

**STAFF REPORT**

<b>Application:</b>	Requests related to the construction of a dwelling and attached garage. Approvals required include Variances to tear down an existing dwelling and detached garage and replace with a new home and attached garage approx. 35 feet from Cedar Lake (min. 75 ft required), 63 feet from the centerline of a township road (min. 65 ft required) and 3-5 feet from a septic tank (min. 10 ft required). Home to have small crawlspace at an elevation below that required by floodplain regulations.
<b>Applicant and Property Owner:</b>	James and Barbara Evenson
<b>Agenda Item:</b>	4(f)

**Background Information:**

- **Proposal:** The applicants are proposing to tear down the existing dwelling and detached garage (which have already been gutted) and rebuild a new home with attached garage largely in the same location, but with a change to the angle of the home to the lake such that portions will be closer and other portions will be further from the lake.
- **Location:**
  - Property address: 7271 Ingram Ave NW , Maple Lake
  - Sec/Twp/Range: 27-121-27
  - Parcel number(s): 206065000011
- **Zoning:** R1 - Urban/Rural Transition/S2 - Residential-Recreational Shorelands, Cedar Lake (General Development lake)
- **Lot size:** Approx. 17,859 sq ft (0.41 acres) according to Beacon GIS estimate.
  - Existing Impervious Coverage:
    - Buildings: About 2257 sq ft (12.6%)
    - Total: About 3208 sq ft (17.9%)
  - Proposed Impervious Coverage:
    - Buildings: About 2197 sq ft (12.2%)
    - Total: About 5652 sq ft (31.5%)
- **Septic System Status:** The property is served by an existing septic system that was installed in 2023.
- **Natural Features:**
  - Floodplain: The existing and proposed structures are not within an identified floodplain. The ordinance, however, requires that the lowest floor of a dwelling be constructed at least 4 feet above the highest known water level.

- Bluff/Steep Slopes: The lot does not contain a bluff. The lot does not contain steep slopes that would impact the proposed improvement(s) to the property.
- Wetlands: There are not wetlands that are likely to be impacted by the proposed improvement(s) to the property.
- Current Shoreline Conditions: The shoreline of the property consists primarily of mowed grass.

- **Permit History:**

- 1962 - Apparent date the existing home was constructed on the lot (from Assessor's records)
- 1973 - Dwelling addition and septic system
- 1992 - Septic system
- 2013 - Building reroof
- 2016 - Building mechanical
- 2023 - Septic found non-compliant
- 2023 - Septic system repaired

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**Board of Adjustment Action:** The Board of Adjustment may approve the variance request, deny the request(s), or table the request(s) if the Board should need additional information from the applicant. If the Board should approve or deny the request, the Board should state the findings which support either of these actions.

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**Staff Comments:**

1. The proposal would also appear to raise impervious coverage above the maximum 25% coverage allowed. The applicant has initiated a survey to be performed that will show lot size and building/impervious coverage amounts as well as exact setback information. Staff is expecting the survey to be completed prior to the April 9 meeting.

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**Staff Recommendation:** Based on the findings of fact and discussion listed below, Staff recommends approval of the proposed Variance only if it is found that the standards for approval have been met and that alternative designs are not feasible that would help minimize the need for variances.

If the application or some version of the application is approved, Staff would recommend consideration for the following conditions of approval (or tabling of the application to allow for review of revised plans consistent with the following):

1. Erosion and sedimentation control measures must be installed and maintained until the construction areas have been stabilized. These shall include at a minimum silt fences between any areas of disturbance (if there will be any) and the lake as well as to any neighboring properties which are downslope of the disturbed areas. Once disturbed areas are no longer being used for construction purposes, these shall be covered with mulch, erosion control blankets, hydroseed or other forms of temporary cover until vegetation is re-established.

2. The applicant shall submit a permanent stormwater management plan designed to minimize the potential for ongoing erosion or sedimentation and to allow adequate time for infiltration or other treatment of rainwater from the lot prior to it flowing into the lake, wetlands, road right-of-way or onto adjoining properties. These may include directing rain gutters to appropriate areas, rain barrels, establishing or maintaining a buffer of native vegetation along the shoreline, or other acceptable best management practices. Once approved, the plan should be implemented at the time of construction or within a reasonable time period after construction is completed and maintained indefinitely.
3. The applicant shall eliminate the proposed crawlspace and the entire structure shall meet an elevation above the highest known water level of the lake by at least 3 feet.
4. The applicant shall reduce the size of the proposed dwelling and/or attached garage so as to remain at impervious coverage of 25% or less.

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**Applicable Statutes/Ordinances:** See Appendix A.

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**Findings of Fact:** The following findings of fact are presented by Staff for consideration by the Board of Adjustment:

**1) Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control.**

The spirit and intent of the relevant ordinances are as follows:

The spirit and intent of the ordinance's setback requirements between a building or structure and a lake or river, according to the DNRs SONAR statement in 1989, is: "In general, structure setbacks are needed to provide an adequate distance between the development of a shoreland area and the adjacent waterbody or near bluffs to control the resource damaging effects of non-point source pollution. Soil erosion and subsequent sedimentation in water bodies and the loading of nutrients, toxics and other pollutants to the water body from shoreland area surface water runoff are examples of non-point source pollution."

The spirit and intent of the ordinance's setback requirements between a building or structure and a road is to help ensure adequate space for road maintenance activities (i.e. snowplowing, road grading, ditch spraying, etc...), to prevent damage to property and promote public safety should a vehicle drive off the road and to allow adequate space for parking of vehicles on driveways without endangering public safety.

In other zoning districts where development occurs more densely, the ordinance allows for setbacks from the right-of-way of a road as low as 20 feet. This is presumably to allow adequate space for a vehicle to park on the driveway without impinging on the road right-of-way.

The spirit and intent of the ordinance's setback requirements between a septic system and a building or structure is to minimize the potential for interference between the septic component and the building activities during construction and operation and to ensure that systems can be effectively replaced and maintained over time without

damaging buildings or preventing pumper trucks from accessing the tank.

Findings Supporting Approval

The proposed improvements would be in harmony with the general purpose and intent of the requirements because it is primarily about replacing what already exists on the property.

Findings Supporting Denial

The proposed improvements would not be in harmony with the general purpose and intent of the requirements because it will create a new, larger structure that appears to not meet even a 5 ft setback to the existing septic system and will increase impervious coverage above 25%.

**2) Variances shall only be permitted when they are consistent with the comprehensive plan.**

Findings Supporting Approval

The granting of the requested variance(s) is not inconsistent with the Comprehensive Plan because it would represent an anticipated use within the relevant zoning district(s). A stormwater management plan is required as part of the approval so as to address issues related to stormwater, the project will not require the removal of substantial numbers of trees and any grading and filling for the project can be adequately managed through the required erosion control practices.

Findings Supporting Denial

The granting of the requested variance(s) would be inconsistent with the Comprehensive Plan because it would result in impervious coverage newly exceeding 25% and place a structure extremely close to an existing system that would inhibit future maintenance or removal of the system. This would be in conflict with the Comprehensive Plan's goal of consistent enforcement of regulations when a practical difficulty has not been shown.

**3) The property owner proposes to use the property in a reasonable manner not permitted by an official control.**

Findings Supporting Approval

The proposed use of the property is reasonable because it is largely about replacing what already existed on the property and maintains similar or improved setbacks.

Findings Supporting Denial

The proposed use of the property is not reasonable because it would increase impervious coverage beyond the 25% maximum allowed, place a structure extremely close to the existing septic system and allow for a crawlspace below the required lowest floor elevation.

**4) The plight of the landowner is due to circumstances unique to the property not created by the landowner.**

Findings Supporting Approval

The plight of the landowner is due to factors that they did not create because the need for the variance(s) is due largely to the location of the existing house (originally built in 1962) and the small size of the lot.

Findings Supporting Denial

The plight of the landowner is due to factors that they created themselves because they have the ability to customize a dwelling size and location to minimize the need for variances.

**5) The variance, if granted, will not alter the essential character of the locality.**

Findings Supporting Approval

The essential character of the area would not be altered because both the current area and the proposed use are residential in character.

Findings Supporting Denial

None

**6) Economic considerations alone do not constitute practical difficulties.**

Findings Supporting Approval

Economic considerations are not the only reason the applicant cannot meet the requirements of the ordinance because there are non-economic factors involved, as mentioned above.

Findings Supporting Denial

Economic considerations are the only reason the applicant cannot meet the requirements of the ordinance because a primary reason for the request is to maximize the value of the property.

**7) No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.**

Findings Supporting Approval

The proposed use is identified as a permitted use in the zoning district where the applicant's property is located.

Findings Supporting Denial

None

**8) The practical difficulty cannot be alleviated by a method other than a variance.**

Findings Supporting Approval

Avoidance of the need for a variance is not possible because of the small size/depth of the lot.

Findings Supporting Denial

The applicant could avoid (or minimize) the need for variances by reducing the size of the proposed new home/attached garage and eliminating the proposed crawlspace and putting utilities on the main floor or upper floor/attic.

**9) The granting of the variance will not adversely affect the environmental quality of the area.**

Findings Supporting Approval

The proposal will not have any significant adverse impact on the environmental quality of the area provided proper measures are taken to manage stormwater and erosion. The proposed conditions of approval require such a plan.

Findings Supporting Denial

The proposal would increase the potential for adverse impacts on the environment because of the proximity of the proposed, larger structure in the lake setback.

## Appendix A

### Applicable Statutes and Ordinances

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#### Minnesota Statutes

#### **462.357 (2016) OFFICIAL CONTROLS: ZONING ORDINANCE.**

##### Subd. 6. Appeals and adjustments.

Appeals to the board of appeals and adjustments may be taken by any affected person upon compliance with any reasonable conditions imposed by the zoning ordinance. The board of appeals and adjustments has the following powers with respect to the zoning ordinance:

(1) To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of the zoning ordinance.

(2) To hear requests for variances from the requirements of the zoning ordinance including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the ordinance. The board of appeals and adjustments or the governing body as the case may be, may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located. The board or governing body as the case may be, may permit as a variance the temporary use of a one family dwelling as a two family dwelling. The board or governing body as the case may be may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

#### **394.36 (2016) NONCONFORMITIES**

Subd. 5. Existing nonconforming lots in shoreland areas. (a) This subdivision applies to shoreland lots of record in the office of the county recorder on the date of adoption of local shoreland controls that do not meet the requirements for lot size or lot width. A county shall regulate the use of nonconforming lots of record and the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in shoreland areas according to this subdivision.

(b) A nonconforming single lot of record located within a shoreland area may be allowed as a building site without variances from lot size requirements, provided that:

(1) all structure and septic system setback distance requirements can be met;

(2) a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, can be installed or the lot is connected to a public sewer; and

(3) the impervious surface coverage does not exceed 25 percent of the lot.

(c) In a group of two or more contiguous lots of record under a common ownership, an individual lot must be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements:

(1) the lot must be at least 66 percent of the dimensional standard for lot width and lot size for the shoreland classification consistent with Minnesota Rules, chapter 6120;

(2) the lot must be connected to a public sewer, if available, or must be suitable for the installation of a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, and local government controls;

(3) impervious surface coverage must not exceed 25 percent of each lot; and

(4) development of the lot must be consistent with an adopted comprehensive plan.

(d) A lot subject to paragraph (c) not meeting the requirements of paragraph (c) must be combined with the one or more contiguous lots so they equal one or more conforming lots as much as possible.

(e) Notwithstanding paragraph (c), contiguous nonconforming lots of record in shoreland areas under a common ownership must be able to be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots are suitable for, or served by, a sewage treatment system consistent with the requirements of section 115.55 and Minnesota Rules, chapter 7080, or connected to a public sewer.

(f) In evaluating all variances, zoning and building permit applications, or conditional use requests, the zoning authority shall require the property owner to address, when appropriate, storm water runoff management, reducing impervious surfaces, increasing setback, restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation-designed actions.

(g) A portion of a conforming lot may be separated from an existing parcel as long as the remainder of the existing parcel meets the lot size and sewage system requirements of the zoning district for a new lot and the newly created parcel is combined with an adjacent parcel.

### **Corinna Township/Wright County Regulations**

#### **502. APPEALS AND BOARD OF ADJUSTMENT**

##### **502.4 Findings**

(1) The Board of Adjustment must review variance petitions and consider the following factors prior to finding that a practical difficulty has been presented. The applicant must provide a statement of evidence addressing the following elements to the extent they are relevant to the applicant's situation.

(a) The granting of the variance will be in harmony with the County Land Use Plan.



- (b) The property owner proposes to use the property in a reasonable manner not permitted by an official control.
- (c) The plight of the owner is due to circumstances unique to the property not created by the owner.
- (d) The proposal does not alter the essential character of the locality.
- (e) The practical difficulty cannot be alleviated by a method other than a variance; and.
- (f) The granting of the variance will not adversely affect the environmental quality of the area.

The Board of Adjustment may grant a variance if it finds that all of the above factors have been established. The Board of Adjustment must not approve a variance request unless the applicant proves all of the above factors and established that there are practical difficulties in complying with official controls. The burden of proof of these matters rests completely on the applicant.

612.5 (1) General Performance Standard for Lakes

Performance standards in shoreland areas are additional to standards of the primary zoning district. In case of a conflict, the stricter standard shall apply as well as any additional requirements if flood plain elevations have been established.

(c) General Development Minimum Standards:

Structure setback from OWHL	75 ft.
Structure setback from Bluff	30 ft.
Structure setback from unplatted cemetery	50 ft.
Lot Size	As per underlying zoning district
Lot Width	As per underlying zoning district
Height	2 1/2 stories (35 ft.)
Elevation of lowest floor above highest known water level (livable structures only)	4 ft.
Water Oriented Accessory Structure setback from OWHL	10 ft.

The lot width may be reduced to 100 feet if public sewage treatment facilities are provided.

716. SEWAGE AND WASTEWATER TREATMENT AND DISPOSAL STANDARDS

716.3 Site Evaluation and Design Requirements

**Table 3  
Minimum Setback Distances (Feet)**

	<b>Sewage or Holding Tank</b>	<b>Soil Treatment or Absorption Area</b>	<b>Building Sewer or Supply Pipes</b>
Water Supply Wells* (50 feet of continuous casing or encountering 10 feet of impervious material)	50	50	50**
Water Supply Wells* (less than 50 feet of continuous casing)	50	100	50**
Buried water suction pipe*	50	50	50**
Buried pipe distributing water under pressure*	10	10	10
Buildings***	10	20	-
Property Lines****	10	10	-
Subsurface drainage systems such as field tile lines	50	50	-
Surface drainage systems such as open ditches	30	30	-
The ordinary high water mark of the following types of lakes:			
Natural Environmental Lakes and Transitional River Segments (North Fork of the Crow)	150	150	-
Recreational Development Lakes, Mississippi River, Agricultural Rivers and Tributaries as defined in Section 612.4	75	75	-
General Development Lakes	50	50	-
All public water wetlands as defined by Minnesota Statutes, Section 103G.005, Subd. 15a or successor statute	50	50	-

- \* Setbacks from buried water pipes and water supply well as governed by Minnesota Rules, Chapters 4715 and 4725, respectively.
- \*\* The setback can be reduced from 50 to 20 feet if the building sewer or supply pipe is air tested by holding 5 pounds of air pressure for 15 minutes.
- \*\*\* For structures other than buildings these setbacks may be reduced if necessary due to site conditions, but in no case shall any part of the individual sewage treatment system be located under or within the structure. For this provision to be employed there shall not be interior space below the structure. For the new construction of a structure without interior space below the structure no part of the absorption area shall encroach closer than 10 feet.
- \*\*\*\* The setback from the treatment area to the platted road may be reduced with written approval from the road authority. The Board of Adjustment shall review variance requests, including those from common property lines, per 502 Appeals and Board of Adjustment in the Wright County Zoning Ordinance.