

## STAFF REPORT

<b>Application:</b>	Variance Request to allow the construction of a residential dwelling on a parcel to be served by a private sewer system rather than connecting to the ALASD sanitary sewer collection system.
<b>Applicant and Property Owner:</b>	RT Seasonal Properties LLC
<b>Agenda Item:</b>	4(a)

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### Background Information:

- **Proposal:** The applicants are proposing to construct a new dwelling on the property. Because it is located in the ALASD service area, it is required to connect to the ALASD sewer system by ALASD ordinance. But also, the lot on which it would sit was created by a plat in 2021 and was granted a variance to not extend sewer to the created lots by variance on the condition that any sewage-generating dwellings or other facilities would not be allowed without either connecting to ALASD sewer or obtaining another variance (at that time, discussions had started about the possibility of a public project to extend the ALASD sewer - which is currently about 1/4 mile away from the property - down County Road 73 past this property; that extension is no longer planned to occur in the near future). The property is about 20 acres in size.
- **Location:**
  - Property address: XXXX County Road 73
  - Parcel number(s): 03-1203-100
- **Zoning:** UR - Urban Residential
- **Lot size:** Approx. 872,942 sq ft (20.04 acres) according to County GIS records.  
Proposed Impervious Coverage: Well under 25% limit.
- **Septic System Status:** The property is served by a private sewer system that was installed in Fall 2023 (the septic permit was submitted without a corresponding request for a dwelling at the time and due to an oversight by the Zoning Administrator the need for a variance to use a private sewer system was not caught at that time).
- **Natural Features:**
  - Floodplain: The existing and proposed structures are not within an identified floodplain.
  - Bluff/Steep Slopes: The lot does not contain a bluff. The lot does not contain steep slopes that would impact the proposed improvement(s) to the property.
  - Wetlands: There are not wetlands that are likely to be impacted by the proposed improvement(s) to the property.
  - Current Shoreline Conditions: N/A

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**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.

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**Staff Comments:**

1. A December 5, 2023 email from ALASD director Scott Gilbertson states: "If Alexandria Twp. allows this building structure, we recommend the township generate a variance to not require connection to ALASD sewer. Reasons: The property does not abut sewer, and there isn't access or sewer in the area for this property."

Note: ALASR board had County Road 73 & Liberty Road identified as sewer extension areas (which would have served this parcel), but Alex Twp. decided against the improvement area(s). Our current planned 2024 sewer extension project only includes County Road 81 and County Road 82 extensions. I don't know when the next ALASR extension project will be planned in this area.

We recommend variance language indicate the connection to ALASD is required if/when sanitary sewer is extended to this area (within 1-year). I know previous variance language has been approved with similar land use conditions."

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**Staff Recommendation:** Based on the findings of fact and discussion listed below, Staff recommends approval of the proposed Variance only if it is found 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. That if an ALASD sewer collection line is extended past the property in the future, the lot owner shall be required to connect up to that system and abandon any private sewage treatment systems within a timeline established by ALASD (or three (3) years - whichever is less), regardless of how far their dwelling or other structure generating sewage is located from the sewer line.

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**Applicable Statutes/Ordinances:** See Appendix A.

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**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 requiring that new dwellings within the ALASR service area connect to the ALASD sewer system is to help ensure that sewage generated by homes in that area is properly treated and to help ensure that the costs of running the ALASD system are distributed amongst as many property owners as

possible at reasonable costs.

Findings Supporting Approval

The proposed improvements would be in harmony with the general purpose and intent of the requirements because the distance from the property to the closest sewer line is about 1/4 mile and the cost of extending is not feasible. A condition of approval requiring connection to ALASD sewer if it does run by the property in the future will ensure that the spirit of the official control is met.

Findings Supporting Denial

The proposed improvements would not be in harmony with the general purpose and intent of the requirements because it is intended to ensure dwellings within a reasonable distance of the sewer line connect to it. The distance of about 1/4 mile, while lengthy, is not entirely unreasonable.

**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 land proposed for development with a dwelling is located in an area not immediately adjacent to existing ALASD sewer lines and the allowance for placing a home on one lot would not inhibit the extension of sewer lines in the future past the property.

Findings Supporting Denial

The granting of the requested variance(s) would be inconsistent with the Comprehensive Plan because the Plan identifies a goal of the Township developing "in an orderly manner that maximizes the use of existing infrastructure and services and provides new infrastructure in an efficient, well-planned manner." The proposed development would not allow for efficient expansion of the ALASD sewer collection system as the lots are laid out in such a way that future re-subdivision, while possible, would not be especially efficient or well-planned given the restrictions on driveway access to County Road 73, the location of wetlands and the difficulty in providing public roads and infrastructure through the property.

**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 it would create one dwelling on a relatively large lot (20 acres) and the applicant is aware that if the ALASD sewer line does run by the property in the future it will be required to connect at that time.

Findings Supporting Denial

The requirement to extend sewer to the property to serve the proposed single-family dwelling, while expensive, is not unreasonable.

**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(s) is due largely to the long distance between their land and the existing sewer lines.

Findings Supporting Denial

The plight of the landowner is due to factors that they created themselves because they have other uses of the land that do not involve sewage-generating facilities and because they purchased a lot that had indicated the need for a variance to place such facilities on the property.

**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 the surrounding land already consists of lots at rural or semi-rural lot sizes served by private sewage treatment systems.

Findings Supporting Denial

None

**6) Economic considerations alone do not constitute practical difficulties.**

Findings Supporting Approval

Economic considerations are a significant factor, but not the only one. Extension of sewer lines to the property will make the proposed dwelling construction financially unfeasible and a development that would make the cost more feasible would require a larger number of residential lots that would be inconsistent with the character of the area.

Findings Supporting Denial

The primary reason for the variance request is to avoid the large cost of extending ALASD collection lines to the property and as such is not a sufficient practical difficulty by itself.

**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

The proposed use (a residential dwelling) is identified as a permitted use in the zoning district where the applicant's property is located.

Findings Supporting Denial

None

## Appendix A

### Applicable Statutes and Ordinances

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#### 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.