



City Council Memorandum

To: Mayor Fasbender & City Councilmembers
From: John Hinzman, Community Development Director
Date: April 20, 2020
Item: Resolution: Denial of Variance - Ian Martin - 1770 Greystone Rd

Council Action Requested:

Consider adoption of the attached resolution denying a five-foot variance to the five-foot minimum side yard setback requirement within the Zoning Code as requested by Ian Martin on his property located at 1770 Greystone Road.

A simple majority is necessary for adoption of the attached resolution, denying the variance request. A vote of six of seven councilmembers is necessary to grant the variance request.

Background Information:

On September 13, 2019 Mr. Martin submitted a building permit application to construct the subject deck. The original permit requested permission to construct a 12'x24' (12' x 22' is now requested) deck on the eastern side of the home. Mr. Martin was notified that the permit could not be issued due the following:

- 1) Location of the deck within the five-foot minimum side yard setback.
- 2) Placement of a structure within the five foot drainage and utility easement.

During the 2019 permit review City Staff discussed options with Mr. Martin to allow construction of the deck which included reducing the size of the deck to comply with minimum setback and easement requirements. Mr. Martin asked if a variance to the side yard setback could be considered and was told that staff did not believe a variance would meet the ordinance requirements and a recommendation for denial of the variance was likely.

Mr. Martin proceeded to construct the deck without securing a building permit or other City approvals. On March 31, 2020 the Hastings Building Department issued a stop work order on the construction of the deck for failure to secure approvals. Deck footings and structural members had been installed at the time of the stop work order as evidenced by the enclosed pictures.

On April 1, 2020 Mr. Martin submitted a Land Use Application for the subject variance to allow construction of a 12'x22' deck located on the east side of this home.

Financial Impact:

N/A

Advisory Commission Discussion:

The Planning Commission voted 5-1 (Johnson nay) to recommend denial of the variance at the April 13, 2020 meeting. Commissioners discussed the presence of any practical difficulties or hardships that may be present, precedence that may be set, and disappointment that the deck project proceeded without necessary city approvals.

Mr. Martin shared his belief that the building setback should be taken from the location of the decks posts instead of the deck overhang. Calculating the setback from the posts would reduce the extent of the variance request to around three feet instead of five feet. Staff does not agree with Mr. Martin's methodology for determining the setback and believes the variance request to be five feet. Staff acknowledges that minimal overhang of roof eaves into the minimum setback have been acceptable, however the proposed deck overhang substantially hinders use of the property at ground level in a way eave overhangs do not.

Mr. Martin also shared his belief that the issuance of a license to encroach by the City Council in 2019 to allow an existing boulder retaining wall constructed within the same sideyard easement should be a factor in granting the variance. The staff report accompanying the license to encroach request as well as the license itself both noted that the owners are put on notice that they may not expand the existing improvements within the easement and they cannot install new improvements or other structures within the easement.

One comment was received via email in support of the variance from Jill and Andy Gentz of 1671 Fallbrooke Drive

Council Committee Discussion:

N/A

Attachments:

- Resolution for denial
- Planning Commission Memo
- Email in Support of Variance - Gentz

HASTINGS CITY COUNCIL

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HASTINGS
SITTING AS THE BOARD OF ADJUSTMENT AND APPEALS DENYING THE
REQUEST OF IAN MARTIN TO VARY FROM THE MINIMUM SIDE YARD
SETBACK REQUIREMENTS OF HASTINGS CITY CODE 155.05(D)(11) AND
155.50 AT 1770 GREYSTONE ROAD**

Council member _____ introduced the following Resolution and moved its adoption:

WHEREAS, Ian Martin, property owner, has petitioned for a five foot variance from the five foot minimum R-1 Side Yard Setback requirement of Hastings City Code 155.05(D)(11) and 155.50 to allow construction of deck on property generally located at 1770 Greystone Road, legally described as Lot 14, Block 1, WALLIN 16TH ADDITION, Dakota County, Minnesota (the “Subject Property”); and

WHEREAS, variances to the Hastings City Code may be considered by the Board of Zoning Adjustment and Appeals upon determination of supporting evidence as stipulated in Hastings City Code 30.02(F); and

WHEREAS, The City Council acts as the Board of Adjustment and Appeals in accordance with Hastings City Code 30.02(A), and

WHEREAS, on April 13, 2020, the Planning Commission of the City of Hastings serving in advisory to the Board of Zoning Adjustment and Appeals reviewed the petition as required by state law, city charter and city ordinance; and

WHEREAS, The Planning Commission voted to recommend denial of the petition consistent with findings of fact and conclusions included in this resolution; and

WHEREAS, The City Council sitting as the Board of Adjustment and Appeals has reviewed the petition and concurs with the recommendation of the Planning Commission.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HASTINGS AS FOLLOWS:

That the City Council hereby denies the variance request as presented based on the following findings of fact and conclusions:

- 1) The physical surroundings, shape and topographical conditions of the Subject Property are not distinctive and do not differ greatly from other properties within the vicinity or zoning district. A stormwater ponding basin owned and maintained by the homeowner’s association abuts the proposed deck; however, the site is one of 14 properties that abut the same stormwater ponding basin. The denial of the variance may result in inconvenience to the property owner but would not rise to the level of a practical difficulty.

- 2) The conditions upon which the variance request is based are not unique to the Subject Property and are applicable, generally, to all other properties within the same zoning classification and those in the surrounding neighborhood.
- 3) The purpose of the variance request does not appear to be exclusively based on the desire to increase the value or income potential of the Subject Property.
- 4) The granting of the variance would be detrimental to the public welfare and would be injurious to other land and improvements in the vicinity because the five-foot extension of the deck into the five-foot drainage and utility easement would significantly limit the use of the easement for the future benefit of the public.
- 5) The proposed variance would not impair an adequate supply of light or air to property, it will not substantially increase the congestion of public streets, and it should not increase the danger of fire but as noted above, by allowing the five-foot extension of the deck into the five-foot drainage and utility easement, it would significantly limit the use of the easement for the future benefit of the public, thereby impairing the proper handling and treatment of stormwaters which would diminish property values within the vicinity.
- 6) The request is not in harmony with purposes and intent of the ordinance. The purpose of the side yard setback is to keep side yards free of structures and the intent is to provide a uniform development pattern, which assures that adjacent side yards will have adequate open space and separation from other properties. The proposed variance reduction from five feet to less than one foot constitutes a reduction of the majority of the required setback.
- 7) The proposed variance is neither consistent nor inconsistent with the comprehensive plan.
- 8) The Applicant has not demonstrated a “practical difficulty” in complying with the zoning ordinance as defined by Hastings City Code 30.02(F)(9). The proposed use of the property, namely extending a deck into a platted drainage and utility easement, is not a reasonable use of the property and other reasonable alternatives for similar use of the property are available to the Applicant. Specifically, the Applicant could construct a seven-foot-wide deck and comply with the minimum five-foot setback requirement. The deck may also be extended at a seven-foot width to the north side of the building where it could be enlarged and provide views of the pond to the Applicant.
- 9) The difficulties in complying with the minimum setback as noted in the variance application were created solely by the Applicant. The size, configuration, and placement of the home on the property were undertaken at the discretion of the Applicant during construction of the home and other alternatives existed that would have allowed the Applicant, with proper prior planning, to construct a larger deck on the eastern portion of the home.
- 10) Granting the variance would alter the essential character of the locality by deviating from the standard requirement that no structures may be placed in drainage and utility easements surrounding the residential parcels.
- 11) The variance is not needed to provide adequate access to direct sunlight for solar energy systems.

12) Granting the variance in absence of a unique condition or hardship could confer similar rights on other properties.

Council member _____ moved a second to this resolution, and upon being put to a vote it was unanimously adopted by all Council members present.

Adopted by the Hastings City Council on April 20, 2020, by the following vote:

Ayes:

Nays:

Absent:

ATTEST:

Mary Fasbender, Mayor

Julie Flaten, City Clerk

(City Seal)

I HEREBY CERTIFY that the above is a true and correct copy of resolution presented to and adopted by the City of Hastings, County of Dakota, Minnesota, on the 20th day of April, 2020, as disclosed by the records of the City of Hastings on file and of record in the office.

Julie Flaten, City Clerk

(SEAL)

This instrument drafted by:

City of Hastings (JH)
101 4th Street East
Hastings, Minnesota 55033



Planning Commission Memorandum

To: Planning Commissioners

From: John Hinzman, Community Development Director

Date: April 13, 2020

Item: Ian Martin - Variance #2020-18 - Sideyard Setback - Deck - 1770 Greystone Rd

Planning Commission Action Requested

Review and make recommendation to the City Council on the following action requested by Ian Martin on property located at 1770 Greystone Road:

- 1) Grant a five foot variance to the minimum five foot required setback to allow placement of a deck abutting the side property line. The minimum setback is established under Hastings City Code Chapter 155.05, Subd. D(11) - Accessory Building and Structure Requirements, and Chapter 155.50 - Residential Lot Requirements

BACKGROUND INFORMATION

History

On September 13, 2019 Mr. Martin submitted a building permit application to construct the subject deck. The original permit requested permission to construct a 12'x24' (12' x 22' is now requested) deck on the eastern side of the home. Mr. Martin was notified that the permit could not be issued due the following:

- 1) Location of the deck within the five foot minimum sideyard setback.
- 2) Placement of a structure within the five foot drainage and utility easement.

During the 2019 permit review City Staff discussed options with Mr. Martin to allow construction of the deck which included reducing the size of the deck to comply with minimum setback and easement requirements. Mr. Martin asked if a variance to the sideyard setback could be considered and was told that staff did not believe a variance would meet the ordinance requirements and a recommendation for denial of the variance was likely.

Mr. Martin proceeded to construct the deck without securing a building permit or other City approvals. On March 31, 2020 the Hastings Building Department issued a stop work order on the

construction of the deck for failure to secure approvals. Deck footings and structural members had been installed at the time of the stop work order as evidenced by the enclosed pictures.

On April 1, 2020 Mr. Martin submitted a Land Use Application for the subject variance to allow construction of a 12'x22' deck located on the east side of this home.

Zoning

The property is zoned R-1 Single Family Residential. Decks are a permitted use within the R-1 District upon adherence to the five foot minimum setback requirement.

Adjacent Zoning and Land Use

The following land uses about the property:

Direction	Use	Comp Plan District	Zoning District
North	Single Family	Low Density Residential	R-1 - Single Family
East	Stormwater Pond	Low Density Residential	R-1 - Single Family
South	Greystone Rd Single Family	Low Density Residential	R-1 - Single Family
West	Vacant - Future Single Family Home	Low Density Residential	R-1 - Single Family

Public Notification

Notification of the meeting was sent to all property owners within 350 feet of the proposed property. Staff has not received any questions or comments as of this writing.

VARIANCE REVIEW

Variance Definition

Variances are deviations from strict compliance of City Code provisions. The Board of Adjustment and Appeals may recommend issuance of a Variance upon determination of findings of fact and conclusions supporting the variance as established in Chapter 30.02, Subd. F of the City Code.

Board of Zoning Adjustment and Appeals

Hastings City Code Chapter 30.02 establishes the Board of Zoning Adjustment and Appeals and appoints the Planning Commission to facilitate the Board's roles and duties. Applications for Variances require Board of Zoning Adjustment and Appeals review.

Requested Variance – Minimum Sideyard Setback in the R-1 Zoning District

City Code Chapter 155.05, Subd. D(11) - Accessory Building and Structure Requirements, and Chapter 155.50 - Residential Lot Requirements both establish a minimum five foot sideyard setback requirement for the placement of decks within the R-1 Zoning District.

Variance Review

City Code Chapter 30.02(F) establishes the requirement for granting variances. The Planning Commission (acting as the Board of Adjustment and Appeals) may consider variances to the Zoning Code that are not contrary to the public interest where owing to special conditions, and where a literal enforcement of the provision of the City Code would result in practical difficulties. Variances may be granted providing the following has been satisfied (staff review appears in **bold italics**):

(1) Because of the particular physical surroundings, shape or topographic conditions of the land involved, a practical difficulty to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out;

The physical surrounds, shape or topographical condition of the land is not unusual to other properties in the immediate vicinity and does not present a practical difficulty.

(2) The conditions upon which the petition for a variance is based are unique to the tract of land for which the variance is sought and one not applicable, generally, to other property with the same zoning classification;

The conditions are not unique to the land. A stormwater ponding basin owned and maintained by the homeowners association abuts the proposed deck; however the site is one of 14 properties that abut the same stormwater ponding basin.

(3) The purpose of the variance is not based exclusively upon a desire to increase the value or income potential of the parcel of land;

The owner seeks to enhance utilization of the property through construction of a deck.

(4) The granting of the variance will not be detrimental to the public welfare or injurious to other land or improvements in the vicinity in which the tract of land is located;

Granting of the variance would allow construction of the deck within the publicly dedicated drainage and utility easement and would limit use of the easement for the benefit of the public.

(5) The proposed variance will not impair an adequate supply of light and air to property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety or substantially diminish or impair property values within the vicinity; (Prior Code, §11.08)

It does not appear that the variance will impair light, air, congestion, fire danger, public safety, or property values within the vicinity.

(6) The variance is in harmony with the purposes and intent of ordinance;

Granting of the variance would reduce the sideyard setback to zero feet and is contrary to the intent and purpose of the ordinance.

(7) The variance is consistent with the comprehensive plan;

The property is guided for low density residential development. The proposed use appears consistent with the Comprehensive Plan.

(8) The proposal puts the property to use in a reasonable manner;

Placement of a deck within the drainage and utility easement and with no setback to an adjoining property does not put the property to use in a reasonable manner.

(9) There are practical difficulties in complying with the official control. "Practical difficulties", as used in connection with the granting of the variance means that:

(a) The property owner proposes to use the property in a reasonable manner not permitted by an official control; ***Construction of a deck puts the property to use in a reasonable manner; however the location of the structure within the drainage and utility easement and abutting the property line is not a reasonable use.***

(b) The practical difficulty is caused by the provisions of this chapter and has not been created by any persons presently or formerly having an interest in the parcel of land; ***The practical difficulty was created by the applicant's decision to place the home and access door to the deck in close proximity to the property line.***

1. A practical difficulty is not present if the proposal could be reasonably accomplished under the current Ordinance requirements, ***The applicant could reduce the deck width from 12 feet to 7 feet and meet the ordinance requirement. The deck may also be able to wrap around the house from the east side to the north side where the deck could be expanded and still have views of the pond.***

(c) The variance, if granted, will not alter the essential character of the locality. ***Allowance of the variance without a unique hardship could confer the ability to construct decks in close proximity to the property line, altering the essential character of the locality.***

(d) Economic considerations alone do not constitute practical difficulties. ***Not stated by applicant.***

(e) Practical difficulties include inadequate access to direct sunlight for solar energy systems. ***Not applicable.***

RECOMMENDATION

Denial of the Variance is recommended subject to the above findings of fact in the Variance Review. Granting a variance without the identification of a unique practical difficulty could confer similar rights on other properties and creates difficulty in administering zoning regulations uniformly.

ATTACHMENTS

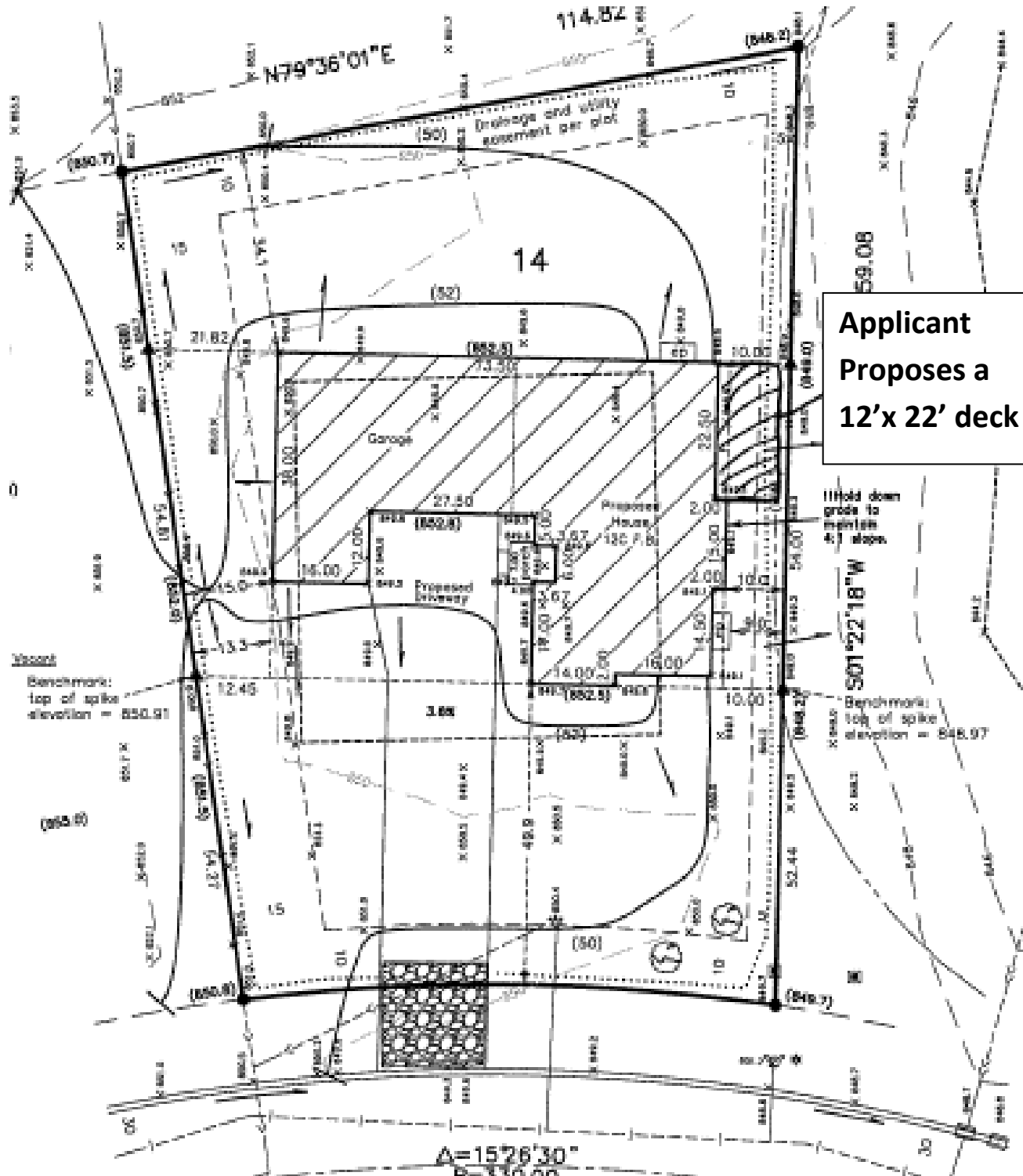
- Location Map
- Site Plan (From 2019 Building Permit Application)
- Letter and Pictures from Applicant
- Land Use Application

AERIAL MAP



SITE PLAN

From 2019 Building Permit



Applicant
Proposes a
12' x 22' deck

- site service
- site elevation top
- site electric line
- site telephone line
- site existing elevation
- site proposed elevation
- site drainage flow direction

$\Delta = 1526'30''$
 $R = 330.00$
 88.94
GREYSTONE ROAD

Lowest opening elevation : 852.7

Ian T. Martin
1770 Greystone Road
Hastings, MN 55033

Mayor Fasbender, Council Members and Planning Commission Members,

Before you tonight is a retrospective land use application seeking a variance to approve a deck at my residence at 1770 Greystone Road. The lot is unique as it abuts a pond that is owned by our development, Wyndham Hills. The pond is what drew us to this piece of property as both my wife and I enjoy the outdoors and constructed our house as such for the back of it to face the pond.

We purchased the land in 2016 and began construction in the spring of 2017. Building plans and site review was approved with the plans showing a future deck and egress windows on the east side of the home.

Much to my chagrin, the egress window well per code (min. 36" from opening), had to be constructed in the easement area to provide enough space for egress in the event of a fire or something of the like. The city approved the site plan where the house currently sits.

What I am asking for from you tonight is to grant this variance due to its minimal impact on our property and its easement. We don't have a neighbor to the east of us, only grass and water. There is an over abundance of space to access the pond even with the deck constructed as it sits.

For a variance to be granted, three factors must be met: Reasonableness, Uniqueness and Essential Character. Below are my arguments in support of each factor.

Reasonableness: The deck is of a proportionate size and in some instances smaller than surrounding decks on the homes surrounding our home in question. It does not affect property values of abutting properties, sight lines of abutting properties, wildlife, or drainage in any way. Access to the pond is also not encumbered by the deck as there is ample space from the deck to the water's edge to perform work should the need ever arise (the pond is private property and not city owned or maintained). The deck piers also sit closer to the house than the already approved egress window well by way of a license to encroach into the easement that was recorded at Dakota County in October of 2019.

Uniqueness: The plans for the home were submitted for a site plan and building review prior to the issuance of a building permit and were approved knowing the window well would have to lie in the easement area by city staff. This misstep did not come to our knowledge as homeowners until the final grade was failed partly due to this issue. Due to the unique situation, a license to encroach was issued by city staff and recorded in Dakota County in October of 2019 granting permission for the improvements and egress window well in the easement area. The deck piers

lie considerably closer to the house than the already approved improvements granted by the license to encroach.

Lastly, the property lies next to a pond that allows for far more than adequate access to maintenance of the pond and surrounding property than a typical city lot would allow if say a house was built next to our property.

Essential Character: All the homes around the pond by our property have decks that have enhanced their property value and overall enjoyment of their property. Many decks are larger and more complex than what ours is. The overall character of what is being asked is not negatively impacted. We are avid outdoors people and take great care of our property.

In closing, what we are asking for has no negative impacts to the neighborhood, neighbors, and the enjoyment of their property. The deck is harmonious with the intents and purposes of the ordinance, puts our property to use in a reasonable manner, and does not alter the character of the neighborhood in which we reside.

Thank you for your consideration.

Respectfully submitted,
Ian T. Martin

Ian T. Martin
1770 Greystone Road
Hastings, MN 55033

Re: Supplemental photos of property and deck





Property Line

All edging, landscape rock, and retaining wall for egress window well was approved via license to encroach granted by city staff at their request Oct. 2019.



Property Line

30"

Deck piers lie approx. 30" closer to the house than city approved edging lies from the house at its furthest point out near sump pump drain exit.



This picture gives you an idea of how much space is between the deck and the water. Keep in mind the pond is higher than it normally is due to the recent rain when this picture was taken (April 2nd) and the ice out that occurred on the pond a week prior. Footings for deck were purposely left high if a 500 year flood were to ever create an issue, although as you can see, our basement floor is the area of most concern as it sits below the water level of the pond.



Since 1857

MINNESOTA

City of Hastings Community Development Department

Land Use Application

Address or PID of Property: 1770 Greystone Road

Applicant Name: Ian T. Martin
Address: 1770 Greystone Road
Hastings, MN 55033
Phone: 651-307-4024
Fax: n/a
Email: ian.martin1931@comcast.net

Property Owner: SAA
Address: _____
Phone: _____
Fax: _____
Email: _____

Description of Request: Issue retrospective permit for deck on my property.

If requesting site plan review of multi-family units (three or more attached), are the units intended to be for sale or rental units? na

Check Applicable Line(s)

Please Note: All Fees and Escrows are due at time of application.

- Rezone \$500
- Final Plat \$600
- Variance \$300
- Vacation \$500
- House Move \$500
- Prelim Plat \$500 + escrow
- Site Plan \$500 + escrow

- Minor Subdivision \$500
- Special Use Permit \$500
- Comp Plan Amend. \$500
- Lot Split/Lot Line Adj. \$75
- Annexation \$500 plus legal expenses
- EAW \$500 + \$1,000 escrow
- Interim Use Permit \$500

Total Amount Due: \$ 250
per J. Hinzman

Make checks payable to City of Hastings.
Most credit cards also accepted.

Please ensure that all copies of required documents are attached.

Ian T. Martin 4/1/2020
Applicant Signature Date

Ian T. Martin 4/1/2020
Owner Signature Date



Ian T. Martin
Applicant Name and Title - Please Print

Ian T. Martin
Owner Name - Please Print

OFFICIAL USE ONLY

File # _____
Fee Paid: _____

Rec'd By: _____
Receipt # _____

Date Rec'd: _____
App. Complete _____

John Hinzman, AICP

From: Julie Flaten
Sent: Friday, April 10, 2020 10:57 AM
To: John Hinzman, AICP
Cc: Dan Wietecha
Subject: FW: Ian Martin Variance

John,

This was received in the public comment email.

Julie Flaten
Administrative Services Director
City of Hastings | City Hall | 101 4th Street East | Hastings, MN 55033
Direct: 651-480-2355 | Mobile: 651-775-6558 | Fax: 651-437-1654 <http://www.hastingsmn.gov> -----Original Message-----
From: Jill <gentzer01@yahoo.com>
Sent: Thursday, April 9, 2020 6:16 PM
To: PublicComment <PublicComment@hastingsmn.gov>
Subject: Ian Martin Variance

Hi,

I am writing in support of the variance requested to the property listed at 1770 Greystone Road in ownership by Ian Martin.

My property faces directly East of this parcel and said property shares a common pond with ours. It is my opinion that this request does not place any additional burdens to any surrounding properties, including mine and that this variance should be granted.

Please let the record reflect that Andrew and Jill Gentz, neighbors of Ian and Kelsey Martin are In full support of the decision to allow this variance.

Feel free to reach out with any question.

With kind regards,

Jill and Andy Gentz
1671 Fallbrooke Drive