

STAFF REPORT

Application:	Requests related to the splitting of a parcel into two developable parcels. Approvals required include a Variance to allow for the creation of lots with widths of 75 feet and 71 feet (min. 150 ft required).
Applicant:	Thomas Wosepka
Property Owner:	William and Judith Kluver
Agenda Item:	4(a)

Background Information:

- **Proposal:** The applicants are proposing to split their approximate 9.9 acre parcel into two - a 7.4 acre parcel and a 2.5 acre parcel. The smaller parcel would contain the existing home on the property. As there is only approx. 156 ft of public road frontage for the parcel now, splitting it into two that meets the min. 150 ft width requirement is impossible.
- **Location:**
 - Property address: 3410 W LK JESSIE DR SE ,
 - Sec/Twp/Range: 34-128-37
 - Parcel number(s): 03-2172-510
- **Zoning:** UR - Urban Residential / RS - Residential Shoreland, Jessie Lake (General Development lake)
- **Lot size:** Approx. 10 acres according to GIS estimate.
- **Septic System Status:** The properties are served by ALASD sewer (a new stub may need to be installed to serve the newly created lot).
- **Natural Features:**
 - Floodplain: The existing and proposed structures are not within an identified floodplain.
 - Bluff/Steep Slopes: The lot does not contain a bluff.
 - Wetlands: There are not wetlands that are likely to be impacted by the proposed improvement(s) to the property.
 - Current Shoreline Conditions: N/A

Board of Adjustment Action: The Board of Adjustment may approve the variance request, deny 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 below, Staff recommends approval of the proposed variance only if the Board finds that the standards for approval have been met.

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. (For discussion) That the resulting lot only be allowed to have an accessory building on it - no dwelling shall be allowed unless the ordinance requirements are changed such that the lot becomes conforming to size and width requirements for residential lots.
2. (For discussion) That no further subdivision of the lots be allowed without conformance to all applicable regulations.

Applicable Statutes/Ordinances: See Appendix A.

Findings of Fact: The following findings of fact are presented by Staff for consideration by the Board of Adjustment:

1) Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control.

The spirit and intent of the relevant ordinances are as follows:

The spirit and intent of the ordinance's requirement for a minimum lot width is to ensure adequate access to the property from a public road and to maintain a specified density of development in an area.

Findings Supporting Approval

The proposed improvements would be in harmony with the general purpose and intent of the requirements because the lot being split is very large compared to others in the area and the limitations on density that are intended by min. lot dimensions will not be exceeded.

Findings Supporting Denial

The proposed improvements would not be in harmony with the general purpose and intent of the requirements because the two lots resulting from the split would both have only approx. half of the required lot width.

2) Variances shall only be permitted when they are consistent with the comprehensive plan.

Findings Supporting Approval

The granting of the requested variance(s) is not inconsistent with the Comprehensive Plan because the Plan does not directly address issues such as this. Further, the resulting lots would still significantly exceed the minimum lot size required and anticipated by the Plan.

Findings Supporting Denial

The granting of the requested variance(s) would be inconsistent with the Comprehensive Plan because it would result in inconsistent application of the minimum lot size standards.

3) The property owner proposes to use the property in a reasonable manner not permitted by an official control.

Findings Supporting Approval

The proposed use of the property is reasonable because the lot is very large and there is no way to create the required amount of road frontage without the creation of a new township road at significant expense to the landowner.

Findings Supporting Denial

The proposed use of the property is not reasonable because the lot was created as it is, with limited road frontage - not enough for the creation of two lots.

4) The plight of the landowner is due to circumstances unique to the property not created by the landowner.

Findings Supporting Approval

The plight of the landowner is due to factors that they did not create because the need for the variance is due largely to the shape of the property.

Findings Supporting Denial

The plight of the landowner is due to factors that they created themselves because they have other options to eliminate the need for a variance and still allow for the splitting of the land.

5) The variance, if granted, will not alter the essential character of the locality.

Findings Supporting Approval

The essential character of the area would not be altered because both the density of development that would result would not be out of character with the area. It would, in fact, still be significantly less density than occurs for most of the neighborhood.

Findings Supporting Denial

The character of the area includes lots that all meet the 150 ft width requirement and the proposal would change that.

6) Economic considerations alone do not constitute practical difficulties.

Findings Supporting Approval

Economic considerations are not the only reason the applicant cannot meet the requirements of the ordinance because there are non-economic factors involved, as mentioned above.

Findings Supporting Denial

The economic cost of building a road (or not subdividing) are the main drivers of the need for the variance.

7) No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.

Findings Supporting Approval

Residential lots are an allowable use in the zoning district where the applicant's property is located.

Findings Supporting Denial

None

Appendix A

Applicable Statutes and 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/Douglas County Regulations

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.

Alexandria Township/Douglas County Regulations

SECTION III. ZONING DISTRICT REGULATIONS

D. SHORELAND DISTRICT (RS & CS¹)

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
Lot Size - Unsewered Areas (sq ft unless noted)				
Riparian Lots	20,000	40,000	90,000	30,000
Non-Riparian Lots	40,000	40,000	90,000	40,000
Commercial Shoreland ²	Not allowed	Not allowed	Not allowed	Not allowed
Minimum Buildable Area - Unsewered Areas (sq ft unless noted)				
Riparian Lots	7,400	17,400	17,400	17,400
Non-Riparian Lots	17,400	17,400	17,400	17,400
Lot Size - Sewered Areas (sq ft unless noted)				
Riparian Lots	20,000	40,000	70,000	30,000

¹ Amended 7/2/2007 (Resolution #07-09)

² Added 7/2/2007 (Resolution #07-09)

Non-Riparian Lots	20,000	40,000	70,000	40,000
Commercial Shoreland ³	1 acre	1 acre	1 acre	1 acre
Minimum Buildable Area - Sewered Areas (sq ft unless noted)				
Riparian Lots	7,400	7,400	7,400	7,400
Non-Riparian Lots	7,400	7,400	7,400	7,400
Commercial Shoreland ⁴	17,400	17,400	17,400	17,400
Lot Width				
Unsewered - Riparian	100	150	300	100
Unsewered - Non-Riparian	150	150	300	100
Sewered	100	150	300	100
Commercial Shoreland ⁵	100	150	300	100
Lot Depth - (ft)	150	150	150	150
Maximum Lot Coverage - Impervious Surfaces	25%	25%	20%	20%
Height (ft)				
Agricultural buildings	25	25	25	25
Other Structures	25	25	25	25
Setback from Road Right-of-Way or Easement				
Federal Road	50	50	50	50
State Road	50	50	50	50
County Road - Urban	-	-	-	-
County Road - Rural	-	-	-	-
Township Road	32	32	32	32
Cartway, Alley, Avenue, Private accesses serving more than two parcels and other roads	32	32	32	32
Setback from Public Road Centerline⁶				
Federal Road	-	-	-	-
State Road	-	-	-	-
County Road - Urban	75	75	75	75
County Road - Rural	100	100	100	100
Township Road	65	65	65	65
Cartway, Alley,	48	48	48	48

³ Added 7/2/2007 (Resolution #07-09)

⁴ Added 7/2/2007 (Resolution #07-09)

⁵ Added 7/2/2007 (Resolution #07-09)

⁶ Center Line setback shall not apply in cases where the adjacent road is in a platted right-of-way of at least sixty-six (66) feet in width and the right-of-way has not been identified in official government documents for future expansion beyond a sixty-six (66) foot right-of-way. If any portion of an existing road is located outside of a right-of-way, regardless of the width of the right-of-way, the right-of-way setback shall apply as measured from the edge of the traveled road surface or the actual right-of-way, whichever is more restrictive.

Avenue, Private accesses serving more than two parcels and other roads				
Side Yard Setback				
Lot existence prior to August 9, 1966	6 ft (3 ft to eaves)			
Lot existence on or after August 9, 1966	10 ft (5 ft to eaves)			
Rear Yard Setback				
Dwellings	25	25	25	25
Commercial/Industrial buildings	25	25	25	25
Livestock buildings	-	-	-	-
Ag/Accessory buildings	10	10	10	10
Lake and River Setback - Buildings/Structures				
Lake sewered prior to Jan 2001 ⁷	50	75	150	50
Lake sewered on or after Jan 2001 ⁸	75	100	150	50
Unsewered	75	100	150	100
Lake and River Setback - ISTS System	75	75	150	75

Building Setback from Wetlands				
Protected	50	50	50	50
All Other Wetlands	25	25	50	25
Sewage Treatment System Setback from Wetlands	50	50	50	50
Structure Setback from Bluff (feet)	30	30	30	30

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

⁷ Lakes Burgen, Geneva, Le Homme Dieu and Victoria were sewered prior to Jan 2001. All properties on these lakes shall be considered "sewered" for the purposes of this regulation, regardless of whether they were actually served with a sewer line prior to January 2001. (Amended 3/21/2011 – Resolution #11-02)

⁸ Any lake other than Burgen, Geneva, Le Homme Dieu and Victoria.

designated area.

- c. Multiple Setbacks. When more than one setback applies to a site, buildings and facilities must be located to meet all setbacks. Where principal buildings exist on the adjoining lots on both sides of a proposed building site, building setbacks may be altered without a variance to conform to the adjoining setbacks from the ordinary high water level, provided the proposed building site is not located in a shore impact zone or in a bluff impact zone.
- d. Fences.⁹ Fence setbacks shall be as follows:
 - i. Ordinary High Water Level of a lake or stream: Same setback as other buildings or structures;
 - ii. Public Road Right-of-Way: No setback required provided no part of the fence projects into the right-of-way or otherwise would present a hazard;
 - iii. Other Property Lines: Fences may be placed on the property line if they are maintenance free or can be maintained from within the perimeter and two (2) feet from the property line if they are maintained outside of the perimeter or are not maintenance free.

All fences are to have a height of no greater than six (6) feet from the original ground to the highest point, except as otherwise allowed by this ordinance.

- e. Overlapping Zoning Classifications in Shoreland Districts. In the event that different zoning classifications in shoreland districts overlap, riparian lots will be regulated according to the lake upon which they have frontage. All other parcels and land uses will be governed by the most restrictive classification.
- f. General Regulations. Additional requirements are set forth in Section V, Performance Standards.

⁹ Amended 12/17/2007 (Resolution #07-20)