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# **Le Sueur County, MN**

**Thursday, July 21, 2016**

**Regular Session**

## **Item 4**

**Mostaghimi**

Staff Contact: Kathy Brockway or Michelle Mettler

# VARIANCE STAFF REPORT

## GENERAL INFORMATION

APPLICANT/OWNER: ESMail & BARBARA MOSTAGHIMI

911 ADDRESS: 50411 MORTENSEN LANE, WATERVILLE MN 56096

VARIANCE REQUEST: To allow the applicant to repair an existing deck located within the bluff in a Recreational Residential "RR" District on a Recreational Development "RD" lake, Lake Tetonka.

VARIANCE NUMBER: 16157

PARCEL NUMBER: 14.140.0100

## SITE INFORMATION

LOCATION: Lot 11, Auditor's Subdivision and part of Government Lot 3, Section 28, Waterville Township.

ZONING & PURPOSE: Recreational Residential

The intent of the **Recreational Residential (RR) District** is to preserve areas, which have natural characteristics suitable for both passive and active recreational usage. Also, it is the intent of this district to manage areas suitable for residential development of varying types, including permanent and seasonal housing. Some non-residential uses with minimal impacts on residential uses are allowed if properly managed under conditional use procedures.

### GOALS AND POLICIES:

**Goal 2:** Le Sueur County should adopt and enforce land use goals and policies that conserve and restore its natural resources, bring protections to the ecological systems of the natural environment, and prevent the premature development of natural resource areas.

**Policy:** Utilize shorelands on Recreational Development Lakes (RD) for housing, but with a focus on development design that protects the resource.

### GENERAL SITE

DESCRIPTION: Shoreland, Residential

ACCESS: Existing access off Mortensen Lane

LAKE: Recreational Development "RD" lake, Lake Tetonka.

RFPE: Regulatory Flood Protection Elevation: 1006.08 Lowest floor must meet RFPE.

## ATTACHMENTS

Application, Survey, Surveyor Certification, Aerial photo, Letter LSC Resource Specialist, Findings of Fact

## STAFF FINDINGS

Staff findings per Le Sueur County Ordinance, the following findings have been developed for this request:

1. Variance:  
Repair existing deck within the bluff
- Ordinance:  
Section 13.2
2. Refer to DNR Guidance Letters:
  - a. The Role of the Variances in Shoreland Management Ordinances pg. 9
  - b. Bluffs and Steep Slopes pg. 11

Page 1 of 2

- c. Limiting Impervious Surface pg. 15
  - d. Non-conforming Lots of Record in Shoreland Areas pg. 19
  - e. Structure Setback Requirements pg. 21
3. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official controls and are consistent with the comprehensive plan.
  4. A Variance may be granted **only** where the strict enforcement of the official controls will result in a **practical difficulty**.
  5. It is the responsibility of the **applicant** and/or landowner to prove evidence that a practical difficulty exists.
  6. A determination that a **practical difficulty exists** upon the consideration of the **findings of fact**.

<b>CONSIDERATIONS</b>
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1. The following shall be considered at the hearing:
  - a. There are special circumstances or conditions affecting the land, structures or use referred to in the Variance.
  - b. The granting of the application will not be a detriment to the public health, safety, and general welfare or injurious to property or improvements in the area adjacent to the property of the applicant/landowner.
  - c. Consider sewage treatment and water supply capabilities or constraints of the lot and shall deny the variance if adequate facilities cannot be provided.

<b>CONDITIONS</b>
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1. In granting any Variance, the Board of Adjustment may designate such conditions in connection that will secure substantially the objectives of the Ordinance, regulation or provision to which the application is granted.
2. Conditions must be directly related to and bear a rough proportionally to the impact created by the Variance.
3. *If approved*, construction must be completed **prior to the Variance expiration**, Section 22; Subdivision 7.
4. *If approved*, a **zoning permit** must be purchased prior to starting construction, Section 26.
5. **Extension** must be requested 30 days prior to Variance expiration, Section 22; Subdivision 7.

**LE SUEUR COUNTY ENVIRONMENTAL SERVICES  
88 SOUTH PARK AVE.  
LE CENTER, MINNESOTA 56057-1600**

Phone (507) 357-8540 (direct line)

Fax (507) 357-8541

Date: 07/07/2016

To: Le Sueur County Planning and Zoning Board of Adjustment

From: Joshua Mankowski, Environmental Resources Specialist

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**Applicant:** Esmail and Barbara Mostaghimi

**Property owner:** Esmail and Barbara Mostaghimi

**Property:** 14.140.0100

**Description:**

Allow the applicant to repair an existing deck located within the bluff on Lake Tetonka

**Recommendation:**

It is my recommendation to approve the Variance request to allow for repair of the existing deck. The footprint of the deck must not change and existing footings must be used.

Sincerely,



Joshua Mankowski  
Le Sueur County  
Environmental Resources Specialist

## Variance Application

**I. Applicant:**  
 Name Esmail and Barbara Mostaghimi  
 Mailing Address 113 S. Park Lane  
 City Le Sueur State MN Zip 56058  
 Phone # 507-351-6644 Phone # 507-351-6645

**II. Landowner:**  
 Name Esmail and Barbara Mostaghimi  
 Property Address 50411 Mortensen Lane  
 City Waterville State MN Zip 56096  
 Phone # 507-351-6644 Phone # 507-351-6645

**III. Parcel Information:**  
 Parcel Number R14.420.0100 Parcel Acreage 8669 SqFT  
 Township 109 North Section 28  
 Subdivision Auditors SD Lot 11 Block \_\_\_\_\_

Full Legal Description must be attached.

(Full legal description can be found on deed, not abbreviated legal description from tax statement).

**IV. Variance Request:** List requested alternative to development standard(s).  
Existing deck is located in a bluff.  
Repairing an existing deck.

**V. Description of Request:**

a. A full written description of the proposed variance request with detailed information must be attached.

**VI. Township Notification:**

Township must be notified prior to application. (County Commissioners are not the Township Board.)

Waterville Township Township notified on June 14 2016  
 (Township Name) (Date)

Board Member Commins regarding the proposed request.  
 (Name)

**VII. Site Plan - Shall be a Certificate of Survey to include, but not limited to:**

- |                     |            |   |             |
|---------------------|------------|---|-------------|
| • North point       | • Lakes    | • Well  | • Access    |
| • Setbacks          | • Rivers   | • Septic System   | • Easements |
| • Property lines    | • Wetlands | • Proposed Structures   |             |
| • Road Right-Of-Way | • Streams  | • Existing structures - <i>Within and adjacent to project area.</i> |             |
| • Lot Dimensions    | • Ponds    | • Location of trees to be removed - <i>Shoreland Districts.</i>     |             |

- Impervious Surface
  - Required for *Shoreland, Business, & Industrial Districts.*
  - Itemized current & proposed impervious surfaces to include total percentages.
  - Examples include but are not limited to: *rooftops, sidewalks, patios, decks, driveways, parking lots, storage areas and concrete, asphalt, or gravel roads, or tightly compacted soils.*

\*Site shall be physically staked, then surveyed.

\*Stakes shall be in place at the time of onsite visit/meeting, or the application will be tabled.

\*Stakes must remain in place until construction commences.



### VIII. Practical Difficulty:

- a. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official controls and are consistent with the comprehensive plan.
- b. A Variance may be granted only where the strict enforcement of the official control will result in a practical difficulty.
- c. It is the responsibility of the applicant and/or landowner to prove evidence that a practical difficulty exists.
- d. A determination that a practical difficulty exists upon the consideration of the following criteria:

1. Describe how the Variance request is reasonable compared to the ordinance requirements being varied from.

The deck already exists. We just want to repair it and make sure it is safe for our family.

2. What are the unique circumstances of this property that prevent compliance with the Zoning Ordinance that will result in a practical difficulty?

The deck is located in a bluff and is in the only location that is practical.

3. Describe how the unique circumstances causing the practical difficulty were created by someone other than the applicant/landowner.

The deck was put in place by previous home owners.

4. How will the request maintain the essential character of the locality?

It enhances the outdoor living space of the property.

5. Does the alleged practical difficulty involve more than economic considerations?

The deck is the means for exiting the rear of the house from the 2nd floor (main floor).

6. Is the request consistent with and supported by the statement of purposes, policies, goals and objectives in the Ordinance?

Yes, except for it being located in a bluff.

7. Describe how the request is consistent with the Comprehensive Land Use Plan.

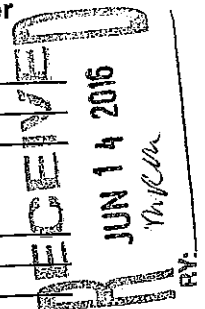
We are only repairing the existing deck.

8. Describe the properties current, and any proposed, onsite sewage treatment and water capabilities.

The property has a septic system and a well.

9. Explain why this request is the minimum variance amount to afford relief.

We are not adding or removing; we are repairing the existing deck to make it safe.





**IX. Attachments shall include but not limited to:**

- |   |  |
|---|--|
| <input type="checkbox"/> a. Site Plan- <del>survey</del> <i>X</i> | <input type="checkbox"/> e. Floor plans and/or blue prints ( <i>For structures</i> ) |
| <input checked="" type="checkbox"/> b. Surveyor Certification     | <input checked="" type="checkbox"/> f. Septic System Compliance Inspection           |
| <input checked="" type="checkbox"/> c. Access approval            | <input checked="" type="checkbox"/> g. Erosion control plan                          |
| <input checked="" type="checkbox"/> d. Full legal description     | <input checked="" type="checkbox"/> h. Description of request                        |

*The Department may request additional information regarding the application.*

**X. Quantities and Submittal Formats:**

- One (1) reproducible copy of the request and all other supporting documents.
- Ten (10)** copies must be submitted for documents larger than 11 x 17, documents in color, aerials or photographs.
- Electronic version of any supporting documents if available.
- Additional copies may be requested as deemed necessary by the Department.

**XI. Fees:**

Variance: \$ 600  
Filing Fee: \$ 46

Variance for Clusters: \$ 600 + \$200 per household  
Filing Fee: \$ 46

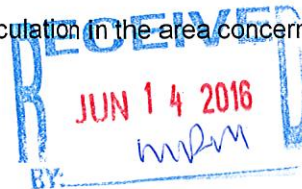
**Additional Fees:**

Special Meeting: \$1,200  
After-The-Fact meeting fee: Doubled + After-The-Fact Penalty.  
After-The-Fact Penalty: \$1,500 OR 10% of the improvement, whichever is greater.

***Fees must be paid at the time of application, cannot be accepted by mail, and are non-refundable. Cash or check. Credit cards will not be accepted.***

**XII. Procedure:** *See Section 22 of the Zoning Ordinance for full details.*

- Pre-application meeting is recommended prior to making application to ensure submittal completion. **Appointment is necessary.**
- Application must be made in person by the applicant and/or landowner prior to 12 P.M. on the date of application deadline. **Appointment is necessary.**
- All required information must be correct and submitted **at the time of application,** or the application will not be accepted.
- Fees **will not** be accepted by mail and must be paid at the time of application.
- Notification will be sent to all landowners within 500 feet of the affected property, (minimum of 10 landowners) as well as the affected Town Board, any municipality within 2 miles, and other applicable agencies.
- Notice will be published in the newspaper of general circulation in the area concerned and the official newspaper of the County.



- g. The Board of Adjustment may conduct an onsite visit to the affected property prior to the scheduled meeting. Any conversation with the Board of Adjustment during the onsite visit is prohibited.
- h. The Board of Adjustment shall hold a public hearing on the proposed Variance at a scheduled Board of Adjustment meeting.
- i. The applicant or representative must appear before the Board of Adjustment in order to answer questions concerning the request, or the application will be tabled.
- j. The Board of Adjustment has the authority to request additional information or designate conditions.
- k. The Board of Adjustment has the authority to determine Variance approval or denial. No Variance may be granted that allow any use that is prohibited in the Zoning District in which the property is located.
- l. The Department shall notify the applicant and/or landowner in writing of the Board of Adjustment decision.
- m. The Department will file a certified copy of any order or decision issued by the Board of Adjustment with the County Recorder.
- n. A zoning permit is required prior to starting construction however zoning permits will not be available the day of the Board of Adjustment meeting. Zoning permit application must be approved prior to obtaining a zoning permit.

### XIII. Signatures:

I hereby certify with my signature that all data contained herein as well as all supporting data are true and correct to the best of my knowledge.

Emmie Monty  
Applicant signature

June-5-2016

Date

I hereby certify with my signature that all data contained herein as well as all supporting data are true and correct to the best of my knowledge.

Emmie Monty  
Landowner signature

June-5-2016

Date

#### OFFICE USE ONLY

Date received 10-14-16

Present Zoning Classification RR

Feedlot within 500' 1000' (N)

Meeting date 7-21-16

Lake Classification RD

Erosion Control Plan (Y) N

60 Day 8-13-16

Lake Teton Kaw

Water courses Y (N)

RFPE 1000.08

FEMA Panel # 2707900435D

Bluff (Y) N

☒ Site Plan -survey

Flood Zone X outside

Other \_\_\_\_\_

☒ Surveyor Certificate

☒ Full legal description

☒ Septic \_\_\_\_\_

COE  
NONC/Waiver  
Design

☐ Floor plans/blue prints

☐ Access approval

☒ Fee \$ 1640

ATF / SPEC MTG

☒ Description of Request

☒ Blue Prints

10-13-16

16157

☐ Application complete

Nichelle R. Miller  
Planning & Zoning Department Signature

Date

Permit #

01-15-16



## Legal Description

Lot Numbered 11 of Auditor's Subdivision of a part of Government Lots Numbered 3 and 4 of Section Numbered 28, in Township numbered 109 North, Range 23 West according to the plat thereof on file and of record in the Office of the County Recorder in Le Sueur County, Minnesota, in Book B of Plats age 45, together with the right of ingress and egress on a cartway over and across Government Lots 3 and 4 from the above described tract, thence Southwesterly to County Road "L" and subject to the use of the gate at the entrance of said Highway and that the land conveyed hereby shall be used for no other purpose than for the private residential purposes only which covenant shall continue and run with the land.

Also

Commencing at the Southwest corner of Lot Numbered 11 Auditor's Subdivision of a part of Government Lots 3 and 4 in Section Numbered 28, Township Numbered 109 North, Range Numbered 23 West per the recorded plat of such Subdivision, thence running South 35 feet as a continuation of the West line of said Lot 11, thence Easterly parallel to the South line of said Lot Numbered 11 a distance of 60 feet, thence Northeasterly to the Southeast corner of said Lot 11 and thence Westerly along the South line of said Lot 11 to place of beginning, Le Sueur County, Minnesota. **PID: 14.420.0100**

14.420.0100



# VARIANCE FINDINGS OF FACT

Name of Applicant: ESMail & BARBARA MOSTAGHIMI

Variance # 16157

Variance Request: TO ALLOW THE APPLICANT TO REPAIR AN EXISTING DECK LOCATED WITHIN THE BLUFF.

- A. No Variance may be granted that would allow any use that is prohibited in the Zoning District in which the subject property is located.
- B. Facts supporting the answer to each question must be documented below, and are hereby certified to be the Findings of Fact of the Board of Adjustment.
- C. A Variance may be granted only where the strict enforcement of the official control will result in a practical difficulty.
- D. It is the responsibility of the applicant / landowner to prove evidence that a practical difficulty exists.
- E. A determination that a practical difficulty exists upon the consideration of the following criteria.

Y N 1. Does the property owner propose to use the property in reasonable manner?

Explain \_\_\_\_\_

JM	JW	JD	CH	FC
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Y N 2. Is the alleged practical difficulty unique to the property?

Explain \_\_\_\_\_

JM	JW	JD	CH	FC
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Y N 3. Were the circumstances causing the practical difficulty created by someone other than the applicant / landowner?

Explain \_\_\_\_\_

JM	JW	JD	CH	FC
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Y N 4. Will the issuance of the Variance maintain the essential character of the locality?

Explain \_\_\_\_\_

JM	JW	JD	CH	FC
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Y N 5. Does the alleged practical difficulty involve more than economic considerations?

Explain \_\_\_\_\_

JM	JW	JD	CH	FC
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

F. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official controls.

Y N 6. Is the Variance consistent with and supported by the statement of purposes, policies, goal and objectives in the Ordinance?

Explain \_\_\_\_\_

JM	JW	JD	CH	FC
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Y N 7. Is the Variance consistent with the Comprehensive Plan?

Explain \_\_\_\_\_

JM	JW	JD	CH	FC
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

G. IF ALL THE ANSWERS ARE "YES", THE CRITERIA FOR GRANTING THE VARIANCE HAVE BEEN MET.

( ) APPROVED

( ) DENIED

CONDITIONS:

Applicant response to conditions:

Agree ( )

Disagree ( )

Reasons:

Board of Adjustment Chairman

Date

**Le Sueur County  
Variance Application**

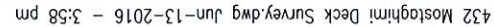
Esmail and Barbara Mostaghimi  
50411 Mortensen Lane  
Waterville, MN 56096

**V. Description of Request:**

Existing deck is in need of repair. It is unsafe in its current condition. In order to exit from the rear of the house we need to go on or under the deck. Our plan is to replace the surface and the railings of the deck. We are keeping the deck the same size. We are not extending or making the deck any bigger. We are also not putting any new footings.









# Le Sueur County

## Surveyor Certification

### I. Applicant:

Name JOHN VERDEJEN

### II. Land Owner (s), if different from above:

Name ESMAIL & BARBARA MOSTAGHIMI

Property Address 50411 MORTENSEN LANE

City WATERVILLE State MN Zip 56096

### III. Parcel Information:

Parcel Number 14.420.0100

### IV. Quantities and Submittal Formats:

- One (1) reproducible 8.5" x 11" copy of the request and all other supporting documents.
- Ten (10) copies must be submitted, if in color, an aerial, or larger than 8.5" x 11" in size.
- Electronic version of any supporting documents if available.
- Additional copies may be requested as deemed necessary by the Department.
- Application must be made in person by the applicant and/or owner no later than 12 P.M. on the date of application deadline. Appointment is necessary.
- All required information must be correct and submitted at the time of application, or the application will not be accepted.
- Applications will not be accepted by mail.

### V. Site Plan-must be a survey and shall include but limited to the following:

- North point
- Setbacks
- Property lines
- Road Right-Of-Way
- Easements
- Access
- Impervious Surface -- Itemized current & proposed with total percentages (If in Shoreland)
- Location of significant trees to be removed (If in Shoreland)
- Note how disturbed areas will be restored (If in Shoreland)
- Landscape, screening and buffering (If applicable)
- Lakes
- Rivers
- Wetlands
- Streams
- Ponds
- Existing structures (within and adjacent to project area)
- Proposed Structures
- Lot Dimensions
- Septic System
- Well

Building site shall be physically staked by the surveyor or the application will be tabled.

- VI. The proposed improvements have been physically staked onsite then surveyed on 06-02-2016 to reflect an accurate account of current and proposed conditions of the property identified above.

### VII. Signatures:

I hereby certify with my signature that all data contained herein as well as all supporting data are true and correct to the best of my knowledge.

John Verdejen  
Surveyor's signature

06-02-2016  
Date

41820  
Lic #

6-3-16  
Date Received

04-15-13

### OFFICE USE ONLY

Michelle R. Mottola  
Planning & Zoning Department Signature



RECEIVED  
JUN 14 2016  
BY: men