

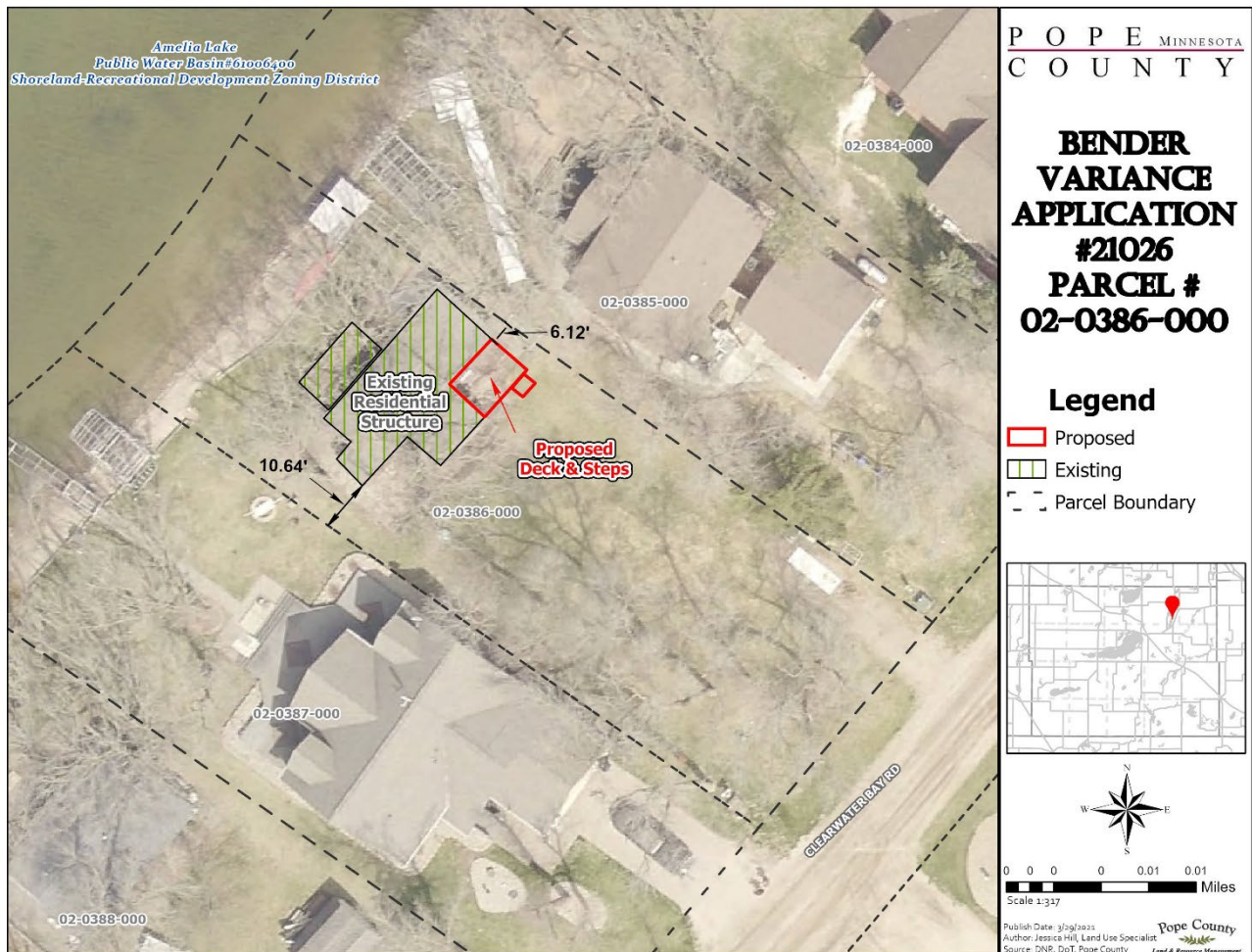
## STAFF REPORT

### Applicant Information

**Applicant:** Korey & Tracy Bender

**Application:** Variance to locate an accessory structure at 6.1 feet from the sidelot line where 10 feet is the minimum standard setback in a Shoreland-Recreational Development (S-RD) zoning district per Section 4.3.4.D of the Pope County Land Use Controls Ordinance.

**Location:** Lot 19, Plat of Ladd's Beach, Section 35, Township 126 (Leven), Range 37, Pope County, Minnesota.



DISCLAIMER: THIS MAP IS NOT A SUBSTITUTE FOR ACCURATE FIELD SURVEYS OR FOR LOCATING ACTUAL PROPERTY LINES AND ANY ADJACENT FEATURES.



## Background

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The applicant is proposing to construct/reconstruct the entrance to his lake Amelia cabin. The cabin is slightly elevated which necessitates a set of steps for access. The applicant is seeking permission to improve the access point by constructing a small deck at the entrance point on the non-riparian side of the structure. The deck will provide for a safer area of entrance/exit. Due to the cabin structure’s close proximity to the shoreline and adjacent property lines, it is considered a non-conforming structure. This particular structure encroaches into the shore impact zone. Such structures are not to be expanded. However, statute and local ordinance does allow for such non-conforming structures to be maintained through repair, replacement and improvement. The deck improvement, as proposed will be located at just over six feet from the property line at its closest point. If approved, the deck will not be any closer than the existing cabin is to the adjacent property line.

## Applicable Statutes

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- 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:

4.3.4 Setbacks:

D. Side Yard Setback: 10 feet

- 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.
- Minnesota Administrative Rules chapter 6120.3900 subp. 3 **Variiances:**

*Variiances may only be granted in accordance with Minnesota Statutes, chapters 394 or 462, as applicable. They may not circumvent the general purposes and intent of the official controls. No variance may be granted that would allow any use that is prohibited in the zoning district in which the subject property is located. Conditions may be imposed in the granting of variances to ensure compliance and to protect adjacent properties and the public interest. In considering variance requests, boards of adjustment must also consider whether property owners have reasonable use of the lands without the variances, whether existing sewage treatment systems on the properties need upgrading before additional development is approved, whether the properties are used seasonally or year-round, whether variances are being requested solely on the basis of economic considerations, and the characteristics of development on adjacent properties.*



## Staff Comments

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Staff offers the following comments for consideration:

Based on Minnesota Statute 394.27 subd. 7: A variance may be granted if it is in harmony with the general purposes and intent of the official control and when the variance is consistent with the comprehensive plan. 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.” The standard for establishing a Practical Difficulty is as follows:

### 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 a request to construct a small deck and steps to provide for a better access to the structure. The questions to be considered are: is it reasonable to have a safe access to the cabin structure and is the size of the deck and steps/stairway reasonable? Are there other options by which the owner could provide for access to the cabin structure and be in compliance with local ordinance?

### 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 this variance request to install a deck and set of steps for access to an existing cabin, 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 use from being in compliance. In this case, the first floor of the structure is elevated and necessitates steps for access. There is a minimum floor elevation prescribed for structures adjacent to Lake Amelia for purposes of high water and flood considerations.

### 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 which relates to a deck structure that will encroach into a minimum setback from an adjacent property boundary, how will the resulting structure look in relationship to others in the neighborhood, and if that fits in with the character of the area.



## Staff Recommendation

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Having reviewed and considered the application, local ordinances, state statutes, and all comments received, staff does not object to the issuance of a variance in this case that would allow for a 120 square foot deck and set of steps on the southeast (non-lakeshore) side of the cabin structure to provide for access. However, the public hearing as well as the applicant may offer additional facts that are not yet evident for the Board of Adjustment to consider. If the Board of Adjustment does grant a variance to the applicant, Staff recommends that the following conditions be considered:

1. That proper stormwater best management practices are implemented during construction.
2. That the variance is invalid, or expires, if the holder/Owner has not substantially completed the construction project within two years of issuance of granting the variance.
3. That County staff may enter onto the property at reasonable times and in a reasonable manner to ensure the variance holder is in compliance with the conditions and all other applicable statutes, rules and ordinances.
4. That prior to any construction activities, all necessary permits are secured from Township, County and State agencies.



## Staff Findings

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Based upon the information available at the time of writing of this report, Staff proposes the following findings of fact for consideration by the Board of Adjustment. These findings may be amended based upon additional information gathered during the public hearing and discussion process.

1. **Variance request consistent with purposes and intent of the official controls and the comprehensive plan:** The Minnesota DNR Shoreland Rules Ch 6120 as well as the Pope County Land Use Controls Ordinance regulate the location of structures in shoreland designated areas. The purpose of the requirements is to maintain neighborhood character and aesthetics as well as for the protection of surface water resources and personal property. The issuance of a variance in this case does not conflict with the intent and purpose of these standards.
2. **Use of property/structure is a reasonable use:** A deck and steps that provide access to the seasonal cabin is a reasonable and permissible use in Shoreland zoned districts.
3. **Character of locality and detriment to neighboring properties:** This property has been in single family seasonal use for many years. The seasonal cabin structure has existed in this location for over forty years and has not been the subject of complaint by neighboring property owners or has caused any specifically identified impact to the surface waters of Lake Amelia. It is not anticipated to have any impact to the neighboring property owners or neighborhood aesthetics. The existence of a deck will not change the properties use and therefore there is no change in character of the locality nor shall there 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 include that this property was originally developed over forty (40) years ago. In 1973 a permit was issued and the structure constructed without the benefit of an accurate survey to identify the parcel boundaries or parcel dimensions. Thus, the structure encroaches into the minimum setback from a parcel boundary.



## REPORT APPENDIX

- **Routing Sheet** (*Comments, concerns and conditions*)
- **Public Notice**
- **Supplemental Information**
  - **Attachment 1:** *Variance Application (Korey & Tracy Bender, 16 March 2021)*
  - **Attachment 2:** *Certificate of Survey (Nyberg Surveying, 17 August 2020)*
  - **Attachment 3:** *Applicant Submitted Site Photo (Korey & Tracy Bender, 16 March 2021)*



## Routing Sheet

### Comments, Concerns and Conditions

Agency

MN DNR

*COMMENTS: It appears that the County would also need to consider granting a variance from the OHWL setback. As a RD lake, the structure setback is 100 feet. Is the proposed deck being considered as a water-oriented accessory structure under 4.6.17? Please refer to 4.6.3 Decks, "for lots that were not developed prior to April 5, 1972, full setback requirements shall apply to decks." Dimensions of the deck should be provided. An existing non-conforming structure should not be made more non-conforming. The intent is to bring non-conformities in to compliance over time.*

County Department

Attorney

No comment received.

Recorder

*COMMENTS: Please see MN Statute 507.093 Standards for documents to be recorded or filed for recording. Our records show that the current property owner the above parcel is Korey & Tracy Bender per recorded document #269037; in which, can be found in the Laredo land records system.*

Township

Leven

No comment received.

Other Comments Received

No comment received.



## Public Notice

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

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

**Notice is hereby given** that a Public Hearing will take place in conjunction with the Board of Adjustment meeting to be held at 6:00 pm or shortly thereafter on Thursday, April 22nd 2021 in the Pope County Courthouse 3<sup>rd</sup> Floor Meeting Room to consider the following variance request.

**Description of Request:** Variance hearing on the application by Corey & Tracy Bender, if granted would allow applicants to locate an accessory structure at 6.1 feet from the sidelot line where 10 feet is the minimum standard setback in a Shoreland-Recreational Development (S-RD) zoning district per Section 4.3.4.D of the Pope County Land Use Controls Ordinance.

**Legal Description/Site Location:** Lot 19, Plat of Ladd's Beach, Section 35, Township 126 (Leven), Range 37, Pope County, Minnesota.

As of the drafting of this public notice, a declared Peacetime Emergency in response to the spread of COVID-19 (coronavirus) in MN is still in effect. In an effort to comply with MDH recommendations issued with the declared Peacetime Emergency, any citizens who wish to participate in person must wear an appropriate face covering or mask and follow social distancing guidelines.

Public participation will include an opportunity to:

- 1) submit written concerns and comment prior to the scheduled meeting. All such communications will be shared with the Board of Adjustment prior to or during the meeting;
- 2) review the staff prepared report via Pope County website;
- 3) observe and/or participate in the proceedings of the Board of Adjustment meeting.

Interested parties and citizens may contact the Land and Resource Management office for further information as to how to participate in the meeting. Thank you for your patience and consideration in this matter.

**Dated:** April 2, 2021

**By:** David Green, Director, Land & Resource Management





## Supplemental Information

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### **Supplemental Information Attachment 1:**

*Variance Application (Korey & Tracy Bender, 16 March 2021)*



**Supplemental Information Attachment 2:**  
*Certificate of Survey (Nyberg Surveying, 17 August 2020)*



**Supplemental Information Attachment 3:**

*Applicant Submitted Site Photo (Korey & Tracy Bender, 16 March 2021)*