

Lot 65 & 66 of 17th Addition to BPE Variance Application

State the nature of your request detail. What are you proposing for your property?

The purpose of the variation request is to establish a record based on the current City ordinance for an existing 40 year old structure where no additional requests to expand beyond existing conditions is being requested but there exist various deviations. Said deviations being presented include: building setbacks from road right of way, OHW, side yard, road right of way, lot size requirement and impervious coverage.

The variations if granted will allow for the continued repair and renovation of the existing structure, and wooden decks on both the upper and lower level of the duplex. Due to Breezy Point International (BPI) being the new owner. New facts have shown up on an updated survey of the property and it was found that the previous variance actions and distances that were granted in 1979 need to be modified to match the existing conditions of the structure as it was previously constructed as well as changes in the current City Ordinances reflective of this request. Property is currently zoned R-2 sewerred, with a duplex dwelling and subdivision approved with CUP in 1979. It is therefore the belief of the applicant that this variance process gives the applicant and City the opportunity to correct the record of all variations of structure setbacks and performance standards for future land owners and generations.

Variance requests:

1. Road right-of-way building setback: 8.4 feet (original V = 18 feet) – where 30 feet is required.
2. Building setback to OHW structure: 22 feet (original V = 32 feet) – where 50 feet is required.
3. Building setback to OHW first floor deck: 15 feet (original V not addressed) – where 50 feet is required.
4. Building setback to OHW second floor deck: 16 feet (original V not addressed) – where 50 feet is required.
5. Lot size requirement (R-2, Duplex lot): 6,170 square feet (original V = 8,000 square feet) – where 30,000 square feet is required.
6. Sideyard building setback: 6.5 feet to fireplace– where 10 feet is required.
7. Sideyard building setback: 8.6 feet to structure – where 10 feet is required.
8. Impervious coverage Lot 65 & 66 combined: 47.9% - where 25% is required.
9. Deck and principal structure located in shore impact Zone (SIZ – 25 feet from OHW) – where a permit is required.

As part of the request the applicant has submitted an updated Certificate of Survey performed by Stonemark dated 10/04/2019 and a Time Line Analysis document and exhibits of pertinent information relating to the previous applications, permits, sales, etc...on the subject property attached hereto. The Applicant respectfully requests the Planning Commission and Board of Adjustment to favorably consider this variation request.

The following questions must be answered.

1. What changes are you proposing to make to this property?

Building: no material changes are being proposed to the building foot print, primary structure or decks. The 5.8 foot X 9.4 foot (54.52 square foot) storage shed on the first level deck will be removed and replaced with a privacy wall between units.

Landscaping: Landscaping was addressed by the applicant in the spring of 2019 with the addition of plantings, trees and a light added to the street side of the building. At this time the shoreline was also rock rip-rapped and pea rock was added between the existing decks and shoreline to stabilize and protect said shoreline and reduce runoff directly into the lake hence adding as a protective environmental barrier to Pelican Lake.

Parking and signs: parking and signage will not be changed.

2. What are the unique circumstances of the property (parcel size, shape, topography, or other characteristics not created by the land owner) that make strict interpretation of the Ordinance impractical?

- a. The duplex and decks were constructed together in 1980 following a granted variance and building permit under different ownership at that time. I suspect at that time the City looked at the irregular shape of the lot configuration and topography as findings to grant the deviations at that time.
- b. The parcel was platted in 1964 as lots 66 & 65 in the plat of Seventeenth Addition to Breezy Point Estates. This was prior to any City shoreland Ordinance being in effect. Whereas Lot 65 and 66 were irregularly shaped with a significant angle point occurring at the road right of way. Since the platting there has also been a significant change in the shoreline (OHW) of Pelican Lake from a lot size loss of 20 to 40 feet. The OHW has also changed negatively from the time of the original variances granted in 1979 by around 10 feet. This is illustrated on the Certificate of Survey. The existing traveled roadway is also not centered in the road right of way. These factors have impacted the lot size, and building setbacks from OHW as well as the SIZ zone.
- c. The original construction of the duplex and decks was commenced and completed together on this property prior to the 1989 MN DNR Shoreland Rules Revisions which were subsequently adopted by the City of Breezy Point in around 1991, whereas numerous new lakeshore standards were implemented due to the increasing expansion and use of the lakes in Minnesota thereby creating; lake classifications (GD, RD, NE), the 1000 foot shoreland district, bluffs, shore impact zones, impervious coverage requirements, performance standards for addressing runoff as well as many more.
- d. The current variations and difficulty that are requested were created by past owners of the property and not by the applicant.

3. How is granting the variance consistent with the intent of the City of Breezy Point Zoning Ordinance?

- a. The variance and deviations requested are from previous acts of nature (erosion of Pelican Lake) and from an existing condition that was created 4 decades earlier by previous property owners, not the current owner Breezy Point International. Whereas the variances being sought have not been created by any person or corporation presently having an interest in the property. Breezy Point International recently became the owner of record in February 2012 of lot 66 (South portion) and April 2019 of lot 65 (North portion).
- b. Decks on lakeshore oriented property in the City are consistent with normal design and construction and fit the neighborhood building construction.
- c. The City through its records has recognized the existing building and decks through granting of building permits and renovations thus allowing the structure to be used in its current state. (See time line analysis).
- d. The official zoning for this property is currently Medium Density Residential (R-2) sewer, where this building was originally approved on a zoning classification of General Residential through a Conditional Use Permit in 1979 on a city sewer parcel, for a "2 family house".
- e. The use and configuration of the existing building including the building footprint, decks, parking and landscaping are consistent with the surrounding neighborhood.
- f. Municipal sanitary sewer currently serves the property and is available.

4. How will reasonable use of the property be deprived if the variance is not granted?

- a. It would be unreasonable not to allow the existing decks to remain, which were constructed by a cantilevered method out from the primary structure. Additionally the interior floor plans are configured with sliding glass doors for entry and exit onto said decks. These decks provide reasonable ingress and egress from the building for health, safety and welfare of the occupants in the event of a life threatening event where other accesses cannot be used. It is a reasonable use of the dwellings to have decks which fit with the use of most lakeshore oriented property in the City and is consistent with the neighborhood. The dwellings without the decks would not allow the occupants the opportunity to recreate, and enjoy the natural environment of Pelican Lake consistent with other lakeshore owners.

5. What other options, either conforming or non-conforming, have been considered and why were those options not chosen?

- a. No other options were considered for the main existing building structure.
- b. No other options were considered for the upper decks due to their size and configuration (5.8 feet X 15.5 feet, 90 square feet each). A different railing system was considered however due to the safety and liability of the occupants the standard post and rail system that currently exists was deemed to be the best and safest alternative. The rail system is also one that matches other properties in the neighborhood.
- c. Pervious material was considered for the lower decking. However due to the elevation from the first floor to the ground being greater than 2 feet it would have required significant dirt moving and additional landscaping and was not deemed a practical alternative.

- 6. Describe the impact on the use and enjoyment of other property in the immediate vicinity. If there is no impact, explain why.**
- a. There will be no impact on the use and enjoyment of other property in the immediate vicinity due the facts previously presented that this existing use and building including the building footprint, decks, parking and landscaping are consistent with what has been in place for the previous 4 decades. It is important to note as is the case with this application that nothing is being materially changed to the existing structure other than the removal of the shed on the lower level.
- 7. Describe the character of the area and the existing patterns and uses of development in the area. How is this proposal consistent with those patterns?**
- a. The existing development patterns and use of neighboring properties are similar zoning and land use to the North, South and West with Pelican Lake a General Development Lake located on the East.
- b. The existing structure both as to size, building style, decks, parking and landscaping are nearly identical to the nearest properties to the north on the east side of Shoreview lane. Other surrounding properties in the area are residential or rental in nature. Once again it is our opinion that the development and use pattern is consistent with the neighborhood that has been in development and operation in this vicinity over the last 4 decades.
- 8. Discuss any environmental limitations of the site or the area that limit building in other areas.**
- a. While this discussion is really not relative due to the nature of the request and the existing structure and improvements discussed previously. The environmental limitations would be the proximity of Pelican Lake on the East and the Road right of way on the west. The managing of stormwater runoff which has predominately been directed to the sides and road side of the structure and placement of the rock rip-rap and pea rock for an environment buffer between the structure and Pelican Lake.
- 9. Please include any other comments pertinent to this request.**
- a. It is the belief of the applicant that this variance process gives the applicant and City an opportunity to correct the record of all variations of structure setbacks and performance standards for future land owners and generations.
- b. The applicant feels the process of addressing the variations; while necessary to clear the record, should not have been solely their burden to bear due to the past faults of others including the previous land owners and City planner and administrations. Changes in ordinances setbacks, lot size and development standards are always occurring and the effect of 40 years has impacted this request significantly. The applicant has spent time and effort to secure an updated Certificate of Survey, and has delayed construction on the decks. Therefore the applicant would respectfully request any fees paid as part of this request be waved and refunded.

10. Please state the practical difficulty that exists with this property.

- a. The current variations and practical difficulty were created in part by the actions of past owners of the property in 1979 (4 decades) and not by the applicant. The existing structure and deck were constructed together in 1980 and have been in place and maintained for 40 years and have not been materially changed or altered.
- b. The current variations and practical difficulty were created in part by the lack of actions from past City administrations in which they should have acted on known deviations on this property. One city record (exhibit C) indicates the existence of the deck and shed in 1995 with no action taken. One city record (exhibit D-1 & D-2) discussed the specific deck deviation between city staff and city attorney in 2002 with no action taken.
- c. The City ordinances and shoreland standards have changed significantly over the last 40 years since the existing structure and decks were constructed on the subject property. These changes require several additional deviations which were not a factor and not required at the time of the original 1979 variation and construction.
- d. The topography and natural conditions of the shoreline/OHW has changed from the time of the original plat in 1964 and since the original CUP and variance was granted in 1979. These shoreland changes impact the building setback distance from the OHW of Pelican Lake to the existing structure and decks and size of the property.
- e. The platted lots are uniquely shaped with a significant angle point occurring at the road right of way and together with the change of the shoreline/OHW interfere with the buildable area of the lots.

29700/29706 Shoreview Lane - Time Line Analysis

Lots 66 & 65 of 17th Addition to Breezy Point Estates - PID #10210801 / PID #10210802

Breezy Point Resort Rental Units - #461/#460

<u>Dates</u>		<u>Fees Paid to City</u>
1964	Plat of Seventeenth Addition to Breezy Point Estates, lots 66 & 65 created	
10/13/1979	Variance Permit Application Filed - <u>Exhibit A-1 & A-2</u> Note: Herb Mason, Don Hagen, and Al Fazendin - Not WBI	\$ 1,903.20
10/15/1979	CUP Permit and Variance application is Published in Echo - <u>Exhibit B</u>	
11/15/1979	Certificate of Survey for Fazendin Homes on subject lots - <u>Exhibit C</u>	
11/27/1979	Planning Commission Approves CUP Permit & Variances	
12/4/1979	Note: Council okayed Condtl. Use Permits as needed	
1/22/1980	Letter received from Etta Steffen Note: All fees paid, All necessary variances granted	\$ (20.00)
12/20/1983	Receipt from City to S Granley Note: Penalty Fee for Variance request that was wrong	\$ 150.00
1/3/1995	Note: from Tim Polipnick on original Plat Doc. - <u>Exhibit C</u> Deck and Shed included in original permit on all 3 adjoining properties	
6/11/2002	Note: John Erickson City attorney and Vicki Willer regarding non-conforming decks <u>Exhibit D-1 & D-2</u> City attorney and City staff Willer suggest to apply for variance to "legalize the property".	
2/17/2012	Breezy Point International, BPI, purchases -29700 - Rental Unit #461 - from Original Developer Don Hagen	
4/20/2012	Building Permit Application - for Siding/Roofing general repair Approved by Scott Sadusky	\$ 115.38
3/20/2015	Building Permit Application - for Window Replacement #29706 Approved by Scott Sadusky	\$ 40.00

dated 12/12/2019

page 1 of 2

4/10/2015	Building Permit Application - for Replacing Deck railing & Spindles #29706 - Approved by Scott Sadusky	\$ 40.00
4/24/2019	Breezy Point International, BPI, purchases -29706 - Rental Unit #460 from Wichenheiser/Wyman	
5/1/2019	Stabilize shoreline and beach area with rock rip-rap and pea rock and other lake front landscaping for stablizing stormwater runoff	
10/4/2019	Certificate of Survey by Stonemark surveying on subject property showing exisiting conditions	
11/8/2019	Building Permit Application - for Gas Fireplace #460, Move A/C #460, Kitchen Remodel and Bypass Doors both sides, replace #460 patio door - Approved by Scott Sadusky	\$ 149.75
<u>Total fees paid to the City on permitting from 1979 - present</u>		\$2,378.33

dated 12/12/2019

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Dzē 10-13-79

A-1

Permit Number 514

CITY OF BREEZY POINT PERMIT APPLICATION 1-22-80
for

() Planned Unit Development () Conditional Use (x) Deviation
() Special Permitted Use () Zoning Permit () Variance

Applicant's Name Herb Mason, Don Hagen, Al Fazendin

Address Box 427, Hopkins, MN 55343

Phone 612-933-7533

Zone Classification of Property Residential

Legal Description Lots 65 and 66, 17th Addition to Breezy Point Estates

Lake Name Pelican

Classification

Lake Frontage 100'

Lot Size 90 x 100

Sq. Ft. 9,000

Setback-Lake or Front 35'

Sides 15'

Rear 30' - 18' - 42'

Distance from septic area to well none (75ft. min.) Depth of (well 80')

Size of septic tank none (1200 gal. min.) or holding tank

holding tank must be 3600 gal. min.

Type of ext. covering asphalt Roof cedar side walls \$70,000.00 est. cost

On back of this application draw lot and building placement to scale showing well and septic area.

Proposed land use or structure Residential - 2 FAMILY

Deviation or Conditional Use requested Front and Rear Setbacks

Applicant's Signature

Permit

LOT TO RECEIVE 18" FILL

A permit to construct a building in accordance with the application as shown above is hereby (granted) (denied) subject to the following:

1. Construction of exterior must be completed within six months of starting date.
2. No occupancy will be permitted until water and sewer are installed.
3. Non compliance of above after expitiation subject to fine not to exceed \$100.00 per day.

Deviation with current zoning regulations have been noted and are approved as follows:

increased granted w/ variance on area
public hearing held 11-27-79. (can start building)

Chairman, Planning Commission

City Clerk

Thomas R. Ynet 11-27-79

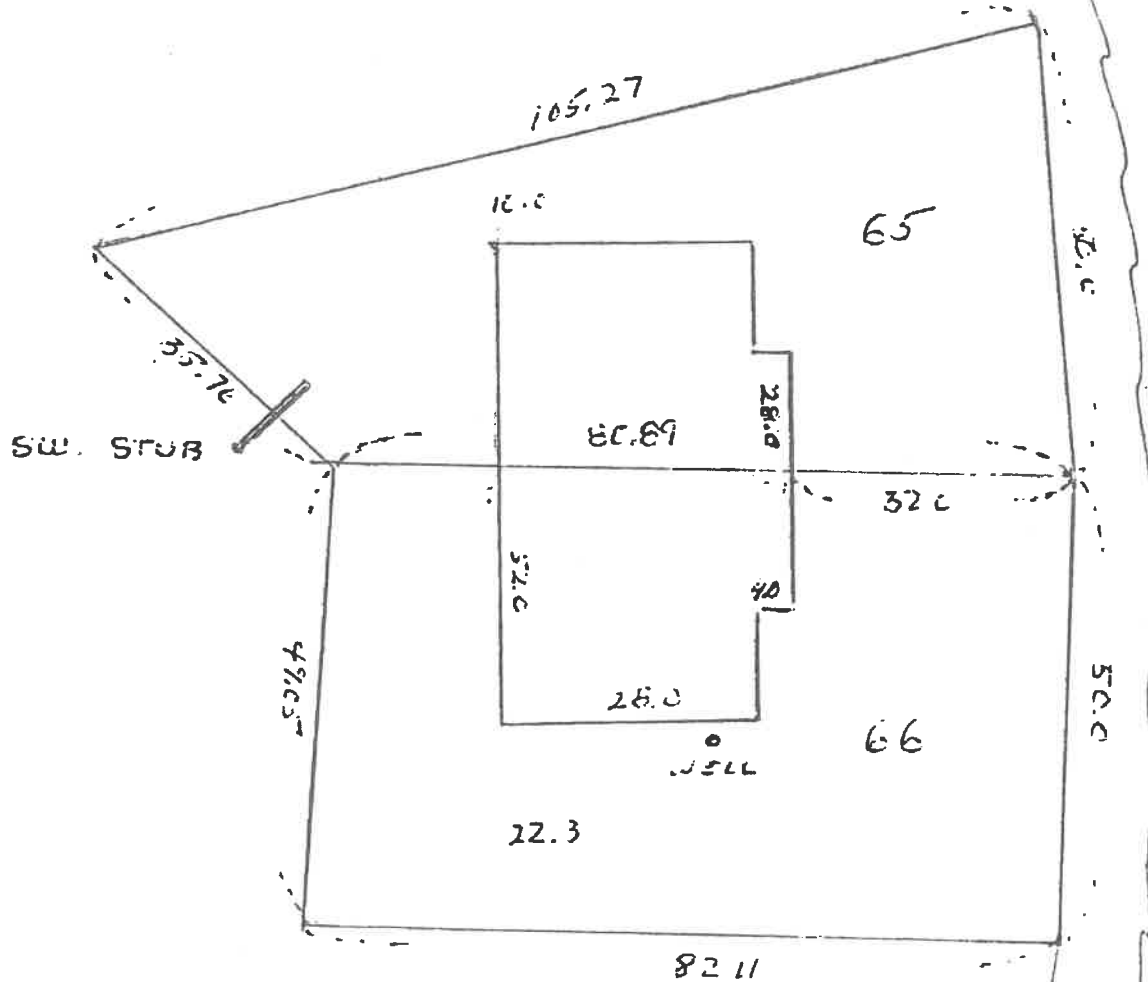
COMPLIANCE

The day of 19, I inspected the building located on the above described property and find that the conditions of the permit have-not been fulfilled.

Compliance Inspector

A-2

LOTS 65 and 66, 17th ADDITION TO BREEZY POINT ESTATES,
CROW WING COUNTY



EXISTING HOUSE APPROXIMATELY
15' FROM LAKE

B

NOTICE OF HEARING

Notice of hearing on Variance Application.
From the requirements of the Breezy Point Village Zoning Ordinance.

TO WHOM IT MAY CONCERN:

Herb Mason, Don Hagen and Al Fazendin
Box 427 Hopkins, MN 55343 has made
Bd of Adjustment Variance
application to the Breezy Point Village Planning Commission for a Deviation
from the requirements of the Breezy Point Zoning Ordinance. The Planning
Commission will assemble for its hearings at 7:00 P.M., Tuesday, Oct 20,
1979 at the City Village Hall, Breezy Point, Minnesota. Nov. 27

The property concerned in the application is legally described as:
Lot 65 and 66 17 1/2 Acres Breezy Point

The purpose of the application is to allow Variance from:

1) The Ordinance minimum required setback of 15 ft. on a lake
Development Lake (Pelican)

2) The Ordinance minimum required lot width
ONLY Lake requesting ft.

3) The Ordinance minimum required lot area
on Pelican Lake, requesting 8000 sq.

4) The Ordinance minimum required sideyard
ft.

5) The Ordinance minimum required setback:
requesting 18 ft.

6) The Ordinance minimum required a cor
requesting 18" fill for the
a 2 family house

on the above described property zoned General Residential.

Dated 10-15, 1979

Breezy Point Village Planning Commission
BY: Tom Ebnel Chairman.

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Notice of hearing on Variance Application
From the requirements of the Breezy Point
Zoning Ordinance.

TO WHOM IT MAY CONCERN:

Herb Mason, Don Hagen and Al Fazendin, Box 427, Hopkins, Mn. 55343 has made application to the Breezy Point Board of Adjustment for a Variance from the requirements of the Breezy Point Zoning Ordinance. The Board will assemble for its hearings at 7:00 P.M., Tuesday, Nov. 27, 1979 at the City Hall, Breezy Point, Minnesota.

The property concerned in the application is legally described as: Lot 65 and 66, 17 1/2 Acres Addition, Breezy Point Estates.

The purpose of the application is to allow Variance from: The Ordinance minimum required lot area of 20,000 sq. ft. on city sewer on Pelican Lake, requesting about 8,000 sq. ft. The Ordinance requires a conditional use permit for a 2 family house on the above described property zoned General Residential.

Dated 10/15/79
Breezy Point Planning Commission
By: Tom Ebnel, Chairman

The Country Echo
November 15, 1979

city sewer

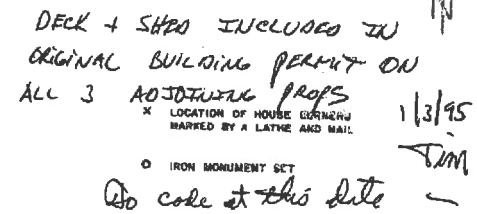
requesting

35 ft.

PERMIT for fill

the building

Myron L. Landecker
Minn. Rep. No. 752



LANDECKER & ASSOCIATES, INC. PEQUOT LAKES, MINNESOTA 56472 (218) 562-4945		DESIGNED BY _____ CHECKED BY _____ REVIEW OF _____		Fazendin Homes Box 427 Hopkins, Minnesota 55603
SCALE _____ NOTES: 1 " = 20' _____ WEST _____		DATE 11/15/79		

D-2

6-11-03
vw

In light of an e-mail received from the City Attorney, the actual existence of the structure (the decks) without permit or variance is the issue and the "maintenance" of it does not apply because it is not a lawful structure.

Recommendation: Apply for a variance for a deck (requires 50' setback) or a patio (requires 25' setback). This, if approved, would legalize the property and allow the issuance of new permits.

I looked over the files of the other two similar properties. Their decks were included from the beginning so were allowed to maintain them. Houses met the 50' setback. Decks were under the old 30" patio rule.

Original File: Variances were granted for 32' from the OHW and 18' from the RROW
No decks, patios or sheds were addressed. They may have been considered patios.

Certificate of survey showing house at 27' from OHW and 13' from RROW.
No decks, patios or sheds were shown. (Same Year)
(Lot is 10' shorter than was on scale drawing for variance application.

Madonna stated when she talked to the Mayor the City's liability for not allowing them to immediately replace the deck came up. The concern is renters over the Summer.

If the owners deem the risk is high that someone is going to get hurt, perhaps the deck could be removed now or the property not be rented out. That would be the decision of the owner.

Vicki Willer

From: "John Erickson" <John@EricksonPearsonLaw.com>
To: <vicki@cityofbreezypoint.com>
Sent: Saturday, May 25, 2002 4:54 PM
Subject: Non-conforming Deck on Permitted House: Proposed Repair to Deck

Dear Vicki,

I have your voice mail concerning the above. It was a bit sketchy and in addition, I've not looked at the Ordinance in answering your question, which seems to be whether "repair" to a non-conforming deck attached to a "permitted" house is lawful under the Ordinance.

Perhaps it is temporizing on my part, but my initial thought is that if the "repair" is "routine," relatively "nominal" and not "substantially rebuilding" of the deck, then the focus should not be on the repair itself, but on the fact of existence of the non-conforming deck.

The other question which comes to mind is whether it is a "deck," as the ordinance uses the term, or whether it is not a "deck" and, either way, what the consequence of such definition is under the ordinance. There is a tendency to think of a "deck" as a structure which, if not permitted through a variance order, would cause the house to be in non-conformity to (I gather) the lakeside setback. This would be true if the deck was created many years ago or yesterday.

There may be other facts which might alter my thinking on this, but those are what come to mind now.

John
5/25/2

05/15/2002