LAKE MINNETONKA CONSERVATION DISTRICT
5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

August 26, 2016

Mr. Jerry Martin
10 Crabapple Lane
Tonka Bay, MN 55331

RE: Approved Variance for 10 Crabapple Lane, Tonka Bay

Dear Mr. Martin:

At their regular Board meeting of August 10, 2016, the Lake Minnetonka Conservation District (LMCD) Board of Directors approved the attached adjusted dock use area and setback variance for 10 Crabapple Lane in Tonka Bay, MN.

Please note the specific conditions outlined within the Order (starting on page 2). The LMCD staff look forward to your communication as to the progress in obtaining all the necessary permits prior to the commencement of construction. This communication is welcomed just as soon as able to comply with the condition of bringing the site into compliance with Attachment 1 by no later than May 1, 2017.

Lastly, please know that the LMCD is in the process of filing the variance with the Office of the County Recorder (Condition #3). Once that process is completed, staff will be sure to mail you the documented receipt.

As always, if you have any questions, please do not hesitate to call.

Sincerely,

Emily Herman
Administrative Assistant/ Technician
Lake Minnetonka Conservation District

Encl

Cc: Jim Brimeyer, LMCD Interim Director
Gregg Thomas, LMCD Board Member (Tonka Bay)

LAKE MINNETONKA CONSERVATION DISTRICT

RE: APPLICATION OF JERRY MARTIN
10 CRABAPPLE LANE, TONKA BAY

FINDINGS

THE BOARD OF DIRECTORS FINDS AND DETERMINES AS FOLLOWS:

a. The Lake Minnetonka Conservation District ("LMCD") received an application from Jerry Martin ("Applicant") requesting an amendment to an existing side setback variance and an adjusted dock use area for the property located at 10 Crabapple Lane in the City of Tonka Bay and described as Lot 10, Crescent Beach Addition, Hennepin County, Minnesota ("Site").

b. The existing side setback variance, which was originally approved by the LMCD on January 25, 1984, established the dock use area for 10 and 20 Crabapple Lane based on converging lot lines. The variance was amended on February 26, 1997 to allow for the construction and maintenance of a permanent 6' x 40' dock structure for 20 Crabapple Lane. The variance for 10 Crabapple Lane remained in place allowing a 24' long dock with a 5' setback to the northerly extended lot line.

c. The Applicant proposes to amend the existing variance for the Site by replacing the existing dock structure with a 47.7' x 4' dock. The northeasterly point of the proposed dock would maintain a zero foot setback from the northerly extended lot line and would require adjusting the northerly extended lot line by up to a 17 degree deflection as shown on the site plan dated June 22, 2016 and attached hereto as Attachment 1. The Applicant further proposes to install a new deck that would extend over the 929.4 NGVD shoreline as shown on Attachment 1.

d. The Applicant's site plan shows the storage of two restricted watercraft on the dock, which is allowed for this Site under the LMCD Code of Ordinances ("Code").

e. The proposed new dock location would cause one of the restricted watercraft stored on the north side of the proposed dock to extend past the extended boundary line of the Site into the dock use area of the City of Tonka Bay. The City indicated its agreement to allow the encroachment into its dock use area with the execution of an encroachment agreement by the Applicant.

f. Under Section 1.07, the Board of Directors may issue variances from the requirements of the Code if it finds there are practical difficulties that prevent the owner from using the Lake in a reasonable manner permitted by the Code.

g. The severely converging lot lines of the Site constitute a practical difficulty to the Applicant using the Lake in a manner otherwise permitted by the Code. In this case, the

Applicant could install the proposed dock without the need for any variances if the Site did not have converging lot lines. The Applicant did not create the converging lot lines, the resulting difficulties are unique to the Site, the proposed use is reasonable and consistent with the allowed uses of the Lake, requiring strict conformance with the Code in this case would be unreasonable, and granting the requested variances would not alter the essential character of the locality.

h. The staff report dated July 7, 2016 is incorporated herein by reference, except the proposed conditions within the report are superseded by the conditions contained within this order.

i. The LMCD is aware that the Applicant must obtain additional regulatory approvals and agreements from other entities before the Applicant can install the dock and deck as proposed.

j. The Applicant is eligible for the requested variances under Section 1.07 of the Code, subject to the conditions contained herein, which the Board of Directors deems necessary.

ORDER

ON THE BASIS OF THE FOREGOING, THE BOARD OF DIRECTORS HEREBY ORDERS:

1. The Applicant's variances requests to adjust to the authorized dock use area to allow a deflection of the extended lot line by up to 17 degrees to the north from the point at which it crosses Elevation 929.4 NGVD, to allow the placement of a dock with the furthest northeasterly corner of the dock maintaining a zero foot setback to the northerly extended lot line side setback variance, and to allow the placement of a deck that would extend over the 929.4' shoreline with either a length or width dimension that does not exceed eight feet, all as depicted on Attachment 1, are hereby approved subject to compliance with the following conditions:

   (a) No canopy, as defined by the Code, may be constructed at this Site.

   (b) The Applicant shall obtain all permits or approvals that may be required for the construction of the proposed dock and deck, as well as the placement of any watercraft.

   (c) Prior to beginning construction of the proposed dock and deck, Application shall present the LMCD Executive Director copies of the required permits and agreements.

   (d) The Applicant shall bring the Site into compliance with the site plan attached as Attachment 1 by no later than May 1, 2017. The LMCD Executive Director may grant an extension to this deadline if the Applicant is able to demonstrate such an extension is reasonably needed under the circumstances.

(e) The Applicant shall provide the LMCD an as-built survey of the new deck and dock within 60 days of the completion of construction.

(f) The dock , as measured from the shoreline at elevation 929.4 NGVD, shall not exceed 47.7' in length.

(g) The portion of the proposed deck extending over the shoreline at elevation 929.4 NGVD may exceed eight feet, excluding posts, in either its length or width, but not both.

(h) The storage density of watercraft shall comply with the Code, but no watercraft shall be stored so that it extends beyond the length of the approved dock structure or is located north of the approved 17 degree deflection of the northerly extended dock use area.

(i) If the Applicant is not able to obtain all the permits, agreements, or other approvals required to place the dock as identified in Attachment 1, the Applicant must place the dock in accordance with the January 25, 1984 variance. The variance granted herein shall otherwise be controlling over the January 25, 1984, but that original variance shall remain in effect for the 20 Crabapple Lane property with the approved February 26, 1997 amendment.

2. The issuance of these variances shall grant no vested rights to the use of Lake Minnetonka. Such uses shall, at all times, remain subject to regulation by the LMCD to assure the public of reasonable and equitable access to the Lake.

3. The LMCD Attorney is authorized and directed to file this variance with the Office of the County Recorder.

BY ORDER OF THE BOARD OF DIRECTORS of the Lake Minnetonka Conservation District this 10th day of August, 2016.

James Jay Green, Chair

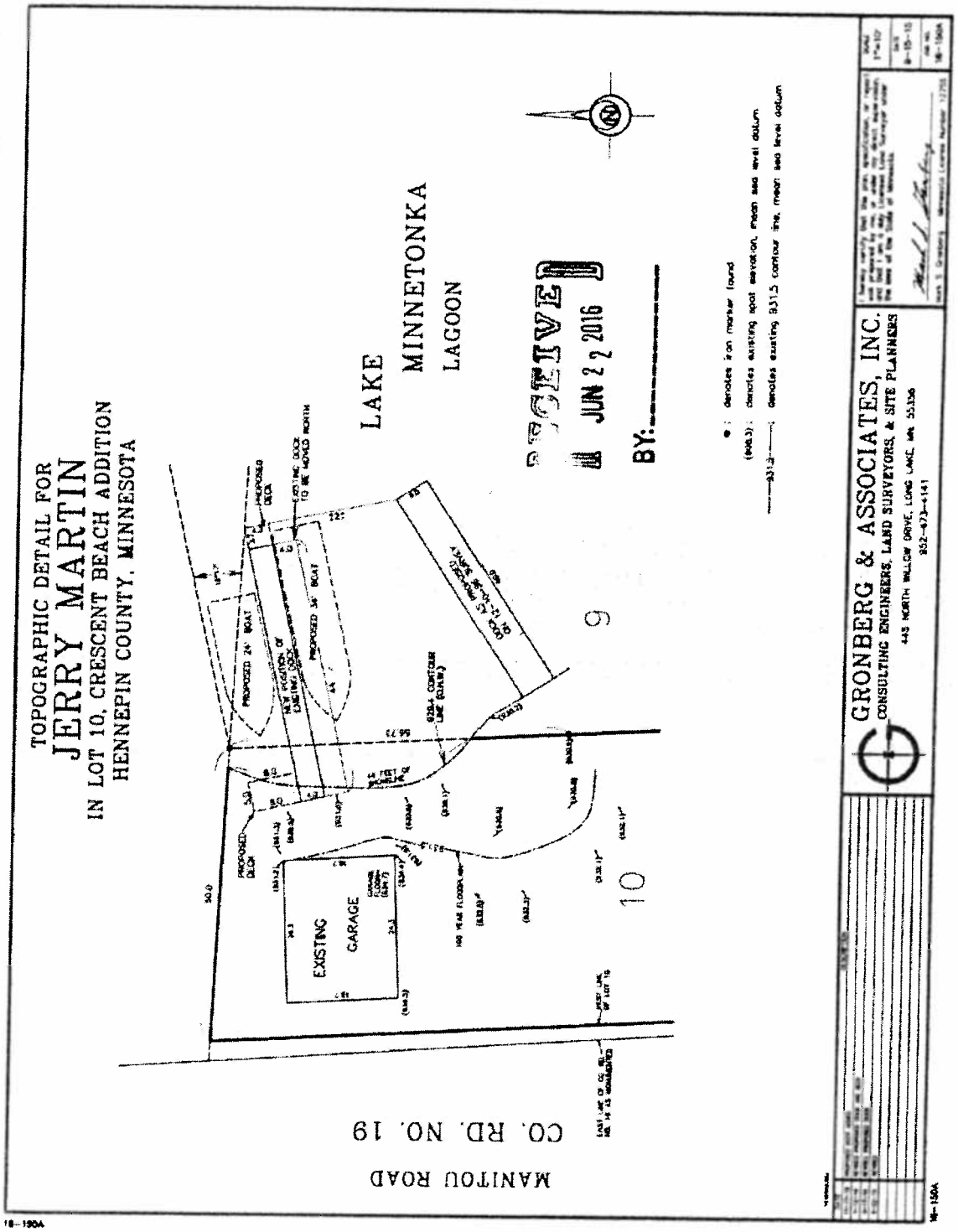
ATTEST:

Gregory J. Thomas, Secretary

483456v4 LK110-4

ATTACHMENT ONE

AMENDED PROPOSED SITE PLAN



LAKE MINNETONKA CONSERVATION DISTRICT
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July 7, 2016

TO: Board of Directors

FROM James Brimeyer, Interim Executive Director
Emily Herman, Administrative Assistant

SUBJECT: Adjusted Dock Use Area Variance Application

BACKGROUND
The Lake Minnetonka Conservation District (LMCD) has received an adjusted dock use area variance application from Mr. Jerry Martin of 10 Crabapple Lane in Tonka Bay. This application was originally scheduled for a public hearing on May 11th and then again on June 8th; both of which were tabled at the applicant's request to consider further amendments to the application. The proposed practical difficulties documented are converging lot lines.

Both 10 and 20 Crabapple Lane maintain a January 25, 1984 setback variance to adjust their dock use area (DUA). Additionally 20 Crabapple Lane maintains a February 26, 1997 variance to allow for the construction and maintenance of a permanent 6 x 40 foot dock structure that would replace their then existing 3 x 20 foot structure. The length of the that dock is limited so that the closest point of the northwest corner of the dock structure shall be no closer than 30 feet from the closest point of the dock authorized for 10 Crabapple Lane.

Prior discussions were held with Mr. Martin relative to his dock structure not being in conformance with the approved 1984 variance; dimensions of dock structure. Compliance to the northerly extended side setback was un-conclusive as there was not sufficient enough evidence to determine that measurement without the LMCD's completion of a certified survey. To this end, Mr. Martin has chosen to apply for an amended variance. The application process, to date, is outlined as follows:

<u>Tabled May 11th Public Hearing (4/20/16 Site Plan)</u>

- Amended the five foot setback to the northerly extended side site lines to a 2.7 foot dock structure setback and a zero foot watercraft storage setback.
- Amend the approved 24 foot dock length (measured at 44 feet) to 52 feet;
- The storage of two watercraft (a 24 foot long watercraft on the north side of the dock and a 34 foot long watercraft on the south side of the dock). The current variance does not place density restrictions on the site.
- The City of Tonka Bay did not have a concern with this original request.

- Applicant requested the Board table the public hearing to provide an opportunity to work with the neighboring property owner at 20 Crabapple Lane.

Tabled June 8th Public Hearing (5/25/16 Site Plan)

- Applicant worked with neighboring property owner of 20 Crabapple Lane and submitted an amended site plan, dated 5/25/16.
- Proposal included moving the dock structure four feet northward (over the extended property line) and shorten the dock by four feet.
- Applicant requested the Board table the public hearing to provide Tonka Bay City Council (northerly abutting property owner) an opportunity to consider the proposal.

Discussions with the City of Tonka Bay

City advised applicant that, if approved, the attached encroachment agreement would be required, as well as a variance for the installation of the proposed 10 x 10 foot deck (a portion of which would extend over the 929.4' shoreline). Lastly, it was recommended that the Minnehaha Creek Watershed District be consulted relative to the placement of the deck being so close to the shoreline. The discussion of the 10 x 10 foot deck brought to light LMCD Code Section 2.12, Subd. 12; a dock cannot exceed eight feet in both width and length.

CURRENT PROPOSAL

July 13th Public Hearing (6/22/16 Site Plan)

Mr. Martin has requested the Public Hearing be held in consideration of the amended proposed site plan dated June 22, 2016. The application continues to be for an adjusted dock use area variance as originally published and the Board has official tabled the prior scheduled agenda items. Therefore, staff confirmed with legal counsel that the public hearing notice did not require additional publishing to consider this request.

The final proposed amendments for Board's consideration include:

- A 47.7 x 4 foot dock
- A proposed deck with a portion over the 929.4 foot shoreline.
- A northerly adjusted dock use area of up to a 17 degree deflection

Martin would remain in compliance with watercraft storage density as his site has not been re-platted since August 30, 1978. Therefore he is, by Code, able to maintain two restricted watercraft without reference to ownership.

RELEVANT LMCD CODE

Establishing Authorized Dock Use Area (Section 2.01)

Length

Extends into the Lake a distance equal to the site Lake frontage. However, a site in existence on February 5, 1970 and has Lake frontage of 40 to less than 60 feet may extend out to 60 feet into the Lake. A site less than 40 feet may extend out to four feet of water depth or 60 feet, whichever is first. **Mr. Martin has 44 feet of shoreline. For a site without converging lot lines, that would provide for a DUA of up to 60 feet in length and five foot setbacks (if in existence on February 2, 1970).**

Width

For the Portion of the Length of the DUA Which Extends From the Shore	Side Setback Requirement (Minimum)
Zero to 50 feet	10 feet
Over 50 feet to 100 feet	15 feet
Side opening slips	Depth of slip (minimum of 20 feet)
Sites in existence on February 2, 1970 (50 feet or less of lakeshore frontage)	5 feet

Density Allowance (Section 2.02)

If the site has been in existence on August 30, 1978 and the shoreline has not been compromised by a re-plat, Mr. Martin's site would be grandfathered for the storage of two restricted watercraft without reference to ownership or he may store up to four restricted watercraft with reference to ownership as there is a single family dwelling on the site. **Mr. Martin is proposing the storage of two restricted watercraft.**

Variance from Code (Section 1.07)

In review of the proposed application for variance from Code, the Board should ensure that the applicant has documented practical difficulties that are caused by the application of the Code. When considering this request, the discussion should focus on what is reasonable for the amount of dock structure and the number or restricted watercraft that should be allowed at this site and that the request, "...does not adversely affect the purposes of the Code, the public health, safety, and welfare, and reasonable access to or use of the Lake by the public or riparian owners." In addition, the Board should apply the following historically utilized decision standards in the review of the proposed variance application.

- Is the proposed use reasonable;
- Would it be unreasonable to require conformance to the ordinance?

- Is the difficulty of conforming to the ordinance due to circumstances unique to the property;
- Is the problem one created by the applicant; and
- Will the variance, if granted, alter the essential character of the locality?

STAFF COMMENTS
Based on the proposed application being in proximity to wetlands and the possibility of considering a dredging permit, staff has submitted a review and comment form on the most current, proposed application to the City of Tonka Bay, Minnesota Department of Natural Resources (MN DNR) Ecological and Water Resources Division, and the Minnehaha Creek Watershed District. Staff has received the attached comments from the City of Tonka Bay (dated June 20th and 28th) and the MN DNR (dated June 29th).

Staff is working with the neighbor of 20 Crabapple Lane to verify compliance with the existing variance. Staff believes this effort does not affect the Board considering the variance request at hand.

RECOMMENDATION
Staff recommends the Board direct legal counsel to draft Findings of Fact and Order approving the adjusted dock use area variance based on:

- The proposed request is reasonable. Without converging lot lines, Mr. Martin would be able to maintain a 60 foot dock with up to four restricted watercraft.
- It would be unreasonable to provide conformance to the ordinance based on converging lot lines. If the site was parallel, Mr. Martin would have been able to meet setbacks. Additionally, Mr. Martin is not proposing a canopy.
- Severely converging lot lines makes it a unique situation and difficult to conform to the ordinance.
- The problem was not created by the applicant.
- The variance would not alter the essential character of the locality (based on approved permits for the use of the wetland area).

<u>Recommended Approval Conditions</u>
Staff further recommends approval be subject to the following conditions: 1) restrict future use of a canopy, 2) for both the proposed deck and storage of watercraft, all appropriate permits be obtained and approved prior to placement, 3) the LMCD Executive Director receive an update from Mr. Martin on the required approvals and subsequently an as-built survey, 4) no greater storage than two restricted watercraft (subject to consideration of unrestricted watercraft), 5) no greater size of watercraft than 34 feet on the south side of the dock structure and 24 feet on the north side of the dock structure (subject to further consideration of defining length overall), and 6) that the variance be filed with the Office of the County Recorder by LMCD legal counsel.