

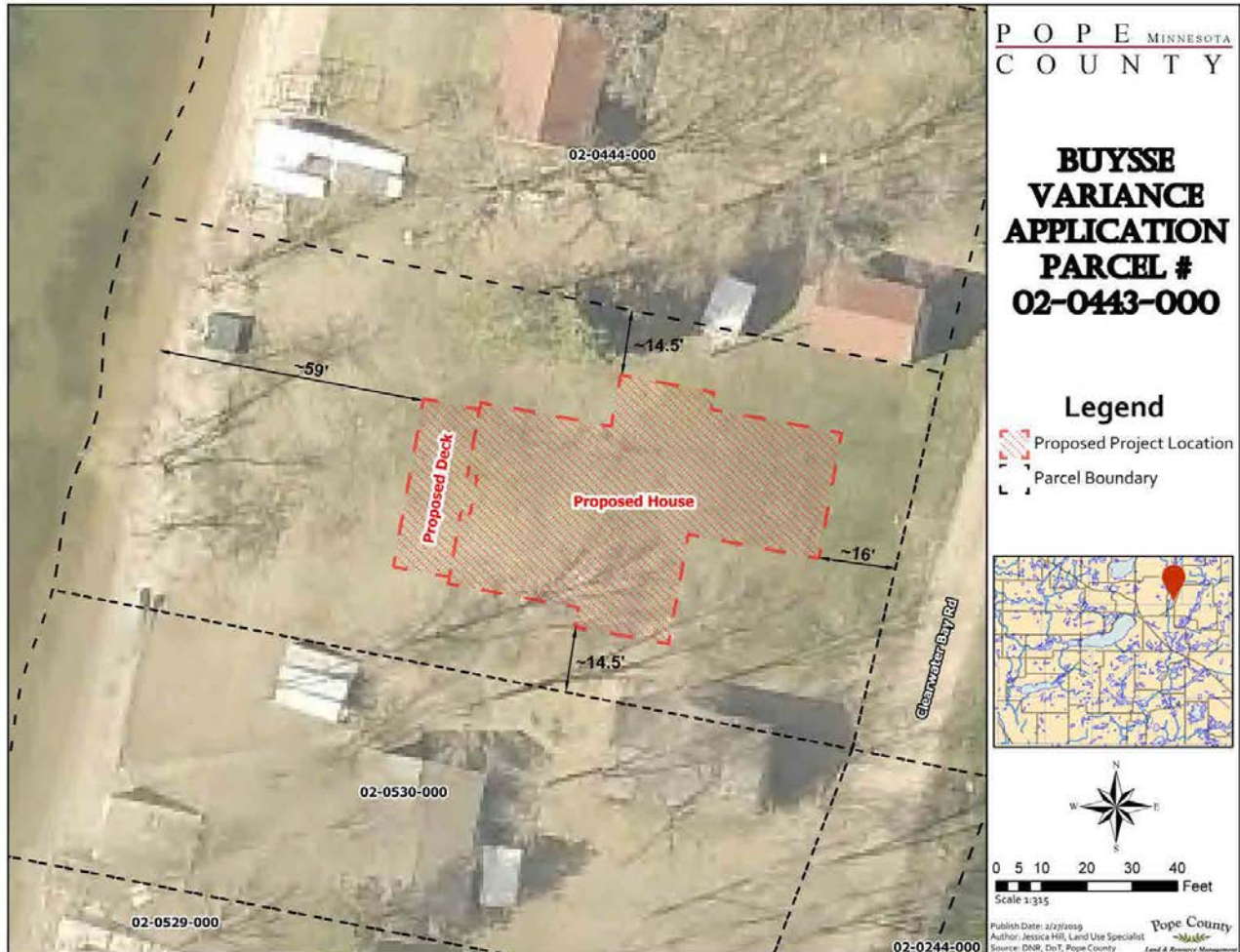
STAFF REPORT

Applicant Information

Applicant: Dennis Buysse on behalf of Christopher & Jessica Buysse

Application: Variance to locate structure at 16 feet from the right-of-way line in a Shoreland-Recreational Development (S-RD) zoning district where 40 feet is the minimum standard setback per section 4.3.4.G. of the Pope County Land Use Controls Ordinance.

Location: Lot 1, The First Addition to Clearwater Bay, Section 35, Township 126 (Leven), Range 37, Pope County, Minnesota.





Background

The applicant is proposing to construct a new residential structure with an attached garage. In order to maintain the proper minimum setback distance from the OHW it is necessary to encroach within the right-of-way setback. All other aspects of the proposed project will be in conformance with specified performance standards.

Applicable Statutes

- This application is subject to the criteria and procedures as prescribed in Section 11.6 Variance From Standards of the Pope County Land Use Controls Ordinance.
- Specific standards of use and development for parcels located in the Shoreland-Recreational Development (S-RD) zoning district are referenced in the Pope County Land Use Controls Ordinance Section 4.3.4.G.:

4.3.4. Setbacks:

G. Right-of-way line of town road, public street, or other legal roads or streets not classified: 40 Feet

Staff Comments

Staff offers the following comments for consideration:

Based on Minnesota Statute 394.27 subd. 7: A variance may be granted if enforcement of the zoning ordinance as applied to a particular piece of property would cause the landowner “practical difficulties.” There is a Three Factor Test for establishing practical difficulties. If the applicant does not satisfy all three factors of the test, then the variance should not be granted.

1. Reasonableness

The first factor is that the property owner proposes to use the property in a reasonable manner. This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance. It does not mean that the land cannot be put to any reasonable use whatsoever without the variance. For example, this variance application is for locating a garage structure at less than the minimum setback distance to the road right-of-way. The question to be considered is: whether the construction and locating of a garage on this parcel is a reasonable use.

2. Uniqueness

The second factor is that the landowner’s problem is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner. When considering the variance for a structure to encroach or intrude into a setback, the focus of this factor



is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like public waters, floodplains, wetlands or trees that prevent the structure from being located in compliance.

3. Essential Character

The third factor is that the variance, if granted, will not alter the essential character of the locality. Under this factor, consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area. For example, when thinking about this variance for a garage structure that encroaches into the right of way setback, how will the proposed structure and its location look when compared to others in the neighborhood, and if that fits in with the character of the area.

Staff Recommendation

Based on comments received and the findings of fact as presented, staff does not object to the issuance of a variance resulting in the garage structure being located at sixteen (16) feet from the right-of-way. However, it should be noted that Leven Township has an identified setback standard of twenty (20) feet from the road right-of-way for structures. A variance issued by Pope County does not affect a stricter standard that may be enforceable by the township. The following conditions are recommended by staff:

- 1. That prior to any construction activities, all necessary permits are secured from Township, County and State agencies.

Staff Findings

The Staff proposes the following findings of fact for consideration by the Board of Adjustment:

- 1. **Variance request consistent with purposes and intent of the official controls and the comprehensive plan:** The purpose of the required setback for structures from roadways is to protect personal property; provide for maintenance and potential expansion of public roads; ensure safety for all users of roads and for those adjacent to roads; and to preserve the neighborhood character and aesthetics. The location of the structure will be at least sixteen (16) feet from the right-of-way and approximately twenty-four (24) feet from the driving surface. However, the road provides access for only three other property owners beyond the applicants' property. Therefore, it is not likely that allowing the structure will create a hazard to motorists using the adjacent road nor impact the existing visual aesthetics.
- 2. **Use of property/structure is a reasonable use:** A residential/garage structure is a common use in the Shoreland districts of Pope County.
- 3. **Character of locality and detriment to neighboring properties:** Granting the variance will not change



the character of the locality or be a detriment to the neighboring properties. Each of the neighboring properties have storage/garage structures that encroach into the right-of-way setback.

4. **Plight of the landowner is due to circumstances unique to the property and not self-created:** The circumstances contributing to the need for the variance are that the lot dimensions are relatively shallow. With the lake at one end and the road right-of-way at the other, each having a setback requirement, the building envelope is very small.



POPE MINNESOTA
COUNTY

S:\2. BOA-PAC\2019\3. March 28th\5. BOA\1. 02-0443-000 Buysse Variance\3. Staff Report\3-28-19 BOA_Buysse_Variance_Staff_Report.docx

REPORT APPENDIX

- **Routing Sheet** (*Comments, concerns and conditions*)
- **Public Notice**
- **Supplemental Information**
 - **Attachment 1:** *Certificate of Survey for Chris & Jessica Buysse (Stoeckel Jahner Surveying Inc., January 2019)*



Routing Sheet

Comments, Concerns and Conditions

County Department

- Attorney No Comments Received
- Emergency Mgt No Comments Received
- Recorder *COMMENTS: Please see MN Statute 507.093 Standards for documents to be recorded or filed for recording of documents in the Recorder's office. Our office shows per document #270243; which can be found in our Laredo program that Christopher & Jessica Buysse are the current owners of parcel 02-0443-000.*

Township

- Leven No Comments Received

Other Comments Received

No Comments Received



Public Notice

**POPE COUNTY LAND & RESOURCE MANAGEMENT
POPE COUNTY COURTHOUSE
130 E. MINNESOTA AVENUE, SUITE 113
GLENWOOD, MINNESOTA 56334
(320) 634-7791**

**POPE COUNTY BOARD OF ADJUSTMENT
NOTICE OF PUBLIC HEARING FOR
VARIANCE REQUEST**

Notice is hereby given that a Public Hearing will be held in the Community Room of the Pope County Courthouse, 130 East Minnesota Ave, Glenwood, MN 56334 at 6:00 pm or shortly thereafter on Thursday, March 28th, 2018, where the Pope County Board of Adjustment will consider a variance request per Pope County Land Use Ordinance sec. 11.6.

Description of Request: Variance hearing on the application by Dennis Buysse on behalf of Christopher & Jessica Buysse, if granted would permit applicant to locate structure at 16 feet from the right-of-way line in a Shoreland-Recreational Development (S-RD) zoning district where 40 feet is the minimum standard setback per section 4.3.4.G. of the Pope County Land Use Controls Ordinance.

Legal Description/Site Location: Lot 1, The First Addition to Clearwater Bay, Section 35, Township 126 (Leven), Range 37, Pope County, Minnesota.

Dated: March 8, 2019

By: Jessica Hill
Land Use Specialist
Land & Resource Management



Supplemental Information

Supplemental Information Attachment 1:

Certificate of Survey for Chris & Jessica Buysse (Stoeckel Jahner Surveying Inc., January 2019)

CERTIFICATE OF SURVEY

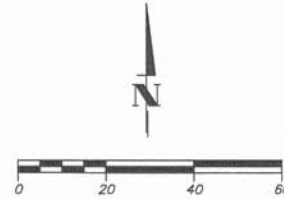
STOECKEL-JAHNER SURVEYING FILE NO. 6913

LAKE AMELIA
ELEVATION=1347.9
1-3-2019
OHW=1349.1
NGVD 29



SURVEY OF:

Lot 1, FIRST ADDITION TO CLEARWATER BAY, according to the recorded plat thereof, Pope County, Minnesota.



LEGEND

- IRON MONUMENT FOUND AS NOTED
- IRON MONUMENT SET MARKED LS 44493
- () RECORD DISTANCE

GRAVEL SURFACE

POWER POLE

OVERHEAD ELECTRIC

SURVEYORS NOTE:

A Title Commitment and/or Title Opinion were not provided for the benefit of this site plan. Easements may exist which are not shown herein.

SEC. TWP. RANG: 35-126-37
DATE: 01-09-19
DRAWN BY: DLS
CHECKED BY: MFJ
FILE NUMBER: 6913

PREPARED FOR:
**CHRIS & JESSICA
BUYSE**

MARK F. JAHNER - LICENSE NO. 44493
1206 3rd Avenue South, St. Cloud, MN 56306
Phone: 320-763-6865 Fax: 320-763-8341
Website: mnsurveying.com Email: mark@msurveying.com

**STOECKEL
JAHNER
SURVEYING INC.**

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

LS 44493
Date: 01-25-19