



ITEM REPORT  
PLANNING AND ZONING COMMISSION

Agenda Date: 8/10/2022  
Agenda Section: New Business

**TO:** Baxter Planning and Zoning Commission

**FROM:** Matthew Gindele, City Planner

**REQUEST:** **PUBLIC HEARING. Variance** to allow a deck, above-ground swimming pool, and retaining wall within the required 30-foot setback from a bluff for property located at 12222 Camwood Trail. (City file 22-28)

**APPLICANT:** Tim & Casey Taylor, 12222 Camwood Trail, Baxter, MN 56425  
R-1, Low Density Residential

**ZONING:**

**1. Application Request**

The applicant is requesting variances to allow a deck, above-ground swimming pool, and retaining wall to be located within the required 30-foot setback from a bluff on the Mississippi River. Specifically, the applicant is requesting the variances to allow the aforementioned structures to be over the top of the bluff thus having a 0-foot setback to it.

**2. Context**

Adjacent Land Use and Zoning

	Adjacent Land Use	Zoning
Northwest	Vacant Property	R-1, Low Density Residential
Northeast	Single Family Homes	R-1, Low Density Residential
Southwest	Single Family Homes	R-1, Low Density Residential
Southeast	Mississippi River	Mississippi River

Characteristics of the Site

The subject property is heavily wooded primarily with mature deciduous trees. A modest sized home and attached garage and deck are located on property, as well as an existing shed. These structures are all partially within the bluff setback and a small corner of the house and most of the deck are located over the top of the bluff. The front half of the property between the home and the street is flat and the back half between the home and the river is a bluff that slopes approximately 30 feet down the river. The proposed development would expand the impervious surface on the property to 13.8%, which complies with the maximum 25 percent impervious surface requirement of the shoreland overlay district. The property is two lots totaling 82,549 s.f. in size meeting the minimum area standards for a lot within the shoreland overlay district. The property has frontage on the Mississippi River which acts as a wetland and FEMA floodplain. This portion of the river is an urban river section which requires a minimum 75-foot setback; all structures, new and existing, meet the river setback requirement.

### 3. Analysis of Request

#### Variance

This is an after-the-fact variance application meaning at least some of the improvements needing a variance have already been commenced. Staff received a call stating that the applicant was dumping large rocks into the river, assumingly for bank stabilization. Upon inspection of the property, staff noted that the buiolders were not anywhere near the river's edge and were instead being placed to build a retaining wall to createa flat stable area to situate the pool on and to stabilize the steep slope behind the garage and driveway that was beginning to erode and cause washout running down to the river. At the time of inspection the pool was already placed in the location indentified on the survey. That applicant states that they had conntacted City Hall ahead of time and believe they were told that they could put the pool anywhere on the property since it was not an in-ground pool. Due to the miscommunication of information, the pool and the retaining wall were constructed as shown on the survey, over the top of the bluff.

The applicant is requesting the variances to allow the pool and the retaining wall to be located over the top of the bluff and to allow for an expansion of the deck, which is also over the top of the bluff, to provide access to the pool.

The variance standards are established by Minnesota Statute §462.357, Subd. 6.2. The burden of proof is on the applicant to show that the variance standards have been met. Staff has reviewed the application for consistency with the variance standards, as follows:

*a) That there are practical difficulties in complying with the Zoning Ordinance.*

There are practical difficulties in complying with the Zoning Ordinance because the existing house and the deck are currently over the top of the bluff; there is no place between house and the river for any improvements that would not require a bluff setback variance. The requested variances are for reasonable uses of the property that are otherwise allowed. The variances are not excessive and are the minimum variances needed to accomplish the applicant's goals

*b) That the conditions upon which a petition for a variation is based are unique to the parcel of land for which the variance is sought and were not created by the landowner.*

The conditions are unique to the parcel of the land and were not created by the landowner. The unique conditions include the fact that there is an existing home and deck already within the bluff setback and over the top of the bluff. The applicant has selected the most practical location on the subject property to place the pool at the edge of the deck. The reataining wall is needed for a level pad for the pool to sit on and to stabilize the bluff from further eroding into the river.

*c) That the granting of the variation will not alter the essential character of the locality.*

The granting of this variance will not alter the essential character of the locality because adjacent lots also have homes with very similar setbacks and the subject property is screened by dense vegetation from adjacent properties, the street, and the river.

*d) The proposed variance would be in harmony with the general purposes and intent of the Ordinance.*

The variance would be in harmony with the general purposes and intent of the ordinance. Staff finds that, given the development pattern of the lot and neighborhood, the variance is reasonable and would meet the intent of the ordinance to protect the river and the bluff from erosion and visual impairment from the river.

e) *The variance is consistent with the Comprehensive Plan.*

The comprehensive plan and zoning ordinance identify this property as a residential use where pools, decks, and the like are a common and acceptable accessory uses of property.

#### DNR Review

The DNR was provided a copy of the application but has not provided any comments to date.

#### **4. Recommendation**

Staff recommends approval of the variances, subject to the findings and conditions in the draft resolution.

#### Attachments

1. Draft Resolution Approving the Variance
2. Site Location Map
3. Survey Site Plan