

**STAFF REPORT**

<b>Application:</b>	Requests related to allowing two contiguous lots of record under common ownership to be treated as separate buildable lots and for the construction of a new dwelling and septic system. Approvals required include Variances to allow for the use of two contiguous nonconforming lots of record under common ownership to be allowed as separate building lots and for the construction of a dwelling and associated septic system which will not meet the required minimum property line setback of 100 feet. The resulting lots would not meet the Township's minimum lot size requirements of 5 acres and 300 feet width.
<b>Applicant and Property Owner:</b>	Adel A. Chamoun
<b>Agenda Item:</b>	4(a)

**Background Information:**

- **Proposal:** The applicants are proposing to construct a dwelling and associated septic system on "Tract D" of their property. The dwelling would not meet the required 100 ft setback from property lines, which in this case would include the north and south lines (side lot lines) and the west property line which is adjacent to the private roadway leading to their property. As the property owner does not have final plans for the exact size and location of the house, they are asking for approval of a building "envelope" in which they would be allowed to build. Their proposed setbacks would be approximately 10 feet from the north property line, 20 feet from the south property line (which would necessitate a variance on the setback between the house and the septic tank/drainfield if one were placed there) and up to 0 feet from the west property line adjacent to the private roadway.

The project will also require variances from Hubbard County to allow for "Tract D" to be considered a separate lot for sale/development purposes from "Tract C" as they are both under common ownership now and do not separately meet the required size to automatically be considered separate lots. The County may also need to grant variances related to setbacks from the septic system to the lake and/or property lines and the proposed dwelling depending on the final location and size of the septic system and house. There is also question of whether a septic system can be installed in the steep slope that exists where the applicant has stated they intend to place the system. The applicant has indicated that if that site doesn't work they could also obtain a lease from the State of MN to place the septic system across the private road on state land - although they have not provided any information to indicate this would be approved by the state (except that the State did allow a lease of their land for four properties located some distance to the south to install a common drainfield on state land in 1997).

- **Location:**
  - Property address: 28350 Jewel Trail
  - Sec/Twp/Range: 31-142-33
  - Parcel number(s): 26.31.03200
- **Zoning:** Lake Shore (L)

- **Lot size:** Approx. 15,200 sq ft (0.35 acres) according to County GIS estimate (Tract D).  
Existing Impervious Coverage: 0 sq ft (0.00%)  
Proposed Impervious Coverage: About 2,000 to 2,500 sq ft (13.16-16.45%)
- **Septic System Status:** The property would be served by a new septic system that is initially proposed to be located west of the proposed home. If that location does not work, the applicant indicates they would seek to lease land from the State of MN across the private road to the west. Locating the septic system closer to the lake would require a variance from the County's required lake setback for septic system drainfields (150 feet).
- **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 mostly of wooded land.

**Planning Commission Action:** The Planning Commission may recommend approval of the variance request, denial the request(s), or table the request(s) if the Commission should need additional information from the applicant. If the Commission should recommend approval or denial of the request, the Commission should also recommend findings which support either of these actions.

**Staff Comments:**

1. There are state statutes that dictate when two adjacent lots under common ownership can be separated for development or sale purposes. Those requirements (MN Statute 394.36, subd. 5c and d) include that the lots meet a width and size of 66% of the normal minimum required lot width and size. These two lots would be just under 66% of the 150 ft normally required width (at the building setback line) and well under 66% of the normally required 40,000 sq ft minimum lot size. The DNR's interpretation of that statute is that if the lots don't meet that 66% standard (or the other criteria in the statute) then the lots cannot be treated separately even by variance. Hubbard County, however, has indicated that their interpretation is that landowners always have the right to apply for a variance and they have accepted applications for variances for similar situations in the past.

From the Thorpe Township ordinance, it is Section 100.10 that dictates how "Pre-Existing, Substandard Lots" are handled. That section allows for such lots to be "considered for a zoning permit without requiring a variance, provided that:

- i) The use is permitted in the district;
- ii) All the setbacks can be met; and
- iii) Sanitary provisions for well and sewage disposal can be maintained.

Variances will be considered for lots not able to meet the above requirements."

The current application meets the first criteria, does not meet the 2nd and may or may not meet the 3rd criteria. But in those cases, a variance may be considered.

Staff has discussed with Hubbard County the question of whether the County should address the variance questions relating to whether the lots can be separated for development/sale purposes first, before the Township addresses the questions relating to property line setbacks. Their response was that they historically have sought to have Township variances addressed first and prefer that it be done that way.

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**Staff Recommendation:** Based on the findings of fact and discussion listed below, Staff recommends a recommendation for approval of the proposed Variance only if the Commission finds that the standards for approval have been met and that Hubbard County grants variances related to separating the two lots and any variances related to setback requirements for the house and septic system.

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. The applicant shall maintain all natural vegetation which currently exists between the proposed construction and the nearest side property line, as much as possible. As trees and vegetation die or are felled by storms, new trees and vegetation shall be re-established.
2. The applicant must have all variances required by Hubbard County approved, including those related to allowing for the two lots to be considered separately buildable and any variances related to property line setbacks for the proposed house and septic system.
3. (For consideration) That the proposed house shall meet a minimum setback of 10 feet from the north property line, 20 feet from the south property line and 10 feet from the west property line.
4. That if the applicant must install a septic system meeting the requirements of Hubbard County (accounting for any variances that the County may grant). Such system, if installed on state land, must provide a copy of an approved lease agreement with the state.
5. All conditions of the variance approval must be met prior to the issuance of the separately required Thorpe Township permit for the construction of the dwelling.

The Township may also wish to consult with the Township Attorney regarding the issues relating to the separation of the two parcels so that they are both considered separately buildable/saleable. Given the conflicting interpretations between the DNR and Hubbard County about the ability to apply for such variances, it may be helpful to have the Township Attorney weigh in. Of course, if the County were to grant such a variance and the DNR (or some other individual) chose not to challenge that approval as being in conflict with state law, it may become a non-issue.

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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 Planning Commission:

**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 setback requirements between a building or structure and property lines is to 1) ensure sufficient room for adjustments should future surveys create a lot line discrepancy; 2) ensure maintenance of the building would not encroach on a neighbor's land; and 3) maintain a buffer between neighbors to ensure the natural settings that currently exist.

Findings Supporting Approval

The proposed improvements would be in harmony with the general purpose and intent of the requirements because the 100 ft property line setbacks required by the Township ordinance arguably assume that lots meet the minimum required 300 ft width, which this property clearly does not. Further, the proposed setback from property lines will be consistent with other structures in the immediate area, which also contain small and narrow lots.

Findings Supporting Denial

The proposed improvements would not be in harmony with the general purpose and intent of the requirements because it would allow for the construction of a new dwelling only about 0-20% of the required property line setback on a lot that is arguably not buildable.

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

Findings Supporting Approval

Thorpe Township does not have a Comprehensive Plan which would conflict with the proposal.

Findings Supporting Denial

Thorpe Township does not have a Comprehensive Plan which would conflict with the proposal.

**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 allow for construction of a dwelling on a lot that was created well before minimum lot size and width requirements and would be consistent with the development of many other lots in the immediate area.

Findings Supporting Denial

The proposed use of the property is not reasonable because it will allow for the construction of a dwelling that is only about 0-20% of the required minimum property line setback.

**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 both of the lots

they own were created prior to the Township's requirements for minimum 5 acre and 300 feet wide lots and before the state minimum requirements for 40,000 sq ft and 150 ft wide were in place. Given the current size and width of the lot, there is no way in which to construct any structure on the property without a variance from the property line setbacks.

Findings Supporting Denial

The plight of the landowner is due to factors that they created themselves because they could achieve the additional living space they indicate they want by enlarging the existing dwelling. While this would also require a variance from property line setbacks, it would likely not be as much of a variance and would avoid the issues related to separating the lot.

**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. Further, other properties in the area are of a similar or even lesser lot size/width and the structures on those lots meet property line setbacks similar to what is proposed here.

Findings Supporting Denial

The essential character of the area would be altered because the proposed use would cause the development of a parcel that is arguably unbuildable.

**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 related to lot width and size involved, as mentioned above.

Findings Supporting Denial

A desire to increase the value of the property is the primary reason for the variance request, by making a lot that is arguably unbuildable buildable.

**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 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.

#### **394.36 NONCONFORMITIES.**

##### **Subd. 5. Existing Nonconforming Lots In Shoreland Areas.**

(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.

## **Thorpe Township Regulations**

### ARTICLE II – GENERAL ZONING DISTRICTS AND REGULATIONS

#### Section 30.10.4 Minimum Lot Requirements and Setbacks

The following minimum requirements shall apply to all property and structures in the Lake Shore District\*. Requirements in Article III on Performance Standards and other standards as noted, shall also apply.

- A. Lot Area: 5 acres
- B. Lot Width: 300 feet (at building and front lot line)
- C. Setbacks (from lot lines): 100 feet from existing lot lines\*

\* Hubbard County Shoreland Standards shall also apply to setbacks from the Ordinary High Water Mark of public waters.

### ARTICLE III – PERFORMANCE STANDARDS

#### **Section 100. Use of Pre-existing lots, Substandard lots and Non-conforming Uses.**

##### **Section 100.10 Pre-Existing, Substandard Lots**

A pre-existing, substandard lot for which a deed, recorded contract for deed or other legal conveyance or plat has been recorded prior to 1979, or that has been created and met existing regulations between 1979 and the effective date of this Ordinance, shall be considered for a zoning permit without requiring a variance, provided that:

1. The use is permitted in the district;
2. All the setbacks can be met; and
3. Sanitary provisions for well and sewage disposal can be maintained.

Variances will be considered for lots not able to meet the above requirements.

##### **Section 100.20 Lots formed to meet minimum requirements.**

Legal and/or equitable interests in lots joined together to meet the minimum requirements for zoning permit applications shall not, as to title, use by easement, license, or contract interest, be

divided, sold, mortgaged or conveyed separately thereafter, but the said lots shall thereafter remain bound together by covenants filed with the County Recorder. This provision does not apply to easements or licenses which convey an interest in lots joined together for zoning permit application if the purpose or use of the easement or license is utility placement, utility access, drainage, access easement, road maintenance, local improvements and/or pedestrian ingress/egress.