

MINUTES OF THE TOWN OF SILVER CREEK BOARD OF ADJUSTMENT  
SILVER CREEK TOWN HALL  
VARIANCE HEARING  
DECEMBER 10, 2013

The Town of Silver Creek Board of Adjustment sat in session on Tuesday, December 10, 2013 and conducted a variance hearing. Chairman Mike Hoops called the hearing to order at 7:00 p.m.

Member present were: Chair – Mike Hoops; Supervisor – Greg Hull; Supervisor – Larry Lampart; Clerk – Frederick R. Whitney. Others in attendance were the applicant's parents Margit and Ray Wakefield; adjacent property owner John M. Hasse.

The purpose of the hearing is to consider the Variance application, SCV-13-1 by Ray Andre' Wakefield for the property described as: All that part of Outlot 1 of County Auditors Plat No. 3 of Government Lot 3, Sec. 32, T. 54 N, R. 9 W. of the 4<sup>th</sup> Principal Meridian as hereinafter described: Starting at a point where the west line of said Outlot 1 intersects the southerly right of way line of U.S. Highway No. 61, thence in a northeasterly direction along said southerly right of way line on an assumed bearing of N 43 degrees – 02' E., a distance of 6.63 ft. to a point which is the point of curvature of a curve to the right whose radius is 1,382.5 ft., thence along said curve to the right a distance of 232.82 ft. to a point which is the point of beginning of the parcel being described; thence continuing along said curve to the right a distance 69.14 ft. to a point, thence on a bearing of S 59 degrees – 0' E. a distance of 194.0 ft. more or less to a point on the shore of Lake Superior, thence in a southwesterly direction along said shoreline of Lake Superior a distance of 68 ft. more or less to a point, thence on a bearing of N 59 degrees – 0' W a distance of 201.5 ft. more or less to the point of beginning; containing 0.29 acres more or less. Town of Silver Creek, Lake County, Minnesota, zoned RS – Residential Service.

This after-the-fact request, if approved, would allow a variance to the side-yard building setback of 11 ft. for the cabin and 12 ft. for the garage, which were moved away from their Lake Superior embankment due to erosion.

Legal notice was published 11/23/2013 and 11/30/2013 in the Northshore Journal. 70 notices were sent as follows; the applicant, adjoining property owners within ¼ mile, Lake County Land Use Office, Town of Silver Creek Board. There were no written responses. The hearing notice was also posted at the Silver Creek Town Hall and the Town's website.

Hoops asked whether or not we had received any responses. Whitney indicated none had been received in writing, but had three conversations with adjacent property owners in support of the variance. Additionally, John M. Hasse gave his verbal support at the hearing.

Fred Whitney presented the after the fact building permit and variance applications to the Board. He discussed the discovery of the cabin move, the purpose for the cabin move, (embankment erosion due to the flood in June 2012), as well as what had transpired with the property owner, the parents of the property owner and the builder as a result of the move.

The Board was presented with a letter dated October 25, 2013 from Dan Schutte, the Lake County Soil and Water Conservation District Manager who had visited the site at the request of the property owners, as well as the Clerk. The letter identifies his recommendations for immediate action for erosion control of the embankment. The initial recommendation of Schutte back in 2012 was to move the cabin in that its' footings were exposed and buckling toward the lake.

Whitney indicated that the move was performed when the contractor and building mover had an unexpected opening in their schedules in October 2013. Once the move was discovered, due to a loss of power to the grinder station, all construction was halted.

The Board, at a previous meeting, allowed the winterization of the cabin. Additionally, emergency stabilization efforts and sewer line connections with final grading and seeding of the site were allowed in order to beat the cold weather set in.

Margit Wakefield confirmed Whitney's remarks. She indicated that they had attempted to obtain bids and recommendations for erosion control in 2012, as well as repairing the damage caused by the storm. Contractors weren't available due to the extent of the storm's damage and any recommendations that they did receive did not include moving the cabin, as had been suggested by Lake County Soil and Water. They obtained the name of their contractor from their neighbor. Their contractor called in October of 2013 to let them know that the mover, Peter McQuade had moved the Rustic Inn and he had an opening. Wakefield confirmed that it was their responsibility to obtain a building permit, but didn't realize that one was necessary for a move.

Hull asked what the side yard setback ordinance was. Whitney confirmed that it was 20 feet, and added that the building structures are within the other ordinance setback guidelines – front, lakeside, vegetation line, highway right of way. However, this property's lot size is .29 acres, and has been grandfathered in, because the ordinance requires a 2 acre minimum lot size.

Hoops indicated that there appears to be some discrepancies with the site surveys of John M. Hasse's property. Mr. Hasse presented a survey, performed by Rick Tofte, that shows the legal description of his property lines are different than the surveyed lines from 1973. This discrepancy, whichever property line is correct, will cause the Wakefield property line to be potentially different than is described on the permit applications. It was noted that while the Wakefield's buildings are within the "envelope" of their legal property, the side yard setback variances may fluctuate by as much as 6 feet.

Hull stated that there are three questions to be answered.

1. Can the property be put to reasonable use for anything else under the existing land use ordinance? Answer: No.
2. Is the plight of the land owner due to circumstances not created by the land owner? Answer: Yes, the June 2012 storm washed the embankment away up to the footings of the cabin.
3. Does the granting of the variance alter the essential character of the area? Answer: No.

Hoops made a motion to provisionally grant the variance contingent upon the Wakefield's following all recommendations contained within the letter from the Lake

County Soil and Water director, dated October 25, 2013. Further, that the Wakefield's work with their neighbors and Soil & Water in order to further stabilize the embankment. And finally, before the buildings are permanently anchored to the ground, obtain a survey identifying the locations of the buildings on their property so that the Board can finalize the exact side yard setback variances.

Hull asked for clarification of the motion; was it a conditionally granted? Hoops answered yes. Hoops added that we can take an additional 60 days before granting the final variance. The Wakefield's were OK with extending the hearing for another 60 days, have already completed many of the recommendations within the letter and will proceed with obtaining another survey from Sam Parker.

Hull added that an additional survey was perhaps irrelevant to this Board's discussion. The buildings are within the envelope of the described property, regardless of which survey is being utilized. The variance will only fluctuate, plus or minus, 6 feet on either side, but again, will be within the envelope of the legally described property.

Hoops agreed to meet with Sam Parker regarding the lot line discrepancy and go to the site with Parker when he conducts the survey.

Discussion regarding the extending of the hearing continued. Hull would rather make a final, provisional granting of the variance tonight, with the above conditions included.

The above motion failed for lack of a second.

Hull made a motion to provisionally grant the variance requested, second by Lampart, based upon the Board's findings of fact that they meet the criteria listed for granting of the variance which includes:

1. The property cannot be put to reasonable use for anything else under the existing land use ordinance.
2. Their plight was not created by the land owner.
3. The granting of the variance will not alter the essential character of the area.

Further, the provisions for the granting of the variance include:

1. That the Wakefield's follow the recommendations contained within the letter from the Lake County Soil and Water director, dated October 25, 2013 regarding bank stabilization.
2. That the Wakefield's immediately order a survey that substantiates the fact that the new locations of the buildings do not result in an encroachment upon any of their neighbor's property. Said survey to identify the locations of the buildings, as well as the distances from the side yard lot lines.
3. That the Wakefield's work with their neighbors and Soil & Water regarding the long-term stabilization of the bank.

Variance approved by unanimous yea vote of Supervisors Mike Hoops, Greg Hull and Larry Lampart this 10<sup>th</sup> day of December 2013.

Hull made a motion to adjourn the meeting at 7:46 p.m., seconded by Lampart. Motion carried unanimously.

Respectfully submitted,  
Frederick R. Whitney