

STAFF REPORT

Application: Requests related to the construction of a 28' x 41' dwelling and 6' wrap-around open deck to replace an existing 24' x 32' cabin and wrap-around open deck and the installation of a new septic system. Approvals required include variances for the construction of a structure approx. 28.6 ft from Sugar Lake (min. 75 ft required) and 12 ft from a side lot line (min. 15 ft required) and for the installation of a sewer system approx. 6 ft from the east property line (min. 10 ft required).

Applicant: Arthur and Kathleen Quiggle

Agenda Item: 4(c)

Background Information:

) **Proposal:** The applicants are proposing to replace an existing 24' x 32' single story cabin with walkout basement with a new 28' x 40' single story cabin with walkout basement (note - the measurements on the submitted building plans indicate 28' x 41', which the applicant has confirmed is incorrect). The new structure would also involve a wrap-around open deck on the lake side to replace the existing open deck; both will extend 8 feet out from the home, but the new deck will be wider given that the new home is also wider. Finally, a new 6' x 40' covered porch is proposed on the road side of the house where one did not previously exist.

The proposed home and deck will not be located any closer to the lake than what currently exists (37 feet to the dwelling and 28.9 feet to the deck vs. 75 feet required), but it will be 8 feet wider as viewed from the lake and 10 feet deeper than the existing home when including the 6 ft covered porch.

The new deck on the side of the home will be located 12 feet from the south property line (min. 15 ft required). The new home will be 15.5 feet from the south side property line and 15.1 feet from the north side property line.

How impervious coverage is calculated for this property makes a difference as to whether they are under the 25% limit or over (it would either be 29.4% total impervious if Hollister Ave is included in the impervious and lot size calculations or 24.2% if it is not). The policy of Wright County and Corinna Township in situations like this has been:

When lakeshore property, combination of lots, or a lot is divided by an access easement or road, the individual portions on either side of the road shall be considered separately under performance standard calculations related to lot size and lot coverage.

In a 2013 variance request by the neighboring property to the north, the issue of lot size and impervious calculation was discussed and in that case it was determined to include the entire lot as the lot size (both sides of the road plus the road surface itself) and the road surface as part of the impervious coverage. That was a deviation

from the above policy. Using the same method on the current application as what was used in the 2013 variance is what would result in over 29% impervious coverage. Using the Wright County policy is what would result in the 24.2% impervious coverage. Either method results in building coverage that meets the 15% coverage limit (11.9% or 13.5%).

A new septic system is proposed to serve the new home and the drainfield will be located approx. 6 feet from the edge of the easement through which Hollister Avenue passes. A 10 ft setback is normally required from all property lines; the easement boundary is not technically the property line and as such may not technically require a variance, although it seems that the intent of the setback for a septic system to a property line along a public road is to minimize the potential for damage to septic system components/drainfield from road maintenance activities, vehicles potentially parking or accidentally driving off the right-of-way and other situations that could damage the septic system.

) **Location:**

- o Property address: 10815 HOLLISTER AVE NW, MAPLE LAKE
- o Sec/Twp/Range: 11-121-27
- o Parcel number(s): 206000111101

) **Zoning:** R1 Urban Rural Transition / S2 Residential Recreational Shorelands, Sugar Lake (General Development lake)

) **Lot size:**

	Only West of Road Surface (Wright County/Corinna Township policy)	Entire Lot plus Road Surface (2013 neighboring variance method)
Lot Size	10,720 sq ft (0.25 acres)	12,170 sq ft (0.28 acres)
Existing Building Coverage	818 sq ft (7.6%)	818 sq ft (6.7%)
Existing Impervious Coverage	2,154 sq ft (20.1%)	3,134 sq ft (25.8%)
Proposed Building Coverage	1,444 sq ft (13.5%)	1,444 sq ft (11.9%)
Proposed Impervious Coverage	2,596 sq ft (24.2%)	3,576 sq ft (29.4%)

NOTE: The calculation of lot size for only west of the road surface is estimated by scaling from the provided survey. If necessary, an exact calculation could be requested from the surveyor.

) **Septic System Status:** A new septic system is proposed to be installed to serve the new home. The existing system was installed in 1979.

) **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 four (4) feet above the highest known water level. That would require an elevation of 993.74 for the lowest floor. It appears that the lowest floor will be above an elevation of 996 and would meet this requirement.
- Bluff/Steep Slopes: The lot does not contain a bluff. The land where the current and proposed home sit slopes down to the lake, but is not unusually steep. The remainder of the lot is relatively flat.
- Wetlands: There do not appear to be any wetlands that would impact this proposal.
- Current Shoreline Conditions: The shoreline is mostly mowed with a few trees.

) **Permit History:**

- 1965 - apparent date the existing home was constructed on the lot (from Assessor's records)
- 1979 - septic system (tank and drainfield)
- 2016/2017 - building determined to be dilapidated/hazard

Applicable Statutes/Ordinances:

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.

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.

605. URBAN/RURAL TRANSITIONAL R-1

605.5 Performance Standards

(3) Side Yard Regulations:

There shall be a minimum side yard of fifteen (15) feet for principal uses (including attached decks or garages) and ten (10) feet for accessory uses unless the building is housing livestock, then the setback is 100 feet for livestock buildings

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)**

	Sewage or Holding Tank	Soil Treatment or Absorption Area	Building Sewer or Supply Pipes
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.

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

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 (lake setback): The spirit and intent of the ordinance (lake setback), 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 proposed setback for the house would be reasonably consistent with the intent of the ordinance in that there are limited options on the lot given its small size and the need to meet both lake and road setbacks. However, it does appear that a new house could potentially be shifted further back on the lot away from the lake, which has generally been viewed as preferable to maintaining the largest road setback possible.

Needs discussion (side yard setback): The spirit and intent of the ordinance (side yard setback) is to require some space between buildings and other improvements and the adjacent lot and to maintain space between structures. Its' intent is also to maintain consistency from one property to the next in this setback.

The neighboring property to the south where the side yard setback would be encroached does not currently have any buildings within 50+ feet of the shared property line. In order to meet the required side yard setback, the dwelling width would need to be reduced and/or the proposed deck would need to be eliminated or reduced in size.

Needs discussion (septic setback to road): The spirit and intent of the road setback for a septic system is to ensure the protection of the septic system from road maintenance activities and vehicles which may leave the driving lane.

The ordinance actually refers to a setback required to the property line rather than the road itself. In that sense, a variance may technically not be needed, unless the easement through which the road has a legal status that essentially makes it a property line. In either case, the drainfield appears to be sufficiently set back from the road to avoid damage from vehicles leaving the road accidentally or for parking purposes.

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 new dwelling/deck/porch is allowed, a stormwater plan to ensure protection of the lake and to manage stormwater in general is advised.
- 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 if it is done in the location of the current house. Some additional excavation would be needed to accommodate the larger home and its walkout basement. If the home were moved further from the lake, additional excavation would be necessary to accommodate a walkout basement.

3. Is the proposed use of the property reasonable?

Needs discussion (all requested variances): The desire to have a larger house as proposed is reasonable in that the existing dwelling is very small and other homes in the immediate area are larger than what exists now on this property. However, it would appear reasonable to have a smaller house and/or situate the house further back from the lake and/or side yard so as to eliminate or reduce some of the variance requests.

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

Yes: The need for the variances is due largely to the location of the existing house (originally built in 1965) and the small size of the lot.

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

Needs discussion: While there are other homes in the immediate area that are larger or similar in size to the proposed dwelling, the lot on which this home would sit is smaller than the other lots. The proposed home would not generally

"stick out" among the other homes in the area, although it would certainly change the look of the applicants lot both from the lake and from the road.

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)?

Needs discussion: It appears the applicant could shift the home further back in the lot to increase the lake setback and to reduce the size of the home and/or decks to come into compliance with the 15 ft side yard setback and more closely meet the required lake setback. This would require additional excavation to move the home further from the lake.

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

Needs discussion: The proposal would place more building coverage in close proximity to the lake and options for treating stormwater before entering the lake appear limited due to the slope of the land. Still, there are some options for water treatment (e.g. rain barrels, vegetative buffers, rain garden) to allow for as much infiltration as possible before entering the lake.

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.

Staff Recommendation: Based on the findings of fact noted above, Staff cannot recommend approval of the requested variances only if the Board finds that moving the house further from the lake and/or the side lot line is not practical or feasible. The applicant has the option of replacing the structure to the size it is now without a variance or amending their variance request to have a house of the same/similar footprint but changes the shape.

The Board will also need to determine which method of impervious coverage calculation will be used and whether that requires a variance.

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. That the application be tabled to allow for the applicant to redesign the home and shift it back so that it is further back from the lake - possibly in line with what would be allowed under the "string line test" (averaging the setback of the two adjacent homes). This would also possibly require a modification to the septic system design.

2. 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.
3. 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.