

# Memorandum

**TO:** Planning Commission  
**FROM:** Will Harris , Associate Planner  
**DATE:** August 25, 2026  
**SUBJECT:** 804 County Road I W - Variances - Robert Freed  
**ITEM NUMBER:** 7.C  
**SECTION:** NEW BUSINESS

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## **REQUESTED MOTION**

To deny the following three variances submitted by Robert Freed regarding the property at 804 County Road I, each to maintain a patio, water-oriented accessory structure.

1. Variance to Development Code [Sec. 115-155 \(b\) \(3\) \(a\) \(2\)](#): To exceed the maximum allowed impervious surface of 25%
2. Variance to Development Code [Sec. 115-149 \(c\)](#): A water-oriented accessory structure may exist between the OHW and the required structure setback so long as it does not encroach into the shore impact zone; 25' from the OHW. The existing patio is within the Shore Impact Zone.
3. Variance to Development Code [Sec. 115-149 \(c\) \(3\) \(d\)](#): The patio has a side setback that is 10' rather than the 20' required for water oriented accessory structures.

This action is based on the finding that a practical difficulty is not present. The patio was not lawfully established by the previous owner, thereby making it an illegal non-conformity, and the desire to maintain the patio at its current size and location a matter of preference rather than a unique circumstance.

To adopt Resolution 26-68 approving the 17.9 foot structure setback submitted by Robert Freed at 804 County Road I W for the existing deck setback on the property. Said approval is subject to the following conditions:

1. The project must be maintained in accordance with the plans submitted with the variance applications. Any significant change to these plans, as determined by the community development department, will require review and approval by the planning commission. Any subsequent expansion of the existing house shall necessitate a new residential design review and variance consideration.
2. A building permit must be applied for the existing deck to ensure the work meets relevant Minnesota State Building Codes.
3. These approvals will expire after one year if a building permit has not been issued for the project.
4. This variance and residential design review approval is subject to a five-day appeal period.

## **INTRODUCTION**

The applicant, Robert Freed, purchased the site located at 804 County Road I W in September of 2025 and applied for a new short-term rental license for the property one month later, in October. In accordance with the regulations of the City, staff performed an inspection of the site and, after receiving corrections for the issues noted, issued the license on November 3rd, 2025. Shortly after, staff began receiving complaints from neighbors regarding concerns over parking capacity, location of vehicles parked on the site and on County Road I, occupancy limits, trash, and noise. After receiving further complaints in March, staff performed a thorough evaluation of the site, the listings on Airbnb, and neighbor complaints to compile a comprehensive list of violations of the rental code and municipal code to send to the owners and to bring the property into compliance. During this evaluation, staff found that the property has an illegally installed gravel parking area, a patio located lakeside that was installed in 2022, along with a deck that encroaches further into the lakeside structure setback than was permitted as part of a residential design review on the property and a hot tub and associated pad in the Shore Impact Zone. The patio currently violates five provisions of the Shoreview City Code, and the deck violates one provision.

Staff has met with the owners of the site multiple times to discuss potential options for correcting the violations present on the property. Ultimately, the applicants desire to maintain some of the existing patio that was a part of the home when it was originally purchased and therefore are proposing to alter the existing patio to bring it into compliance with two out of the five violations, and to request variances for three of the five violations to maintain the existing water-oriented accessory structure. The applicants are also requesting a variance to the lakeside structure setback for their deck. The following variances are under consideration:

1. Variance to Development Code [Sec. 115-155 \(b\) \(3\) \(a\) \(2\)](#): The total impervious surface on the site exceeds 25%
2. Variance to Development Code [Sec. 115-149 \(c\)](#): A water-oriented accessory structure may exist between the OHW and the required structure setback so long as it does not encroach into the shore impact zone; 25' from the OHW. The existing patio is within the Shore Impact Zone.
3. Variance to Development Code [Sec. 115-149 \(c\) \(3\) \(d\)](#): The patio has a side setback that is 10', less than the 20' required.'
4. Variance to Development Code [Sec. 115-149 \(c\) \(2\)](#): The attached deck does not comply with the required structure setback of 50 feet from the OHW level.

## **DISCUSSION**

### **Property Description**

The subject property is a substandard riparian lot located in the R1-Detached Residential Zoning District. The lot is 9,896 square feet, with a width of 75 feet along County Road I W to the north, thus making it a substandard lot, and depths of 119 feet along the western property line and 129 feet along the eastern property line. The property has a single-family home on it that was originally constructed in 1972, then significantly remodeled in 2003 when it went through a residential design review. As a part of this remodel, the homeowners added 300 sq ft of living space on the street side of the property above the garage. As a part of this RDR, the planning commission approved the owners to exceed the maximum allowed impervious surface coverage to 35.6% with a mitigation affidavit and no lakeside accessory structure. They maintained the existing lakeside setback of the deck at 19.5 feet and stated on their building plans and survey that there would be no changes to the deck.

With the current conditions of the property, the patio violates five provisions of the Shoreview

City Code, and the deck violates one. The five patio violations include:

1. There are currently two water-oriented accessory structures on the property: the patio and the hot tub. This violates [Sec. 115-149 \(c\)](#), which states that on residential property, only one water-oriented accessory structure may be located between the OHW level and the required structure setback.
2. The water-oriented accessory structure, as it currently sits, is 314 sq ft, which exceeds the maximum area of 250 square feet per [Sec. 115-149 \(c\) \(3\) \(a\)](#).
3. The patio is currently 10 feet from the side property line on the eastern side, which exceeds the minimum setback of 20 feet per [Sec. 115-149 \(c\) \(3\) \(d\)](#).
4. The patio is currently located within the shore impact zone, which is an area where only lawfully created boathouses or off-season ice fishing houses may be permitted per [Sec. 115-149 \(c\) \(3\) \(g\)](#). This area is anywhere within 25 feet of the ordinary high water line. The current patio is located 10 feet 9 inches from the OHW. Code does permit that this setback requirement can be waived, but not reduced to less than ten feet from the OHW, if the planning commission determines that a practical difficulty exists which renders strict compliance to be unreasonable. This portion of code defines this usage of "practical difficulty" as due to topography or other circumstance acceptable to the city.
5. The home had a variance approved at 35.6% impervious surface coverage, which exceeded the previous limit of 30%. With the installation of a water-oriented accessory structure, the permitted amount of impervious surface coverage decreases to a maximum of 25% per [Sec. 115-155 \(b\) \(3\) \(a\) \(2\)](#). With the current amounts on the property, the site is 41.5% impervious.

During the residential design review that was approved in 2003, the attached deck had an approved at 19.5 ft setback from the OHW. However, the deck that was approved alongside the survey and the building plans was torn down and replaced with a larger deck that extends the width of the western portion of the home and encroaches 1.6' further towards the lake. The new deck did not have any permits approved. The deck expanded an existing legal non-conformity and would need a variance to [Sec. 115-147](#), as it does not comply with the required structure setback of 50 feet from the OHW level.

### **Project Description**

To remedy the first patio violation, the owners are proposing to remove the existing hot tub to reduce the number of water-oriented accessory structures to one; therefore, they will not need a variance for [Sec. 115-149 \(c\)](#). To remedy the second violation, the owners are proposing to reduce the total square footage of the patio from 314 sq ft to 200 sq ft and replace the removed materials with sod; therefore, they will not need a variance for [Sec. 115-149 \(c\) \(3\) \(a\)](#) for exceeding 250 square feet. To remedy the third violation, the owners are requesting a variance to [Sec. 115-149 \(c\) \(3\) \(d\)](#). They are proposing to maintain the existing patio setback of 10 from the side property line. To remedy the fourth violation, the owners are requesting a variance to [Sec. 115-149 \(c\) \(3\) \(g\)](#) to maintain the patio in its existing location within the shore impact zone, but will be reducing the amount of impervious surface within that area that is closest to the lake. The new patio will be located 17.6 feet from the OHW. Lastly, the owners are requesting a variance to [Sec. 115-155 \(b\) \(3\) \(a\) \(2\)](#) by reducing the impervious surface coverage of the site from its current area of 4,102 sq ft to 3,522 sq ft, and the overall percentage of impervious surface from 41.5% to 35.6%. This would be done by removing the hot tub and underlying pad, removing a portion of the patio, all of which is located within the shore impact zone, and removing a small portion of the cement surface of the driveway and the adjacent pea gravel area, both of which would be replaced with sod. While this meets the

total percentage that was approved through the residential design review in 2003, the need for the variance stems from the addition of the lakeside accessory structure and the subsequent reduction of allowed impervious coverage to 25%. To remedy the deck violation, the owners are requesting a variance to [Sec. 115-147](#), to allow for a 17.9' setback for the principal structure from the OHW.

### **Development Code Requirements**

#### **Residential Design Review for Substandard Lots**

Development Code [Sec 115-155\(b\)](#) requires that no structures be expanded, constructed or reconstructed on a substandard lot of record unless design review approval is first obtained from the city in accordance with Sec 103-5. As the various improvements made to the site were not reviewed by the city, Planning Commission review and consideration is required.

| <b>Design Standard</b>           | <b>Allowed</b>                                                            | <b>2003 Approved</b> | <b>Current Conditions</b> | <b>2026 Proposed</b> |
|----------------------------------|---------------------------------------------------------------------------|----------------------|---------------------------|----------------------|
| Lot Area                         | 15,000 sq. ft.                                                            | 9,938 sq ft          | 9,896 sq ft               | 9,896 sq ft          |
| Lot Coverage                     | 25% with lakeside acc. structure<br>30% with no lakeside acc. structure   | 35.6%                | 41.5%                     | 35.6% *              |
| Accessory Structure OHW Setback  | 1/2 the distance of the OHW setback for the principal structure (25 feet) | None                 | 10.9 feet                 | 17.6 feet *          |
| Accessory Structure Total Size   | 200 sq ft                                                                 | None                 | 314 sq ft                 | 200 sq ft            |
| Accessory Structure Side Setback | 20 feet                                                                   | None                 | 10 feet                   | 10 feet *            |
| Principal Structure OHW Setback  | 50 feet                                                                   | 19.5 feet            | 17.9 feet                 | 17.9 feet *          |

### **Variance Criteria**

When considering a variance request, the commission must determine whether the ordinance causes the property owner practical difficulty and find that granting the variance is in keeping with the spirit and intent of the ordinance. Practical difficulty is defined as:

1. Reasonable Manner. The property owner proposes to use the property in a reasonable manner not permitted by the Shoreview Development Regulations.
2. Unique Circumstance. The plight of the property owner is due to circumstances unique to the property not created by the property owner.
3. Character of the Neighborhood. The variance, if granted, will not alter the essential character of the neighborhood.

### **Applicants' Statement**

The present owners of the property at 804 W Co Rd believe the need for these variances is required in part, first, by the placement of the houses in this area are very close to one another on relatively narrow lots, by their respective builders, leaving only relatively small side setbacks between each of the respective houses, and second, by a prior owner or prior owners of the present property who, perhaps separately, built a deck and an adjacent lakeside patio, which arguably violated provisions of the code, and that were existing, and which added to the

value to the property, when the property was purchased by the present owners in September of 2025.

We agree to take the actions described above if we can obtain the requested variances from the Planning Commission and the Commission believes the proposed actions will be sufficient, along with the requested variances, to bring the property into compliance with the provisions of the code. It is believed by the present owners that the requested variances, together with the actions the present owners have tentatively proposed, will bring the property into compliance with the provisions of the code.

It will be appreciated that the present owners wish to be in compliance with provisions of the code, and that the actions they have agreed to take if the requested variances are granted, would be taken at significant trouble and expense, and that the practical difficulties associated with addressing the further aspects of the code that are not addressed by the proposed actions, which the present owners tentatively agree to take, and that would prevent the present owners from complying with the provisions of the code, are believed to consistent with the property owner using the property in a reasonable manner that would not be permissible under the code if the variances are not permitted.

Furthermore, it is believed that the present property owners' circumstances are unique to the present property and were not created by the present property owners. In addition, it is believed by the present property owners that none of the variances that have been requested will do anything that will alter the essential character of the neighborhood.

The applicants have also included pictures of the property that are taken from several vantage points to show what can be seen or not seen of the current patio, and presumably, would likely be seen or not seen of the proposed patio from these respective vantage points if the proposed actions are taken. The pictures taken from the dock show the steps that lead away from the patio to the dock, but the height of the rocks of the "riprap" on the lakeside of the current patio, and the grass adjacent to the patio, would likely prevent anyone on the dock or on the water in the lake adjacent to the shoreline from seeing the patio. Similarly, there are two pictures showing the area near the property line on the east side of the property, also showing that the current patio is not visible from the neighboring lot because of the rise of the landscaping provided in the area encompassing the lot line. We are providing these pictures to supplement the information provided in the present application.

Although we appreciate that drainage of rainwater from the roof of the house is not a central matter of concern with regard to the Commission's consideration of this matter, it was mentioned in one of our discussions as a matter of some limited concern that might put us in a favorable light with the Commission. We have reviewed this matter and note that one of the prior owners has upgraded the gutter system on the house and placed five separate downspouts connected to the respective gutter system at different corners of the house, each of which drains into a separate catch basin, each of which is believed to drain away from the house into grassy areas in the yard that is spaced well away from the lake.

The present owners of the property at 804 W Co Rd wish to express their appreciation for the consideration and communication provided by the City planning staff with respect to this matter and also the further consideration provided regarding this matter by each of the respective members of the Planning Commission. Thank you.

## **STAFF REVIEW**

Residential Design Review - Staff has reviewed the proposal in accordance with the standards specified for the R1 zoning district and for substandard riparian lots.

Staff has reviewed the proposal for the three variance requests relating to the lakeside accessory structure in accordance with the variance criteria. Upon review, Staff determined that practical difficulty is not present because a unique circumstance not created by the property owner does not exist.

1. Reasonable Manner. A lakeside accessory structure within the R1 zoning district is a reasonable request provided certain dimensional requirements are met.
2. Unique Circumstances. Staff has determined that a unique circumstance is not present. The approved residential design review from 2003 was conditioned on the homeowners removing 5% of their impervious surface coverage on the site as a mitigation practice to get down to an approved 35.6%, which still exceeds the maximum allowed percentage. With the addition of a lakeside accessory structure reducing the maximum allowed percentage down to 25%, staff believes the preference for a lakeside accessory structure on a site does not justify an exceeding of the maximum permitted impervious surface coverage by 10.6%. Secondly, the site does allow for the homeowners to reduce/alter the patio to conform to the side setback that borders 800 County Road I and maintain a nearly 150 sq ft patio. Finally, staff believes that a "practical difficulty" involving the required setback from the OHW is not present. There are no topographical issues that present a practical difficulty in that area. And while the distance of the house from the OHW only allows for between 4 to 5 feet of space between the setback line and the home, the proposed location of the water-oriented accessory structure does not appear to be making a full attempt at reaching as close to compliance as possible.
3. Neighborhood Character. Staff has determined that granting the variance would not alter the essential character of the neighborhood due to other properties along County Road I on Turtle Lake having patios.

Staff has reviewed the proposed variance requests related to the lakeside setback and believes that practical difficulty is present for the variance to section [Sec. 115-147](#), to allow for a 17.9' setback for the principal structure from the OHW:

1. Reasonable Manner. The property owner proposes to use the property in a reasonable manner not permitted by the Shoreview Development Regulations. The applicants propose to maintain a lakeside deck, which is a permitted use within the R1- Detached Residential zoning district.
2. Unique Circumstance. The request is due to circumstances unique to the property, and not created by the property owner. In 2003, the city evaluated the proposed impervious surface of the property and approved a setback for the principal structure of 19.5 feet from the OHW. Since the time of that approval, the location of the Turtle Lake OHW has eroded into the property, reducing the western property line by 1.95 feet. With the unpermitted deck being located on the western side of the property, if the structure were to have been permitted in 2003, it would have met the 19.5-foot setback. The proposed variance to increase the percentage of lot coverage is a result of natural changes to the OHW location on the property, such as erosion, that have reduced the lot area used to calculate the lakeside setback.
3. Character of the Neighborhood. The proposed setback would meet the historically

present setback if not for a natural change to the OHW on the property. The character of the neighborhood will not be adversely affected by approval of the variance.

## **COMMENTS**

### **Public Comments**

Property owners within 150 feet were notified of the applicant's request. At the time of this report, one written public comment from two homeowners was submitted expressing disapproval of the variance request.

### **Staff and Agency Comments**

Engineering staff provided comments regarding the importance of Shoreview's impervious surface limits: These regulations provide a consistent standard for builders and homeowners to help prevent cumulative negative impacts from rain runoff to drainage systems, flooding, and water quality. Excess impervious coverage on lake lots can directly affect water quality because rain will not soak into the ground, but can flow directly into the lake. When rain runs off the impervious surfaces, it can carry sediments and other pollutants to the lake.

Rice Creek Watershed District provided comments outlining their permitting specifications, which may be required for the removal of the patio if they are stockpiling over 50 cubic yards of erodible earth material and/or disturbing 5,000 sq ft.

## **RECOMMENDATION**

Staff recommends the planning commission deny the following three variances submitted by Robert Freed regarding the property at 804 County Road I, each to maintain a patio, water-oriented accessory structure.

1. Variance to Development Code [Sec. 115-155 \(b\) \(3\) \(a\) \(2\)](#): To exceed the maximum allowed impervious surface of 25%
2. Variance to Development Code [Sec. 115-149 \(c\)](#): A water-oriented accessory structure may exist between the OHW and the required structure setback so long as it does not encroach into the shore impact zone; 25' from the OHW. The existing patio is within the Shore Impact Zone.
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This action is based on the finding that a practical difficulty is not present. The patio was not lawfully established by the previous owner, thereby making it an illegal non-conformity, and the desire to maintain the patio at its current size and location a matter of preference rather than a unique circumstance.

Staff recommends the planning commission adopt Resolution 26-68 approving the 17.9 foot structure setback submitted by Robert Freed at 804 County Road I W for the existing deck setback on the property. Said approval is subject to the following conditions:

1. The project must be maintained in accordance with the plans submitted with the variance applications. Any significant change to these plans, as determined by the community development department, will require review and approval by the planning commission. Any subsequent expansion of the existing house shall necessitate a new residential design review and variance consideration.
2. A building permit must be applied for the existing deck to ensure the work meets relevant

Minnesota State Building Codes.

3. These approvals will expire after one year if a building permit has not been issued for the project.
4. This variance and residential design review approval is subject to a five-day appeal period.

**ATTACHMENTS**

[Location Map](#)

[804 CR I W - Variance Application.pdf](#)

[Resolution 26-68](#)