

## STAFF REPORT

**Application:** Requests related to the replacement of a 24' x 32' fire-damaged home with a new 28' x 56' dwelling. Approvals required include variances for building coverage of approx. 23.3% (max. 15% allowed), ~~and~~ total impervious coverage of approx. 43.9% (max. allowed 25%) and installation of a Type III sewer system to serve a new dwelling on a nonconforming lot (Type I required).

**Applicant:** Louis Lee

**Agenda Item:** 4(a)

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### Background Information:

- **Proposal:** *This application was tabled at the December 2018 meeting to allow the applicant to downsize the home and/or explore options to purchase additional property so as to minimize or eliminate the increase in impervious and building coverage on the lot. Another aspect was to design a septic system that would serve the newly sized dwelling.*

The applicants originally proposed to replace a 24' x 32' home that was damaged by fire and torn down in the last year with a new 28' x 56' dwelling. While that proposed home would meet all setback requirements, it would cause the building and impervious coverage to exceed what was already a non-conforming status. Building coverage would increase from 15.7% before the fire to 23.3% if the proposed new dwelling is allowed (max. 15% allowed). Total impervious coverage would increase from 40.9% to 43.9% (max. 25% allowed).

The applicant's representative has indicated that they are now planning to build a 24' x 32' home - the same footprint as the previously existing dwelling - with a loft addition above. Given that the new home would presumably not result in an increase in impervious or building coverage and would meet all required setbacks, a replacement of the home to the same footprint (even though it is expanding in height) would not require a variance. Staff is working with the applicant to confirm that this will be the case with their new proposed home.

The existing sewer system has been inspected and found failing. Staff had spoken with the applicant's sewer designer prior to the December 2018 meeting and they had indicated that two options exist - a Type III mound system can be installed that would need a variance to be 17 ft from the dwelling instead of the required 20 feet. The only other alternative is a holding tank (expansions of dwellings are not typically allowed on a holding tank). Staff is awaiting a response from the applicant to see if a formal design - or at least a detailed estimate - of the location of a new septic system and whether any setback variances would be necessary. MN Statutes indicates that nonconforming single lots of record require a variance if a Type I sewer system cannot be installed on the lot.<sup>1</sup>

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<sup>1</sup> The language regarding construction on nonconforming lots is subject to some interpretation as to whether a Type I sewer is required to replace an existing, conforming building with one of the same size,

- **Location:**
  - Property address: 8050 GRIFFITH AVE NW, MAPLE LAKE
  - Sec/Twp/Range: 24-121-27
  - Parcel number(s): 206017002060
- **Zoning:** R1 Urban Rural Transition / S2 Residential Recreational Shorelands, Mink Lake (Recreational Development lake)
- **Lot size:** Approx. 9,757 sq ft (0.22 acres) according to provided survey
  - Existing Impervious Coverage:
    - Buildings: About 1,533 sq ft (15.7%)
    - Total: About 3,986 sq ft (40.9%)
  - Proposed Impervious Coverage:
    - Buildings: About 2,277 sq ft (23.3%)
    - Total: About 4,282 sq ft (43.9%)
- **Septic System Status:** A new septic system is being designed to replace the previous system that was found to be failing. The new system would be either a holding tank or a Type III mound sewer system.
- **Natural Features:**
  - Floodplain: The existing and proposed structures are not within an identified floodplain.
  - Bluff/Steep Slopes: The lot does not contain a bluff or steep slopes. It is relatively flat.
  - Wetlands: There do not appear to be any wetlands that would impact this proposal.
- **Permit History:**
  - 1968 - 24' x 32' dwelling permit
  - 1976 - 24' x 24' garage permit
  - 1990 - septic system install
  - 2018 - septic system inspection (found failing)

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**Applicable Statutes/Ordinances:**

Minnesota Statutes

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

**Subd. 6. Appeals and adjustments.**

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although indicates from DNR staff (as this lot is in a shoreland area) are that even replacement of a previously existing dwelling requires a variance if it cannot be served by a Type I sewer system.

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.

## **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.

#### 403. LOT COVERAGE

Not more than fifteen (15) percent of a lot may be covered by buildings (including covered porches or other roofed structures) and not more than twenty-five (25) percent of lot may be covered by impervious surfaces, including all structures, decks and pavement areas except as provided in Section 608, 609, and 610.

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

*NOTE: If the applicant is building a 24' x 32' dwelling that continues to meet setback requirements, the only variance that would be necessary would be related to the septic system – for use of a Type III sewer system on a lot where a Type I is apparently not possible or feasible. It is also possible that setback variances would be necessary for the septic system, although this would take an actual design to know for sure.*

*Given the lack of specifics relating to the sewer system at the time this staff report was written, no changes were made in the findings of fact listed below from the December 2018 staff report. Staff will revise as appropriate if and when more detailed information is presented – although Staff generally supports the granting of a variance for a Type III sewer system and for any setback requirements that are reasonably necessary to ensure installation of a full sewer system (as opposed to just a holding tank).*

1. **Will the granting of the variance be in harmony with the general purposes and intent of the Corinna Township Land Use (Zoning) and/or Subdivision Ordinance?**

**Needs discussion (building or impervious coverage):** The spirit and intent of the ordinance (impervious surface limit) is to help protect lake water quality by allowing more stormwater runoff to infiltrate into the ground. The intent is also presumably to prevent wide disparities in the size of buildings on similarly sized lots.

The spirit and intent of the ordinance (building coverage limit) is to create uniformity in the percentage of a lot that is covered by buildings/roofed structures on a lot and to help ensure that, when added to necessary other impervious surfaces that typically come with development, the overall 25% maximum impervious coverage is not exceeded.

The existing building and impervious coverages were already above what would be allowed under current ordinances (before the fire damaged home was removed). Total impervious coverage, in particular, far exceeded the 25% limit with nearly 41% coverage (building coverage was at 15.7% compared to the 15% limit). Allowing the lot to increase its already excessive coverage would not be consistent with the intent of the ordinance.

However, the area in which this lot sits includes many very small lots, some of which are likely to be exceeding their 15% building coverage and/or 25% impervious coverage limits. In particular, the neighboring property is of the same dimensions as this lot and currently has approx. 1499 sq ft of building on the property, for a building coverage amount of about 15.4%. Adding in the driveway, parking area, pavers and other hard surfaces, the total impervious coverage of the neighboring lot is about 39.8%. Still, the Township has generally adhered to these limits - or at least not making them worse when they are already exceeded.

## 2. Will the granting of the variance be consistent with the Corinna Township Comprehensive Plan?

**Needs discussion:** The Comprehensive Plan states the following as strategies to "protect, preserve, and enhance lake water quality":

- Require on-site storm water retention and erosion-control plans for all new lakeshore development and redevelopment of existing sites, to ensure that storm water runoff is properly managed and treated before entering surface waters.
  - Comment: If the larger dwelling and increased building/impervious coverages are allowed, a stormwater plan to ensure protection of the lake and to manage stormwater in general is essential.
- Seek ways to ensure that new development, landscaping, or other alterations on lakeshore properties preserve and/or provide for the planting of native trees and shoreline vegetation.
  - Comment: The application would not appear to require the removal of any trees.
- Require the use of best management practices as outlined by the Minnesota DNR, University of Minnesota Extension, or other appropriate

agencies during the development and re-development of all property in the Township to prevent erosion and sedimentation that eventually reaches area lakes and wetlands through ditches, direct runoff, or other means.

- Comment: See comments above.
- Limit the amount of grading and filling in the shoreland area so as to minimize the disturbance of soil and prevent erosion.
  - Comment: It does not appear that any significant grading will be necessary to construct the proposed house.

**3. Is the proposed use of the property reasonable?**

**Needs discussion (all requested variances):** The desire to have a larger house to replace the one damaged by fire is reasonable in that the proposed house size is not excessively large. However, the new home would further increase building and impervious coverage beyond what is already a nonconforming situation and in that sense is not reasonable.

**4. Is the plight of the landowner due to circumstances unique to the property not created by the landowner?**

**Needs discussion:** The need for the variances is due partly to the small size of the lot. However, the applicant does have the option of replacing the existing dwelling to the same footprint without needing a variance, including adding a second story should they choose.

**5. Will the variance, if granted, alter the essential character of the locality?**

**Needs discussion:** The neighborhood is a mix of various dwelling sizes and the proposed home would be very much consistent with the size of homes in the immediate area.

**6. Are economic considerations the only reason the applicant cannot meet the strict requirements of the ordinance?**

**No:** The need for the variance is due to other factors mentioned in #4 above.

**7. Could the practical difficulty be alleviated by a feasible method other than a variance (taking into account economic considerations)?**

**Yes:** The applicant would have the ability to replace the existing home with another of the same footprint – including the ability to add a second level to the home. The only other way to reduce impervious coverage would be to remove the existing garage (so that there would be no garage on the property) and/or remove some of the existing driveway. Another option would be to move the garage further toward the front of the lot, although this would likely require a variance from the side lot line both for the garage and the new home.

**8. Will the granting of the variance adversely affect the environmental quality of the area?**

**Needs discussion:** The proposal would obviously create more hard surfaces on a lot located within a shoreland area. While the lot is located across the road from the lake, it could impact lake water quality unless stormwater management practices are employed to promote infiltration of the water running off the lot before it can enter the lake.

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**Board of Adjustment Direction:** 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 Recommendation:** Based on the findings of fact noted above, Staff cannot recommend approval of the requested variances as presented. The applicant has the option of replacing the structure to the same footprint as it is now – even with adding a new second story. Increasing the building and impervious coverage beyond what is allowed does not appear reasonable or in keeping with the spirit of the ordinance as a smaller house would still result in a reasonable dwelling size for the lot and neighborhood.

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. 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.