

Jerry Bohnsack

From: Matt Kallroos <Matt.Kallroos@crowwing.us>
Sent: Monday, May 1, 2023 9:11 AM
To: Deb Runksmeier; planner
Cc: cityadmin
Subject: RE: RESCHEDULED - City of Breezy Point - Schmidt Variance Application Hearing Date - May 9

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning,

Please see comment below related to the Schmidt Brothers Variance Application.

The County Highway Department does not support the road right of way setback variance. In reviewing neighboring parcels, it was deemed nearly all were meeting road right of way setback requirements. The Highway Department has concerns with drainage and snow storage for this variance as well. Also, it is possible that parcels with similar characteristics to the South may seek similar variance requests if this variance request is approved, thus further straining drainage and snow storage concerns. Lastly, in reviewing the landscape plan the Highway Department noticed proposed trees and bushes being planted in the County Road right of way which would not be permitted.

Is the hearing still scheduled for May 9th? I have not seen any updates, thanks!

Matt Kallroos
Transportation Planner

Office: (218)824-1110
Direct: (218)822-2694
www.crowwing.us

Crow Wing County Highway Department
16589 County Road 142
Brainerd, MN 56401

We value your opinion, please let us know how we are doing by taking our [Customer Service Survey](#).



Our Vision: Being Minnesota's favorite place.
Our Mission: Serve well. Deliver value. Drive results.
Our Values: Be responsible. Treat people right. Build a better future.

This e-mail and any attachment is intended to be read only by the intended recipient. This e-mail may be legally privileged or protected from disclosure by law. If you are not the intended recipient, any dissemination of this e-mail or any attachments is strictly prohibited, and you should refrain from reading this e-mail or examining any attachments. If you received this e-mail in error, please notify the sender immediately and delete this e-mail and any attachments. Thank you.

From: Deb Runksmeier <drunksmeier@cityofbreezypointmn.us>
Sent: Thursday, March 30, 2023 1:55 PM
To: planner <planner@cityofbreezypointmn.us>

Jerry Bohnsack

From: Deb Runksmeier
Sent: Thursday, March 30, 2023 8:02 AM
To: planner
Subject: FW: City of Breezy Point - Schmidt Variance Application

Follow Up Flag: Follow up
Flag Status: Flagged

From: Frie, Jacob (DNR) <Jacob.Frie@state.mn.us>
Sent: Wednesday, March 29, 2023 5:05 PM
To: Deb Runksmeier <drunksmeier@cityofbreezypointmn.us>
Cc: MN_Ordinance Review (DNR) <ordinance.review.dnr@state.mn.us>
Subject: RE: City of Breezy Point - Schmidt Variance Application

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon Deb:

The Minnesota DNR has reviewed the variance application for Schmidt property proposed new dwelling construction on Pelican Lake.

It appears that the proposed dwelling is located above/outside the flood fringe district of 1,208.3 (NGVD 29 datum), below the 25% maximum impervious threshold, and has minimum encroachment within the 75 foot setback to Pelican Lake by proposing to further encroach into the public road right-of-way setback through an additional variance request. The proposed location of the dwelling is also located in a portion of the lot that minimizes encroachment to OHW setback.

If approved, the DNR recommends the following conditions to ensure enhanced conformance with local and state Shoreland Rules:

- 1.) The proposed stormwater management plan must be implemented by the time of permit expiration or upon substantial completion of the project, whichever is sooner.
- 2.) The existing gravel from the front (lake) side of the proposed patio and lakeward must be removed by the time of permit expiration or upon substantial completion of the project, whichever is sooner. Within the Shore Impact Zone (SIZ) (37.5 feet from OHW), the area of gravel removal must be re-seeded to an approved native / natural seed mix for shoreland buffer protection, except for a 8 foot corridor to allow for a 4 foot walkway.
- 3.) No portion of the proposed dwelling shall be below the base flood elevation (BFE). If it is, it must meet all flood fringe district elevation requirements including a 15 foot fill pad and lowest elevation not to be below the regulatory flood plain elevation (RFPE).
- 4.) Both lots must be consolidated at the time of permit application to avoid after-the-fact property line encroachments and variances for side-lot setback issues.

Thank you.

Jacob Frie
Area Hydrologist | Division of Ecological and Water Resources

Jerry Bohnsack

From: Joseph J. Langel <jjl@ratwiklaw.com>
Sent: Thursday, April 6, 2023 11:21 AM
To: Jerry Bohnsack
Cc: David Chanski
Subject: RE: Schmidt Variance Application

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Jerry,

Subpart 153.006(A)(2) is a little unclear. It's initial focus is on whether a single lot can be considered for development. Here, however, there is no such request because the applicant bought two lots and the proposed house crosses the lot line. Subpart (D) may apply, meaning "covenants" shall be filed with the County Recorder to the effect that these two lots cannot be split apart moving forward. If the City has an administrative lot consolidation procedure, perhaps that could be considered as part of this process.

Joe



Ratwik, Roszak & Maloney, P.A.

Joseph J. Langel

Ratwik, Roszak & Maloney, P.A.

444 Cedar St., Suite 2100

St. Paul, MN 55101-1865

Ph: 612-339-0060 | Fax: 612-339-0038

Web: www.ratwiklaw.com

Stay connected with us on social media:   

The information contained in this electronic message may be attorney-client privileged and/or confidential information and is intended only for the use of the individual(s) to whom this electronic message is addressed. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this electronic communication or any attachment thereto is strictly prohibited. If you have received this electronic communication in error, you should immediately return it to us and delete the message from your system. Thank you.

From: Jerry Bohnsack <jbohsack@cityofbreezypointmn.us>
Sent: Thursday, April 6, 2023 10:30 AM
To: Joseph J. Langel <jjl@ratwiklaw.com>
Cc: David Chanski <dchanski@cityofbreezypointmn.us>
Subject: RE: Schmidt Variance Application

Thanks Joe

I am wondering if or how 153.006 -2 should also be applied to the variance request?

Jerry

From: Joseph J. Langel <jjl@ratwiklaw.com>
Sent: Wednesday, April 5, 2023 9:57 PM
To: planner <planner@cityofbreezypointmn.us>
Subject: Schmidt Variance Application

29-442 Corey
29-372. Corey

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Jerry,

I reviewed the application, preliminary plan set, and those portions of the City Code concerning the R-2 zoning requirements and variance applications. From what I reviewed, it appears this application satisfies the requirements for receiving a variance.

These two lots were platted in 1965, before the current zoning ordinance was adopted. Under the Zoning Ordinance, the ROW setback from a county road is 35' and the setback from a wetland is 30'. Based on those two setbacks, the buildable area on these two lots (as combined) is almost non-existent. In other words, while these two lots may have been usable when platted, subsequent zoning standards have rendered them essentially unbuildable.

The two variances sought are to reduce the county ROW setback from 35' to 13' and to reduce the wetland setback from 30' to 15'. Those are pretty sizable variances, but they allow for a residential structure that is not overly large front-to-back.

By statute, a variance applicant must demonstrate practical difficulties with complying with the zoning ordinance. That term means (1) the owner proposes to use the property in a reasonable manner not allowed under the ordinance; (2) the plight of the landowner is due to circumstances unique to the property not created by the landowner; and (3) a variance will not alter the essential character of the locality. Minn. Stat. § 462.357, subd. 6(2).

Here, the applicant wants to use the two lots for residential purposes but cannot because of the two setback requirements. Residential purposes are reasonable in the R-2 zoning district.

The applicant's plight is due to the application of the current zoning restrictions to lots platted in 1965, long before the current standards were adopted. These circumstances are unique to the property and were not created by the applicant.

A variance to allow a lake home would not alter the essential character of the nearby lake homes. The statutory factors therefore appear to be satisfied.

Under the City code (section 153.120), several factors have to be considered for variances including: (1) strict application of the ordinance would be impractical because of circumstances relating to size, shape, topographic or other characteristics of the property; (2) a deviation from the ordinance will still be in keeping with the intent of the ordinance; and (3) the variance is not for economic reasons alone, but reasonable use of the property does not exist under the ordinance. These three factors appear to be satisfied as well. The characteristics of the lots (which have a great deal of wetland on them) make them effectively useless for building a structure. Changing the setbacks would allow a lake home, which is consistent with the zoning. And reasonable use of this residential property does not exist because no house can be built under existing setbacks.

Based on the unusual nature of these two lots, I would recommend approval of the two variances.

Let me know if you have any questions.

Joe