

**STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

IN THE MATTER OF:

Docket No.: 19-008813

Petition of Robert & Merri Klingel

Agency No.: W2019001V

Part(s): 305, Natural Rivers

**Agency: Department of Environment,
Great Lakes, and Energy**

Case Type: Water Resources Division

**Issued and entered
this 19th day of January 2022
by: Paul Smith
Administrative Law Judge**

PROPOSAL FOR DECISION

This matter is a contested case concerning the petition of Mr. Robert Klingel and Mrs. Merri Klingel for review of the White River Zoning Review Board's denial of an application for an after-the-fact dimensional variance. Petitioners sought the variance to allow them to retain a house they built within the 75-foot construction setback and the 50-foot protected natural vegetation strip next to Sand Creek, a tributary of the White River.

JURISDICTION

The hearing was requested under and is governed by Part 305, Natural Rivers, of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.30501, *et seq.* The hearing was conducted pursuant to the provisions of the Michigan Administrative Procedures Act, MCL 24.201, *et seq.*

PROPERTY RIGHTS PRESERVATION ACT

Pursuant to the Property Rights Preservation Act, 1996 PA 101, MCL 24.421, *et seq.*, the undersigned, in formulating this Proposal for Decision, reviewed the Takings Assessment Guidelines and considered the issue of whether this governmental action equates to a constitutional taking of property. Const 1963, art 10, § 2.

PARTIES

Petitioners were represented at the hearing and on brief by Attorney Kevin J. Wistrom of Muskegon. In addition to testifying on their own behalf, Petitioners called Walter Brimmer (Otto Township Supervisor, Otto Township Zoning Administrator, and member of the White River Zoning Review Board), Jeffrey Junod (a friend of Petitioners who helped with construction of the house), and Daniel Frens (another friend of Petitioners who helped with construction of the house). Through these witnesses, Petitioners entered Exhibits P-1, P-2, P-4, P-5, P-6, P-9, P-12, P-18 and P-21.

The Fisheries Division of the Department of Natural Resources (Department or DNR) was represented at the hearing by Assistant Attorney General Nathan Gambill and on brief by Assistant Attorney General Luanne Laemmerman. The Department offered the testimony of Brian Bury (a Natural River Zoning Administrator within the Fisheries Division of the Department), John Warner (Deputy Drain Commissioner for Oceana County), Kesiree Thiamkeelakul (Natural River Zoning Administrator for the White River), and Joshua Crane (an Environmental Quality Analyst with the Department of Environment, Great Lakes, and Energy). Through these witnesses, the Department entered Exhibits R-1 through R-15.

STANDARD OF REVIEW

In a contested case hearing challenging a denial of a requested variance under Part 305, this Tribunal reviews de novo the variance factors set forth in Mich Admin Code, R 281.60(2). *Petition of Wayne Shugars*, 1998 WL 477441, *2 (Mich.Dept.Nat.Res.).

FINDINGS OF FACT

Petitioners own a ten-acre piece of property in Otto Township, located within Oceana County and within the boundaries of the White River Natural River District. Sand Creek runs through Petitioners' parcel. (Exhibit R-1). In 2018, Petitioners built a house on the parcel. Before building the house, Petitioners did not obtain a Natural River zoning permit under Part 305 because Petitioners mistakenly believed that no permit from the Department was needed. When the Department discovered the unapproved construction activity, it issued a violation notice and informed Petitioners that they would need to obtain an after-the-fact dimensional variance from the White River Zoning Review Board to avoid removal of their house and restoration of the site. After the White River Zoning Review Board denied the requested after-the-fact dimensional variance,

Petitioners brought a petition for a contested case hearing to challenge the denial of the variance.

Sand Creek is a tributary of the White River. The White River System, including Sand Creek, was designated a Natural River by the Natural Resources Commission under the provisions of the then Natural River Act of 1970, now Part 305 of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, MCL 324.30501, *et seq.* Natural River Zoning Rules for the White River Natural River District were promulgated and became effective on May 5, 1979. See Mich Admin Code, R 281.51(1)(m)(iii).

Before purchasing the property on Sand Creek, Petitioner Robert Klingel spoke to Brian Bury, a Natural River Zoning Administrator within the Fisheries Division of the Department, about building requirements on Carlton Creek where Petitioners were considering purchasing land. Mr. Klingel also reached out to the Department of Environmental Quality (DEQ), now the Department of Environment, Great Lakes, and Energy (EGLE), for the same purpose. During those conversations, Mr. Klingel learned that Carlton Creek was a designated trout stream. He came away from those conversations with the impression that purchasing the Carlton Creek property would not be feasible because there were “too many requirements to build on that property.” (Tr., p 40).

One of the reasons why Petitioners decided to buy the Sand Creek property instead of the Carlton Creek property was Mr. Klingel’s understanding that Sand Creek was not a “designated trout stream” and his corresponding belief that, therefore, building near Sand Creek would not involve as many restrictions (Tr., pp 79-80). In fact, the status of a body of water as a “designated trout stream” is a fishing regulation that is not relevant to the permitting requirement under Part 305 (Tr., pp 114-117).

Mr. Klingel had worked as a builder and intended to build the house himself. Before starting, Otto Township Supervisor Walter Brimmer provided Mr. Klingel with a list of requirements he would need to build a house on the Sand Creek parcel. Included among the list of permits and other requirements was an instruction from Brimmer to check with the Department and DEQ about any necessary environmental permits. Mr. Klingel made a second call to Brian Bury to discuss his plans for building on the Sand Creek property. Although Mr. Klingel acknowledged at the hearing that Mr. Bury never expressly told him that he did not need a permit from the Department to build near Sand Creek (Tr., p 78), Mr. Klingel somehow came away from his conversation with Mr. Bury believing that no permit from the Department would be needed (Tr., pp 41-42, 68, 78-80, 181).

Mr. Klingel’s belief that he did not need a permit from the Department most likely was the result of some miscommunication or misunderstanding between Mr. Bury and Mr.

Klingel. The Tribunal infers that as a Natural River Zoning administrator, Mr. Bury would not have told Mr. Klingel that he could build on Sand Creek without a permit (Tr., pp 70, 116-117).¹ The Tribunal also infers that Mr. Bury would not have suggested that the designation of the creek as a “trout stream” had anything to do with the need for a permit under Part 305 (Tr., pp 114-117). Likewise, the Tribunal infers that Mr. Klingel would have applied for a permit from the Department if he believed, after talking to Mr. Bury, that a permit was required (Tr., pp 45, 67, 180-181). Nothing in the record supports a conclusion that Mr. Klingel ever intentionally sought to evade compliance with any permit requirements.

Petitioner’s initial plan was to build the house 120 or 130 feet from the creek (Exhibit R-2, p 2; Exhibit R-3, p 2). When Walter Brimmer visited the construction site in June of 2018, Petitioners had staked out a construction site that was 120 feet from Sand Creek. On June 26, 2018, Mr. Brimmer issued a local permit indicating that Petitioners’ intended use complied with the zoning ordinance of Otto Township (Exhibit R-2, p 1). The local zoning permit allowed Petitioners to obtain a street address for their house. During Mr. Brimmer’s visit, Mr. Klingel informed him that he had called the Department and DEQ, informed Mr. Brimmer that no environmental permits were required, and gave Mr. Brimmer the names of the people with whom he had spoken (Mr. Bury at the Department and Joshua Crane at DEQ) in case Mr. Brimmer had any questions for them (Tr., pp 42, 78-79). Petitioners were under the impression that Mr. Brimmer, as the Otto Township Supervisor who approved his local zoning application, would have understood the DNR rules and advised them to get a DNR permit if one was needed (Tr. p, 45, 66, 71-72).

On July 5, 2018, Petitioners applied for and were granted a soil erosion permit. The permit application stated that the earth disruption from the construction would occur 130 feet from the nearest stream. (Exhibit R-3). During the same week, Petitioners applied for and were granted a septic permit. The septic permit set forth the following instruction: “DNR Natural River Zoning is in effect. Contact the DNR Natural Rivers Administrator as additional permits may be required and setbacks may be more restrictive.” (Exhibit R-4).

Sometime after receiving the local zoning permit, building permit, soil erosion permit, and septic permit, Mr. Klingel decided to move the location of the house construction approximately 60 feet closer to Sand Creek than was originally intended and described in the aforementioned permit applications. Mr. Klingel explained that he decided to move the construction location, on his own, after the “septic guy” suggested a “better location” for the septic system. He concluded that moving the house closer to the creek would accommodate the preferred location for the septic system, so he changed his

¹ Evidence includes reasonable inferences that can be drawn from the facts. *Zytkewick v Ford Motor Co*, 340 Mich 309, 318; 65 NW2d 813 (1954).

construction plans without informing Mr. Brimmer or John Warner, the Deputy Drain Commissioner who had issued the soil erosion permit. (Tr., pp 43-44, 75.)

On October 5, 2018, John Warner conducted a site inspection of Mr. Klingel's construction project to ensure that Petitioners were utilizing appropriate erosion controls. As a result of the inspection, he discovered that Mr. Klingel had moved the location of the house closer to Sand Creek. He described the new location as "extremely close" and noted that "the edge of the house was right at the top of the bank." Mr. Klingel advised Mr. Warner that the Department and DEQ had told him that no environmental permits were necessary for his project, of which Mr. Warner was doubtful. Consequently, Mr. Warner sent an email to Kesiree Thiamkeelakul, the Natural River Zoning Administrator responsible for the White River Natural River District, and Joshua Crane at DEQ, advising them that Petitioners were building their new house "less than 50 feet from the edge of Sand Creek" and that Mr. Klingel claimed to have been informed by the Department that no permits were necessary. (Exhibit R-6; Exhibit R-13; Tr., pp 146-153, 160-161.)

After receiving Mr. Warner's email, Ms. Thiamkeelakul and Mr. Bury conducted a site visit to determine whether Petitioners' construction project was proceeding without an appropriate permit under Part 305. At this time, Petitioners' house was about 85% completed. Ms. Thiamkeelakul and Mr. Bury measured the distance of the construction to the ordinary high-water mark (OHWM) of Sand Creek with a tape measure. At its closest point, Petitioner's house is 41 feet from Sand Creek. Petitioners' French drain is 38 feet from Sand Creek. (Tr., pp 67, 120-122, 164-165)

A permit under Part 305 is required to commence any construction within 400 feet of a designated natural river (Exhibit R-8; Tr., pp 161, 163-164). See Mich Admin Code, R 281.90(x). On Sand Creek, the required setback for houses is a minimum of 75 feet (Exhibit R-8; Tr., pp 132-133, 160-161). See Mich Admin Code, R 281.91(1)(a)(iv). The Natural River Zoning Rules also require a "natural vegetation strip" of 50 feet from the OHWM, within which the cutting of natural vegetation is regulated (Exhibit R-8; Tr., pp 124-126). See Mich Admin Code, R 280.91(2). Petitioners' house, which was only 41 feet from Sand Creek, occupied a portion of the vegetation strip (Tr., p 126).

Because Petitioners' house was built only 41 feet from Sand Creek, Ms. Thiamkeelakul and Mr. Bury notified Mr. Klingel that his construction activity was not authorized, and that Petitioners would need to obtain an after-the-fact dimensional variance from the White River Zoning Review Board to allow the house to remain in that location. (Exhibit R-7; Exhibit R-8; Tr., pp 59-60, 68-69, 128, 165-166.)

Brian Bury testified about the interests sought to be protected by Part 305. Building houses closer to a natural river can have multiple negative effects. It can impact on

water quality by causing rainwater to drain into the river more quickly, changing the hydrology of the water in a negative way. Allowing houses close to natural rivers also affects their recreational value by reducing the aesthetic quality for persons using the river. Moreover, by physically occupying areas where plants and animals otherwise would be present, building too close to natural rivers negatively impacts wildlife. Finally, because rivers are dynamic and move over time, building too close to a natural river can impede the flow of the river by creating increased demand to stabilize riverbanks as necessary to protect infrastructure. In sum, enforcing the setback rules set forth in Part 305 and the Natural River Zoning Rules protects the “semi-wilderness” experience of natural rivers without preventing development. (Tr., pp 125-128.)

No condition on their property would have prevented Petitioners’ from building their house 120 feet from Sand Creek, beyond the 75-foot setback, as was originally intended (Tr., pp 37-38, 141, 154-155, 166-167). Ms. Thiamkeelakul testified that she would have approved the construction and issued a permit under Part 305 if Petitioners had sought approval for the construction 120 feet from Sand Creek according to their initial plans (Tr., pp 162-163).

Petitioners’ house is built on a slab. It cannot be moved but must be removed and rebuilt for Petitioners to be in compliance with the 75-foot setback rule. One estimate for the total cost of compliance was \$242,030. (Exhibit P-5.)

The Department identified seven members of the White River Zoning Review Board as “voting members” for Petitioners’ variance request. Voting members came individually to visit and view Petitioners’ property before the board meeting. On February 21, 2019, the White River Zoning Review Board met to consider Petitioners’ request for an after-the-fact dimensional variance to allow them to retain the house they built inside the 75-foot minimum setback for Sand Creek. Only five of the voting members were present at the meeting. One of the voting members, Mr. Brimmer, recused himself from participation because of his involvement in granting the township zoning permit to Petitioners, leaving only four voting members present. Of these, three voted to approve the variance and one voted to deny the variance. Because of the “quorum rules” explained by Mr. Bury at the meeting, four votes were necessary for Petitioners’ variance to be approved.² Accordingly, on February 22, 2019, Ms. Thiamkeelakul, on behalf of the Department, notified Petitioners’ that their request for an after-the-fact dimensional variance was denied and that all structures within 75 feet of Sand Creek, including Petitioners’ house, garage and French drain must be removed (Exhibit R-12; Exhibit R-14; Tr., pp 32, 61.) Petitioners then timely filed a petition challenging the White River

² The Natural River Zoning Rules provide that “[t]he concurring vote of at least a majority of the eligible voting members of the zoning review board is required to grant a dimensional variance.” Mich Admin Code, R 281.60(7). Both parties to this proceeding agree that four votes were necessary to approve the variance request.

Zoning Review Board's decision to deny their variance request.

PART 305 ANALYSIS

The issue is whether Petitioners should be approved for an after-the-fact dimensional variance for a house and French drain constructed within the 75-foot building setback from Sand Creek and within the 50-foot protected vegetation strip.

Rule 10 of the Natural River Zoning Rules provides that a zoning review board may grant a dimensional variance if the evidence establishes a "practical difficulty" in complying with the standard rule. The rule further sets forth seven factors to be considered in determining whether such a practical difficulty exists:

(1) A dimensional variance from any standard established in these rules may be granted by the zoning review board after a public hearing or, by the zoning administrator as provided in these rules, to allow a modification from a standard that establishes an area, yard, height, floor space, frontage, setback, or similar numerical restriction, but only after evidence establishes that a practical difficulty exists in complying with these rules. A variance shall be granted only when it is consistent with the general purposes and intent of these rules. Work authorized by the variance shall not commence until a permit is issued by the zoning administrator.

(2) The zoning review board or zoning administrator shall consider the following factors to determine if a practical difficulty exists in order to comply with these rules as specified in subrule (1) of this rule:

- (a) A condition exists on the property that prevents the development standards from being met.
- (b) The practical difficulty can be overcome by some reasonable method other than a variance.
- (c) If the practical difficulty cannot be overcome by some reasonable method other than a variance, the variance shall meet the standards to the greatest extent possible.
- (d) The variance will cause a substantial change in the character of the area.
- (e) In view of the manner in which the practical difficulty arose, the interests of justice will be served by allowing the variance.

- (f) The practical difficulty is due to circumstances which are unique to the subject property and not self-created.
- (g) The variance shall not result in an adverse effect on the environment

* * *

[Mich Admin Code, R 280.60.]

Petitioners argue that the “practical difficulty” in this case were statements made by Walter Brimmer and Brian Bury that “led Petitioners to believe that the property in question would not require DNR permits, thus inducing them to commence construction of this home.” This difficulty, Petitioners contend, cannot now be overcome by any method other than an after-the-fact dimensional variance. The Department argues, in turn, that the claimed practical difficulty does not support allowing a variance because it was self-created and has nothing to do with a condition on the property itself before construction began.

A. *Whether a condition on the property prevents the standards from being met*

The “practical difficulty” asserted by Petitioners here is not a condition of the property but instead are statements allegedly made by Walter Brimmer and Brian Bury that induced Petitioners to believe that they could build their house within the 75-foot setback. Petitioners do not make any assertion that a condition of the property prevented the standards from being met.

Petitioners may not appropriately assert that their newly-constructed house is a “condition on the property,” because Rule 10 necessarily requires consideration of the factors present on the property before construction work has commenced. See Mich Admin Code, R 280.60(1) (“Work authorized by a variance shall not commence until a permit is issued by the zoning administrator.”).

Here, four witnesses (Mr. Brimmer, Mr. Warner, Mr. Bury, and Ms. Thiamkeelakul) all testified that there was nothing about Petitioners’ property that would have prevented them from building their house outside of the 75-foot setback as originally intended (Tr., pp 37-38, 141, 154-155, 166-167). While Mr. Klingel decided to move the location to accommodate a better location for the septic system, no evidence was presented that the house could not have been built 120 feet from Sand Creek as originally intended. Therefore, I find, as a Matter of Fact, that no condition on the property prevented the Part 305 standards from being met.

B. Whether the practical difficulty can be overcome by some other reasonable method

Because the evidence does not establish that any practical difficulty would have prevented Petitioners from building their house outside of the 75-foot setback, this factor is not applicable here. The reasonable method by which Petitioners could have satisfied the Part 305 development standards would have been to build their house 120 feet from Sand Creek as originally planned.

C. Whether the variance meets the standards to the greatest extent possible

Because Petitioners' house is already built, and Petitioners are seeking a variance after the fact, it is not possible to alter the variance request to meet the standards to the greatest extent possible.

D. Whether the variance will cause a substantial change in the character of the area

Petitioners' house has not only been built 34 feet inside the construction set back, but it also occupies a portion of the "natural vegetation strip" required by Mich Admin Code, R 281.91(2), which provides:

(2) Within the White River natural river district, a natural vegetation strip that includes the river and all lands within 50 feet of the ordinary high-water mark shall be maintained on each side of the White River mainstream and all designated tributaries. Cutting in the natural vegetation strip is subject to R 281.57.

Mr. Bury testified that the purpose of the natural vegetation strip is to create a natural buffer zone to separate the development from the river's edge (Tr., pp 124-125). Because Petitioners' house occupies a portion of the natural vegetation buffer zone, I find, as a Matter of Fact, that allowing the variance will cause a substantial change in the character of the area.

E. Whether the interests of justice will be served by allowing the variance

Petitioners created the dilemma they now find themselves in by building a house within 400 feet of a river covered by Part 305 without first obtaining permission from the Department. Ms. Thiamkeelakul, the Natural River Zoning Administrator for the White River Natural River District, testified that she would have issued a permit to allow

Petitioners to build their house 120 feet from Sand Creek as originally planned. Thus, if Petitioners had properly applied for a permit before commencing construction, as required under the Natural River Zoning Rules, the construction would have been authorized according to the appropriate development standards, and Petitioners would not now need an after-the-fact dimensional variance (Tr., pp 162-163).

Neither Mr. Bury nor Mr. Brimmer ever told Petitioners that they did not need to have a permit to build within the 75-foot setback set forth by the Natural River Zoning Rules. As the property owner and builder, it was the responsibility of Mr. Klingel to ascertain the applicable law. Therefore, I find, as a Matter of Fact, that the interests of justice would not be served by allowing Petitioners to avoid the Part 305 development standards merely because they were unaware of the legal requirements associated with building a house near a natural river.³ The Natural River Zoning Rules would be ineffectual if they could be avoided simply by being ignored by property owners and builders.

F. Whether the practical difficulty is unique to the property and not self-created

As noted above, Petitioners' actions creating the need for the after-the-fact dimensional variance were entirely self-created. Petitioners commenced construction within 400 feet of Sand Creek without first obtaining a permit under Part 305. Although Mr. Klingel did not intend to evade the legal requirements associated with building near a natural river, as the builder and property owner he was responsible for ascertaining his legal obligations before beginning construction.

Nobody told Mr. Klingel that he could build near the river without first obtaining a permit from the Department. It was not the responsibility of Mr. Brimmer, the Township Supervisor who approved Petitioners' local zoning permit application, to also determine whether Petitioners were in compliance with the DNR's requirements. Moreover, when Mr. Brimmer visited the construction site to approve Petitioners' request for a local zoning permit, Mr. Klingel had staked out an area for construction of the house that was 120 feet from the river and would have been in compliance with the standards under Part 305.

Mr. Bury also did not tell Mr. Klingel that he did not need a permit, as Mr. Klingel himself acknowledged at the hearing (Tr. p 78). Instead, Mr. Klingel's misunderstanding about the DNR permitting requirements arose from his confusion about the relevance of Sand

³ In their reply brief, Petitioners argue that the White River Zoning Review Board's decision to allow a variance in another matter (the "Ackerberg case") while denying Petitioners' similar request amounts to a miscarriage of justice. As the Department correctly notes in its brief, the facts of the Ackerberg case are materially different because the Akerberg's requested a variance before starting construction (Exhibit R-15; Tr., p 131).

Creek not being a “designated trout stream,” a factor that has no bearing on the Natural River Zoning Rules.

When Mr. Klingel decided to move the house inside the 75-foot setback to accommodate a better location for the septic system, he created the need for an after-the-fact dimensional variance.

For these reasons, I find, as a Matter of Fact, that Petitioners’ practical difficulty was self-created.

G. *Whether the variance will have an adverse effect on the environment*

The parties did not present evidence on the question whether allowing the variance would have an adverse effect on the environment. Mr. Bury did testify in general terms, however, that building houses close to natural rivers can negatively affect river hydrology, impede the flow of the river, and occupy spaces that otherwise would be inhabited by wildlife. Therefore, I find, as a Matter of Fact, that this factor does not support allowing Petitioners’ variance request.

H. *Summary*

As set forth above, consideration of each of the seven factors described in Rule 10 supports a denial of Petitioners’ after-the-fact dimensional variance request.

PETITIONER’S EQUITABLE ESTOPPEL ARGUMENT

Petitioners also argue that the Department should be estopped from enforcing Part 305 based on statements made by Brian Bury and Walter Brimmer, upon which Petitioners relied, which induced Petitioners to commence construction inside of the minimum setback. As set forth above in the findings of fact and analysis of the Rule 10 factors, neither Mr. Bury nor Mr. Brimmer ever told Petitioners that they did not need to have a permit to build within the 75-foot setback set forth by the Natural River Zoning Rules. As the property owner and builder, it was the responsibility of Petitioners to ascertain the applicable law. In any event, this Tribunal does not have authority to grant the requested equitable relief.

Estoppel is an equitable remedy that a court in equity may impose when the acts or omissions of one party induces another party to believe facts resulting in prejudice to that party. See, e.g., *Holt v Stofflet*, 338 Mich 115, 119-120 (1953). A basic tenant of administrative law is that an agency has only those powers provided to it by statute. See *York v Detroit*, 438 Mich 744; 475 NW2d 346 (1991); *Coffman v State Board of*

Examiners in Optometry, 331 Mich 582; 50 NW2d 322 (1951). This proceeding is “an extension of the initial application process for the purpose of arriving at a single final agency decision on the application....” *National Wildlife Fed’n v Department of Env’tl Quality*, 306 Mich App 369, 379; 856 NW2d 394 (2014). In performing this function, the Tribunal must operate under the authority of a statute or administrative rule, because “doubtful power does not exist.” See *In Re Quality Service Standard*, 204 Mich App 607, 611; 516 NW2d 142 (1994). Absent lawful authority to perform its function, this Tribunal lacks subject matter jurisdiction and “any action with respect to such a cause, other than to dismiss it, is absolutely void.” *Fox v Board of Regents of the University of Michigan*, 375 Mich 238, 242; 134 NW2d 146 (1965). Part 305 does not grant the Department or this Tribunal authority to exercise equitable jurisdiction.

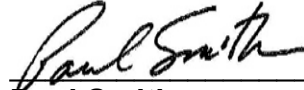
CONCLUSIONS OF LAW

Based on the Findings of Fact, I conclude, as a Matter of Law:

1. Petitioners’ property is subject to a Natural Rivers designation, the White River Natural River Zoning Rules and the Department of Natural Resources jurisdiction.
2. The Petitioner’s filed for an after-the-fact dimensional variance with the White River Zoning Review Board. That request was denied, and the Petitioner’s timely filed a petition for a contested case hearing challenging the denial.
3. The evidence did not establish that a “practical difficulty” existed that would have prevented Petitioner from complying with the Natural River Zoning Rules. See Mich Admin Code, R 281.60(1).
4. Under the criteria set forth in Mich Admin Code, R 281.60, the variance to maintain the house built inside the 75-foot construction setback and inside the 50-foot natural vegetation strip should be denied.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, it is proposed that Petitioners' after-the-fact dimensional variance request to retain the house within the 75-foot setback from Sand Creek and within the 50-foot natural vegetation strip be **DENIED**.



Paul Smith
Administrative Law Judge

EXCEPTIONS

The parties have twenty-one days from the date of this Proposal for Decision to file Exceptions. R 792.10132. If an opposing party chooses to file a Response to the Exceptions, it must be filed within fourteen (14) days after Exceptions are filed. R 792.10132. The filings shall be sent by mail to the Michigan Office of Administrative Hearings and Rules (MOAHR) at 611 West Ottawa Street, P.O. Box 30723, Lansing, Michigan 48909-7973, or electronically at MOAHR-GA@michigan.gov.

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties and/or attorneys, by electronic delivery, unless indicated otherwise, this 19th day of January 2022.



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