

## STAFF REPORT

**Application:** (Tabled from August 2017 meeting) Variance to construct a 24' x 28' single-story garage approximately 28 feet from the centerline of a road (65 ft required) and with sidewall height of 19.5 ft (max. allowed 12-14 ft). Lot line adjustment to transfer approx. 5,200 sq ft of Parcel 206000092302 to Parcel 206012000080 to accommodate proposed garage. Lot line adjustment would reduce road frontage on an existing lot of record from approx. 112 ft to approx. 83 ft (min. 200 ft required).

**Applicant:** Terry and Gretchen Nelson

**Agenda Item:** 4(a)

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### Background Information:

) **Proposal:** *This application was tabled at the August 8, 2017 meeting so that the applicant could provide more detailed data regarding proposed property boundaries, topography and proposed building location. It was also discussed that a septic compliance report should be submitted as well as information regarding building design – showing sidewall height as well as ceiling height for a lower level to the proposed garage. The applicant has submitted:*

1. *a septic compliance report;*
2. *a revised set of building drawings indicating that sidewall height would be reduced to 14 feet with a lower level ceiling height of 6'6";*
3. *a set of side view drawings for both potential garage locations;*
4. *a survey indicating proposed boundaries for the lot line adjustment, two different potential locations for a garage (both of which would meet the minimum 10 ft side yard setbacks and one of which would meet the required road setback as well), and topography.*

*While they are showing two potential garage locations, the applicants are asking for the garage that would be located closest to the road – the other garage location is shown to indicate where it would have to go to avoid the need for any variances and to show why the applicant feels the proposed location works the best for the lot.*

The applicants are proposing to adjust lot lines with the adjacent property owner so that they would gain an approximate 5,200 sq ft triangular-shaped parcel across the road from their lake lot. They are then requesting to place a garage on this parcel that would be located 26.2 feet from the centerline of the road (min. 65 ft required). Due to the slope of the lot and the desire to minimize the amount of fill, the rear and sides of this proposed garage would have a sidewall height of approx. 14 ft (max. 12-14 ft allowed) and there would be a lower level with a height of 6'6" (max. 6 ft allowed unless the lower level meets the definition for a "tuck-under garage" (it does not – it would have to have no more than one side more than 25% exposed). The front side of the garage (toward the road) would be filled with approx. 40 cu yds of material to allow for a driveway. As such, the application requires a variance for the road setback and sidewall height as well as BOA review of the proposed lot line adjustment.

- J **Location:**
  - o Property address: 9905 103RD ST NW
  - o Sec/Twp/Range: 9-121-27
  - o Parcel number(s): 206012000080
- J **Zoning:** R1 - Urban/Rural Transition/S2 - Residential-Recreational Shorelands, Clearwater Lake 86-252 (General Development lake)
- J **Lot size:** Approx. 7,321 sq ft (0.17 acres) according to provided survey – area north of easement only.

Existing Impervious Coverage:

- J Buildings: 120 sq ft (1.6%)
- J Total: 135 sq ft (1.8%)

Proposed Impervious Coverage:

- o Buildings: About 795 sq ft (10.9%)
- o Total: About 799 sq ft (10.9%)

- J **Septic System Status:** The lake property is served by an existing septic system that was installed in 1996. A compliance inspection from 8/13/2017 indicates the existing septic system (located on the lake side of the access easement) is in compliance.

- J **Natural Features:**

- o Floodplain: The proposed garage and lot area to be purchased from the neighbor are not within an identified floodplain.
- o Bluff/Steep Slopes: The lot does not contain a bluff but does have steep slopes.
- o Wetlands: There do not appear to be any wetlands that would impact this proposal.

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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.

(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.

### **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.

#### 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.

#### 404. LOTS OF RECORD

Lots of record in the office of the County Recorder prior to the effective date of this Ordinance may be allowed as residential building sites provided:

- (2) They have at least 20,000 square feet of area.

Lots smaller than 20,000 square feet may be used as dwelling sites if the owner can prove that adequate sanitary facilities can be provided. Said sanitary facilities must be located on the same lot of record as the dwelling, or on adjacent land which is legally available to the owner. Extraordinary alteration of the lot through land filling or excavation shall not constitute proof of an adequate site for sanitary facilities.

The Board of Adjustment shall decide if lots smaller than 20,000 square feet may be used for dwelling sites in accord with Section 502.2. The expansion of the floor area of nonconforming residential uses on lots smaller than 20,000 square feet shall also be reviewed by the Board of Adjustment. Such expansion may be denied or limited by the Board when there is limited space for sewage treatment and/or no alternative sewage treatment site on the lot. The Board of Adjustment may note in

its review that a nonconforming residential use should be used for seasonal use only, if adequate sanitary facilities for year-round occupancy cannot be provided. Holding tanks need not be considered as adequate sanitary facilities for year-round use. In no case shall the expansion of a nonconforming residential use exceed 50% of the assessed value of the original structure if a holding tank is the only available method for sewage treatment.

In determining if adequate sanitary facilities can be provided, the Board of Adjustment shall require that all standards in Section 716. Sewage Treatment and Disposal Standards be shown to be met. Due to the small lot size, and in areas where community water and sewer systems are not planned to be installed, the Board of Adjustment may require that proposals include a second location for a sewage treatment system. Proposals which can provide for only one site, and require a mound system or other alternative sewage treatment system shall not be considered as adequate sanitary facilities on lots which are predominantly low (less than 6 feet) in elevation above the Ordinary High Water Mark or water table. The total square footage of any proposed residence shall be limited by the Board on any lot where there is no alternative sewage treatment site available.

605. URBAN/RURAL TRANSITIONAL R-1

**605.3 Accessory Uses**

Garages and Non-Commercial pole structures subject to the following size restrictions:

- (a) Lot area under 20,000 square feet - maximum 800 square feet structure with maximum side wall height of 12 feet.
- (b) Lot area over 20,000 square feet but less than 80,000 square feet - maximum 1400 square feet structure with maximum side wall height of 14 feet.
- (c) Lot area over 80,000 square feet - maximum 2000 square feet structure with maximum side wall height of 14 feet.

**605.5 Performance Standards**

(2) Front Yard Regulations:

(a)

<u>Required Setback Distance From Road Centerline</u>	<u>Road Class</u>
130	State Highway
130	County Road and State Aid Highway
65	Local Road

25	From right-of-way of cul-de-sac or approved "T"
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- (b) Where a lot is located at the intersection of two (2) or more roads or highways, there shall be a front yard setback on each road or highway side of each corner lot. No accessory buildings shall project beyond the front yard of either road.
- (c) Within existing developed areas, the above front yard setback requirements may be adjusted to coincide with average setback occurring on either side of the proposed building within three hundred (300) feet except that no building shall be located less than twenty (20) feet from the right-of-way line. The calculation of the average setback shall not count lots without a permanent building on the lot. All measurements shall be to the building location even where such buildings exceed the required setback.

(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.

**SECTION 7. PERFORMANCE STANDARDS**

**743 DETACHED ACCESSORY STRUCTURES**

Detached accessory structures and garages on lots less than one acre shall not have a second story, must have no more than six (6) feet of headroom in a rafter storage area, and have a maximum 6/12 roof pitch.

Accessory buildings and structures, individually and combined (not to include attached garages nor decks), on isolated residential parcels (those that are not adjoining other residential parcels/lots) smaller than 10 acres in size shall not exceed the following maximum size limits:

<u>Parcel size</u>	<u>Max. Building area</u>	<u>Max. Sidewall</u>
Less than 20,000 sq. ft.	1000 square feet	14 feet
20,000 sq. ft.-.99 acres	1600 square feet	14 feet
1-2.49 acres	2400 square feet	14 feet
2.5-4.99 acres	3200 square feet	14 feet
5-9.99 acres	4000 square feet	16 feet

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**Findings of Fact (variances):** 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 (road setback):** The spirit and intent of the ordinance (road setback) for buildings 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 proposed garage would have a setback exceeding 20 feet and allow for off-street parking on the driveway of at least one vehicle. The road is a privately maintained road and has very little traffic and a garage in close proximity should not create a public congestion or safety issue.

**Needs discussion (sidewall height):** The spirit and intent of the ordinance (sidewall height) is to avoid the placement of accessory structures on smaller lots that would be out of character with the neighborhood in regards to their height. In this case, the height will be 2 ft above the maximum allowed 12 ft (for R-1 zoned properties) and meeting the 14 ft maximum allowed for AG zoned properties. The lake side of this property is zoned R-1 and the portion of the lot that is proposed for becoming part of the lake lot is zoned AG. In either case, as viewed from the road, the sidewall height would be just 7 feet.

**Needs discussion (ceiling height):** The spirit and intent of the ordinance (ceiling height) is to avoid the creation of space that could be used as living space. Typically, that restriction is intended to apply to upper levels of garages, although it also would apply to lower levels if they don't meet the definition for a tuck-under garage (which requires that no more than one side be more than 25% exposed). This variance could be eliminated with more fill to cover up the sides of the lower level of the garage, but such fill would potentially create erosion issues and require more removal of trees and would otherwise appear to be unnecessary.

## 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 garage is allowed, care should be taken to ensure the filled area is stabilized and not subject to erosion. The applicant is indicating they would have retaining walls on either side of the driveway.

- 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 require the removal of a number of trees, as the site is heavily wooded at this time.
- 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 garage, except for some excavation to allow for the lower level storage area and foundation and to fill for the driveway into the garage.

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

**Needs discussion (all requested variances):** The desire to have a garage for a lot that does not currently have one is certainly reasonable for the area. The desire to put it on a small piece of land that doesn't meet setbacks and has challenges relating to the slope of the land (causing the need for the sidewall/ceiling height variances) is where the primary question comes into play.

**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 small size of the land to be purchased (which is somewhat in the control of the applicant) as well as the topography of the lot (which is not in their control).

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

**Needs discussion:** While there are other garages in the immediate area, the primary difference in this proposal is that it would be located on a small parcel and on land with a steep slope. As viewed from the road, it would not appear that the garage would change the character of the area, as there are other garages close to the road that are of larger size.

**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:** The only way to avoid the road setback and sidewall/ceiling height variances for a constructed garage would be to bring in more fill for around the garage.

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

**Needs discussion:** The primary potential impact on the environment would be from erosion, although any eroded soil would go into a natural low area. Those impacts would be more about impacts on neighboring properties than environmental.

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**Findings of Fact (lot line adjustment):** The following findings of fact are presented by Staff for consideration by the Board of Adjustment:

1. The lot to which land is being taken would meet the minimum lot size requirements both before and after the proposed adjustment. The lot to which land is being added will be less nonconforming than it is now, but still nonconforming.
2. Both lots involved do not meet the minimum lot width as things are now. One lot would gain slightly in road frontage and the other would lose road frontage.
3. Neither lot fronts on a public road. They are served by a private road.
4. The submitted survey shows that the proposed garage would meet side yard setback and building/impervious coverage limits.

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**Board of Adjustment Direction:** The Board of Adjustment may approve the variance and lot line adjustment 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:** 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, 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.