

## STAFF REPORT

**Application:** Variance to construct a 30' x 40' walkout basement and 10' x 30' covered porch under and attached to an existing 30' x 30' dwelling approx. 59 feet from Cedar Lake (min. 75 ft required) and within the side yard setback (min. 15 ft required).

**Applicant:** Wayne and Paula Hoistad

**Agenda Item:** 4(d)

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### Background Information:

) **Proposal:** The applicants are proposing to lift up the existing approx. 30' x 30' cabin on the property and install a 30' x 40' walkout basement underneath in the same location (approx. 59-60 feet from Cedar Lake (min. 75 ft required)). A 10' x 30' covered porch would then be installed over the road-side portion of the basement attached to the cabin.

) **Location:**

- o Property address: 7330 ISAAK AVE NW
- o Sec/Twp/Range: 27-121-27
- o Parcel number(s): 206068000050

) **Zoning:** R1 - Urban/Rural Transition/S2 - Residential-Recreational Shorelands, Cedar Lake 86-227 (General Development lake)

) **Lot size:** Approx. 28,663 sq ft (0.626 acres) according to Beacon GIS estimate.

Existing Impervious Coverage:

) Buildings: About 972 sq ft (3.4%)

) Total: About 3,687 sq ft (12.9%)

Proposed Impervious Coverage:

) Buildings: About 1,307 sq ft (4.6%)

) Total: About 4,022 sq ft (14.0%)

) **Septic System Status:** The property is served by an existing septic system that was installed in 1978. It was last inspected and found compliant in 2013.

) **Natural Features:**

- o 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 1003.3 for the lowest floor. While no specific numbers have been submitted, it appears the lowest floor would be at an elevation of about 1008.
- o Bluff/Steep Slopes: The lot does not contain a bluff, but does have a steep slope near the lake. The cabin would be located on a relatively flat area.

- Wetlands: There do not appear to be any wetlands that would impact this proposal.
- Current Shoreline Conditions: Little aquatic vegetation. Various mature trees near shoreline, otherwise lawn is mowed to the lake. Sand beach area at shoreline.

**) Permit History:**

- 1973 - Setback variance for dwelling to be 60 ft from Cedar Lake
- 1978 - 30' x 32' dwelling
- 1978 - Septic system
- 2013 - Septic system compliance inspection - found compliant.

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**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**

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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.

(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.

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. SHORELAND ZONING REGULATIONS

612.5 Shoreland Performance Standards

(1) General Performance Standard for Lakes

(a) General Development Minimum Standards:

Structure setback from OWHL	75 ft.
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.

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.

**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 blufftops 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 it would not be any closer to the lake than the existing dwelling. However, because the home is being lifted up and a new basement placed underneath, this would be the time to have it moved further back from the lake, if feasible. The existing septic system location does prevent moving the home back without replacing the septic system entirely.

**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 proposed setback would be the same setback that has existed since the home was placed on the lot in 1978. Because there is not a current survey, it is unclear whether the side yard setback is being met. The original survey from 1978 indicates the home would be 24 feet from the south side of the lot and 29 feet from the north side. However, when accounting for the 30 ft width of the cabin, this would require a lot width of 83 feet. It appears from the same survey that the lot width in that location is about 78 feet. From aerial photos, it appears that the existing home and the home on the lot to the south are approximately 25 feet from each other.

## 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: The excavation for the walkout basement would expose soil to potential erosion during the construction process. Temporary erosion control measures would be necessary until the area is stabilized.
- 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 one or more mature trees. The current shoreline conditions are as follows:

- 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: The excavation for the basement would be significant and temporary erosion controls would need to be in place until the area is stabilized to prevent erosion. The applicant is proposing to use the material excavated for the basement to spread further back on the lot (see related conditional use permit application)

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

**Needs discussion (all requested variances):** The desire to have a basement under the existing house is reasonable in that it is not uncommon for residences to have basements and several other homes in the area have walkout basements. However, to create a walkout basement will change the view of the home from the lake and create the potential for erosion until the area is stabilized.

The proposed lake setback is reasonable in that it is consistent with the current setbacks for the dwelling (that have been in place since 1978). However, if it is feasible to meet the required setbacks, this is the time to make that happen.

**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 (built in 1978) and the location of the existing sewer system.

**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 also have walkout basements and are closer than the 75 ft lake setback requirement, they appear to have been in place for many years. The proposed walkout basement would require new excavation of soil in the shoreline area - approximately 30-40 feet toward the lake.

**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, if necessary, away from the side lot line

to meet the required 15 ft setback). However, the septic system is in the way where it sits now.

**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. There do appear to be options for treating stormwater (primarily directing water back toward the road where it would not reach the lake). However, the applicant has expressed concerns about the amount of water he receives from the neighborhood in the back part of his lot and would not likely want more directed there.

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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:** The primary questions involved in this application are: 1) whether the home can be moved further back from the lake and ensuring the side yard setback is met, given that the home is being lifted up and there is flexibility in where the basement is located on the lot; and 2) whether excavating 30-40 feet of the hillside toward the lake to create a walkout basement represents a change in the character of the neighborhood or creates an unusual risk of erosion during construction.

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 applicant provides a survey, prior to the issuance of any permits for the basement construction, indicating where the existing cabin is in relation to the lake and property lines.
2. That the side yard setback be at least 15 feet.
3. That the lake setback be no closer than the existing cabin or 60 feet, whichever is further away.
4. 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.
5. 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.