



City Council Memorandum

To: Mayor Fasbender & City Councilmembers

From: Justin Fortney, City Planner

Date: April 5, 2021

Item: Resolution: Variances #2021-12 – Shoreland lot size and width - 914 1st St E

Council Action Requested:

Review and take action on the attached resolution granting the following variance requests:

- 1) A variance to the minimum lot size and width of two lots within the Shoreland Management District. Chapter 153.05, Subd. (A)(2)(b) – Non-Riparian lots within 1,000-feet from Lake Isabel must be 15,000 SF and within 300-feet of a Transition River must be 150-feet wide.

Lots existing prior to an ordinance change that increases requirements are grandfathered as legally nonconforming lots. However, grandfathered lots that are owned by the same individual as an adjacent lot, may not be grandfathered according to a provision in the Shoreland Ordinance (155.05 Subd. (A)(5)).

Approval of a variance requires the support of 6 of 7 Councilmembers.

Background Information:

The two subject lots are of typical size for the zoning district and location. They are not adjacent to any waterbodies, but are within the Shoreland Management overlay of the Mississippi River and Lake Isabel. Since the grandfathered lots were owned by the same individual after passage of the Shoreland Management Ordinance, variances must be granted to construct a new home on the western lot and sell them individually once again.

Please see the attached March 22, 2021 Planning Commission staff report for additional information.

Financial Impact:

Increase in tax base of one additional single-family home.

Advisory Commission Discussion:

The Planning Commission voted 7-0 to recommend approval of the request at the March 22, 2021 meeting. Two residents spoke in opposition to the request citing current drainage issues in the area. Notably, they mentioned that the lots to the west and north mostly drain to the subject property. They also stated there is a low area in the front of the lot, which may receive high water from time to time and must be pumped out during river flood events. The applicant stated he formerly worked as a civil engineer specializing in drainage. He said he is aware of the current drainage issues and will have engineers develop a drainage plan to address stormwater issues, which is a requirement of the variance approval and a building permit application. The Planning Commission commented that they take the area drainage issues seriously and are tasked with reviewing the variance from an ordinance standpoint related to lot standards. Commissioners stated that the potential for a drainage plan related to home construction may be the catalyst to address the current problems and were confident the engineering review process would not allow for hazardous situations to be created.

Council Committee Discussion:

N/A

Attachments:

- Resolution
- Planning Commission Memo – March 22, 2021
- Public Comment Letters

HASTINGS CITY COUNCIL

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HASTINGS
GRANTING A VARIANCE TO THE minimum lot size and width of the shoreland
Management Ordinance at 914 1st Street E**

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

WHEREAS, Mark Mason with Mason Homes has petitioned for a variance to Hastings City Code Chapter 153.05, Subd. (A)(2)(b)1. to vary from the 15,000 SF and 150-foot wide lot requirements of the Shoreland Management Ordinance to allow for the originally platted lots size and widths for lots generally located at 914 1st St E, legally described as Lot 2 and Lot 3, both of Block 111, Town of Hastings BLKS 100 THRU 199, Dakota County, Minnesota.

WHEREAS, on March 22, 2021, the request was reviewed by the Planning Commission of the City of Hastings, as required by state law, city charter and city ordinance; and

WHEREAS the Planning Commission recommended approval of the request to the City Council subject to the findings of fact contained herein; and

WHEREAS the City Council has reviewed the request and concurs with the recommendation of the Planning Commission; and

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

That the City Council hereby approves the variance as presented to the City Council based on the following findings of fact:

1. The physical surroundings include an existing developed community in conjunction with two waterbodies, which are improperly categorized in the local

- Shoreland Ordinance. If the strict letter of the regulations were carried out, the owner would have a practical difficulty splitting the lots for a new home construction as the full Minnesota Administrative Rules Chapter 6120, Shoreland and Floodplain Management regulations would allow.
2. The conditions above are fairly unique to the subject tract of land. While there may be several other grandfathered lots in common ownership, few are within both the Transition River and Recreational Lake impact zones. Furthermore, as staff intends to propose updating the Shoreland Ordinance later this year to address the existing discrepancies along with the pending draft MRCCA Ordinance, the conditions present would not be applicable to other properties.
 3. The owner doesn't seek to obtain the variance exclusively to increase the value or income potential of the lot, as the variance is necessary to construct a home on the lot.
 4. Granting of the variance would allow for the construction of home as was intended for the lot since platted in 1855 and the proposal meets all zoning requirements. It appears there was a home on the lot in 1936 and water and sewer lines have been maintained to the property in anticipation for a home. The proposed home would meet all setbacks and development requirements, aside from the Shoreland lot measurements. Grading, drainage, and construction requirements will be reviewed and enforced.
 5. It does not appear that the variance will impair light, air, congestion, fire danger, public safety, or property values within the vicinity, as the site will be developed similar to comparable properties.
 6. The variance is in harmony with the intent of the ordinance, as the purpose and intent of the ordinance is to preserve and enhance the quality of surface waters, conserve the economic and natural environmental values of shorelands, while allowing for development, while allowing for wise use and development of properties and resources. The actual ordinance misses the full intent of the ordinance by restricting development in developed areas. This is not the intent of the full Minnesota Administrative Rules Chapter 6120, Shoreland and Floodplain Management regulations.
 7. The property is guided for low density residential development, which allows properties in the proposed size and dimensions. Furthermore, the Housing chapter of the 2040 Comprehensive plan calls for increased infill development by creating new housing on vacant parcels in existing neighborhoods. This leads to lower housing prices and reduces infrastructure maintenance obligations for the city. Additionally, the MRCCA chapter of the 2040 Comprehensive Plan identifies the subject area adjacent to the Mississippi River as River Towns and Crossings, which states the "RTC district must be managed in a manner that allows continued growth and redevelopment".
 8. Construction of a typical home on a typical lot that was intended and planned for a home is certainly reasonable.
 9. The construction of a home on a platted lot meets the intent of the Shoreland Ordinance and is a reasonable use of the land.
 10. The practical difficulty was created by mis-categorization of the waterbodies in the Shoreland Ordinance. The waterbodies should have been categorized in a way

that would have allowed current area development to continue, infill, and redevelop.

- 11. The applicant cannot accomplish the proposal under the current ordinance requirements.
- 12. The parcel will develop consistent with area properties.
- 13. The applicant has not stated any economic considerations necessitating the variance.

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

Approval of the variance is subject to the following conditions:

- 1. Conformance with the Planning Commission Staff Report and plans dated March 22, 2021.
- 2. Approval is subject to a one-year Sunset Clause; if progress on the proposal is not made within one year of City Council approval, the approval is null and void.
- 3. All provisions of the Zoning, Shoreland Management and Floodplain ordinances must be addressed including but not limited to setbacks, design, drainage, and elevation requirements.
- 4. The well identified on the survey, if in fact a well, must be properly capped according to current Dakota County and Minnesota Department of Health standards.

Council member _____ moved a second to this resolution and upon being put to a vote adopted by _____ present.

Adopted by the Hastings City Council on April 5, 2021, by the following vote:

Ayes:

Nays:

Absent:

ATTEST:

Mary Fasbender, Mayor

Erica Henderson
City Clerk

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 5th day of April, 2021, as disclosed by the records of the City of Hastings on file and of record in the office.

Erica Henderson
City Clerk

(SEAL)

This instrument drafted by:
City of Hastings (JJF)
101 4th St. E.
Hastings, MN 55033



Planning Commission Memorandum

To: Planning Commissioners

From: Justin Fortney, City Planner

Date: March 22, 2021

**Item: Mason Home Co - Variance #2021-12 – Shoreland lot size and width - 914 1st St
E**

Planning Commission Action Requested

Review and make a recommendation to the City Council on the following action requested:

- 1) A variance to the minimum lot size and width of a lot within the Shoreland Management District. Chapter 153.05, Subd. (A)(2)(b) – Non-Riparian lots within 1,000-feet from Lake Isabel must be 15,000 SF and within 300-feet of a Transition River must be 150-feet wide.

Lots existing prior to 6-16-1994 (like the subject lots) are grandfathered as legal nonconforming buildable lots. However, grandfathered lots that are owned by the same individual as an adjacent lot, are not afforded such status, as stated in ordinance (155.05 Subd. (A)(5)).

Background Information

Shoreland Management Ordinance

The Shoreland Management Ordinance is meant to preserve and enhance the quality of surface waters, conserve the economic and natural environmental values of shorelands while allowing for wise use and development of properties and resources. This is accomplished by requiring new development around lakes and rivers to be less dense to lessen the impact of stormwater runoff and reduce the visual impact of development from those features.

One missing component to our Shoreland Ordinance that we adopted is a delineation between waters within undeveloped rural lands and developed lands in cities. Undeveloped lakes and rivers provide an expectation of remaining primitive and can benefit from low-density development. Existing dense development in cities near lakes and rivers include infrastructure that protects the waterbodies from potential impacts of continued development in those immediate areas. Existing streets, storm sewers, and sanitary sewers protect those resources from the impact of existing and future development in these developed areas.

The entire Shoreland Ordinance was created by the Minn. DNR and did include water categories that were accepting of standard sized lots in developed areas. Those category descriptions indicate they are for waterbodies “located within or adjacent to major cities throughout the state”. Unfortunately, when we adopted our model Shoreland Ordinance, these classifications were not included in ours. Staff has not done a comprehensive search, but noticed that the City of Monticello (population 13,583) has a Shoreland Ordinance that includes these urban classifications for waterbodies including the Mississippi River adjacent to developed areas.

Later this year, the city will be reviewing a Mississippi River Corridor Critical Area (MRCCA) Ordinance. This ordinance will regulate development and vegetation management along the Mississippi River Corridor. The draft Template includes districts that properly reflect the differences between developed and undeveloped areas. During the review of the proposed plan, staff will propose amendments to the current Shoreland Ordinance to reflect the MRCCA ordinance and better reflect the current development in Hastings. These changes are intended to protect natural areas while allowing for typical infill and redevelopment.

Case Law

There is case law that affects the applicability of shoreland lot size and width requirements to grandfathered lots in common ownership. Existing lots that are owned by the same individual cannot be required to meet more than 66% of the required lot size and width. For the subject property, this would be 99’ wide (required within 300-feet of a transition river) and 9,900 Sf (required within 1,000’ of a recreational Lake). The lots of record are 66’ wide and 9,240 Sf, which still would require variances. The width required for a lot within 1,000’ of a recreational lake is 75’, but a variance is not needed, as case law does not allow requiring more than 66% of that requirement (49.5’). The variances if granted, should still reflect the size requirements of the ordinance rather than case law, but effectively, the proposed variance is very close to what is allowed by case law.

Subject Proposal

The applicants propose to construct a home on the vacant lot, which was platted in 1855 as a standard 66’ by 140’ lot. This 9,240 Sf lot is typical of the area and much larger than the minimum lot size of the zoning district (7,000 Sf). Municipal water and sewer lines are stubbed to the property, although there doesn’t appear to have been a house there since the sometime between 1936 – 1950’s.

The Shoreland Ordinance requires greater lot sizes and widths for lots within 1,000’ of a lake and 300’ of a river, whether or not the property is in a developed area or a remote rural location. Lots that were created prior to an ordinance change, which makes them substandard are grandfathered as legally nonconforming and may be developed. The Shoreland Ordinance acknowledges this, but places conditions on this legally

nonconforming status including that: The lot has been in separate ownership from abutting lands at all times since it became substandard (1994).

The applicant owns both lots and must receive a variance to the original lot dimensions if they wish to construct a new home. The proposed home meets all other development standards. If the variances are granted, they would submit for a building permit with appropriate grading/ drainage plans that are reviewed for compliance with drainage and development standards. The house is proposed to be placed on the south side of the lot with the garage facing the alley and the front of the home facing 1st Street E.

Zoning

The property is zoned R-2 medium density residence. The district allows new lots with at least 7,000 Sf with a minimum width of 50’ wide. The setback requirements are 20’ front and rear and 7’ from the side property lines for principal structures.

Adjacent Zoning and Land Use

The following land uses about the property:

Direction	Use	Comp Plan District	Zoning District
North	Single Family Home	Low Density Residential	R-2 - Single Family
East	Single Family Home	Low Density Residential	R-2 - Single Family
South	Single Family Home	Low Density Residential	R-2 - Single Family
West	Single Family Home	Low Density Residential	R-2 - Single Family

Public Notification

Notification of the meeting was sent to the DNR and all property owners within 350 feet of the proposed property. We have received the comments following this report.

Floodplain

Most of the property is covered by the Flood Fringe designation. Structures within that designation are allowed on fill of 693’ above sea-level in this location. The highest portion of the property (south) is at 694’ and the lowest is 689’ to the north. The home is proposed to be located on the south side of the lot to take advantage of the topography. The development standards of the Floodplain Ordinance require certified surveys and elevation certificates before and after development. They are reviewed administratively by the Planning and Engineering Departments to assure compliance. No development is allowed in the floodway district, which is far from this location.

VARIANCE REVIEW

Variance Definition

Variances are deviations from strict compliance of City Code provisions. The Board of Adjustment and Appeals may issue 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 City Council and Planning Commission to facilitate the Board's roles and duties. Applications for Variances require Board of Zoning Adjustment and Appeals review.

Requested Variance – Lot size and width

City Code Chapter 153.05, Subd. (A)(2)(b) requires new, Non-Riparian lots within 1,000-feet of a recreational lake must be 15,000 SF and 150' wide within 300' of a Transition River.

Variance Review

City Code Chapter 30.02(F) establishes the requirement for granting variances. The Planning Commission (acting in part 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 surroundings include an existing developed community in conjunction with two waterbodies, which are improperly categorized in the local Shoreland Ordinance. If the strict letter of the regulations were carried out, the owner would have a practical difficulty splitting the lots for a new home construction as the full Minnesota Administrative Rules Chapter 6120, Shoreland and Floodplain Management regulations would allow.***

(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 not applicable, generally, to other property with the same zoning classification; ***The conditions above are fairly unique to the subject tract of land. While there may be several other grandfathered lots in common ownership, few are within both the Transition River and Recreational Lake impact zones. Furthermore, as staff intends to propose updating the Shoreland Ordinance later this year to address the existing discrepancies along with the pending draft MRCCA Ordinance, the conditions present would not be applicable to other properties.***

(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 doesn't seek to obtain the variance exclusively to increase the value or income potential of the lot, as the variance is necessary to construct a home on the lot.***

(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 for the construction of home as was intended for the lot since platted in 1855 and the proposal meets all zoning requirements. It appears there was a home on the lot in 1936 and water and sewer lines have been maintained to the property in anticipation for a home. The proposed home would meet all setbacks and development requirements, aside from the Shoreland lot measurements. Grading, drainage, and construction requirements will be reviewed and enforced.***

(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; ***It does not appear that the variance will impair light, air, congestion, fire danger, public safety, or property values within the vicinity, as the site will be developed similar to comparable properties.***

(6) The variance is in harmony with the purposes and intent of ordinance; ***Yes, the purpose and intent of the ordinance is to preserve and enhance the quality of surface waters, conserve the economic and natural environmental values of shorelands, while allowing for development, while allowing for wise use and development of properties and resources. The actual ordinance misses the full intent of the ordinance by restricting development in developed areas. This is not the intent of the full Minnesota Administrative Rules Chapter 6120, Shoreland and Floodplain Management regulations.***

(7) The variance is consistent with the comprehensive plan; ***The property is guided for low density residential development, which allows properties in the proposed size and dimensions. Furthermore, the Housing chapter of the 2040 Comprehensive plan calls for increased infill development by creating new housing on vacant parcels in existing neighborhoods. This leads to lower housing prices and reduces infrastructure maintenance obligations for the city.***

(8) The proposal puts the property to use in a reasonable manner; ***Construction of a typical home on a typical lot that was intended and planned for a home is certainly reasonable.***

(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; The ***construction of a home on a platted lot meets the intent of the Shoreland Ordinance and is a reasonable use of the land.***

(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 mis-categorization of the waterbodies in the Shoreland Ordinance. The waterbodies should have been categorized in a way that would have allowed current area development to continue, infill, and redevelop.***

1. A practical difficulty is not present if the proposal could be reasonably accomplished under the current Ordinance requirements, ***The applicant cannot accomplish the proposal under the current ordinance requirements.***

(c) The variance, if granted, will not alter the essential character of the locality. ***The parcel will develop consistent with area properties***

(d) Economic considerations alone do not constitute practical difficulties. ***The applicant has not stated any financial reasoning for the variance.***

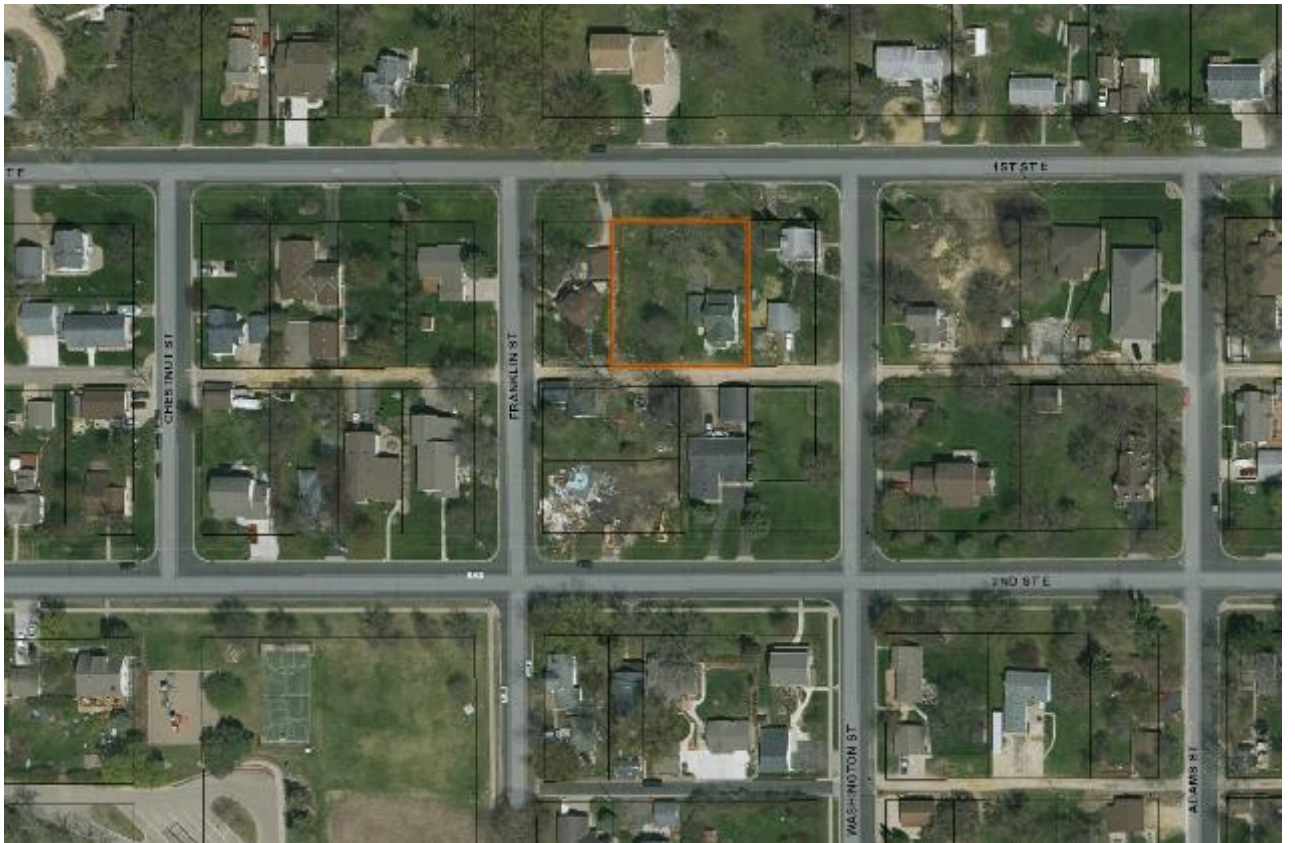
(e) Practical difficulties include inadequate access to direct sunlight for solar energy systems. ***Not applicable.***

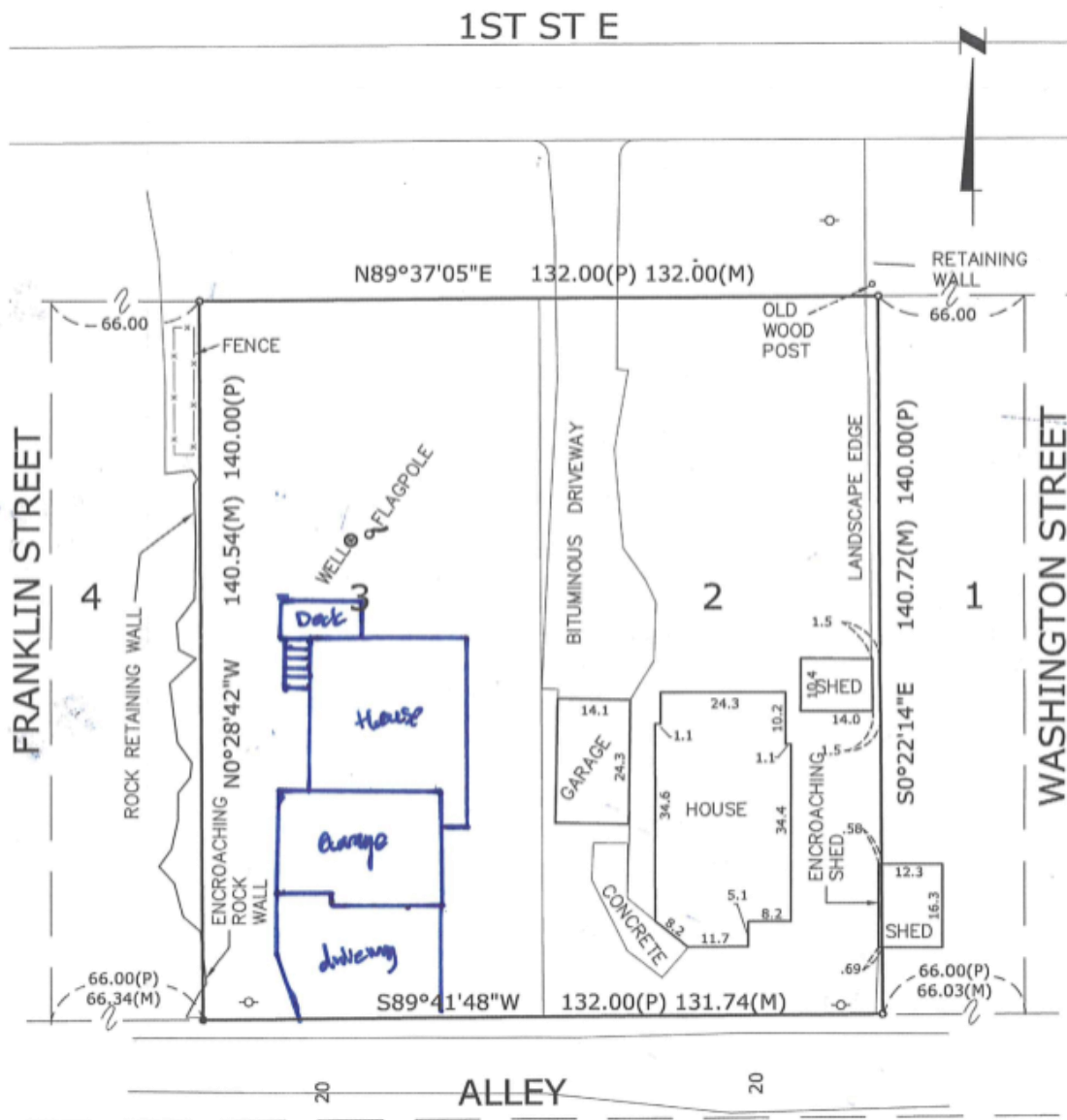
RECOMMENDATION

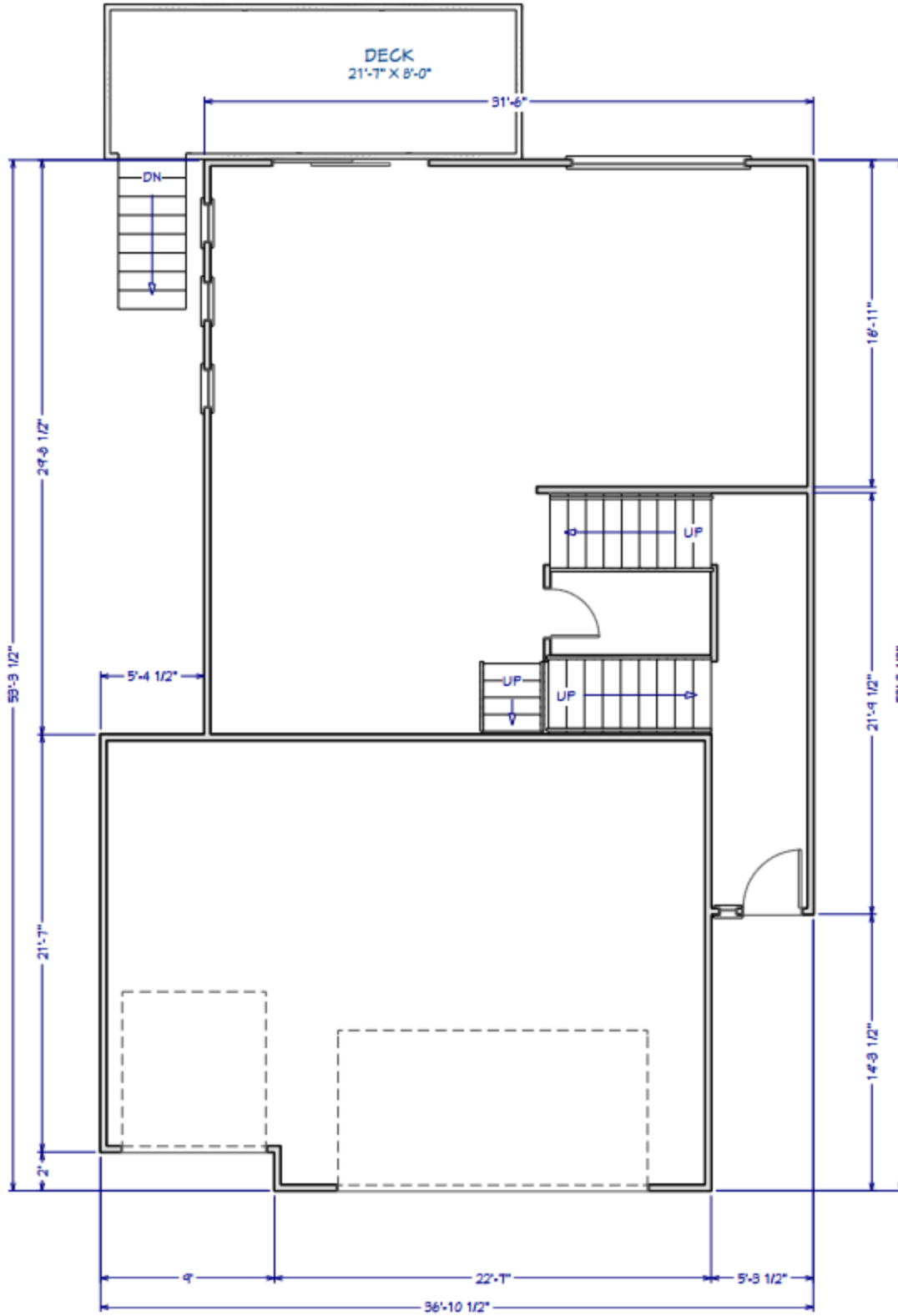
Approval of the Variance is recommended subject to the above findings of fact in the Variance Review. Granting a variance with the identification of unique conditions and practical difficulties would not confer similar justification to other properties.

ATTACHMENTS

- Location Map and Site Photo
- Plans
- Proposal Letter







Proposed footprint



Typical interior design

Dear Justin,

First I would like to thank you for taking time out of your busy day to meet my neighbor Ray Menard and myself.

I would like to state that I am opposed to the variance being allowed.

I have attached the PDF that Ray had attached in his email as he did a wonderful job of pointing out water issues that are already occurring and will only be exacerbated by the addition of another building. We still don't know the impact of the additional surface runoff (3 times the previous building) for the new building Franklin St and 2nd St E.

I am currently getting some images of past water issues on this property and how it affects other surrounding lots. Hope to have them ready before Monday morning. The less than two week notification makes putting together concerns with documentation a bit tough.

I do hope the variance does not get approved. Perhaps the approval should wait until the engineers have a chance to resolve the serious water issues that you agree exist. The Mason Home Co has no concern about what effects the additional building would have current water issues.

I will also be in attendance at the Monday Planning Commission meeting on Zoom.

Warm regards,
Cynthia "BJ" Carl
102 Washington St Homeowner

914 1st St. E.

Variance request: flood and storm sewer issues
Concerns by Raymond Menard, 906 1st St. E.

Water Flow

Storm sewer where water drains into sewer system then river

'Ponding basin' that holds water when river floods and sewer is closed

Area that drains to storm sewer



First St. is downhill to the corner of 1st and Franklin from both ends. From there, the street storm sewer flows under an unvacated area of Franklin St. into the river. The storm sewer in the 914 lot flows downhill to connect there.

First St. is a 'dike' that protects these properties from moderate river flooding. The first place the river comes on 1st St. is at Franklin.

This open lot is probably lowest in Hastings. Entire block uses it for rain flow.



19 March, 2021

Dear Planning Commission of the City of Hastings,

We request that the City of Hastings disallow construction on this site until a proper site review is conducted and any necessary engineering be proposed, approved, and implemented.

We have a justified concern that the new structure will change water flow, undermining the foundation of our house. It will also cause more frequent flood issues as it displaces the ponding basin provided by this empty lot. This will affect ourselves, the and all the lots on the block facing 1st Street. The developer will not be 'owning' these problems.

Sincerely,

Raymond and Lonnie Menard
906 1st St E
Hastings, MN 55033

Sent: Tuesday, March 23, 2021 11:45 AM

Dear Ladies and Gentlemen,

Thank you for hearing BJ and I at the recent Planning Commission meeting! It helps us have confidence in our city and its administration. That is a highly valued feeling.

We look forward to the city's participation in helping resolve this issue. Perhaps the streets department can engage with city engineers as we move forward. Thank you, again.

Ray Menard

Dear Gino Messina,

We were just informed that there is a variance sought on a lot in our neighborhood. I provided a letter to Justin Fortney on this subject but it may not have been provided to you. Kindly find it attached.

We are thankful that Mr. Fortney visited the site this morning. He agrees that there are serious water issues on the property and that it will require special engineering to build on the site. But he told us that he is inclined to set that aside and allow the variance only based on meeting lot size.

In our opinion this will 'kick the can down the road'. Our residences are experiencing increasing problems that will be exacerbated by this construction. Also the city is directly involved as there is a storm sewer actually located in the lot and is already involved in pumping water on the site on a regular basis. This is a classic property-flip situation so the developer will walk away and leave the rest of us holding the bag.

I would be grateful to connect before the meeting and can be available to you anytime before the meeting. Feel free to call me at 612-386-4481. A 15 minute site visit would be best, if possible. I will also be in attendance at the Monday Planning Commission meeting on Zoom.

We ask the city to disallow this request for variance, as described in the attachment herein.

Thank you for your attention to this issue!

Peace,

A handwritten signature in black ink that reads "Ray". The signature is written in a cursive style with a long, sweeping tail on the letter "y".

Ray Menard

Good Morning Justin,

Thank you for forwarding these neighbors' concerns on to us. A few additional pieces of information that may be helpful in your meeting today.

1. Mr. Menard called me wanting to buy the land from me, I told him our plan which he was not too happy about, I believe there is more to this than just the drainage.
2. I spoke to him at length about the drainage, told him we would address it and we came to the solution to meet on site and go over everything with him to make sure his concerns were addressed
3. In a past life I was a Civil Engineer and my specialty was drainage, I've worked on and completely designed many private and public improvement projects. During my time at Kimely-Horn I was the go to drainage designer / reviewer in the office. I am confident once this lot split is completed and we build, we will be more than adequately addressing these neighbors drainage concerns.

My last thought in looking at my site pictures (still snow covered I am out of town and our photos are from a few weeks back) is addressing the concern of the retaining wall, if we fill our site and the Mr. Menard lets us fill very little onto his site, appears to be less than 1-2', the height of his retaining wall would decrease significantly, This is something I will approach him about on my own once we get building plans created. I do believe there is an easy way to work with the existing neighbors to ensure their concerns are met, all well providing the benefits of a new home and a new family in the community.

One other thing to address quickly, Mr. Menard clearly does not know the kind of operation we run. He has taken a few jabs at my company, Saying we have no concern about what affects this may have, and additionally trying to degrade the quality of work we will do by saying "kick the can down the road" and "classic flip situation". These statements could not be further from the truth, while I will let Mr. Menard think what he wants, I felt it important to address this with the city. We have renovated well over 100 houses, built around 10, completed infill developments, renovated entire apartment buildings, and the list goes on. This will be a top quality build and the new owners will love their home, all while working collaboratively with the city addressing the concerns the neighbors have in a way that makes complete sense.

Thanks again for forwarding on the communication from the neighbors.

Mark [Mason]