



STAFF REPORT

DATE: 2/4/2025

**REGULAR
MOTION**

TO: City Council
FROM: Sophia Jensen, Senior City Planner
AGENDA ITEM: **Variance Requests – Chavez Property**
REVIEWED BY: Jason Stopa, Community Development Director
Sarah Sonsalla, City Attorney

INTRODUCTION/BACKGROUND:

Joe and Joan Chavez (the “Applicants”) submitted a variance application for seven (7) deviations from the City’s Shoreland Management Overlay District Code (Section 105.12.1260) for the property located at 14.029.21.24.0004 (“Chavez Parcel”) and 14.029.21.13.0023 (“Northstar 1st Addition Outlot B”). The property is 11.2 acres in size with ~1.37 acres above the Ordinary High-Water Level (“OHWL”). The site is currently undeveloped with heavily vegetated steep slopes down to Sunfish Lake. The Applicants have owned the Chavez Parcel since 1993. The Northstar Outlot B parcel was platted as part of Northstar 1st Addition in 2024. The Chavez Parcel and Northstar Outlot B parcel will receive access and utility stubs through the Northstar 2nd Addition. Access to public streets, public water, and public sanitary sewer will not be available to the property until Northstar 2nd addition is platted, conditions have been met, the plat has been recorded, and site construction built out and approved by the City.

The City Council approved a comprehensive plan amendment and zoning map amendment in 2024 (Ordinance 2024-10 and Resolution 2024-059) to allow the Chavez Parcel and the Northstar Outlot B parcel to be combined without split zoning (RR and V-LDR). In that report, City Staff advised the Applicants work with the Northstar developer to create an outlot shape that would reduce or eliminate the need for variances. The Applicants are requesting to proceed with the existing outlot shape which is requiring seven variances.

The Applicants are looking to receive land use approvals so they can list the property for sale as a buildable single family residential lot. Per Section 105.12.320 of the City Code, variances expire if work does not commence within 12 months of the date of granting the variance. If approved, the variances may expire due to the timing of infrastructure and sale of the property. Also, since the Applicants are not the proposed builder, the site design may be subject to change which may necessitate additional variances or changes to the variances that have been granted.

Below is a table outlining the required criteria, the existing conditions, and what the Applicants are proposing:

Request	Required	Proposed
105.12.1260 Table 17-3 - OHWL Structure Setback	150’	120’
105.12.1260 Table 17-3 - Structure Setbacks from Bluff	30’	In Bluff
105.12.1260 (7)(a) - Principal Structure In Bluff Area	Not Permitted	In Bluff

105.12.1260 (7)(c) - Vegetative Clearing In Bluff Impact Zone/Steep Slopes	Not Permitted	Proposed
105.12.1260 (5)(a) – Subdivision Standards, Suitable Lot	Not Permitted	Proposed
105.12.1260 (5)(b) Subdivision Standards, Variances Required	Not Permitted	Proposed
105.12.1260 (7)(e) - Grading In Shoreland Areas	Not Permitted	Proposed

ISSUE BEFORE THE CITY COUNCIL:

The City Council is being asked to review and make a determination on the variance requests.

VARIANCE REQUEST DETAILS/ANALYSIS:

Applicant: Joe and Joan Chavez
Owner: Joe and Joan Chavez (PID 14.029.21.24.0004) and GWSA Craig Allen (Outlot B)
Address/PID: (PID 14.029.21.24.0004)
Requests: The Applicants are seeking seven deviations from the City’s shoreland standards (LEC 105.12.1260)
Existing Zoning: Village Low Density Residential (VLDR), Shoreland Overlay District, VBWD
Surrounding Zoning: North: Open Space Planned Unit Development (OP PUD) Hamlet on Sunfish Lake
South: Sunfish Lake
East: Village Low Density Residential (V LDR) Northstar
West: Sunfish Lake
Deadline for Action: Application Complete – 11/26/2024
60 Day Deadline – 1/25/2025
City Council Date – 1/21/2025
Applicant and City Agreed to a deadline extension to 2/28/2025
Applicable Regulations: Article V - Zoning Administration and Enforcement
Article XII – Urban Districts
Article XIX – Shoreland Overlay District

DRAFT FINDINGS:

An applicant for a variance must establish and demonstrate compliance with the variance criteria set forth in Lake Elmo City Code Section 105.12.320 before the City may grant an exception or modification to City Code requirements. These criteria are listed below, along with comments from City Staff about the applicability of these criteria to the Applicants’ request.

- 1) Practical Difficulties.** A variance to the provision of this chapter may be granted by the Board of Adjustment upon the application by the owner of the affected property where the strict enforcement of this chapter would cause practical difficulties because of circumstances unique to the individual property under consideration and then only when it is demonstrated that such actions will be in keeping with the spirit and intent of this chapter.

FINDINGS: *The practical difficulties criteria is about what is reasonable given the purpose of the ordinance, not what is reasonable to the applicant. The request should be the minimum necessary to achieve the purpose of the ordinance. Enjoyment of the parcel in its natural state, building a smaller house, moving the house further from the lake, or even using the property as an access to Sunfish Lake, are sufficient and reasonable uses of the property. Staff finds that constructing a large single family home is not a necessity in this sensitive natural area. Practical Difficulties Criteria is not met.*

- 2) **Unique Circumstances.** The plight of the landowner must be due to circumstances unique to the property not created by the landowner.

FINDINGS: *Staff understands that the Applicants have owned this property for many years and did not create their parcel. While the bluff setback requirements and shoreland overlay restrictions may have not been in place when the property was purchased, any future development is required to adhere to them. In addition, the Applicants have the ability to acquire additional property by revising the outlot shape within NorthStar to create a site design that requires minimal or no variances. The Applicants may also change the location of the house or decrease its size. The Applicants have not demonstrated any attempts to avoid variances based on the size or placement of the home or attempts to acquire more property. **Unique Circumstances Criteria is not met.***

- 3) **Character of Locality.** The proposed variance must not alter the essential character of the locality in which the property in question is located.

FINDINGS: *The Applicants are proposing to develop their property that is situated within a natural bluff and shoreland area citing that there are existing adjacent residential homes. Staff finds that the existing homes along the South and West were built many years ago, likely under different less restrictive requirements. Development on the North and East side of the lake, adjacent to this parcel, such as Hamlet on Sunfish Lake and Northstar were developed to avoid these sensitive areas. This request directly conflicts with the bluff and shoreland regulations that were implemented to protect these sensitive areas. **Character of Locality Criteria is not met.***

- 4) **Adjacent Properties and Traffic.** The proposed variance must not impair an adequate supply of light and air to properties adjacent to the property in question or substantially increase the congestion of the public streets or substantially diminish or impair property values within the neighborhood.

FINDINGS: *Although no streets or infrastructure are currently in place to accommodate this request, the request would only add one single family home. Given that the request only consists of the construction of one home, there should not be an increase in congestion on a public street or will the proposed home substantially diminish adjacent property values. **Adjacent Properties and Traffic Criteria is met.***

CITY AGENCY REVIEW:

This request was distributed to several departments and agencies for review on December 2nd 2024. The following departments and agencies provided comments on the variance requests.

- Landscape Architect Memo 12/13/24 – The LSA provided a memo *recommending denial* of the variance requests outlining concerns with the vegetative clearing and grading in the shoreland impact zones and erosion of the area. The proposed development of the parcel is inconsistent with the intent of the shoreland overlay and bluff setback zones. Any development would require major grading, tree removals, and topographic changes to very sensitive slopes.
- City Engineer Memo 12/16/24– Provided a memo *recommending denial* of the variances. The City Engineer outlined concerns with the requests being premature because none of

the public infrastructure that would serve the property (water, sewer, street) has been approved by the City or constructed at this time and they are subject to change. The memo also provided 10 findings related to the infrastructure installation, stormwater management, and numerous off-site easement requirements (these easements have not been secured by the Applicants).

- MN DNR Memo 12/16/24- Provided a memo *recommending denial* of the variances. The memo cites concerns with the requests not meeting the statutory practical difficulties or essential character criteria. The memo outlines the DNR's concerns with the variances' impacts to the natural area including the lake and the water quality of the lake.
- Valley Branch Watershed District Email 12/16/24- Provided a comment that a VBWD permit would be required.
- Fire Department- Did not provide comments on the request.

PUBLIC COMMENT:

A hearing notice was sent to surrounding properties on January 6th, 2025. A hearing notice was published in the local newspaper on January 10th, 2025. The item was tabled by the Planning Commission on January 13th, 2025.

A new public hearing notice was sent to surrounding property owners on January 14th, 2025, and published in the local paper on January 17th, 2025. Below is a summary of the comments received:

1. Craig Allen (Gonyea Companies) provided written public comment that, while he signed off on the variance application as the owner of Northstar Outlot B and has provided access to the lot with the development of the Northstar subdivision to help Mr. Chavez, he would like to put on the record he is not supporting the current design and encroachment onto his property. It is his position that any drainage structures should be fully contained within Northstar Outlot B. He is indifferent to the outlot design.
2. Bill Friederichs (3691 Kelvin) spoke at the public hearing noting they did not receive a mailed notice. They are in support of the request citing that they received a similar variance back in 1993.

PLANNING COMMISSION:

The Planning Commission voted to table this request at their 1/13/2025 meeting (Vote 6-0).

The Commission reviewed the variance requests at their 1/27/2025 meeting and voted to follow staffs recommendation and deny the requests with the findings listed in the staff report. The Commission cited concerns with the site design, house size, variance criteria, and DNR review letter (Vote 4-0).

FISCAL IMPACT:

- None

RECOMMENDED CONDITIONS – IF RECCOMENDING APPROVAL

1. The Applicants must obtain all other necessary City, State, VBWD, and other governing body permits and approvals prior to construction.
2. The property must be connected to sanitary sewer and water with Northstar 2nd Addition once it is made available and pay applicable connection fees.

3. There must be access to an improved public street prior to construction.
4. The Applicants must record the approval resolution with the Washington County Property Records Department to inform future buyers of the approval and the expiration date of the variances.
5. The property must dedicate the necessary drainage and utility easements and the Applicants must acquire any required off-site easements to the satisfaction of the City Engineer and Public Works Director.
6. If approved, all variances shall expire if work does not commence within 12 months of the date of granting the variances.

OPTIONS:

The City Council may:

- Approve the variances with conditions citing recommended conditions and findings of fact for approval.
- Deny the variances, citing recommended findings of fact for denial.

RECOMMENDATIONS:

Staff recommends that the City Council deny the variance requests since they do not meet all four of the required criteria outlined above and based upon agency review comments. Suggested motions:

“Move to approve Resolution 2025-13 denying all of the seven shoreland variance requests from Joe and Joan Chavez for the property located at 14.029.21.24.0004 and Outlot B of Northstar 1st Addition based on the findings listed in the Staff report.”

If the City Council would like to approve the requests, staff recommends the Council provide findings of fact for approval and has proposed the following motion:

“Move to direct staff to bring forward a resolution for approval of all of the seven shoreland variance requests from Joe and Joan Chavez for the property located at 14.029.21.24.0004 and Outlot B of Northstar 1st Addition with the conditions listed in the Staff report.”

ATTACHMENTS:

- 1) Location Map
- 2) Land Use Application and Plans
- 3) LSA Memo (12/13/24)
- 4) DNR Memo (12/16/24)
- 5) City Engineer Memo (12/16/24)
- 6) VBWD Email (12/16/24)
- 7) Public Comment
- 8) Applicant Letter to Planning Commission 1/27/2025
- 9) Resolution 2025-13