

STAFF REPORT

Application: Variance request to allow construction of a patio within a bluff impact zone.

Applicant and Property Owner: Jacquelyn Schulz

Agenda Item: Public Hearing #1

Background Information:

- **Proposal:** The applicant is proposing to build a new patio/fire pit area and walkway using stone pavers within a bluff impact zone. By ordinance, improvements to land within 30 feet of any part of the bluff requires a variance. The area that is proposed for extending the patio with new paved surface is approx. 155 square feet. This would appear to keep the property within the 25 percent limit for impervious surfaces.

NOTE: The public hearing for this application included a conditional use permit for increasing the height of a retaining wall on the property. While a conditional use permit is required, such hearings need to be held by the Planning Commission, who would make a recommendation to the Town Board. Given that such an application would be unnecessary unless the requested variance is granted, the variance will be necessary first and a separate conditional use permit hearing would be necessary later.

- **Location:**
 - o Property address: 126 Freedom Road NE
 - o Sec/Twp/Range: 22-128-17
 - o Parcel number(s): 03-1769-000 and 03-1772-100
- **Zoning:** Urban Residential (UR); Residential Shoreland (RS)
- **Lot size:** Approx. 35,719 sq ft (0.82 acres) according to County parcel data.

Existing Impervious Coverage: About 10,200 sq ft (28.6%) according to aerial photo measurements.

NOTE: A 2012 itemized listing of impervious coverage submitted by the applicant's landscaper shows a significantly lower amount of impervious (7,734 sq ft) that would place the lot under the 25% limit (21.7%).

Proposed Impervious Coverage: About 10,350 sq ft (29.0%)

- **Septic System Status:** The property is currently served with ALASD sewer.
- **Natural Features:**
 - o Floodplain: The property is not located within a floodplain.
 - o Bluff/Steep Slopes: To the west of the lot is a steep bluff along the shoreland of Lake Geneva.
 - o Wetlands: There do not appear to be any wetlands that would impact this proposal.

- **Permit History:** A conditional use permit for the current retaining wall was approved by Douglas County in 2002.

Applicable Statutes/Ordinances:

Minnesota Statutes

462.357 (2016) OFFICIAL CONTROLS: ZONING ORDINANCE.

Subd. 6. Appeals and adjustments.

Appeals to the board of appeals and adjustments may be taken by any affected person upon compliance with any reasonable conditions imposed by the zoning ordinance. The board of appeals and adjustments has the following powers with respect to the zoning ordinance:

(1) To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of the zoning ordinance.

(2) To hear requests for variances from the requirements of the zoning ordinance including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the ordinance. The board of appeals and adjustments or the governing body as the case may be, may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located. The board or governing body as the case may be, may permit as a variance the temporary use of a one family dwelling as a two family dwelling. The board or governing body as the case may be may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

ALEXANDRIA TOWNSHIP ZONING ORDINANCE

SECTION III. ZONING DISTRICT REGULATIONS

A. ZONING DISTRICTS - PURPOSE¹

¹ Amended 7/2/2007 (Resolution #07-09)
Alexandria Township
June 18, 2018

The following zoning districts are established in Alexandria Township for the purpose of implementing the goals and purposes of the Comprehensive Plan and of this ordinance. While each purpose statement is intended to generally describe the locational criteria and the types of land uses allowed for each district, the Township’s official zoning map and specific regulations stated elsewhere in this ordinance shall take precedence over any particular purpose statement.

A. Urban Residential (UR)

The Urban Residential district is intended to provide opportunities for urban density (two to three dwelling units per acre) residential development in areas that are most readily served by urban infrastructure and services. Areas chosen for this district are within existing or planned public sewer district service areas. Proposed residential developments that would create oversized lots would be reviewed to facilitate an efficient and orderly transition to urban densities at a future date should landowners choose to do so.

B. Residential Shoreland (RS)

The Residential Shoreland district is intended to protect and regulate the residential use and development of the shorelands of public waters and thus preserve and enhance the quality of surface waters, conserve the natural environmental values of shorelands, and provide for the wise use of waters and related land resources.

D. SHORELAND DISTRICT (RS & CS²)

5. Building Setback and Lot Area Requirements and Regulations

The following table establishes the set of dimensional standards that shall be applied within the appropriate zoning districts of Alexandria Township. These standards shall be interpreted as the minimum requirements for each district (see Section III.C.5 for dimensional standards within the Shoreland District).

	Gen. Dev. (GDS)	Rec. Dev. (RDS)	Nat. Env. (NES) A-3	River - Tributary
Maximum Lot Coverage - Impervious Surfaces	25%	25%	20%	20%

6. Other Requirements and Regulations

- a. Bluff Impact Zone. Buildings and accessory facilities, except stairways, landings and those items regulated by shoreland alteration permits, must not be placed within this designated area.

4. Storm Water Management.

² Amended 7/2/2007 (Resolution #07-09)
Alexandria Township
June 18, 2018

a. The following general and specific standards shall apply in addition to those contained in Alexandria Township Storm Water Management Ordinance:

i. Standards: Parcels that exceed the maximum allowed impervious surface may construct additional impervious surfaces without a variance or conditional use permit if the proposed new impervious surface meets all setback, height and other regulations of this ordinance and if one of the two following conditions are met:

(1) The applicant removes existing impervious surfaces at a ratio of one and one-half (1.5) square feet removed for every one (1) square foot added and restores these areas to a permeable surface.

a. Permeable pavement systems are encouraged in the management of sites currently over the impervious surface limit and shall be credited as twenty-five (25) percent pervious for these sites when installed according to the requirements of Section V.L.4.a.(2).(d).iii. Applicants are encouraged to replace existing impervious surfaces with natural vegetation at the 1.5 to 1 ratio listed above, however permeable pavement systems may also be used. In these cases they are to replace existing impervious surfaces at a ratio of at least four (4) square feet converted for every one (1) square foot of new impervious surface being added;

(2) The applicant removes existing impervious surfaces at a 1:1 ratio and restores those areas to a permeable surface and in addition, submits a comprehensive stormwater management plan that emphasizes infiltration and onsite retention of stormwater for at least the two year 24-hour storm event through a combination of methods including buffer strips, swales, rainwater gardens, and other low impact development methods. The stormwater

management plan must be designed by a registered engineer or landscape architect and installed as designed by a qualified professional.

a. Permeable pavement systems may be considered as 100% pervious when submitted as part of a stormwater management plan consistent with this section.

ii. Specific Requirements: The applicant must provided the following evidence, in conjunction with meeting one of the two standards listed in (d).ii. above:

(1) A survey shall be submitted showing calculations of the exact dimensions of all existing impervious surfaces and of the lot before and after completion of the project. This survey must be submitted and approved by the Zoning Administrator³ before any work may begin on the project;

(2) In replacing existing impervious surfaces with surfaces designed to be permeable or porous, the applicant must give priority to replacing those surfaces closest to the lake or those surfaces where the replacement is most likely to improve storm water management;

(3) No pervious or porous pavement system shall be allowed in a bluff impact zone or shore impact zone unless specifically approved otherwise by the Zoning Administrator when restoration to natural vegetation would not be practical or advised by a qualified engineer. These areas shall be maintained or restored to a natural vegetative buffer whenever feasible;

(4) A pervious pavement system shall be designed and certified by a registered engineer or landscape architect and installed by someone qualified in the particular system used, or the installation

³ Amended 12/17/2007 (Resolution #07-20)
Alexandria Township
June 18, 2018

shall be overseen by a product representative to ensure its proper long-term function;

(5) A pervious pavement system shall be set back from structures having basements, septic system leach fields, steep slopes and wells at least 10 feet unless otherwise designed by a registered engineer so as to prevent impacting these features;

(6) A pervious pavement design shall include maintenance instructions to the property owner along with a maintenance schedule, with a copy to the Township to be filed along with the permit;

(7) All best management practices must be compatible with local stormwater management plans and NPDES Phase II stormwater permits, where required;

(8) If, in the removal of existing impervious surfaces, the total lot coverage falls below the maximum coverage allowed by this ordinance, the applicant must thereafter conform to the standards of this ordinance.

(9) The design of the pervious paver system shall include features or methods intended to direct stormwater runoff away from the system if such runoff would be likely to carry sediments or other debris that would plug the system.

L. ADDITIONAL PROVISIONS WITHIN THE SHORELAND DISTRICT (RS and CS⁴).

1. Design Criteria for Structures.

(a.) Retaining walls - may be allowed where there is a demonstrated need, the design is consistent with the existing uses in the area, and is not an aesthetic intrusion upon the land. The height of new retaining walls should not exceed three (3) feet in height, some existing walls are higher than three (3) feet and these may be reconstructed with a shoreland alteration

⁴ Amended 7/2/2007 (Resolution #07-09)
Alexandria Township
June 18, 2018

permit. If greater heights are needed for new retaining walls they may be granted with a conditional use permit.

- i. within steep slopes, bluff and/or shore impact zones retaining wall construction may be allowed where erosion problems preclude the use of vegetation or natural rock.
- ii. the repair and reconstruction of existing walls may be allowed subject to review by the Zoning Administrator

BLUFF IMPACT ZONE - A bluff and land located within thirty (30) feet from any part of a bluff.

I. VARIANCES.

1. Criteria for Granting of Variances.

a. The Board of Adjustment shall have the exclusive power to order the granting of variances from the terms of this Ordinance, including restrictions placed on nonconformities. Variances shall only be permitted when the following criteria have been met, as determined by the Board of Adjustment:

- i. Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan.
- ii. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance.
- iii. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner;; and the variance, if granted, will not alter the essential character of the locality.
- iv. Economic considerations alone do not constitute practical difficulties.
- v. A variance may not permit any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located.
- vi. The Township may impose conditions in the granting of variances provided it is directly related to and bears a rough proportionality to the impact created by the variance.
- vii. Variances shall be issued to the property and are not transferable.

Staff Findings: The following findings of fact are presented by Staff for consideration by the Planning Commission with respect to the variance need for the patio surface:

1. Can the property in question be put to a reasonable use if used under the conditions allowed by this Ordinance?

Needs discussion. The property already has a large patio area between the house and the lake. The primary reason for wanting a fire pit area in the proposed location is convenience as given the location of the bluff, the only other location would be closer to the lake.

2. Is the plight of the landowner due to circumstances unique to the property not created by the landowner?

Yes. The primary reason for the variance is the presence of a bluff on the property between the house and the lake.

3. Is the variance necessary to secure a right or rights enjoyed by other owner(s) in the same area?

Needs discussion. It is not uncommon for property owners to have lakeshore patio/fire pit areas similar to what the applicant proposes. Still, the applicant does have a large patio area already and could have a fire pit area closer to the lake at the bottom of the bluff if they wanted (although it would be less convenient than what they are seeking).

4. Will the variance, if granted, alter the essential character of the locality?

No. The character of the area would remain shoreland residential.

5. Are economic considerations the only reason the applicant cannot meet the strict requirements of the ordinance?

No. The primary reason for the variance request appears to be the desired location in relation to the shoreland.

6. Will the variance not allow a use that is prohibited in the zoning district in which the subject property is located?

No. The Shoreland Residential zoning district allows for the patio use.

Board of Adjustment Direction: The Board of Adjustment may recommend approval of the proposed use, denial of the request(s), or table the request(s) if the Board should need additional information from the applicant. If the Board should approve or deny the request, the Board should state the findings which support either of these actions.

Staff Recommendation: Based on the findings of fact and discussion listed above, Staff recommends that the requested variance only be approved if the Board finds that the applicant has met the requirements for a practical difficulty. The applicant appears to have

reasonable use of their property the way it is, and has options to create a fire pit area at the bottom of the bluff, so the primary issue appears to be whether building a patio area at the bottom of the bluff represents an unreasonable method of achieving a patio on the property since it would be separated by distance and a bluff from where it would provide the greatest utility to the landowner.

Also, given that the lot appears to already be over its impervious limit, or at least that there is a possibility of it being over the limit, a variance would either need to be granted to allow it to increase further or the applicant would need to remove existing impervious elsewhere on the lot. The ordinance allows two options in situations like this: 1) reduce impervious at a 1:1 ratio as what is being added and implement a stormwater management practice to promote the treatment or infiltration of water; or 2) reduce impervious at a 1.5:1 ratio.

Staff would not recommend a variance that allows the applicant to go above the impervious limit. If the applicant feels that they are under the impervious limit even with the additional patio area, Staff recommends that the Board require an impervious surface study by a surveyor to show exact figures relating to impervious coverage and lot size.

If the application or some version of the application is approved, Staff would recommend consideration for the following conditions of approval (or tabling of the application to allow for review of revised plans consistent with the following):

1. That the project shall result in at least a no net increase in impervious coverage on the lot.
2. The applicant shall submit a permanent stormwater management plan designed to minimize the potential for negative impacts to the bluff and lake and to mitigate the apparent excess of impervious coverage on the lot. These may include directing rain gutters to appropriate areas, rain barrels, establishing or maintaining a buffer of native vegetation along the shoreline, or other acceptable best management practices. Once approved, the plan should be implemented at the time of construction or within a reasonable time period after construction is completed and maintained indefinitely.