



Olmsted County Planning Department

July 6, 2021

Oronoco Town Board

Prepared by: Olmsted County Planning Department Staff

Request: The request is for a variance #OR2021-003VAR by James Burke. The request is a variance to shoreland standards to allow a dwelling to be built in the bluff impact zone and closer than the required setback of 100' from the ordinary high-water mark. The request includes a variance to allow a driveway within the bluff impact zone.

Location: The request includes a variance to allow a driveway within the bluff impact zone. The property is located in the NW 1/4 of the NW 1/4 Section 2, Oronoco Township. The property lies south of Wabasha County (Zumbro Township Line) and north of Sunset Bay Ln NE.

Zoning: A-2, Agricultural District

ACTION ITEMS

<ol style="list-style-type: none"> 1. Variance to allow a dwelling to be located within a bluff impact zone. 2. Variance to allow a driveway to be located within a bluff impact zone. 3. Variance to allow a dwelling to be located less than the required 100 feet from the Ordinary High-Water Mark for Lake Zumbro 	<p>Olmsted County Planning Staff recommends denial of all three variances based on the findings of fact within the staff report.</p>
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BACKGROUND INFORMATION

Background:

The property is located in Section 2 of Oronoco Township, north of the Kurth's Subdivision. The property is a lot of record according to available information.

According to Section 1.26 Subdivision B buildable lots for a dwelling are:

1. A lot that qualifies as a farm.

2. Lots created after the effective date of this ordinance which meet the lot area, lot width, access requirements and either the standards for non-farm lots or dwellings in the zoning district where such lot is located or the standards for farmstead dwellings.
3. Lots of record, providing that such a lot has recorded access to a public road and the proposed building complies with the regulation of Section 1.28 (B).
4. If in a group of two or more contiguous lots under the same ownership, any individual lot does not meet the zoning district lot area, width, or access standards of the zoning district where located, the lots must not be considered as separate parcel of land for purposes of development. The lots must be combined with one or more contiguous lots so they equal one or more parcels of land, each meeting the lot area, width, or access standards to the extent possible.

Section 1.28 Subdivision B:

Lot of Record: A non-conforming lot of record may be used for any principal use permitted in the zoning district in which the lot is located, provided that for any use which is to be served by an individual well and/or septic system, the non-conforming lot shall be of a size and design to meet the minimum requirements of the Board of Health regulations for such wells and septic systems.

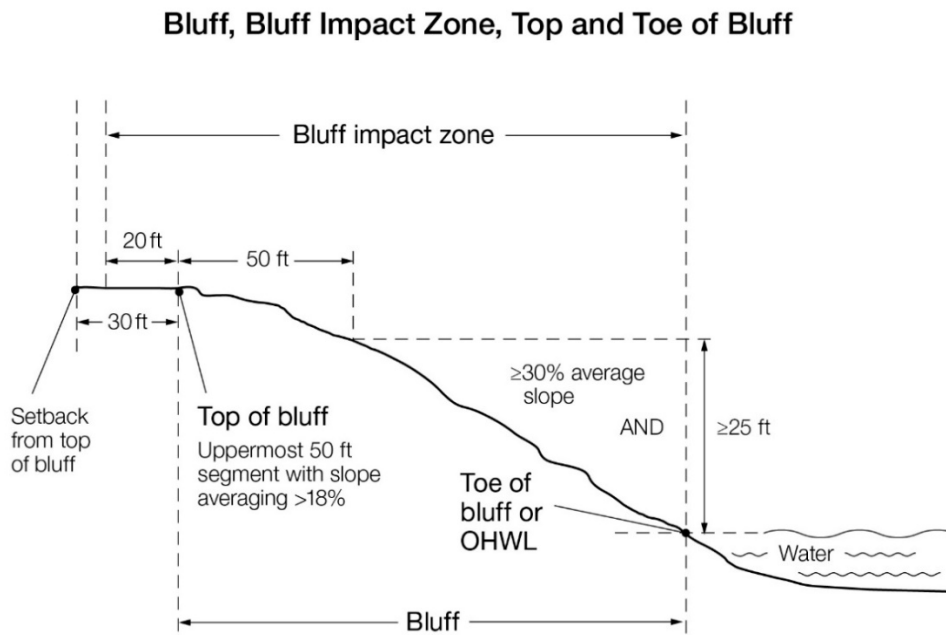
The request is to build the dwelling within the Bluff Impact Zone. The following definitions are from Oronoco Township Zoning Ordinance Section 2.02. Figure 1 on the next page illustrates the definitions below.

Bluff: A topographic feature such as a hill, cliff, or embankment having the following characteristics (an area with an average slope of less than 18 percent over a distance for 50 feet or more shall not be considered part of the bluff):

- a) Part or all of the feature is located in a shoreland area;
- b) The slope rises at least 25 feet above the ordinary high water level of the waterbody;
- c) The grade or slope from the toe of the bluff to a point 25 feet or more above the ordinary high water level averages 30 percent or greater; and
- d) The slope must drain toward the waterbody.

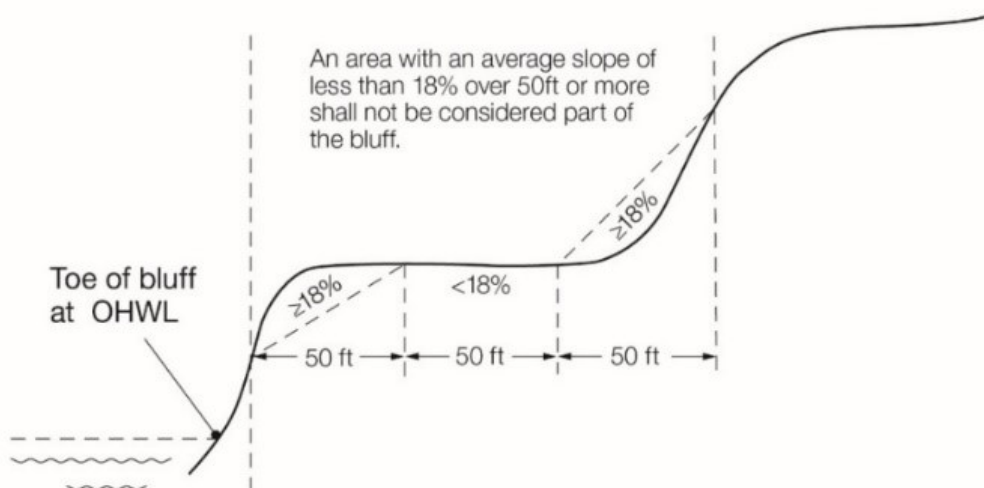
Bluff Impact Zone: A bluff and land located within 20 feet from the top of a bluff.

Figure 1-Bluff, Bluff Impact Zone, Top and Toe of Bluff



The applicant states the location for the dwelling is on a plateau. The plateau the applicant is referencing does not meet the exception to a bluff. The exception to the bluff is any area that is less than 18 % slope over 50 feet as shown in Figure 2 below.

Figure 2-Bluff Exception



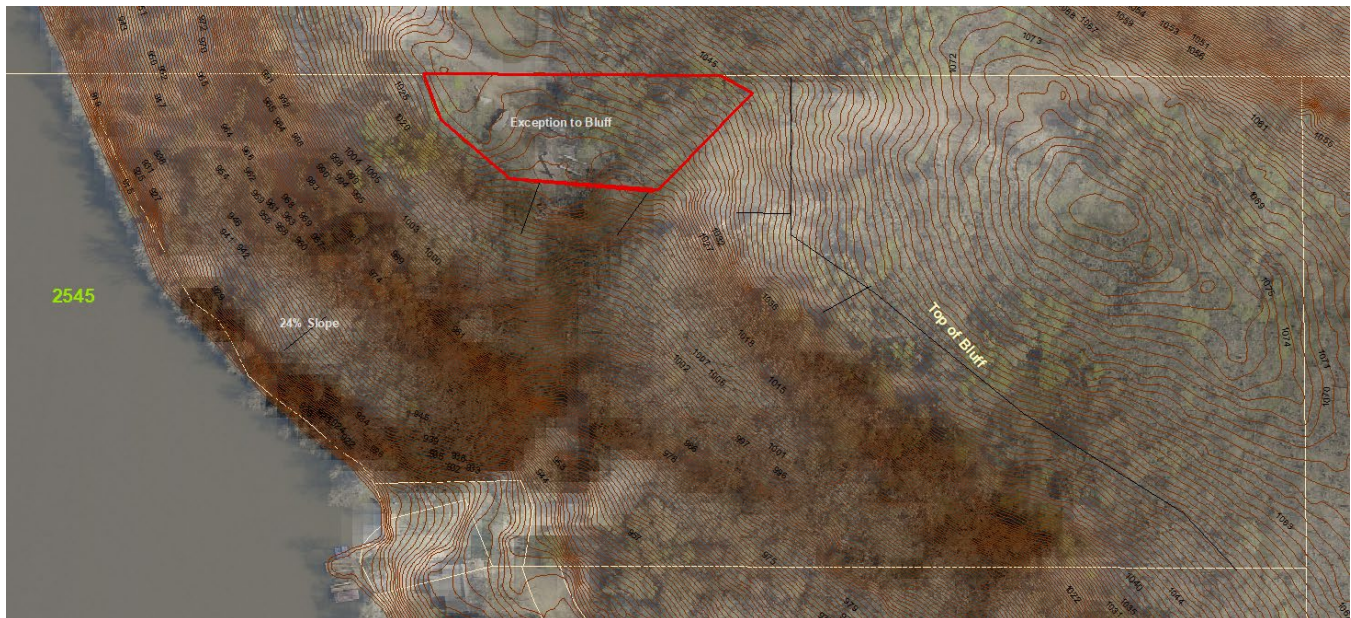
The area that the applicant would like to build is a 24% slope over 50' as shown below.

Figure 3- Slope of property



The majority of the property is bluff impact zone. The only location to create a driveway that would not be a bluff is from the north or east. The applicant has indicated they tried unsuccessfully to work with the adjacent property owners to gain access to the top of the bluff. A dwelling could be built 30 feet from the top of the bluff or in the exception to the bluff area as shown in Figure 4 below.

Figure 4-Whole Property Bluff



Referral Comments

Planning Staff has received comments from Nicole Lehman, Area Hydrologist with MN DNR. DNR recommends denial of the variances as outlined in the attached referral report.

The applicant requests the following:

1. Variance to allow a dwelling to be located within a bluff impact zone.
2. Variance to allow a driveway to be located within a bluff impact zone.
3. Variance to allow a dwelling to be located less than the required 100 feet from the ordinary high-water mark for Lake Zumbro.

ANALYSIS AND FINDINGS

Staff Findings:

According to Section 4.08 Subdivision in the Oronoco Township Zoning Ordinance, a variance from a provision of this zoning ordinance may be granted by the Board of Adjustment in those cases where the zoning ordinance is found to impose unnecessary hardship to a property owner. The Board of Adjustment may not permit as a variance any use that is not permitted for the property in the district where the affected person's land is located.

A. **Criteria for Granting a Variance:** A variance may be granted only when the applicant for the variance establishes that there are practical difficulties in complying with the official control. Economic considerations do not constitute practical difficulties. The Oronoco Board of Adjustment must find evidence that all of the following facts and conditions exist:

1. There are extraordinary conditions or circumstances, such as irregularity, narrowness, or shallowness of the lot or exceptional topographical or physical conditions which are peculiar to the property and do not apply to other lands within the neighborhood or the same class of zoning district;

The property is located on Lake Zumbro. Bluffland is only located within the Shoreland Overlay. There are many properties impacted with blufflands along Lake Zumbro and the Zumbro River. The topography is not unique to this property and there is area on the property that a dwelling could be built while meeting bluff setbacks.

2. The extraordinary conditions or circumstances are due to circumstances unique to the property not created by the landowner;

The extraordinary conditions are created by the landowner in choosing the location for the dwelling. While the applicant stated the area the dwelling would be sited in is plateau, the site does not meet the exception to a bluff. An exception to a bluff must not exceed 18% slope, and the area the dwelling would be sited is 24% slope. A septic system cannot be located on slopes greater than 18%.

3. The variance is necessary to overcome practical difficulties in complying with the zoning ordinance so that the property can be used in a reasonable manner not permitted by the ordinance;

Building a dwelling on the property is reasonable. The property is a lot of record, however there are locations outside of the bluff impact zone in which to build the dwelling. A variance may be required for a future driveway, but the driveway would need to be located in a manner to not create erosion on the Bluff Impact Zone and be safe for emergency vehicles to access the dwelling.

4. The variance will not be materially detrimental to the public welfare or materially injurious to other property in the area, and will not alter the essential character of the locality;

Granting this variance could have adverse impacts to adjacent properties if the bluff erodes. The general character of the bluff impact zone is to be protected with tree coverage, if a dwelling is built in the proposed location vegetative clearing would be required that could further impact the integrity of the slope.

5. The variance is in harmony with the general purpose and intent of this ordinance; and

The request is not in harmony with the general purpose and intent of the ordinance as it is written and interpreted. The property is designated Resource Protection-Potential Suburban. This district is to identify areas that are suitable for future development. However Chapter 5 of the Olmsted County Land Use Plan states that areas with significant natural features should be preserved to minimize adverse impacts.

When deciding a variance to the Shoreland District or the River Corridor District regulations, the following additional factors shall be considered:

1. No variance to the standards of the shoreland district or river corridor district shall have the effect of allowing in any district uses prohibited in that district.

A dwelling with a driveway is a permitted use and the request would not allow a use that is not permitted in the zoning district.

2. No variance in the shoreland district shall permit a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area.

The proposed dwelling site is not impacted by the floodplain. The request would not lower the degree of flood protection.

3. No variance in the shoreland district or river corridor district shall permit standards lower than those required by State law.

The requested variance is to allow a dwelling to be built within the Bluff Impact Zone which is a protected area for bluff integrity. Building in the proposed location could cause erosion issues that could degrade the bluff.

4. In areas where development exists on both sides of a proposed building site, water and road setbacks may be varied to conform to the existing established setbacks.

There is not development on both sides. The OHWL setback variance will only be necessary if the dwelling is permitted in the Bluff Impact Zone.

5. In areas of unusual topography or substantial elevation above the lake level, the water setback may be varied to allow a riparian owner reasonable use and enjoyment of his property.

This could apply to the dwelling if it were permitted in the proposed location.

6. Where homes incorporate a method of sewage disposal other than soil absorption, water setbacks may be reduced by one-third (1/3).

The request is not for a septic system to be located closer to the OHWL at this moment. Sewage treatment systems cannot be located on slopes greater than 18%.

7. For existing developments, the application for variance must clearly demonstrate whether a conforming sewage treatment system is present for the intended use of the property. The variance, if issued, must require reconstruction of a nonconforming sewage treatment system.

The applicant has stated if a sewage treatment system cannot be located near the dwelling due to slope, it can be located on the adjacent property to the south. Planning Staff has estimated the septic would be over 500 feet from the proposed dwelling location.

8. No variance in the shoreland district shall permit a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area

The request is not to allow the dwelling to be located lower than the Regulatory Flood Protection Elevation.

Staff Recommendation

Planning Staff findings support denial of all three variances.

ATTACHMENTS

1. Aerial Map
2. Notification Map
3. Figure 4 Whole Property Bluff
4. Applicant Submittals
5. Referral Comments

Aerial Map of

Oronoco Township Variance #OR2021-003VAR by James Burke. The request is a variance to shoreland standards to allow a dwelling to be built in the bluff impact zone and closer than the required setback of 150' from the ordinary high water mark. The request includes a variance to allow a driveway within the bluff impact zone. The property is located in the NW 1/4 of the NW 1/4 Section 2, Oronoco Township. The property lies south of Wabasha County (Zumbro Township Line) and north of Sunset Bay Ln NE.



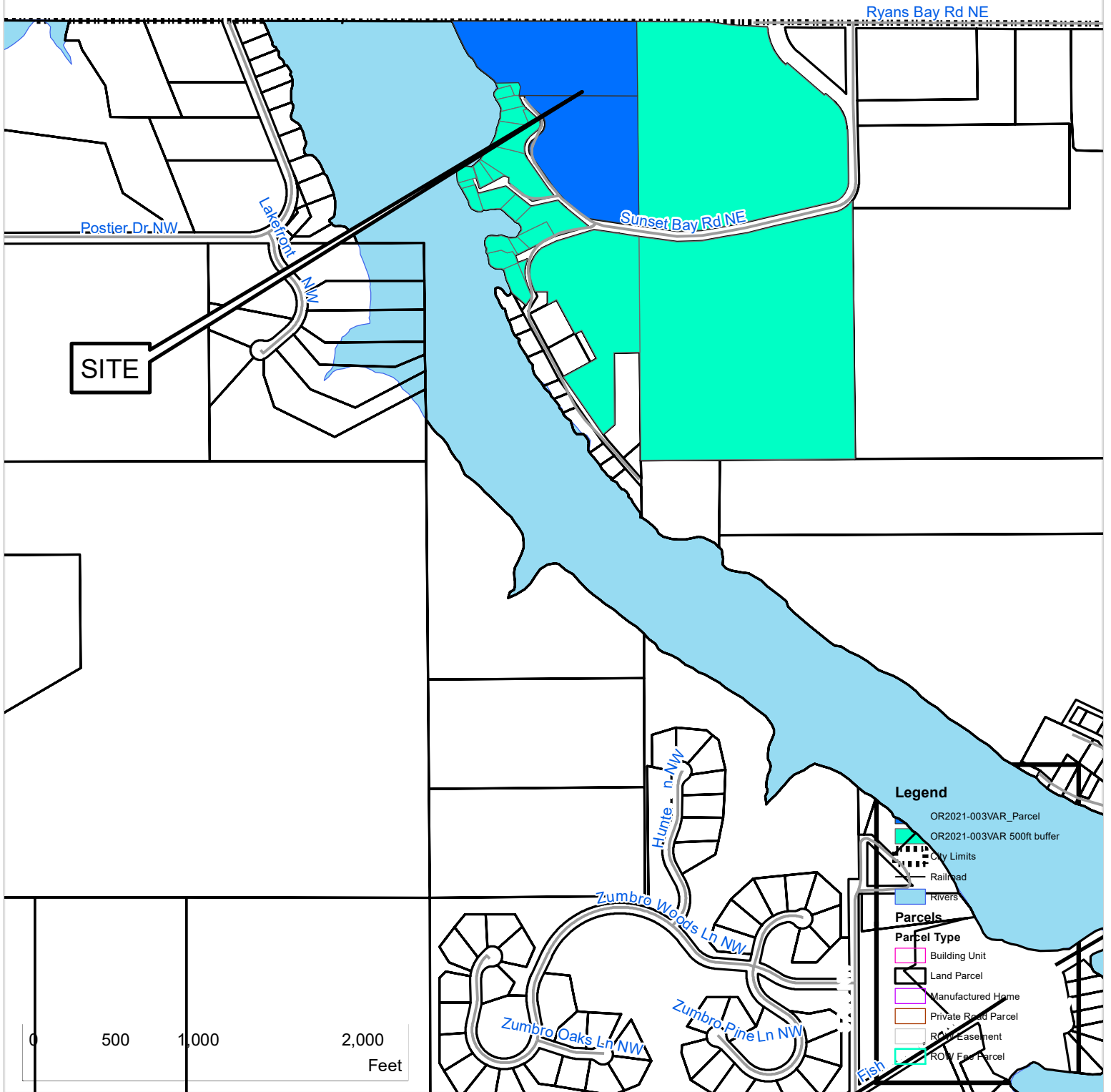
This map prepared by the GIS Division, Olmsted County Planning Department. Olmsted County is not responsible for omissions or errors contained herein. If discrepancies are found within this map, please notify the GIS Division, Olmsted County Planning Department, 2122 Campus Drive SE Rochester MN 55904 (507) 328-7100.

Map Date: 06/01/2021



500 ft. Notification Area of

Oronoco Township Variance #OR2021-003VAR by James Burke. The request is a variance to shoreland standards to allow a dwelling to be built in the bluff impact zone and closer than the required setback of 150' from the ordinary high water mark. The request includes a variance to allow a driveway within the bluff impact zone. The property is located in the NW 1/4 of the NW 1/4 Section 2, Oronoco Township. The property lies south of Wabasha County (Zumbro Township Line) and north of Sunset Bay Ln NE.



This map prepared by the GIS Division, Olmsted County Planning Department. Olmsted County is not responsible for omissions or errors contained herein. If discrepancies are found within this map, please notify the GIS Division, Olmsted County Planning Department, 2122 Campus Drive SE Rochester MN 55904 (507) 328-7100.

Map Date: 06/01/2021

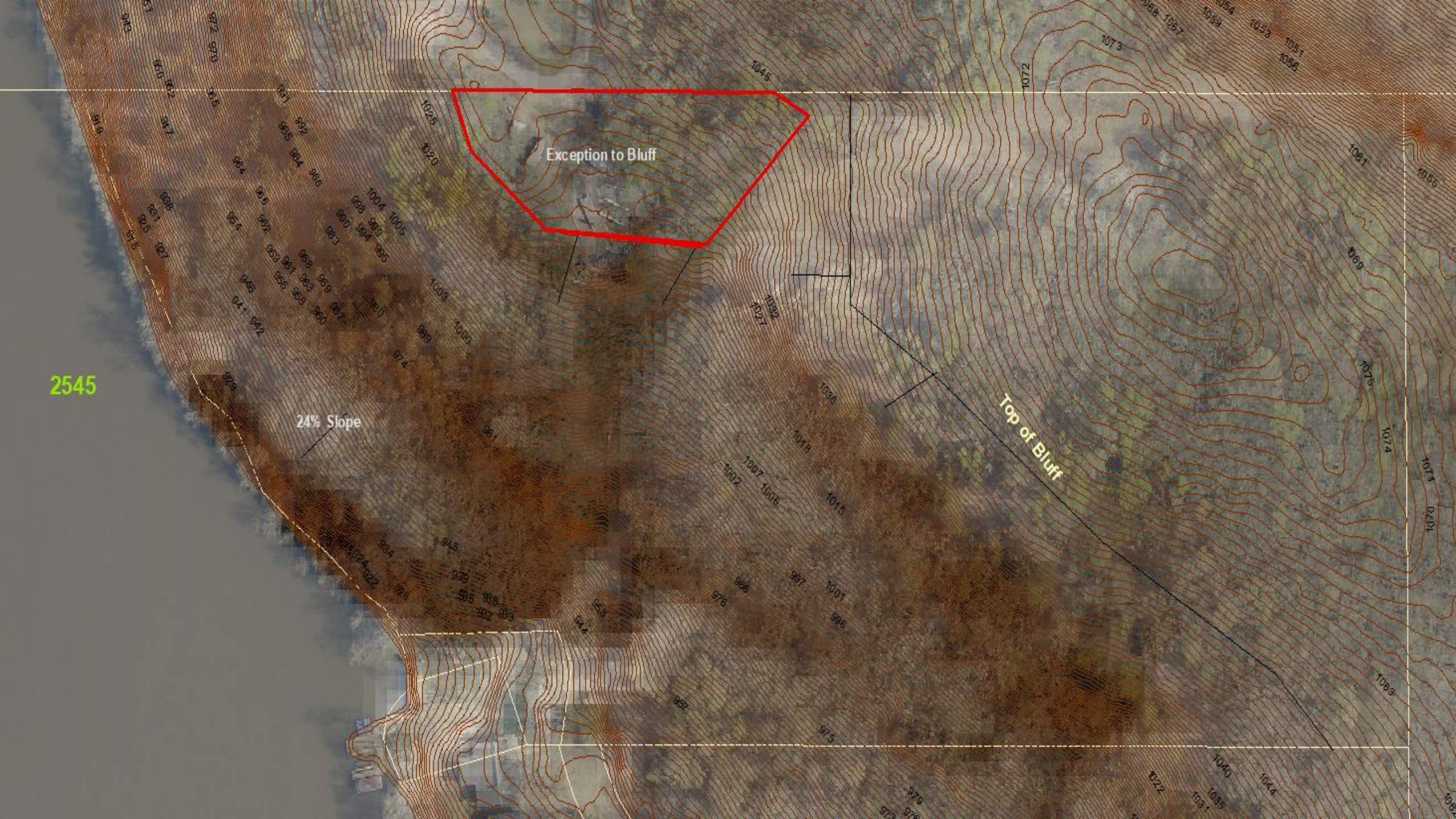


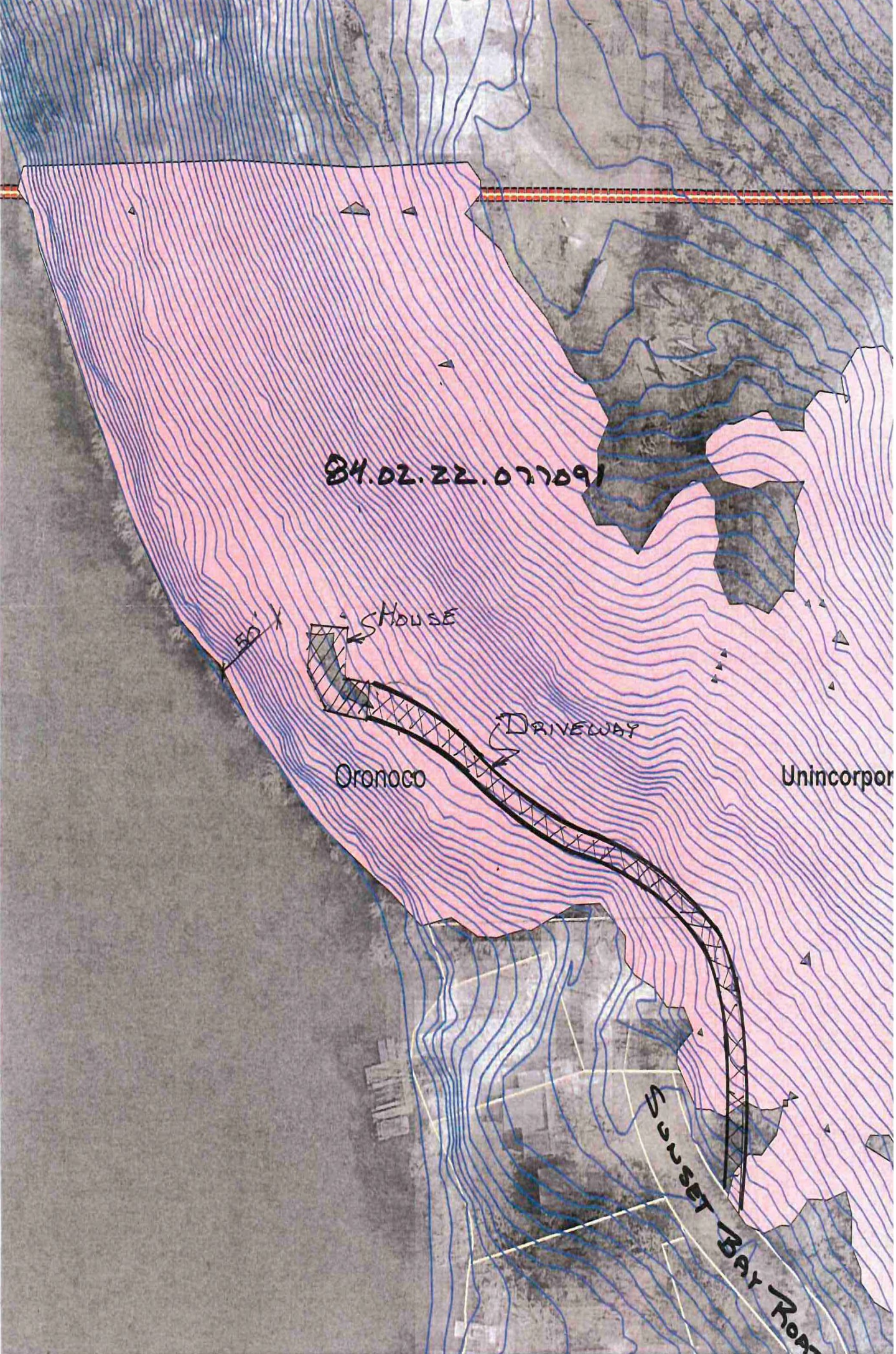
2545

Exception to Bluff

24% Slope

Top of Bluff





84.02.22.077091

HOUSE

DRIVEWAY

Oronoco

Unincorporated

SUNSET BAY ROAD

34
102
1

SCALE 1"=600.0'
100'

Heartwood Homes of Rochester, Inc.
3552 West River Pkwy NW
Rochester, MN 55901

RECEIVED

MAY 24 2021

OLMSTED COUNTY
PLANNING DEPARTMENT

SITE INFORMATION:

Address:
Plat Name:
Block-Lot: 048
PIN: 840222077091
Parcel #: 077091
TWP/Range/Sec: 108 014 2

LICENSED PROFESSIONAL:

Type:
NO LICENSED PROFESSIONAL

APPLICANT:

THE FRESHMAN GROUP
3552 W RIVER PKWY
ROCHESTER, MN 55901

OWNER:

THE FRESHMAN GROUP
3552 W RIVER PKWY
ROCHESTER, MN 55901

Note: This Environmental Review Certificate becomes null and void if work or construction authorized is not commenced within 1 year from date of issuance.

From: [Lehman, Nicole \(DNR\)](#)
To: [Planning Web](#)
Cc: [Gross, Kristi](#); [Petrik, Daniel \(DNR\)](#)
Subject: RE: J, Burke, OR2021-003VAR (DNR Comments)
Date: Thursday, June 3, 2021 4:28:06 PM
Attachments: [image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image002.png](#)
[Referral 05-26-2021 OR2021-003VAR.pdf](#)
[formula for findings 122012.pdf](#)

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Dear Planning Staff,

DNR has reviewed the application for *Oronoco Township Variance #OR2021-003VAR* by James Burke (PID 84.02.22.077091 and 84.02.22.080367) to allow a private driveway to be built on a bluff within the shoreland district and for a residential structure to be built closer than the 100' required structure setback from Lake Zumbro's ordinary high water mark and within a shoreland bluff. The address is at xxx-Sunset Bay Road, Zumbro Falls MN. That part of the Section 2, T108N R14W, Oronoco Township.

Lake Zumbro (DOW#55000400) is a DNR public watercourse with a shoreland classification of recreational lake. Shoreland is the land located within 1,000 ft from the normal high water mark of the lake or the landward extend of the floodplain, whichever is greater. For this property each unsewered lot area must be 2 acres in size and have a width of 150' (riparian/non-riparian). Minimum lot size requirements are 20,000 sq ft (riparian) and 15,000 sq ft (non-riparian). Structure setbacks requirements are 100' unsewered, 75' sewer/sewage treatment system from the ordinary high water level. New structures are also prohibited in bluff impact zones and there is an additional structure setback of 30 ft from the top of bluffs.

The proposed residence and driveway would need 3 variances to be approved by the Oronoco Township Board. The first and second variance would be to construct a driveway and new residential structure in a shoreland bluff. The third variance request is a 50' deviation to the 100' structure setback from the ordinary high water level (OHWL) of Lake Zumbro for the residential structure.

Variances to shoreland standards are an important tool for balancing property rights with the public's right to clean water and healthy habitats. However, variances to shoreland standards should be rare and only for exceptional situations. The variance criteria in Minnesota Statute must be used for determining these exceptional situations. **Note that all five variance criteria must be satisfied to approve a variance.** It is important that there be a good record that

sufficiently documents the decision on all five criteria.

Per Minnesota Statutes, Section 394.27 Subdivision 7, the County may only grant a variance if all five of the following criteria are satisfied:

1. **Would granting the variance be consistent with the comprehensive plan?**

The Oronoco Township Land Use Plan, Goal 1F, Water Resource Area states “Promote plans that clearly account for existing water resource protection mechanisms (e.g., the Shoreland District of the Olmsted County Zoning Ordinance).”

Goal 2, Policy D states “Adopt policies that help to preserve and/or minimize impact to areas such as Natural Drainage areas; Wildlife corridors; Lake Zumbro / Zumbro River; Land Trusts; Natural preserves (prairie grasses, etc.)”.

It appears that this variance would be inconsistent with these goals and policies. The proposal would result in more than a minimum deviation from the shoreland district standards building at the top of sensitive bluff area increasing the risk of erosion and sediment pollution into the Zumbro River.

2. **Would granting the variance be in harmony with the general purposes and intent of the ordinance?**

The bluff standards were designed to protect shorelands from negative impacts caused by developing in bluff areas. Consideration is given to bluff areas because of their vulnerability to erosion that cause water quality impacts and destabilization of hillsides. The bluff impact zone is considered to be the area most susceptible to degradation and even small amounts of development can dramatically affect a previously stable slope. In addition, development within the bluff impact zone destroys critical habitat and impacts to the scenic value and visual quality of users of the water resource and surrounding characteristic bluff areas of the Zumbro River. Allowing encroachment to the top of bluff setback undermines the purpose of the ordinance intent.

In addition, The Ordinary High Water Level (OHWL) is a dynamic area of high biodiversity and ecological function. Setbacks from the OHWL are established in statewide rules and administered through local ordinances to ensure adequate spacing between structures and public waters to protect against runoff and pollution, and to preserve the natural shoreline. Allowing encroachment to the OHWL setback undermines the purpose of the ordinance intent.

3. **Are there unique circumstances to the property not created by the landowner?**

Steep slopes, floodplains, riparian vegetation, and erodible soils are common, and not

usually unique, in shoreland areas. Note design preference for placement does not create a unique circumstance to the property. The 10-ac parcel offers ample space to consider alternative designs that would significantly reduce the number of variance requests (fewer than 3). I'd like to point out the entire home and driveway would be located within the bluff and tree clearing would further destabilize the bluff. The applicant has failed to demonstrate that no feasible alternatives exist that would minimize the variance request and it appears this variance request is being driven by a design preference alone to capture the scenic views of the river valley without offering realistic alternatives.

4. **Would granting the variance allow the essential character of the locality to stay the same?**

The landowner is requesting a 50' deviation to the structure setback to place the new home entirely within the shoreland bluff. Land disturbance in this sensitive area will alter the hydrology, soil stability, vegetation, aesthetics, and landscape features on the site and disturb soil and vegetation. In a highly sensitive area this will increase the risk for long-term alteration to the stream's hydrology and subsequent potential for erosion into public waters.

5. **Does the property owner propose to use the property in a reasonable manner not permitted by the ordinance?**

Variance requests should only be considered reasonable when no other alternatives exist. The applicant has not exhausted all feasible alternatives, nor shown there are no reasonable alternatives that would allow a reasonable use of the property that outweighs design preference.

It appears the variance requests are being driven by design preference without regard to shoreland setbacks. **For that reason the DNR recommends denial of the variance.** Attached I have provided the Shoreland and Floodplain Formula for Variance Findings, which is part of the DNR's Variance Guidance Series for your convenience. Please consider using that document during the Board of Adjustment's review of this proposal.

Please provide DNR notification of the Board's final decision within 10 days. If the variance is approved please include the summary of the public record/testimony and the findings of facts and conclusions which supported the issuance of these variances.

Thank you for the opportunity to comment.

Nicole E. Lehman

Area Hydrologist | Ecological and Water Resources Division

Minnesota Department of Natural Resources

2118 Campus Dr. SE, Suite 100

Rochester, Minnesota 55904

Phone: 507-206-2854

Email: nicole.lehman@state.mn.us

mndnr.gov



From: Davis Beth <davis.beth@CO.OLMSTED.MN.US>

Sent: Thursday, May 27, 2021 10:11 AM

To: Amy Storm - Post Office <amy.j.storm@usps.gov>; BDWolf@minnesotaenergyresources.com; Bennett Scott <bennett.scott@CO.OLMSTED.MN.US>; boats500@aol.com; bjenkinson@rochestermn.gov; Bromberg Mike <bromberg.mike@CO.OLMSTED.MN.US>; Brady Caitlin <brady.caitlin@co.olmsted.mn.us>; Champion Dawn <champion.dawn@CO.OLMSTED.MN.US>; Cody Black - Peoples Coop (cblack@peoplesrec.com) <cblack@peoplesrec.com>; PW Service <pwservice@CO.OLMSTED.MN.US>; Delano Dan <delano.dan@CO.OLMSTED.MN.US>; Jones Ken <kjones@rochestermn.gov>; Dombrovski, Dillon <ddombrovski@rochestermn.gov>; Gary Fitterer (gfitterer@peoplesrec.com) <gfitterer@peoplesrec.com>; gkellen@peoplesrec.com; Heather Peterson <hpeterson@rochestermn.gov>; Inspections <Inspections@CO.OLMSTED.MN.US>; jekappers@rochester.k12.mn.us; Jim Mosser <jjmosser@charter.net>; John Sonnek - Pine Island Telephone Company <jsonnek@bevcomm.com>; Watkins, Justin (MPCA) <justin.watkins@state.mn.us>; Khan Muhammad <khan.muhammad@CO.OLMSTED.MN.US>; Krupski, Mark (krupski.mark@co.olmsted.mn.us) <krupski.mark@co.olmsted.mn.us>; Lary Allen <lallen@bevcomm.com>; Law Bryan <law.bryan@co.olmsted.mn.us>; Mark Baker <mbaker@rochestermn.gov>; Larsen Martin <larsen.martin@CO.OLMSTED.MN.US>; McCollister David <mccollister.david@CO.OLMSTED.MN.US>; Melissa Babbe <melissa.babbe@lumen.com>; Mike Melius <melius.michael@CO.OLMSTED.MN.US>; Michael Bjoraker <mbjoraker@rochestermn.gov>; Michael Nigbur <mnigbur@rochestermn.gov>; Lehman, Nicole (DNR) <nicole.lehman@state.mn.us>; Paul O'Sullivan (posullivan@minnesotaenergyresources.com) <posullivan@minnesotaenergyresources.com>; Reiter Charlie <reiter.charlie@CO.OLMSTED.MN.US>; Ron Muller <ron.muller@chartercom.com>; Russell Halgerson <rhalgerson@peoplesrec.com>; Dick, Sally (DNR) <sally.dick@state.mn.us>; Langer Skip <Langer.skip@CO.OLMSTED.MN.US>; Steve Hauge <steve.hauge@centurylink.com>; Tom Livingston <TDLivingston@minnesotaenergyresources.com>; Hill Tony <hill.tony@CO.OLMSTED.MN.US>; Turk Jon <jturk@rochestermn.gov>; Pierce, Anna (DOT) <Anna.M.Pierce@state.mn.us>; Lukes, Heather A (DOT) <heather.lukes@state.mn.us>; Schnell, Tracy (DOT) <tracy.schnell@state.mn.us>; Charlie Lacy, Supervisor <sugarchuck@yahoo.com>; Kim Stanton <kims4799@gmail.com>; Lucy Shonyo, Clerk <lucyoronoco@gmail.com>; Oronoco TWP - Ken Mergen <kenmergen007@gmail.com>; Tammy Matzke, Supervisor <matzke.tam17@gmail.com>

Subject: Request for Comments Referral 05-26-2021 OR2021-003VAR.pdf



Shoreland and Floodplain Variance Guidance Series

Formula for Variance Findings

This is part of a series of documents to help local governments make good variance decisions. The complete series may be found at http://www.dnr.state.mn.us/waters/watermamt_section/shoreland/variances.html.

#1: Is the request *in harmony with the general purposes and intent of the ordinance*?

The Shoreland Ordinance states _____
(state ordinance requirement), the purpose of which is to _____

_____ (explain what the ordinance requirement is intended to prevent or protect; check SONAR if not sure).

The proposed variance is for: _____
_____ (explain proposal and potential effects).

This variance **is/is not** in harmony with the purpose and intent of the Shoreland Ordinance **because:** _____

_____ (explain how the proposal is in harmony with or undermines the purpose of the ordinance).

#2: Would granting the variance be *consistent with the comprehensive plan*?

The Comprehensive Plan contains **the following policies and goals regarding this request:** _____

_____ (list applicable policies, goals, and maps, including citations).

Granting the variance **is/is not** consistent with the comprehensive plan **because:** _____

_____ (explain how; relate details of the request to specific policies, goals, and maps).

#3: Are there *unique circumstances to the property not created by the landowner*?

There **are/are no** circumstances unique to the property that would prevent compliance with the Shoreland Ordinance **because:** _____

(describe any physical characteristics of the land that are unique to this property that prevent compliance with the ordinance requirement, and whether the applicant has demonstrated that no other feasible alternative exists that would comply with the ordinance; explain what makes this property different from other shoreland properties to justify why this applicant should be able to deviate from the ordinance when others must comply - if there are unique circumstances, describe whether they were created by some action of property owner).



Environmental Review Certificate

Olmsted County Planning Department
Inspections Division
2122 Campus Dr SE, Suite 100
Rochester MN 55904-4744
Ph: (507) 328-7100 * Fax: (507) 328-7958
Email: planningweb@co.olmsted.mn.us

Permit Type: Environmental Review
Township: Orion TWP

Permit Number: O21-0027EVR
Date Issued: 05/24/2021

WORK AUTHORIZED:

Well and Septic applications will be required to be applied for with the Building permit application. There are No known wells on the parcel at this time.

SITE INFORMATION:

Address:
Plat Name: KURTH'S SUB
Block-Lot: 048
PIN: 840222077091
Parcel #: 077091
TWP/Range/Sec: 108 014 2

LICENSED PROFESSIONAL:

Type:
NO LICENSED PROFESSIONAL

APPLICANT:

THE FRESHMAN GROUP
3552 W RIVER PKWY
ROCHESTER, MN 55901

OWNER:

THE FRESHMAN GROUP
3552 W RIVER PKWY
ROCHESTER, MN 55901

Note: This Environmental Review Certificate becomes null and void if work or construction authorized is not commenced within 1 year from date of issuance.

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