

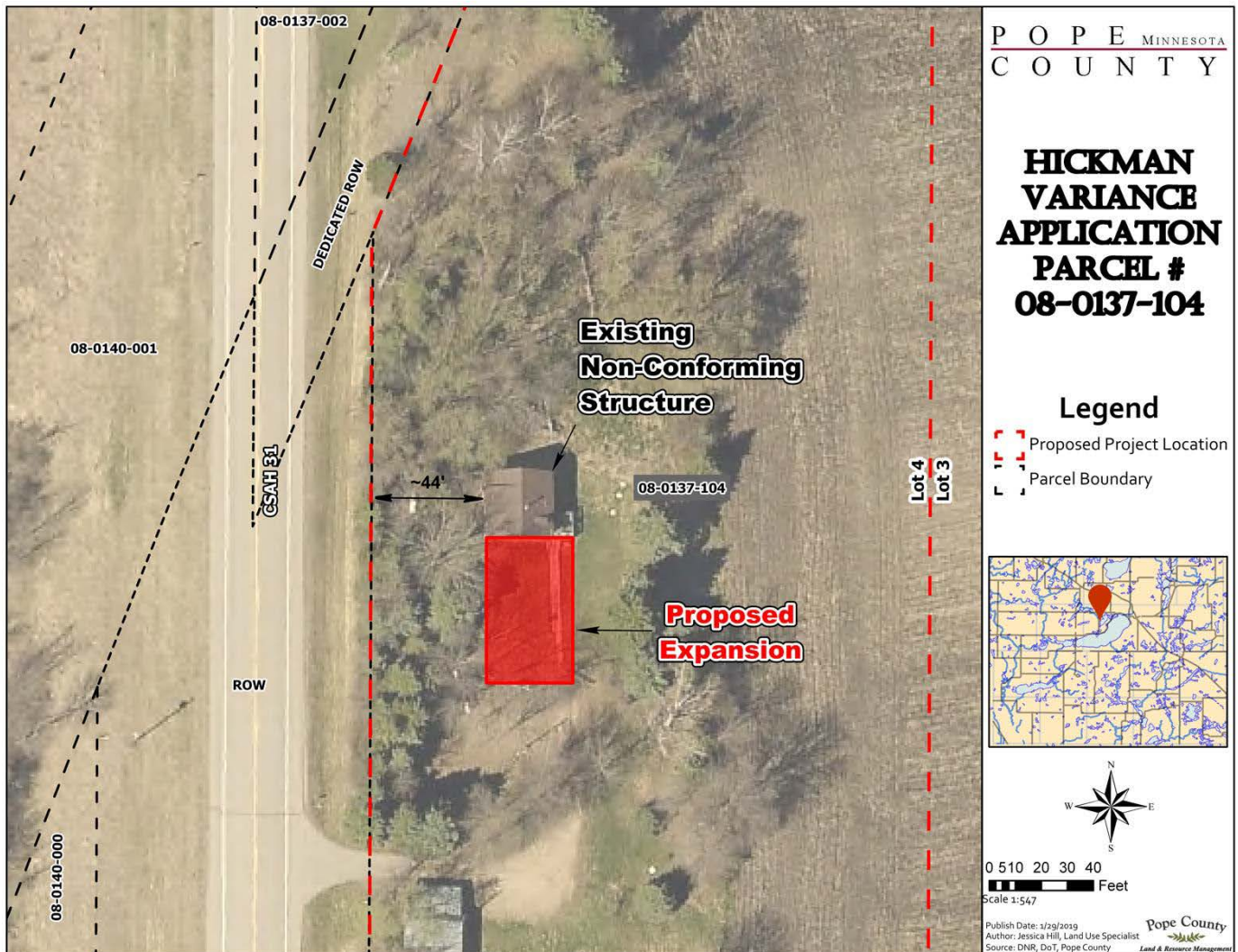
BOARD OF ADJUSTMENT

STAFF REPORT

Applicant: Marita Hickman

Application: Variance to expand a non-conforming structure that is less than 50 feet from the right-of-way in a Shoreland-Recreational Development (S-RD) zoning district per section 4.3.4.F. of the Pope County Land Use Controls Ordinance.

Location: Lot 4, Block 1 of Pelican Lake Meadows, Section 16, Township 125 (Minnewaska), Range 38, Pope County, Minnesota.



Background: The applicant is requesting consideration to expand a non-conforming structure.

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.F. and 10.16.2. for non-conformities:

4.3.4. Setbacks:

F. Right-of-way line of federal, state, or county highway: 50 Feet

10.16.2 Any lawful use existing at the time of adoption or amendment of this ordinance which would be considered as a non-conforming use or structure may be continued except that the expansion, alteration or enlargement of such use or structure may be restricted to prevent increasing the non-conformity.

- Minnesota Statutes 394.36 *Nonconformities*.

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 an expansion of a nonconforming structure. The existing structure is located too close to the roadway. The question to be considered is: whether the proposed expansion of the existing structure is reasonable.

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 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 an expansion of a nonconforming 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 allowance for an expansion of the nonconforming structure. 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 is approximately 44 feet from the right-of-way. However, the proposed expansion will be approximately 68 ft. from the driving surface of the roadway and buffered by a mature strand of trees. 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 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.
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 there is preexisting development on the property including the existing residential structure and septic system (lying to the east and northeast of the residential structure) which limits the expansion of the non-conforming structure to the south.

Report Appendix

- **Routing Sheet** (*Comments, concerns and conditions*)
- **Public Notice**
- **Supplemental Information**
 - **Attachment 1:** *Proposed House Pictures (Hickman, 2019)*

Routing Sheet Comments, concerns and conditions

Agency

- MN DNR *DNR received and reviewed the notification of Hearing for the Hickman CUP and Variance Request.*
- SWCD-Pope *COMMENTS: There are no wetland concerns on this proposal.*

County Department

- Attorney No Comments Received
- E911/IT *COMMENTS: Addressing: No Conditions.*
- Engineer *COMMENTS: No Comment*
- 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. The applicant listed above is the current owner on parcel 08-0137-104 per document #275835; which is found in our Laredo program.*

Township

- Minnewaska No Comments Received

Other Comments Received

No Comments Received

**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, February 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 Marita Hickman, if granted would permit applicant to expand a non-conforming structure that is less than 50 feet from the right-of-way in a Shoreland-Recreational Development (S-RD) zoning district per section 4.3.4.F. of the Pope County Land Use Controls Ordinance.

Legal Description/Site Location: Lot 4, Block 1 of Pelican Lake Meadows, Section 16, Township 125 (Minnewaska), Range 38, Pope County, Minnesota.

Dated: February 11, 2019

By: Jessica Hill
Land Use Specialist
Land & Resource Management

Supplemental Information Attachment 1:
Proposed House Pictures (Hickman, 2019)

Proposed House Pictures



Proposed House Pictures

