

## STAFF REPORT

<b>Application:</b>	Requests related to a replacement and expansion of an existing open deck. Approvals required include a Variance to allow a 3.6 ft extension of an existing open deck approx. 4 ft from a side lot line in a residential planned unit development (min. 50 ft required) on a property that exceeds the impervious coverage limit.
<b>Applicant:</b>	Rebecca Whiting
<b>Property Owner:</b>	Heatherwood Property Owners Association
<b>Agenda Item:</b>	4(a)

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### Background Information:

- **Proposal:** The applicants are proposing to rebuild and extend an existing open deck out toward the lake by 3.5 feet. The existing deck is currently located about 4.4 feet from the side lot line and because it is part of a planned unit development, the minimum setback requirement is 50 feet from a side lot line (if it were not a PUD the side yard setback requirement would be either 6 or 10 feet). The extended deck would also create additional impervious coverage and it appears the PUD as a whole already exceeds the normal 25% per tier limit. However, the applicants are proposing to reduce their coverage elsewhere around their home to compensate for what they are adding.
- **Location:**
  - Property address: 2520 Le Homme Dieu Heights NE #1
  - Sec/Twp/Range: 4-128-37
  - Parcel number(s): 03-0199-000
- **Zoning:** UR - Urban Residential / RS - Residential Shoreland, Le Homme Dieu Lake (General Development lake)
- **Septic System Status:** The property is served by ALASD sewer.
- **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: The shoreline of the property consists primarily of mowed grass.

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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. The applicant's proposal is for the expanded portion of the deck to be angled out from the current corner. They indicate that this will extend the deck to more than 8 feet away from the side property line.

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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 the Board finds that the proposed expansion being so much within the normal required side yard setback meets the standards for a variance.

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. Erosion and sedimentation control measures must be installed and maintained until the construction areas have been stabilized. These shall include at a minimum silt fences between any areas of disturbance (if there will be any) and the lake as well as to any neighboring properties which are downslope of the disturbed areas. Once disturbed areas are no longer being used for construction purposes, these shall be covered with mulch, erosion control blankets, hydroseed or other forms of temporary cover until vegetation is re-established.
2. The applicant shall submit a permanent stormwater management plan designed to minimize the potential for ongoing erosion or sedimentation and to allow adequate time for infiltration or other treatment of rainwater from the lot prior to it flowing into the lake. 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.
3. The proposed deck shall be located no closer to the side yard than \_\_\_ feet.
4. The applicant shall reduce impervious surfaces in areas immediately adjacent to their home in an amount at least equal to what is being added.

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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) **Variations 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 setback requirements between a building or structure and a side lot line is to require some space between buildings and other improvements and the adjacent lot and to maintain space between structures. Its' intent is also to maintain consistency from one property to the next in this setback.

The spirit and intent of the ordinance's limitation on lot coverage by impervious surfaces is to help minimize the amount of stormwater that runs off a property where it would be more likely to negatively impact nearby properties and public right-of-way. In shoreland areas, it is also intended to help protect lake water quality by allowing more stormwater runoff to infiltrate into the ground rather than into the lake.

Findings Supporting Approval

The proposed improvements would be in harmony with the general purpose and intent of the requirements because the applicant will not be building the extended deck any closer to the lot line than what already exists. Regarding impervious coverage, they are proposing to reduce coverage elsewhere on the lot to compensate for what they are adding.

Findings Supporting Denial

The proposed improvements would not be in harmony with the general purpose and intent of the requirements because the proposed setback to the side lot line is not close to the 50 feet required.

**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 it would represent an anticipated use within the relevant zoning district(s). The proposal will involve no net increase in impervious coverage on the lot.

Findings Supporting Denial

The granting of the requested variance(s) would be inconsistent with the Comprehensive Plan because it would result in a structure that is already greatly nonconforming to the required side yard setback to be expanded - making for a situation of inconsistent enforcement of Township ordinances.

**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 proposed deck will not extend closer to the lake than the other decks in the same area on adjacent homes and the impervious coverage will not increase. The proposed deck will also be further from the property line than what exists now.

Findings Supporting Denial

The proposed use of the property is not reasonable because it will allow for an existing nonconformity not just to remain, but to worsen.

**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 location of the existing house in relation to the lot line. The PUD and home were created prior to the 50 ft side yard requirement being in place.

Findings Supporting Denial

The plight of the landowner is due to factors that they created themselves because they are asking for the expansion of an existing deck for which simply rebuilding the deck to the same size would be reasonable and possible without variances.

**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 current area and the proposed use are residential in character.

Findings Supporting Denial

The essential character of the area would be altered because the proposed deck would be expanded in an area where structures are already well within the required 50 ft setback.

**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

Economic considerations are the only reason the applicant cannot meet the requirements of the ordinance because a primary reason for expanding the deck is to increase the economic value of their dwelling.

**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 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.

#### **394.36 (2016) NONCONFORMITIES**

Subd. 5. Existing nonconforming lots in shoreland areas. (a) This subdivision applies to shoreland lots of record in the office of the county recorder on the date of adoption of local shoreland controls that do not meet the requirements for lot size or lot width. A county shall regulate the use of nonconforming lots of record and the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in shoreland areas according to this subdivision.

(b) A nonconforming single lot of record located within a shoreland area may be allowed as a building site without variances from lot size requirements, provided that:

(1) all structure and septic system setback distance requirements can be met;

(2) a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, can be installed or the lot is connected to a public sewer; and

(3) the impervious surface coverage does not exceed 25 percent of the lot.

(c) In a group of two or more contiguous lots of record under a common ownership, an individual lot must be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements:

(1) the lot must be at least 66 percent of the dimensional standard for lot width and lot size for the shoreland classification consistent with Minnesota Rules, chapter 6120;

(2) the lot must be connected to a public sewer, if available, or must be suitable for the installation of a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, and local government controls;

(3) impervious surface coverage must not exceed 25 percent of each lot; and

(4) development of the lot must be consistent with an adopted comprehensive plan.

(d) A lot subject to paragraph (c) not meeting the requirements of paragraph (c) must be combined with the one or more contiguous lots so they equal one or more conforming lots as much as possible.

(e) Notwithstanding paragraph (c), contiguous nonconforming lots of record in shoreland areas under a common ownership must be able to be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots are suitable for, or served by, a sewage treatment system consistent with the requirements of section 115.55 and Minnesota Rules, chapter 7080, or connected to a public sewer.

(f) In evaluating all variances, zoning and building permit applications, or conditional use requests, the zoning authority shall require the property owner to address, when appropriate, storm water runoff management, reducing impervious surfaces, increasing setback, restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation-designed actions.

(g) A portion of a conforming lot may be separated from an existing parcel as long as the remainder of the existing parcel meets the lot size and sewage system requirements of the zoning district for a new lot and the newly created parcel is combined with an adjacent parcel.

### **Alexandria Township/Douglas County Regulations**

#### SECTION IV. PLANNED UNIT DEVELOPMENT

##### C. ZONING USE DISTRICT REGULATIONS

##### 1. **Shoreland District.**

##### D. REQUIREMENTS AND REGULATIONS.

##### 1. Building setback requirements and regulations footprints of PUD must meet setbacks.

	Planned Unit Development	
	Residential	Commercial
	<u>(Feet)</u>	<u>(Feet)</u>

a.	Residential Shoreland District.		
	(3.) Side Yard	50	50*

2. General Requirements and Regulations.<sup>1</sup>

a. Maintenance and Design Criteria.

(3.) Erosion Control and Storm Water Management.

Erosion control and storm water management plans must be developed in accordance with this Ordinance, the Alexandria Township Storm Water Management Ordinance<sup>2</sup> and the PUD must:

- (a.) Be designed, and the construction managed, to minimize the likelihood of serious erosion occurring either during or after construction. This must be accomplished by limiting the amount and length of time of bare ground exposure. Temporary ground covers, sediment entrapment facilities, vegetated buffer strips, or other appropriate techniques must be used to minimize erosion impacts on surface water features. Erosion control plans approved by a soil and water conservation district or a professional engineer may be required if project size and site physical characteristics warrant.
- (b.) Be designed and constructed to effectively manage reasonably expected quantities and qualities of storm water runoff and prevent flood or other storm water-related damage to property on- or off-site. Impervious surface coverage of the development must not exceed 25%. Impervious surface coverage of the first tier must not exceed 25%. The first tier of commercial PUD's on general development lakes may be allowed 35% impervious surface coverage with an approved stormwater management plan and consistency with Section V.L.2.

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<sup>1</sup> Amended 5/21/2007 (Resolution #07-06)

<sup>2</sup> Amended 5/21/2007 (Resolution #07-06)