

## STAFF REPORT

**Application:** Requests related to the construction of a 24' x 48' garage addition with 24' x 24' upper level living area to be served by a holding tank septic system. Approvals required include a variance to construct a structure approx. 16 feet from the edge of a private road (min. 20 ft required) and to construct a dwelling without the required elevation of fill 15 ft out from the structure in all directions.

**Applicant:** Mike Robinson

**Agenda Item:** 4(a)

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### Background Information:

- **Proposal:** The applicant is proposing to construct a 24' x 48' two-story garage addition with a 24' x 24' upper level living area to that addition that would connect to the existing single-story dwelling that exists on the property now.

The addition would be located within approx. 16 feet of the edge of Lake Drive, which is a privately maintained roadway. The applicant's property is currently the last home served by Lake Drive, although it would be possible that the road could be extended at some point in the future to serve additional lakeshore lots.

The existing dwelling may not currently meet the required flood elevation of 983.3 (NAVD88). The applicant has indicated that he will elevate the dwelling and the proposed addition so as to meet the required flood elevation, but has requested that he not be required to bring in fill for 15 feet around the buildings in all directions, as required by state and county floodplain regulations.

The dwelling would also be served by a holding tank, as the applicant's current drainfield has failed an inspection and either needs to be replaced or disconnected and the system used as a holding tank. He intends to replace the existing 1000 gallon tank with a 2000 gallon holding tank. While holding tanks are not allowed as septic systems for newly subdivided lots, they are not prohibited from being used for existing dwellings by the County's ordinance.

- **Location:**
  - Property address: 5902 LAKE DRIVE,
  - Sec/Twp/Range: 13-126-48
  - Parcel number(s): 15-0010000
- **Zoning:** Shoreland / Floodplain, (General Development lake)
- **Lot size:** Approx. 16,290 sq ft (0.37 acres) according to estimate from GIS mapping.

Existing Impervious Coverage: Approx. 10.1%

Proposed Impervious Coverage: Approx. 17.2%

- **Septic System Status:** The property is served by an existing septic system (with drainfield). The drainfield has been found failing and the applicant intends to replace the system with a 2000 gallon holding tank.
- **Natural Features:**
  - Floodplain: The existing and proposed structures are within an identified floodplain. The applicant intends to elevate all buildings to the required elevation of 983.3 (NAVD88).
  - 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.
  - Current Shoreline Conditions: Gravel/sand for the entirety of the shoreline.

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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.

## **Regulations**

### **SECTION 13 VARIANCES AND APPEALS**

#### **13.03 Criteria for Granting Variances**

1. Variances may only be granted by the Board of Adjustment when the following findings have been made by the Board:
  - A. There are practical difficulties or particular hardships in the way of carrying out the strict letter of any of this Ordinance. This involves a determination that:
    - (1) Without a variance the property in question cannot be put to a reasonable use; and
    - (2) The hardship is not based solely on economic considerations (except where the owner has no reasonable use for its property under this Ordinance.)
  - B. The terms of the proposed variance are consistent with the Comprehensive Plan.
  - C. The proposed variance will be in harmony with the general purposes and intent of this Ordinance.
  - D. The plight of the landowner is due to circumstances unique to the property not created by the landowner.
  - E. The variance, if granted, will not alter the essential character of the locality.
2. No land "use" different from that permitted in the zoning district (use variance) may be issued.
3. No variance shall have the effect of allowing a Floodplain District a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area or permit standards lower than those required by state law.

### **SECTION 21 FLOODPLAIN DISTRICT**

#### **21.00 FLOODPLAIN DISTRICT**

21.02 General Provisions.

- 3. Regulatory Flood Protection Elevation. The Regulatory Flood Protection Elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.

21.05 Flood Fringe District (FF).

- 2. Standards for Flood Fringe Permitted Uses.
  - A. All structures, including accessory structures, must be elevated on fill so that the lowest floor including basement floor is at or above the Regulatory Flood Protection Elevation. The finished fill elevation for structures shall be no lower than one (1) foot below the Regulatory Flood Protection Elevation and the fill shall extend at such elevation at least fifteen (15) feet beyond the outside limits of the structure erected thereon.
  - B. As an alternative to elevation on fill, accessory structures that constitute a minimal investment and that do not exceed five hundred (500) square feet for the outside dimension at ground level may be internally flood proofed in accordance with Section 21.04(E)(3).

SECTION 22 SHORELAND DISTRICT

22.05 Zoning and Water Supply/Sanitary Provisions

- 2. Placement, Design, and Height of Structures.
  - A. Placement of Structures on Lots. When more than one setback applies to a site, structures and facilities must be located to meet all setbacks. Where structures exist on the adjoining lots on both sides of a proposed building site, structure setbacks may be altered without a variance to conform to the adjoining setbacks from the ordinary high water level, provided the proposed building site is not located in a shore impact zone or in a bluff impact zone. Structures shall be located as follows:
    - 1) Structure and On-site System Setbacks (in feet) from Ordinary High Water Level.

	Setbacks		
Classes of <u>Public Water</u>	Structure <u>Unsewered</u>	Sewered	Sewage Treatment <u>System</u>

Lakes

General Development	75	50	50
Natural Development	150	150	150

Rivers

Agriculture and Tributary	100	50	75
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2) Additional Structure Setbacks. The following additional structure setbacks apply, regardless of the classification of the waterbody: Setback From:  
Setback (in feet)

- |     |   |    |
|-----|---|----|
| (1) | top of bluff;   | 30 |
| (2) | unplatted cemetery;   | 50 |
| (3) | right-of-way line of federal, state; or county highway; and                             | 50 |
| (4) | right-of-way line of town road, public street, or other roads or streets not classified | 20 |
| (5) | side and rear lot setbacks at 10% of lot width or 10 feet on larger than 100'           | 10 |

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**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 Traverse County 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.

The road in question here (Lake Drive) is a privately maintained road and as such, there is less concern regarding public road maintenance issues. The road is also lightly traveled and the subject property is at the end of the road and safety issues are likewise of less concern. Still, the road may be extended, publicly maintained, or both in the future and a 16-foot setback from the edge of the road could create issues with both safety and road maintenance should that occur.

**Needs discussion (fill around building):** The spirit and intent of the requirement to elevate structures in the floodplain and the land around those buildings is to protect people's investment in buildings and help ensure emergency service vehicle access to properties in the event of a flood.

If the proposed garage floor is elevated to the required 983.3 (NAVD88) elevation on fill, but the land around it is not elevated to the required 982.3 except for on the road side, emergency service vehicles would still appear to have reasonable access to the property in that the elevation of the road is above the 982.3 that is required for the fill. The natural ground itself around the proposed building site may actually already be above the required 982.3 and as such a variance would not even be necessary if that is confirmed.

**2. Will the granting of the variance be consistent with the Traverse County Comprehensive Plan?**

**Yes:** The Comprehensive Plan identifies the following as policies within flood prone and shoreland areas:

**FLOOD PRONE AREAS**

1. The "FP" Flood Plain Districts are created for the public purpose of reducing flood damage through flood plain management and emphasizing the use of nonstructural measures to control potential flood damage. Such measures may include a flood plain zoning designation as well as flood proofing and flood warning practices.
2. The "FP" Flood Plain Districts regulations are intended not to prohibit development, but to guide development in flood plain areas so that it is consistent with the flood threat and the land use needs of the County.
3. The "FP" Flood Plan Districts are designed to guard against the unwise use of flood plains which may cause loss of life and property, disruption of commerce and government services, unsanitary conditions, and interruption of transportation and communications. Sound land use development can reduce flood damages, decrease public expenditure and inconveniences, and ensure that the County's lands are put to their most appropriate use.

**SHORELAND AREAS**

1. The "S" Shoreland District regulations are created because lakes and streams are two of Minnesota's most valuable natural resources for rapidly expanding recreational needs. Lakes and streams also meet the increased agricultural, domestic and industrial demands for water, which must be satisfied from a fixed natural supply. The economy of many areas is related to the fate of water bodies and their shorelands. As man is drawn to shoreland areas, he often creates problems such as water pollution, overcrowding, unwise development, destruction of fish and

wildlife habitat, and the impairment of natural beauty. These policies and regulations seek to provide a balance between the use and beneficial enjoyment of shoreland and the conservation and preservation of valuable natural resources.

2. The Shoreland regulations are implemented through the Zoning Ordinance and are an overlay zone. As an overlay zone, these regulations are applied in addition to other zoning restrictions. Shoreland regulations serve as minimum guidelines for County Shoreland Management Programs.

The proposed use would represent an anticipated use within the shoreland and floodplain zoning districts and is not inconsistent with the Comprehensive Plan. The primary question is whether the proposed addition would conflict with the goals of the Comprehensive Plan, as stated above.

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

**Yes:** The proposal is to add an attached garage with living space above to a property that does not currently contain any garage. The desire for a garage is certainly reasonable and customary for residential and lakeshore properties.

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

**Yes:** The small size of the lot and its location within the floodplain are the primary factors leading to the need for the variance. These are not within the control of the applicant.

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

**No:** The character of the area would remain shoreline residential in nature. The Board should consider however, that many other lots in the same area have the same challenges with lot size and floodplain and granting of variances on one lot may lead to similar requests on other lots in the future.

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

**No:** Other factors mentioned in #4 above also apply.

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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 Comments:** The primary questions on this application are whether or not bringing in fill at least 15 feet in all directions around a building is justification for a variance and whether a 16 ft setback from the edge of a private road is reasonable given the small size and existing location of the dwelling on the property.

Staff's understanding is the DNR does not oppose variances to this requirement provided there is reasonable protection of the building from flood damage and reasonable access to the structures by emergency service vehicles.

To avoid, or at least minimize, the road setback variance, the applicant would need to reduce the width of their addition below 24 feet. The Board of Adjustment could discuss whether a lesser width would still provide reasonable use of the property if the setback variance is not granted.

If the variance(s) is approved, Staff recommends consideration of the following conditions of approval:

1. (For discussion) That the applicant provide a survey of their property boundaries to ensure that the addition will be located entirely on their property and to verify the total lot size for impervious surface calculation purposes.
2. The applicant shall elevate the existing dwelling (if necessary) and the proposed addition to meet the floodplain elevation requirements.
3. The applicant shall complete an as-built elevation certification by a qualified professional indicating that the lowest floor of the structures (including basements and crawlspaces) meets the required elevation.