

TO: Planning Commission

FROM: Jerry Bohnsack

Meeting of May 9, 2023

Variance Request 2023-001

Applicant: Darin Schmidt (Schmidt Brothers Holdings LLC)

Legal Description: Lots 13 – 14 Eighteenth Addition to Breezy Point Estates

Address: TBD County Road 4, Breezy Point MN 56472

Property Identification Number (PIN): 10211048 & 10211049

Zoning: Residential Medium Density (R-2 Sewered)

Applicable Code: 153.004A, 153.120, 153.044, 153.045

Request:

Construct Dwelling and attached garage 13 feet from ROW County Rd 4, 15 feet from Delineated Wetland.

Property:

The property is 2 vacant lots that were created in 1965 as part of the 18th Addition to Breezy Point Estates. The property is located between 29442 (N) and 29372 (S) County Road 4. Sanitary Sewer was installed in County Road 4 in 1978. Each Lot was assessed \$1,438.20 for sewer. Mr. Schmidt acquired Lot 14 as part of a larger real estate transaction in 2022. The intent is to consolidate Los 13 and 14. Portions of the property are located in the designated flood zone. The total square footage of the combined lots is 13,285 ft.

Mr. Schmidt is requesting Variances to allow dwelling construction of property that does not contain a building envelope.

Variances requested:

Wetland 15 ft.

ROW 13 ft.

Lot Size 13,285 ft.

Zoning:

The property is currently Zoned Medium Density Residential (R-2 sewered).

Setbacks per zoning ordinance:

- Road ROW County 35 feet
- Side 10 feet
- Wetland 30 feet
- Impervious Coverage 25%
- Ordinary High Water (OHW) 50 feet
- Lot Size Existing Lot 15,000 sq. ft.

VARIANCE. A legally permitted deviation as provided in M.S. § 462.357, Subd 6, as it may be amended from time to time, from the provision of this chapter as deemed necessary by the Board of Adjustment when the strict interpretation of the

ordinance would create practical difficulty and be impractical because of circumstances, relating to lot size, shape, topography or other characteristics of the property, and when the deviation from the ordinance with any attached conditions will still be in keeping with the spirit and intent of the ordinance. Variances cannot create a land use not permitted in a zone.

Variance Review:

- Variance Review §153.120 E 1-5

(E) Variances shall be decided within a reasonable time with considerations for the following:

- (1) The strict interpretation of the ordinance would be impractical because of circumstances relating to lot size, shape, topographic or other characteristics of the property not created by the land owner;
- (2) The deviation from the ordinance with any attached conditions will still be in keeping with the spirit and intent of the ordinance;
- (3) The land use created by the variance is permitted in the zoning district where the property is located;
- (4) The variance will not alter the essential character of the locality; and
- (5) The variance is not for economic reasons alone, but reasonable use of the property does not exist under the ordinance.

Findings:

- 1) The applicant contends that the practical difficulty is _____
- 2) Building envelope does not exist but for the use of Variances.
- 3) The proposed impervious coverage is 23.85%
- 4) The closest dwelling on either side of the proposed structure are N 47 ft. +- and S 50 ft. +- from ROW.
- 5) The proposed use is a permitted use in R-2 Zone.
- 6) The proposed plans have been submitted to MN DNR, City Attorney, Crow Wing County Highway and Wetlands.
- 7) Mailed and published Notice of Public Hearing to consider request was given and hearing was held May 9, 2023.
- 8) An alternative to variance may exist. Applicant could pursue a wetland replacement plan. Whereby a small portion of the delineated wetland is filled. The plan may utilize the purchase of wetland credits or creation of additional wetlands within the watershed.

The following may be used to support denial of Variance request.

The Planning Commission / Board of Adjustment finds that no practical difficulty exists, the property is unbuildable because it lacks an acceptable building envelope and lake access is a reasonable use of the property. Applicant could create wetland replacement plan to negate the need for variances or minimize the variances.

The following may be used to support Approval of the Variance request.

- 1) The subdivision was created prior to zoning and subdivision regulations. (1965)
- 2) Municipal sewer was installed in County Road 4 in 1978. Lots were special assessed for sewer service.
- 3) Proposed impervious coverage is Less than 25%.
- 4) The Request is in harmony with general purpose and intent of official controls and consistent with comprehensive plan.
- 5) The property owner is proposing to use the property in a reasonable manner
- 6) The plight of the owner is due to circumstances unique to the property not created by the owner.
- 7) The Variance of granted will not alter the essential character of the locality.
- 8) The practical difficulty is _____
- 9) If approved the following may be conditions of approval:
 - a) Minimum elevation of lowest floor 1210
 - b) Elevation and building setbacks to be set and staked by registered surveyor
 - c) The proposed stormwater management plan must be implemented by the time of permit expiration or upon substantial completion of the project, certificate of occupancy, whichever is sooner.
 - d) 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.
 - e) No portion of the proposed dwelling shall be below the based 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).
 - f) 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.
 - g) Building permit to be obtained and building to conform to Minnesota State Building Code.
 - h) Rectify the current wetland violation.

Planning Commission/Board of Review Direction

The Board may by resolution choose to approve, deny, or modify the requested variances. The resolution should clearly state the practical difficulty and reasons for approval, denial, or modification of the variance.