

STAFF REPORT

Application: Variance to construct a 24' x 24' detached garage approx. 3 feet from a side lot line (min. 10 ft required) and 48 ft from the centerline of a township road (min. 65 ft required).

Applicant: Nick and Lexi Pietsch

Agenda Item: 4(f)

Background Information:

) **Proposal:** The applicants are proposing to construct a detached garage on their property that would be within the side yard and road centerline setback requirements.

) **Location:**

- o Property address: 10955 108TH ST NW
- o Sec/Twp/Range: 8-121-27
- o Parcel number(s): 206051001050

) **Zoning:** R1 - Urban/Rural Transition/S2 - Residential-Recreational Shorelands, Clearwater Lake 86-252 (General Development lake)

) **Lot size:** Approx. 22,992 sq ft (0.53 acres) according to provided survey

Existing and Proposed Impervious Coverage: The applicant, in a previous variance application (April 2016) was approved to construct home additions that showed building and total impervious coverage approaching the limits allowed. They have indicated they would have an as-built survey by the time of the September 2017 hearing for this current variance request and that all limits would be met. They reduced their coverage from what had been proposed in 2016 to allow for the current garage proposal.

) **Septic System Status:** The home is currently served by a septic system that includes a drainfield and was found compliant in a 2015 compliance inspection. The system was originally installed in 1982.

) **Natural Features:**

- o Floodplain: The near-shoreline area of the property appears to be within the 100 year (1% chance) floodplain (elevation 996.2). However, the dwelling and proposed improvements are not identified as being within this area.
- o Bluff/Steep Slopes: The lot does not contain a bluff or steep slopes. It is relatively flat, except for the area nearest the shoreline where it drops about 6-7 feet.
- o Wetlands: There do not appear to be any wetlands that would impact this proposal.

) **Permit History:**

- 1968 – apparent date the existing home was constructed on the lot (from Assessor’s records)
- 1982 – septic system installation
- 1997 – variance to replace existing deck with new 12’ x 26’ open deck and 4’ wheelchair ramp around side of home approx. 60-65 feet from the lake.
- 1997 – open deck via variance
- April 2016 – Variance to construct a basement addition to the existing dwelling and make other modifications.
- April 2016 – Conditional use permit for fill around the proposed home.

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.

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.

605. URBAN/RURAL TRANSITIONAL R-1

605.5 Performance Standards

(2) Front Yard Regulations:

(a) Required Setback Distance

<u>Required Setback Distance From Road Centerline</u>	<u>Required Setback Distance From Road Centerline for Livestock Buildings</u>	<u>Road Class</u>
65	100	Local Street (Twp. Rd.)

(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.

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 (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 very close to the side yard (approx. 3 ft) and consistent with the setback of a small shed currently on the property, although much larger than that shed.

Needs discussion: 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 setback for the garage would be more than 20 feet from the road right of way and would not create the potential for vehicles parking partially in the road right of way. Moving the garage further from the road would appear to impinge on the septic drainfield area.

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, a stormwater plan to ensure protection of the neighboring property from runoff would be important.
- 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 garage, although fill may be necessary under the garage in order to meet floodplain elevation requirements. The amount of fill necessary would appear to be relatively minor.

3. Is the proposed use of the property reasonable?

Needs discussion (all requested variances): The desire to have a detached garage is reasonable in that the site does not currently have any garage space and garages are a common structure on residential lots. However, the proposed setback, from the side yard in particular, is very close and it appears possible to move it further away.

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 size of the lot and the location of the septic drainfield, but it also appears possible to move the garage further from the side lot line.

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

No: The garage on the nearest adjacent property (to the east) also has a garage that is located very close to the lot line (approx. 2-5 feet) and other properties in the area also have garages that appear to be just a few feet from adjacent property lines and/or within the road setback.

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 from the side lot line to minimize the amount of variance necessary, if not eliminate it completely. This would move the garage closer to the road, however, given the shape of the lot.

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

Needs discussion: The primary potential for environmental impact would be from reducing the storage area for floodwaters, as the yard in the area of the proposed garage is near the flood elevation. Most, if not all, of the garage however, would appear to be out of the floodplain.

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: The primary question involved in this application is whether the garage could be shifted away from the side property line, or if there is something making that less feasible. It should also be confirmed that the addition of the garage and any driveway area does not cause the property to exceed the building and impervious coverage limits.

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 side yard setback be increased to at least 5 feet, if not the full 10 feet as required.

2. That the lot not exceed the 15% building coverage or 25% impervious surface coverage limits.
3. 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.
4. 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 onto neighboring properties. 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.