

Applicants

Curt and Joyce Ireland
10666 588th Ave
Mapleton, MN 56065

Request and Location

Request for a variance to reduce the required setback to the ordinary high water level of a protected stream from 100 feet to 60 feet for the purpose of constructing an in-ground swimming pool. The property is zoned Agricultural and Shoreland and is located in the SE ¼ of the SW ¼ of Section 1, Sterling Township.

Legal Description

The property is located in the SW ¼ of the SE ¼ of Section 27 Mapleton Township.

Zoning

The property is zoned Agricultural and Shoreland.

General Site Description, Site History, and Land Use Information

The property consists of a rural building site that includes the applicant's home and some storage buildings. An unnamed tributary stream cuts through the property at an angle. Construction of a pool with dimensions of 16 feet by 36 feet has started without a permit.

Existing Land Use within 1/4 Mile

North: State Hwy 30, crop land and an unnamed protected tributary stream
South: Unnamed protected tributary stream and crop land
East: Unnamed protected tributary stream, one residence, 565th Ave (a Township Road) and cropland
West: State Hwy 30, County Road 152 and crop land

Access No change in access points is proposed.

Surface Hydrology

The site slopes slightly to the east. The property is not located in Floodplain.

Township Review - At the time this report was written, no comment had been received from the Township.

Environmental Health Review - See Attachment A-3

Applicable Sections of the County Land Use Ordinance

Section 14-82 (d) (6) e. 2. requires a 100 foot setback to the ordinary high water level of a tributary stream.

Sec. 24-47. Board of adjustment.

(d) *Powers and appeals.*

(1) *Powers.* The board of adjustment shall have power to grant a variance to any of the provisions of this chapter to the extent of the following and no further:

a. To vary or modify the strict application of any of the regulations or provisions contained in this chapter in cases in which there are practical difficulties or unnecessary hardships in the way of such strict applications; no variance or modification of the uses permitted within a district shall be allowed, except as otherwise provided in this chapter.

(e) *Findings required.* The board of adjustment shall not grant an appeal unless they find the following facts at the hearing where the applicant shall present a statement and evidence in such form as the board of adjustment may require:

(1) That there are special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property in the same vicinity.

(2) That the granting of the application will not materially adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant.

Applicant's Statement of Hardship

The applicants have indicated that their daughter was born with cerebral palsy and uses a wheelchair for her only means of mobility. She requires extensive therapy which involves swimming. The pool is in the best location for her to enter the pool for her therapy. If the pool was placed somewhere else it would cause severe hardship for her to receive her therapy.

Opinions

Staff has developed the following opinions:

1. That due to the needs of the applicant's daughter, that there are special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property in the same vicinity.

2. That the granting of the application will not materially adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicants and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant.

Recommendations

Staff recommends **approval** of the request to reduce the required setback to a Tributary Stream from 100 feet to 60 feet for the purpose of constructing an in-ground swimming pool contingent upon the following conditions:

1. That the applicants obtain an after-the-fact construction permit for the construction of the pool.

2. That a fifty foot vegetative buffer system be restored around the stream. This buffer shall consist of native grasses and forbes.

3. That a compliance inspection on the septic system is required.

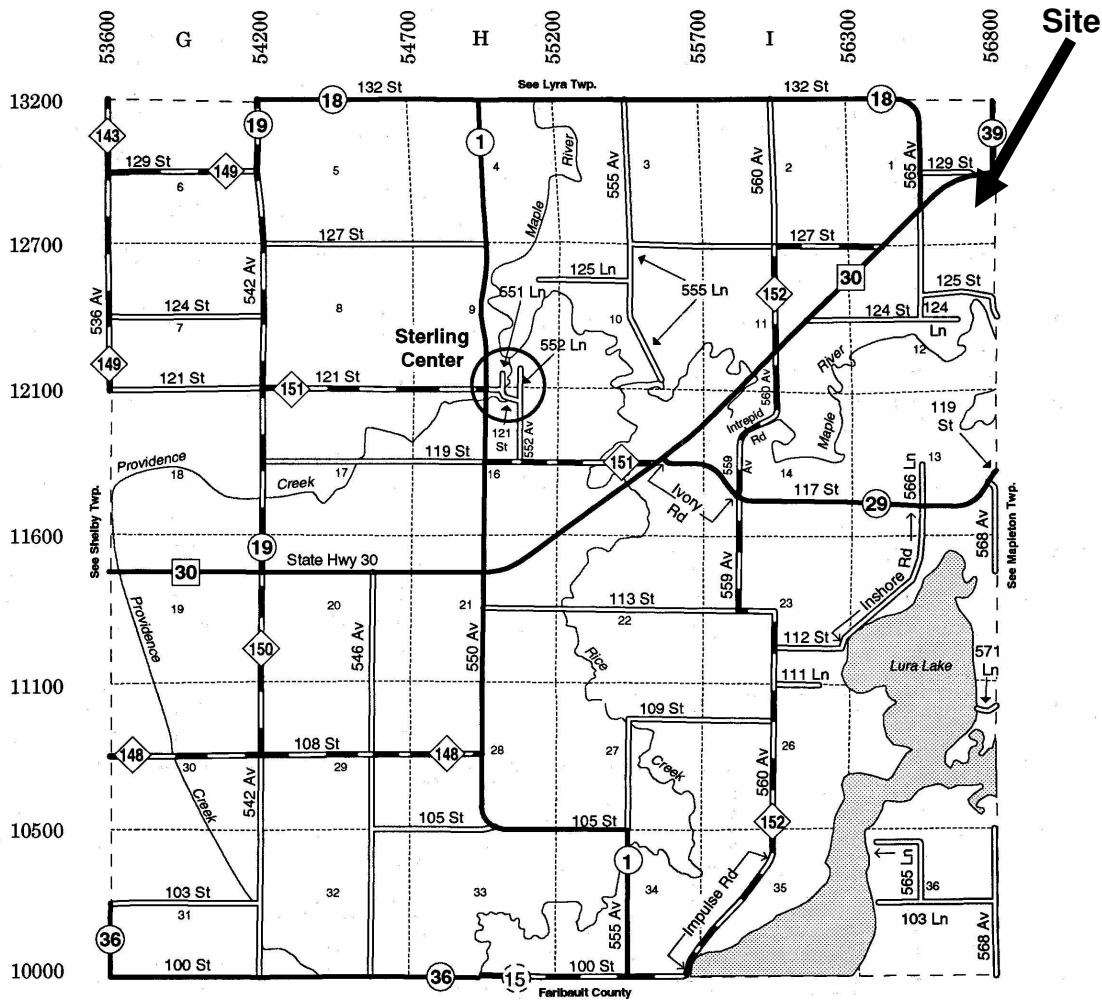
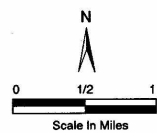
Attachments

- A-1 Site Location
- A-2 Site Map
- A-3 Environmental Health Comments

Attachment A-1 General Location Map

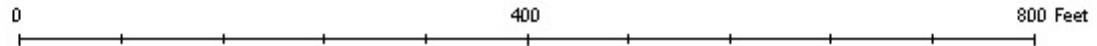
Sterling

T 105 N - R 27 W



	U.S. Highway		Township Road
	State Highway		Railroad
 	County State Aid Highway		Section Line
 	County Road		Township Boundary

A-2 Site Map



**Blue Earth County Environmental Services Department
Land Use and Natural Resources Section
Post Office Box 3566
Mankato, Minnesota 56002-3566
Telephone: (507) 304-4381**

Environmental Health / Sanitarian Report

May 21, 2010

Environmental Health Comments/Questions

R51.23.01.300.006

Curt and Joyce Ireland – Request for a variance to reduce the required setback to the ordinary high water level of a protected stream from 100 feet to 60 feet for the purpose of constructing an in-ground swimming pool. The property is zoned Agricultural and Shoreland and is located in the SE ¼ of the SW ¼ of Section 1, Sterling Township.

General: This after the fact variance request should not have any impact on the septic system as long as the pool water is not discharged into the system. There are MPCA requirements in handling pool water as a discharge. These must be followed. At no time shall the pool water be allowed to enter into the stream as chlorinated water will cause immediate damage to aquatic life.

Septic System: This property is currently serviced by a septic system. The system was installed in 1996. A compliance inspection is required with this variance request. A system will be required to be installed within 12 months if found to be non compliant due to shoreland requirements with any permits.

Water Wells: There is one well servicing the property drilled in 1996. No other know wells are on the property. It is located between the house and the detached garage, based on the septic system drawing and well permit..

Wetlands: Upon review there appears to be wetlands on the property near the waterway. Currently there is not delineation of the wetland area. Any work to be done within 50 feet of the wetland area will require delineation to avoid any wetland disturbance.

Environmental Health Recommendation: Approval

Conditions for approval:

- 1. A compliance inspection is required.**
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May 21, 2010

Joyce Ireland
56403 State Highway 30
Mapleton MN 56065

Blue Earth County Variance Board,

In the November of 2009 we dug a 16' x 32' swimming pool in our back yard. We did not realize we needed to purchase a building permit and therefore did not understand that the swimming pool needed to be 100' away from the drainage ditch that runs through our property.

I am writing this letter to inform you of the hardship it would have caused if we had placed the pool in another location on our property. Our daughter was born with cerebral palsy and uses a wheelchair for her only means of mobility. She requires extensive therapy which involves swimming. The pool is in the best location for her to enter the pool for her therapy. If the pool was placed somewhere else it would cause severe hardship for her to receive her therapy.

Thank you,

Joyce Ireland

Blue Earth County Board of Adjustment

FINDINGS OF FACT SUPPORTING AN AREA VARIANCE

An area of variance may be granted only where the strict enforcement of county zoning controls will result in “practical difficulty”. A determination that a “practical difficult” exists is based upon the consideration of the following criteria as defined by the Minnesota Supreme Court in In re the Matter of the Decision of County of Otter Tail Board of Adjustment to Deny a Variance to Cyril Stadvold and Cynara Stadvold.

1. Is the Request a substantial variation from the intent of the zoning ordinance?
Why or why not?

2. Will the request have an adverse effect on government services? Why or why not?

3. Will the requested variance effect a substantial change in the character of the neighborhood or will it result in a substantial detriment to neighboring properties?
Why or why not?

4. Is there a feasible method to alleviate the practical difficulty without need of a variance? (Economic considerations play a role in the analysis under this factor)
Why or why not?

5. How did the practical difficulty occur? Did the landowner create the need for the variance? Explain.

6. In light of all of the above factors, would denying a variance serve the interests of justice? Why or why not?

IF ALL OF THE ANSWERS ARE “NO”, THE CRITERIA FOR GRANTING THE VARIANCE HAVE BEEN MET.

If the application is for an after-the-fact variance, the board should also consider the following:

1. Has the construction been completed? Why or why not?

2. Does it appear the applicant has acted in good faith and tried to comply with the Ordinance? Why or why not?

3. Are there similar structures in the area? Why or why not?

4. Does the applicant's burden of complying with the Ordinance out weigh the County's benefit of enforcing the Ordinance? Why or why not?

IF ALL OF THE ANSWERS ARE "YES", AND APPLICANT MET THE CRITERIA FOR A VARAINCE UNDER THE SIX "PRACTICAL DIFFICULTY" STANDARDS ABOVE, AN AFTER-THE-FACT VARAINCE MAY BE GRANTED.