

**Fairview Township Planning Commission**  
**February 7<sup>th</sup>, 2011- Styrvoky**

*In attendance: Ken LaPorte, Tom Dechmann, Joe Fitterer, Steve Williams*

*Meeting called to order at 3:15 PM by Chairman Ken LaPorte.*

*The Commission met for the purpose of discussing two notifications received from Cass County ESD.*

***Thomas Styrvoky***

*Parcel: 14-437-0150*

*Application to be allowed to remove an existing residential structure and replace with a 26' by 38' new structure in the approximate site of the current residence which will not comply with the required bluff or lake setback. The current residence is located less than 75 feet from the lake and within the bluff area. Section 1126.1 A of the Land Use ordinance requires new structures to be located 75 feet from lakes classified General Development and section 1126 B which requires new structures to be located 30 feet from the toe or top of a bluff. A bluff is a topographic feature located either part or fully within the shoreland area and having the following characteristics; the slope rises at least 25 feet vertically above the toe of the bluff, the grade of the slope from toe of the bluff to a point 25 feet or more above the toe of the bluff averages 30% or greater and the slope drains toward public waters. The property contains .6 acres riparian to Gull Lake (GD).*

*The Fairview Planning Commission members had an opportunity to review the Styrvoky property on February 7<sup>th</sup> with the Cass County Planning Commission/ Board of Adjustment.*

*The Cass County Planning Commission had an opportunity to discuss the application and composed the following letter:*

*Paul Fairbanks, ESD  
Cass County Courthouse*

*February 4, 2011*

*Re: Thomas Styrovsky  
Parcel: 14-437-0150,  
2511 Birch Forest Road*

*Application to be allowed to remove an existing residential structure to be replaced with a new 26' by 38' structure on the same footprint which is located less than 75 feet from the lake and within the bluff area.*

*The Fairview Township Planning Commission had an opportunity to review the Styrvoky property on February 4<sup>th</sup> with the Cass County Board of Adjustment.*

*The Commission discussed the proposed structure and the members were in agreement that the variance should be granted.*

*The Planning Commission would recommend the Styrvokys create a buffer from the lake by placing a vegetative screening along the top of the bluff.*

*The Commission also suggests the ESD make a lot inspection after the snow melts to check for erodible areas on the bluff setback.*

*Sincerely,  
Marla Yoho, Clerk*

The following are the findings of the Cass County Planning Commission/ Board of Adjustment at their regular meeting on February 14, 2011 in Backus:

Styrvoky, Thomas,  
Fairview Township on property described as Lot 10, 15 & Part of Lot 16, "Birch Forest", Section 24-134-30, PID # 14-437-0150 located at 2511 Birch Forest Road SW.

An application submitted to remove the existing residential structure and replace with 26 feet x 38 feet new construction in the approximate site of the current residence which will not comply with the required bluff or lake setback. The current residence is located less than 75 feet from the lake and within the bluff area. Section 1126.1 A. of the Land Use Ordinance requires new structures to be located 75 feet from lakes classified General Development and Section 1126 B. which requires new structures to be located 30 feet from the toe or top of a bluff. A bluff is a topographic feature located either part or fully within the shoreland area and having the following characteristics; the slope rises at least 25 feet vertically above the toe of the bluff, the grade of the slope from toe of the bluff to a point 25 feet or more above the toe of the bluff averages 30% or greater and the slope drains toward public waters. The property contains .6 acre riparian to Gull Lake (GD).

PC members were at the site 02/07/11. 33 notices of the application were mailed. One response from Fairview township recommending approval of the application was received. The application was discussed and reviewed with the applicants' representatives Mr. Freeman and Mr. Larson. Discussion centered on the question of gaining setback from the lake by moving structure back to the retaining wall, lift station location, shoreline vegetation, and location of the garage.

MS/P Ballenthin/Gould to table consideration of the application until the 03/14/11 meeting in order for the applicants to assess the possibility of moving the proposed residence to the retaining wall and to submit a lakeside elevation of the proposed residence.

The following are the findings of the Cass County Planning Commission/ Board of Adjustment at their regular meeting on March 14, 2011 in Backus:

Styrvoky, Thomas, Fairview Township on property described as Lot 10, 15 & Part of Lot 16, "Birch Forest", Section 24-134-30, PID # 14-437-0150 located at 2511 Birch Forest Road SW.

An application submitted to remove the existing residential structure and replace with 26 feet x 38 feet new construction in the approximate site of the current residence which will not comply with the required bluff or lake setback. The current residence is located less than 75 feet from the lake and within the bluff area. Section 1126.1 A. of the Land Use Ordinance requires new structures to be located 75 feet from lakes classified General Development and Section 1126 B. which requires new structures to be located 30 feet from the toe or top of a bluff. A bluff is a topographic feature located either part or fully within the shoreland area and having the following characteristics; the slope rises at least 25 feet vertically above the toe of the bluff, the grade of the slope from toe of the bluff to a point 25 feet or more above the toe of the bluff averages 30% or greater and the slope drains toward public waters. The property contains .6 acre riparian to Gull Lake (GD).

This application was tabled during the 02/14/11 meeting in order for the applicants' representatives to consider placing the non-lakeside of the proposed structure at the retaining wall. PC members were at the site 02/07/11. 33 notices of the application were mailed of the 02/14/11 and 03/14/11 meetings. One response from Fairview Township recommending approval along with one response from within the notification area urging disapproval were received. The application was discussed and reviewed with the applicants' representatives Mr. Freeman and Mr. Larson. Discussion centered on the question of gaining setback from the lake by moving structure back to the retaining wall.

MS/P Gould/Gardner to approve the location of the residence, fence and railing for PID # 14-437-0150 upon review of Section 800 of the Land Use Ordinance (01/10/10) along with criteria established by court decisions with the following findings and conditions.

Findings:

1. No permit activity for the parcel prior to 1993 can be confirmed therefore it is reasonable to assume the original residence was constructed prior to the enforcement of the bluff setback requirements.

2. The garage was constructed with permit in 1997 prior to the enforcement of the bluff setback requirements.
3. The property was platted in 1951 far prior to the adoption of the buildable lot area requirements and setback requirements.
4. The garage and retaining wall along with the small size of the lot restricts placement at the required bluff setback.
5. The residence will not affect ground or surface water because run-off and erosion control best management construction and post construction practices must be implemented.
6. The residence will not affect area land use because similar style and construction is utilized by adjacent property along Birch Forest Road and because shoreline vegetation required by the variance will reduce the visual exposure of the new construction from the lake.
7. Using the existing excavated area for the new construction will result in less disruption and impact to the property.
8. There is no evidence that financial consideration is the sole reason for the variance.
9. The residence will have no bearing to the need or demand for governmental services because the property already has access to a public road and is not nor will it be connected to municipal or community waste water treatment system.

NOTICE TO APPLICANT: If the following conditions are included, No permit to implement shall be issued until and if:

1. ESD required and approved erosion control is installed.
2. A written plan for native vegetation is approved by ESD and agreed to be implemented by applicant.
3. At applicant's option, the vegetative plan is substantially implemented as determined by ESD or financial assurance in the amount of \$1.00 per square foot of the buffer area for no-mow or \$3.00 per square foot for all other vegetative buffers or if less 125% of the cost estimate.
4. As required by other Conditions as set forth.

NOTICE TO THE APPLICANT: No site preparation or building construction shall be commenced until issuance of Permit. Commencement of either prior to issuance of a Permit may result in withholding, withdrawal or revocation of a Permit until inspection by ESD, correction of any circumstances in violation of laws or ordinances or the terms of this Variance, deposit of financial assurance as determined by ESD to secure correction of violations and completion of other measures required by ESD.

Conditions:

1. The residence and fence shall not exceed the dimensions and setbacks shown on the site plan submitted 02/16/11.
2. The residence shall not exceed 26 feet from walk-out to peak with non-reflective glass in the lake side exposure.
3. The rail location shall be that indicated on the landscape plan submitted 03/14/11.
4. Any debris resulting from demolition and/or construction not recycled or reused must be disposed of in a permitted disposal facility.
5. ESD must determine the need for construction erosion control and if required applicant shall install ESD approved erosion control placement prior to the commencement of construction.
6. No storm water run-off to the lake, to the access road from the approved structure(s), or to adjoining properties is permitted. The approved structure, and any structure to which the approved structure is attached, if necessary, shall be equipped with gutters to redirect storm water and if needed water retention structures such as rain gardens shall be installed to retain structure run-off and prevent run-off to the lake, the access road, and adjoining properties.
7. Shore vegetation shall be installed and maintained in a buffer area, subject to a 14 feet wide lake access area. The applicant shall submit a written plan for a native vegetation buffer to reduce/eliminate nutrient run-off to the lake which shall have written approval by ESD. The plan shall include a schedule for implementation and an estimate of the cost to implement. The plan shall include:
  - a. A buffer within an area defined in the plan and approved by ESD.
  - b. A buffer meeting the preceding conditions and approved by ESD.
  - c. Restoration or installation of a berm approved by ESD.Financial assurance shall be returned to the applicant upon a schedule approved by ESD and in all events upon substantial implementation of the vegetation plan as determined by ESD. Portions of the approved plan for vegetation not completed in accordance with the implementation schedule will be installed at the direction of ESD and charged against the financial assurance.
8. Applicants consent to inspection of the property from time to time by ESD to verify compliance with conditions.

COMPLIANCE WITH ALL CONDITIONS IS REQUIRED. FAILURE TO COMPLY WITH ANY CONDITION SHALL RESULT IN A VIOLATION AND SUBJECT THE APPLICANT TO ENFORCEMENT PROCEDURES WHICH MAY INCLUDE, BUT NOT LIMITED TO, REVOCATION OF THIS VARIANCE, REMOVAL OF VIOLATIONS AND MITIGATION.