the stairs. My mom and his brothers cannot make that, so we have to make them go over to the landing and pick them up in the boat. There was an old walkway where the wall was at a slower slope that we were trying to bring to the shore. That is what the steps are by the lake.

JW - We are trying to make the landing friendlier for the elderly.

LW - The wall that was there was plywood and spike stakes. We were just trying to make it look better. We did not do anything to the water wall, the wall to the west. We were in violation because we didn't know that there was a code for everything.

MS - What about the conditions and the sizes of the deck and height of the wall nailed down? Have you seen the 6 conditions of approval?

LW - No, I have not seen any of those. There were not on the thing sent to me.

TM displayed the conditions slide.

AA - I sent an email last week to the email you provided to staff that had the staff report and conditions attached.

LW - We have actually already put all of this stuff in and got permission and paid the variance and stuff.

MS - That is the beginning of the application process for us to consider. That is what we are doing right now, working through the process to potentially approving the variance. So let's look at the blanks in condition #1. The square footage of the deck?

JW - The deck is 12-ft x 25-ft.

CP - That is the one on top of the hill?

MS - And for the retaining wall?

JT - The highest point is 48 inches so it covers the old wall. It runs 36 feet but gets smaller as it goes down.

CP - That is the one up the hill?

JW - Yes and there are two landings that come down. The one is only 3-ft from the wall and was a friendlier drop to the landing. I could put five steps in instead.

MS - So 48 inches would be the other dimension for the height of the retaining wall.

JW - Yes at the highest point.

MS - You saw the condition for the trees?
LW - Do we get to choose the type of trees?
MS - It would have to be a species native to Rice County, planted and maintained.
LW - I know the neighbors have Oaks, can we plant Oaks?
MS - They would have to be at least 4-ft high at the time of planting and they grow pretty slow.
PB - Staff should have a list for you.
TS - Finish reading the condition: "Tree species and location needs to be approved by the Rice County Environmental Services." That is who you talk to about what species. It also states it must be done by August 1, 2018.
TM - I have a question on what is being proposed here? Is this pretty much the complete construction or will there be stairs coming down from that deck landing yet?
TM changed slide to better view construction on lot.
JT - That first landing is 5-ft x 10-ft. It is as far back as the retaining wall. I added the second landing and dropped it by 3-ft so I could have three steps coming off of it to get down to the dock.
TM - So the only additional construction, that is not there already, is the steps down to the flat area?
JT - Yes.
TM - There is nothing further proposed for the walkway?
LW - No.
TM - I ask because it is blocked off right there.
PB - A question for Trent, is that allowed by the DNR?
TM - We are not adding anything additional with the wall. There is a temporary wood that will be removed to get to their dock.
JW - Yes, that wood will be removed.
CP - You understand that the DNR has concern with the wall that is right on the lake and it getting replaced?
TM - That was the DNR's concern that the wall in the water was part of the proposal.
LW - No. We are not doing anything with that wall.
TM - I understand that and explained that to the DNR but if that was the wall that was proposed, they said No. They would not support that at all.
JR - We should refer to ordinance standards for stairways and landings, chapter 516.21.
TM - One other question, are you proposing to do anything with the stairs that are there?
LW - The 37 steps?
TM - Yes. Is this walkway access replacing them or do you plan to rebuild the stairs?
JW - If I can have the walkway, we will remove the stairs.
LW - They are kind of dangerous.
TM - They were not the easiest to walk down to get to the lake.
PB - I would imagine for you to get a building permit, the stairwell would have to be in compliance.

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

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

Discussion:

MS - Trent, is there anything else you would like to add?
TM - No, I think we covered it.
MS - Do you feel you understand all the moving pieces?
TM - Yes, I think if we refer to the stairs and deck as the access to the lake, it helps.
MS - Julie, anything you want to add?
JR - Even if they are not the ones who removed it, is there a whole area there that has no vegetation?
TM - The entire slope has some type of ground cover. It is not bare dirt but it is really steep.

LW - It is a nice bee hive in summer. Clover maybe.

TM - It would have to be completely disturbed to be seed, so I felt with the conditions that the trees were more appropriate to provide screening.

PB - Trent, just to clarify, if the bottom retaining wall would need maintenance in the future, would should the applicant do? Contact DNR or you?

TM - The DNR said they would not allow a wall there. This was done prior. It would have to be removed and replaced with riff raff or another material. That is difficult because it is a steep, high wall. It is certainly not natural. At some point, someone created it. Definitely before these individuals owned this property.

CP - I think we would all prefer the riff raff if that lower wall starts to fall apart.

LW - What is riff raff?

CP - Riff raff is a rock layer, instead of a wall.

TS - I did want to say something about the bottom wall, the sooner it goes the better. You can replace it with rock. I think that sums it up.

CP - Condition #1 reads how many square feet? And 48 inch or 4-ft high retaining wall.

TM - It would be 300-sqft.

CP - I will make a motion that we approve with the 6 conditions.

PB - I'll make the second. I don't like these after-the-fact finds but we have to deal with them.

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: I want to point out that it is a steep slope and is the only way to access the lake. There is some screening being required on the bluff area. They are maintaining, or replacing, an existing retaining wall on site and that they are proposing to remove the secondary access, the stairs.

Motion made, seconded, and approved.

III. Adjournment

Hearing no other items before the BOA, a motion was made by Sammon, second by Bauer to adjourn the meeting at 9:46 pm. Motion carried 4-0.

Respectfully Submitted

Board of Adjustment Chair

Anna Aguilar
Administrative Coordinator

Michael Streiff