



CITY OF FAIRMONT – 100 Downtown Plaza – Fairmont, MN 56031
www.fairmont.org

Phone (507) 238-9461

Fax (507) 238-9469

TO: Board of Zoning Appeals

FROM: Peter Bode, Planner/Code Enforcement Technician

DATE: December 2, 2021

SUBJECT: **Agenda – Regular Meeting**
Tuesday, December 7, 2021 at 4:30 p.m.
Fairmont City Council Chambers, 100 Downtown Plaza

- 1) Approval of Agenda
- 2) Approval of Minutes – July 6, 2021

New Business

- 3) Public Hearing – Variance Request, 2319 Albion Ave

Old Business

None

- 4) Adjournment

MINUTES OF THE FAIRMONT BOARD OF ZONING APPEALS

Regular Meeting

July 6, 2021 at 4:30 p.m.

City Council Chambers, City Hall, 100 Downtown Plaza

Members present: Mike Klujeske, Susan Krueger, Jay Maynard, Council Liaisons Randy Lubenow, Council Liaison Bruce Peters

Members absent: Holly Hazard, Mike Jacobson

Staff present: Planner/Code Enforcement Technician Peter Bode

Chair Krueger called the meeting to order at 4:31 p.m.

Approval of Agenda: Motion by Maynard and second by Klujeske to approve the agenda as presented. Motion carried.

Approval of Minutes: Motion by Maynard and second by Klujeske to approve the June 1, 2021 meeting minutes as presented. Motion carried.

Public Hearing - Variance Request for 2559 Stella St: Chair Krueger opened the public hearing. Bode introduced a request by James Tate at 2559 Stella Street for a variance to allow a 12-foot in lieu of 25-foot southern corner yard requirement. Bode stated that staff supported the request.

Dennis and Marianne Hagen at 205 Delu Street wrote in support of the request.

There were no additional public comments. Motion by Maynard and second by Klujeske to close the public hearing. Motion carried.

Motion by Maynard and second by Klujeske to grant the amended variance as presented. Members discussed the motion. Motion carried.

Old Business: *None*

Adjournment: Motion by Maynard and second by Klujeske to adjourn the meeting at 4:46 p.m. Motion carried.

*Respectfully submitted,
Peter Bode*

GENERAL INFORMATION

Applicant: ISG – Bryan Petzel

Property Owner: Troy & Jadee Menke

Purpose:

(1) To allow a 2-foot in lieu of 50-foot OHWL setback from Hall Lake

(2) To allow a 0-foot in lieu of 30-foot front yard setback from Albion Ave

Address: 2319 Albion Ave

Parcel Number(s): 23.039.1560

Zoning: Single Family Residential (R-1), Shoreland Overlay District Tier A (SOD-A)

Surrounding Land Use: Single Family Residential (R-1), General & Neighborhood Business (B-3, B-1)

Application Date: November 15, 2021

Review Date: December 7, 2021

BACKGROUND

This riparian non-conforming single-family residential (R-1) area of land of approximately 3,800 square feet is situated adjacent to Hall Lake. The land is part of a larger neighborhood business (B-1) parcel located across Albion Avenue, which contains a single-family home. The land falls within Hall Lake's shore impact zone, is well-vegetated, and supports a residential dock and steps.

The applicant proposes to place a shipping container 0 feet from the Albion Avenue right-of-way where 30 feet is required, and 2 feet from the Ordinary High Water Level (OHWL) of Hall Lake where 50 feet is required. A wood deck is proposed to be placed beyond the container, overhanging Hall Lake. Because it would overhang the public water, this deck requires Minnesota Department of Natural Resources (DNR) permitting and so is not covered by this variance request.

POLICY CONSIDERATIONS

The Fairmont Comprehensive Plan weighs the community's goals of economic development, tourism, and the need to protect and preserve its natural resources, including its five lakes. The plan states in its chapter on natural resources: "Preserving Fairmont's natural resources for future generations is critical to the long-term preservation and success of Fairmont's character, social connectedness, and local economy."

To carry out this vision, the City's Shoreland Management ordinance provides some protections for the community's lakes. One of these protections is a buffer prohibiting structures other than boathouses within 50 feet from the OHWL of the lake, and 30 feet from the top of a bluff. The applicant proposes a structure be placed 2 feet from the OHWL, against the steep and vegetated slope of Hall Lake's eastern shore.

Given the 100-foot width of Albion Avenue's right-of-way, staff are less concerned about the proposed 0-foot setback, as the structure would be placed approximately 32 feet from the street surface.

REVIEW OF VARIANCE STANDARDS

City Code Section 26-101 guides the Board of Zoning Appeals in how to review variance requests:

No variance shall be granted to allow a use not permissible under the terms of this chapter. Variances shall only be permitted when they are in harmony with the general purposes and intent of this chapter and when the terms of the variance are consistent with the comprehensive plan. In granting a variance the board may prescribe appropriate conditions in conformity with this chapter. When such conditions are made part of the terms under which the variance is granted, violation of the conditions is a violation of this chapter. A variance shall not be granted by the board of appeals and adjustments, or by the city council on appeal, unless it conforms to the following standards.

- (1) Special conditions and circumstances exist which are peculiar to the land, structure, or building involved that cause practical difficulties in complying with the requirements of this chapter and do not result from the actions of the petitioner. Economic considerations alone shall not constitute practical difficulties.**

Staff acknowledge that a circumstance exists in which the area of land is naturally shaped by a body of water. However, staff find that the circumstance is not unique. The area of land is part of a larger parcel of land across Albion Avenue which is buildable. Parcels which contain some land inside the shore impact zone are common in Fairmont. Shore impact zones are generally unbuildable.

- (2) Literal interpretation of the provisions of this chapter would deprive the petitioner of rights commonly enjoyed by other properties in the same district under the terms of this chapter and the granting of the variance will not alter the essential character of the locality.**

Staff find that literal interpretation of the 50-foot shoreland setback requirement would not deprive the petitioner of rights commonly enjoyed by properties with access to the shore. This area of land already supports a dock and steps to the lake. Some residential structures to the south of the site are within the OHWL requirement. These structures existed before the City adopted its modern Shoreland Management ordinance.

- (3) Granting the variance will not confer on the petitioner any special privilege that is denied by this chapter to other lands, structures, or buildings in the same area and the petitioner proposes to use the property in a reasonable manner.**

Staff find that granting the variance would confer upon the petitioner a special privilege. The ability to place a structure 2 feet from OHWL where 50 feet is required is denied to other structures, apart from boathouses, throughout the city.

- (4) The proposed variance will not impair an adequate supply of air and light to adjacent property, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, or welfare of the residents of the city.**

Staff find that the proposal would impair the public welfare. The proposal directly conflicts with the Shoreland Management ordinance's purpose to protect the community's five lakes from extensive development within the shore impact zone. Structural development involving vegetation clearing and earth moving may result in bluff failures and a decline in water quality.

RECOMMENDATION

Staff recommend that the Board of Zoning Appeals consider the legal standards set forth by **Minnesota Statute 462.357(6)** when considering variance applications. This includes a three-factor practical difficulties test:

- 1) Reasonableness- does the landowner intend to use the property in a reasonable manner?**
- 2) Uniqueness- are there unique physical characteristics of the land, not personal preferences of the landowner, that creates the circumstance?**
- 3) Essential Character- will the resulting structure be out of scale, out of place or otherwise inconsistent with the surrounding area?**

Staff find that the land is not proposed to be used in a reasonable manner, as the structure's placement would directly conflict with the purpose of the City's Shoreland Management code. While the area of land is naturally shaped by the lake, staff find that this circumstance is not unique. Many properties in Fairmont contain some land that is not buildable due to its proximity to the water. Staff believe the structure's placement within the shore impact zone would be inconsistent with the usual features of nearby shoreland.

The City administers its shoreland management regulations in partnership and consultation with the Minnesota DNR. DNR recommends denial of this request. Its reasoning is attached to this report.

Considering applicable statute and code, staff's findings support denial of the request for a variance to allow a 2-foot in lieu of 50-foot OHWL setback, and a 0-foot in lieu of 30-foot front yard setback.

Respectfully submitted,

Peter Bode

Planner/Code Enforcement Technician



Minnesota Department of Natural Resources
Southern Region
21371 State Hwy 15
New Ulm, MN 56073

November 18, 2021

Peter Bode, Planner-Code Enforcement
City of Fairmont
100 Downtown Plaza
Fairmont, MN 56031

Re: Variance application comments for Troy Menke - PID 230391560 on Hall Lake - Martin County

Dear Mr. Bode:

Thank you for sending the Menke variance application for review. The application requests approval for reduced OHWL setback in order to install steel container, measuring 8' x 40', with a 20' x 40' deck on a bluff located in the shore impact zone of Hall Lake. The structure is proposed to be placed on a small triangular piece of land that is linked to parcel #230391560 which is zoned residential.

We discussed this variance application requesting deviation from the standard OHWL structure setback from 50 feet to 2 feet and spoke to the landowner to confirm these measurements. Hall Lake is classified as a General Development basin so the OHWL setback is 50 feet and includes 25 feet of Shore Impact Zone adjacent to the water. The following comments are submitted for your consideration:

- ✓ The application is in direct conflict with the City of Fairmont's Shoreland Ordinance as it proposes to install a new structure on a wooded, bluff slope. The structure should be setback 30 feet from the top of the bluff.
- ✓ This proposal fails to meet the OHWL setback of 50 feet and would require significant clearing of trees and earth moving in a highly sensitive area. Disturbance in the bluff zone is not recommended and may result in a future bluff failure.
- ✓ The application also includes a deck that would extend approximately 18 feet out over the lake. The deck may require a public waters work permit from DNR. The DNR recommends a natural shoreline and such structures will detract from this goal.

For the reasons identified above, the Department recommends denial of this variance application. If you have questions please call me at 507-822-1559.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Girolamo". The signature is written in a cursive style with a large initial 'D' and 'G'.

Daniel Girolamo
Area Hydrologist

CC: Todd Kolander, EWR DNR



230391560



MENKETROY & JADEE
2319 ALBION AVE
2.53 Acres Value \$413700 Note:

View: [Parcel Report](#) | [Soil Report](#) | [Pictometry Imagery](#)

**CITY OF FAIRMONT
Planning & Zoning
Application Form**

NOTE TO APPLICANT: This is a comprehensive application form. Only those items related to your specific type of development are to be completed. All items applicable must be included prior to acceptance of the application.

115 E Hickory St Ste 300

Name of Applicant: ISG - Bryan Petzel Address: Mankato, MN 56001 Phone#: 507-387-6651

Street Address of Proposal: 2321 Albion Ave, Fairmont, MN

Legal Description of Property: Parcel 230391560

Existing Use of Property: Vacant parcel area of Ambiance on Albion Taphouse Bar & Grill

Proposed Use of Property: Patio overlooking Hall Lake

Type of Application	Fee	Submission Requirements (Attached)
<input type="checkbox"/> Appeal/Code Amendment	\$150.00	7
<input type="checkbox"/> Administrative Appeal	50.00	8
<input type="checkbox"/> Conditional Use Permit	150.00	4, 6(d-g)
<input type="checkbox"/> Home Occupation Permit	30.00	9
<input type="checkbox"/> Minor Plat	90.00	2(a), 5 (a-b)
<input type="checkbox"/> Planned Unit Development	150.00	1, 4, 6(d-g)
<input type="checkbox"/> Preliminary Plat	150.00	5 (b), 6
<input type="checkbox"/> Rezoning	150.00	1
<input checked="" type="checkbox"/> Variance	90.00	2,3

I HEREBY CERTIFY THAT THE INFORMATION AND EXHIBITS HERewith SUBMITTED ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Troy Menke
Owner's Name(Printed)

Troy Menke
Owner's Signature

Bryan Petzel
Applicant's Name (Printed)

Bryan Petzel
Applicant's Signature

City Staff Use Only

DATE FILED: _____
DATE FEE PAID: _____
MEETING DATE: _____
NOTICES SENT (DATE): _____
NOTIFICATION OF EXTENSION (LETTER SENT): _____



AMBIANCE ON ALBION TAPHOUSE AND GRILL

HALL LAKE

ALBION AVENUE (FORMER M.T.H. No. 15)
(100 Foot Right of Way)



NOVEMBER 15, 2021



Peter Bode
Planner/Code Enforcement Technician
City of Fairmont
100 Downtown Plaza
Fairmont, MN 56031
pbode@fairmont.org

**RE: VARIANCE APPLICATION NARRATIVE
AMBIANCE ON ALBION - 2321 ALBION AVE**

Peter,

Enclosed is Variance Application and associated supporting documents for an outdoor patio request at the Ambiance on Albion Taphouse and Grill at 2321 Albion Avenue. Below is a narrative describing the subject site, project details, and variance request.

SITE + PROJECT DESCRIPTION

The Ambiance on Albion Taphouse and Grill is located at 2321 Albion Avenue and owned by Troy and Jadee Menke. They also own the parcel across Albion Avenue from the restaurant that is vacant and overlooks Hall Lake where the setback variance is requested for a new structure. The restaurant would like to build a 320 square foot container structure and an 800 square foot deck on the vacant parcel overlooking the lake as an amenity to the existing restaurant use. The parcel is a smaller, unusual shape and when applying the required building setbacks, there is no space for even a small structure. The owners are requesting the City consider a variance to the setbacks to allow a container structure to be approximately 1.78-ft setback from OHWL line from the lake, and 0-ft setback from the eastern property line fronting Albion Avenue, and for a patio to extend into the OHWL to overlook the lake.

VARIANCE CRITERIA REVIEW

A variance request must demonstrate that it meets the requirements of "Practical Difficulties" in the Minnesota State Statutes, 462.357, and the Variance Criteria of Section 26-101 of the Fairmont City Code. Below are the listed criteria of the City Code and responses to each item regarding this variance request, which also address the State Statutes.

- 1. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved that cause practical difficulties in complying with the requirements of this chapter and do not result from the actions of the petitioner. Economic considerations alone shall not constitute practical difficulties.*

Response: The unusual narrow shape of the parcel presents a special condition and unique circumstance where strict interpretation of the zoning setbacks would render this parcel essentially unbuildable with no viable area outside a setback for a structure.

- 2. Literal interpretation of the provisions of this chapter would deprive the petitioner of rights commonly enjoyed by other properties in the same district under the terms of this chapter and the granting of the variance will not alter the essential character of the locality.*

Response: The structure setback requirement on the west from the Ordinary High Water Line (OHWL) is 50 feet. Applying the 30-ft setback from the east property line would apply leaving no buildable area on the lot. Therefore, a variance would be necessary for any structure on this parcel. It is important to consider that the Albion Avenue right of way extends approximately 31.75-ft from the edge of the street. This means that even

if the building was built 0-ft setback from the east property line as proposed, it would still be setback 31.75-ft from the edge of the street. This is an unusually large right of way beyond the edge of the road. The result of this larger ROW is that it serves as a setback buffer area that would usually be setback space on private property situated closer to the street edge.

3. *Granting the variance will not confer on the petitioner any special privilege that is denied by this chapter to other lands, structures, or buildings in the same area and the petitioner proposes to use the property in a reasonable manner.*

Response: Granting a variance would allow for the site to support a small structure to support an existing business. No special privilege would be given as the proposed structure would still be subject to the City review process for other applicable zoning and building code requirements and would need to obtain any applicable permits as any other structure would need for approval.

4. *The proposed variance will not impair an adequate supply of air and light to adjacent property, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, or welfare of the residents of the city.*

Response: The proposed variance would not cause any nuisance to the surrounding area or impede the public health, safety or welfare. The proposed use would comply with the City requirements for hours of operation, lighting, noise and other standards. The parcels directly adjacent to the north, northeast and south are vacant. To the west is the lake and to the east is the restaurant. Directly adjacent to the southeast is a greenhouse/nursery. Further to the south along the lakeshore are residential structures between the lake and Albion Avenue, like the proposed structure.

In addition to evaluating a Variance request to the City Code, the Variance request must demonstrate conformance to the City's Fairmont Forward 2040 Comprehensive Plan. Below is an analysis of how the requested variance and development proposal relate to the City's Comprehensive Plan Goals.

On page 121 of the Comprehensive Plan, the top priorities for the community that were identified through the engagement process are listed in order as:

1. Stuff to do – places and activities
2. Maintain roads
3. Retail and revitalization
4. Lake tourism
5. Good jobs
6. Bike trails

The proposed patio space for Ambiance on Albion would support the desires of the community, providing a new place/activity that help support local business while enjoying the lake amenity. In addition, the proposal would support the following goals identified in the Comprehensive Plan:

- Land Use Goal 2: Utilize lakeshore land as a community asset in a sustainable and accessible manner
- LU 2-3. Prioritize development that preserves natural features and integrates greens spaces and gathering spaces into site design

Economic Development Goal 3: Foster the Local Economy

- ED 3-3. Partner to attract local and independent restaurants, retail, and entertainment/gathering space

Economic Development Goal 8: Market the City's unique assets for economic growth

- ED 8-3. Improve Fairmont's brand within the region as a fun, livable, active, and business-friendly community

Parks and Recreations Goal 2. Leverage the City's Natural Resources to Drive Economic Development

- PR 2-5. Provide opportunities for people to gather, celebrate, and enjoy culture, music, and food

We hope this analysis demonstrates evidence and the unique circumstances to support the setback variance requested. It would be a benefit to the community and the existing local business to grant this variance request without causing any negative impacts to the surrounding area.

Thank you for taking the time to review the enclosed application and supporting documents. We look forward to working with the City on this project. Please contact me at 952.426.0699 or Andrea.Rand@ISGInc.com with any questions or if there is any additional information we can provide in support of this project.

Sincerely,



Andrea Rand, AICP
Project Coordinator



Phone (507) 238-9461

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www.fairmont.org ♦ citygov@fairmont.org

Fax (507) 238-9469

**CITY OF FAIRMONT
NOTICE OF PUBLIC HEARING**

Notice is hereby given that the Fairmont Board of Zoning Appeals will meet at the City Council Chambers, 100 Downtown Plaza, Fairmont, MN 56031 at 4:30 p.m. on Tuesday, December 7, 2021 to conduct a Public Hearing to review the following item:

Troy & Jadee Menke
2319 Albion Ave (Parcel ID 23.039.1560)
Setback variances 2 feet from water and 0 feet from right of way

Members of the public wishing to provide public comment may attend the meeting. Written comments can also be submitted to City of Fairmont, attention Patricia Monsen, 100 Downtown Plaza, Fairmont, MN 56031.

Questions about the proposal can be directed to Peter Bode, Planner/Code Enforcement Technician at pbode@fairmont.org or 507-238-3940.

Patricia Monsen
City Clerk
(Published in Fairmont Photo Press on November 24, 2021)



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Questions about the proposal can be directed to Peter Bode, Planner/Code Enforcement Technician at pbode@fairmont.org or 507-238-3940.

Patricia Monsen
City Clerk

You are receiving this notice by mail as a neighboring property owner who could be affected by the proposed request. You have the right to provide public comment.

BREYFOGLE,DUKE W
2217 STADE LANE
FAIRMONT, MN 56031

CITY OF FAIRMONT - EDA
100 DOWNTOWN PLAZA
FAIRMONT, MN 56031

COMMUNITY OPTIONS & RESOURCES
PO BOX 333
SHERBURN, MN 56171

FAIRMONT INVESTMENT GROUP LLP
PO BOX 303
FAIRMONT, MN 56031

FAST,ODETTE
2411 ALBION AVE
FAIRMONT, MN 56031

GERHARDT,BRADLEY P & NYLA J
2214 STADE LANE
FAIRMONT, MN 56031

HOVICK,JOHN P & MARILYN
2228 STADE LANE
FAIRMONT, MN 56031

JANZEN,ODETTE
2411 ALBION AVE
FAIRMONT, MN 56031

JOHNSON,CHRISTINE MARIE
143 E BELLE VUE RD
FAIRMONT, MN 56031

KEISTER,TRAVIS J, AMY J KEISTER
2226 ALBION AVE
FAIRMONT, MN 56031

LARSON,CHRISTINA K, ROBERT M HENR
2213 ALBION AVE
FAIRMONT, MN 56031

MADSEN,JOHN
6891 COMPTON LN S
NAPLES, FL 34104

MCKEAN,DUSTIN T & GENA R
2222 ALBION AVE
FAIRMONT, MN 56031

MENKE,TROY & JADEE
2321 ALBION AVE
FAIRMONT, MN 56031

MIXSON,CHARLES M & PENNY K
136 BELLE VUE RD E
FAIRMONT, MN 56031

ORR,ANTHONY J, VICTORIA ORR
128 HALL ST
FAIRMONT, MN 56031

PETERSON,LANCE B & TANYA M
2336 RED BIRD LANE
FAIRMONT, MN 56031

POLZIN,JUDITH M
PO BOX 746
FAIRMONT, MN 56031

SEBAS,MARY
505 N PARK ST
FAIRMONT, MN 56031

SEIBERT,SPENCER PAUL, AMANDA MAF
2324 REDBIRD LANE
FAIRMONT, MN 56031

SHOTLIFF,CURTIS, KATELYN SHOTLIFF
2226 STADE LANE
FAIRMONT, MN 56031

SMITH,ADAM T & AMANDA J
2312 RED BIRD LANE
FAIRMONT, MN 56031

STADE,ARTHUR, ARTHUR STADE
136 BELLE VUE RD E
FAIRMONT, MN 56031

TENNEY,KATHLEEN F & KENNETH T
144 E BELLE VUE RD
FAIRMONT, MN 56031

WOHLHUTER,ROSS R & CINDY L, CINDY
2220 STADE LANE
FAIRMONT, MN 56031