

STAFF REPORT

Application:	Requests related to the modification of an existing variance. Requests made include a Modification of a 2004 variance to eliminate a requirement that an existing approximate 8-10' x 20' shed be removed as a condition of allowing for the construction of a new detached garage and other improvements to the property.
Applicant:	John Schirber
Property Owner:	Andrew and Joellyn Roalstad
Agenda Item:	4(a)

Background Information:

- **Proposal:** The applicants are proposing to modify a variance they received from Itasca County in 2004. That variance allowed for the construction of 3-season porch 53 ft from the ordinary high water level of Wabana Lake (100 ft required) and 38 feet from the centerline of Zims Lane (68 feet required) and for the construction of a 24' x 28' detached garage to be 30 feet from the top of a bluff (30 ft required) and 10 ft from the rear property line (10 ft required).

There were 8 conditions given as part of that approval - one of which read "Implementation of the following mitigation measures:

- A. restore native vegetation within 25' of the OHW or within the first 75% of the distance between the dwelling and the OHW whichever is less;
- B. maintain existing native vegetation in entire structure setback area; and
- C. removal of the shed.

The shed referred to in C. is an approximate 8-10' x 20' shed that existed to the east of the 24' x 28' garage that was allowed by variance. The applicant is now seeking to build the garage (smaller than granted - 24' x 24' vs the 24' x 28' approved in the variance) and wishes to keep the 8-10' x 20' shed on the property - indicating that it was recently restored and provides needed storage space.

- **Location:**
 - Property address: 30727 Zims Ln
 - Sec/Twp/Range: 22-57-25
 - Parcel number(s): 41-022-2305
- **Zoning:** Shoreland - Wabana Lake 31-392, (Recreational Development 2 lake
- **Lot size:** Approx. 23,958 sq ft (0.55 acres) according to historical county records.

Existing Impervious Coverage: About 3,265.0 sq ft (13.63%)

Proposed Impervious Coverage: About 3,940.0 sq ft (16.45%)

NOTE: Impervious calculations depend on the final configuration of the driveway and whether features such as roof eaves are counted as impervious coverage.

- **Septic System Status:** The property is served by private sewer and water. The septic system would be 15 feet away from the new 24' x 24' garage according to the application. Septic certifications and requirements for inspections are administered by Itasca County.
- **Natural Features:**
 - Floodplain: The existing and proposed structures are not within an identified floodplain.
 - Bluff/Steep Slopes: The lot contains a bluff for which a variance was granted. The building requested to remain on the property is located within the required bluff setback but is considered a legal nonconformity. The lot contains steep slopes that do impact the proposed improvement(s) to the property.
 - Wetlands: There are not wetlands that are likely to be impacted by the proposed improvement(s) to the property.
 - Current Shoreline Conditions: The shoreline of the property consists of a bluff with a stairway, lakeside deck, boathouse and a mix of mature trees and mowed grass.

Planning Commission Action: The Planning Commission may approve the variance request, deny the request(s), or table the request(s) if the Commission should need additional information from the applicant. If the Commission should approve or deny the request, the Commission should state the findings which support either of these actions.

Staff Comments:

1. Impervious coverage on Wabana Lake is limited to 15% - or 20% if erosion control and stormwater management conform to the shoreline vegetative buffer standards of Section 5.8.1(B)1 and 8.2.5(D) (of the Wabana Township Shoreland Management Ordinance. The Zoning Administrator has estimated impervious coverage with the proposed new garage to be somewhere between 14.5 and 16.5 percent depending on the final configuration of the driveway on the property and whether features like roof eaves are counted as impervious coverage.

These estimates are higher than what the contractor had indicated in the application by as much as 1,425 square feet; the differences are primarily to do with the size of the driveway (almost 500 sq ft difference), the inclusion of eaves on the garage (about 150 sq ft difference) and the remainder in the inclusion of eaves on other buildings and the lakeside deck/platform. There are also varying records of the size of the lot - anything from 0.48 acres to 0.58 acres in size.

Confirmation of exact amount of impervious coverage would require a survey of the property and all impervious surfaces, although it seems clear that the property would be under 20% coverage so long as an adequate erosion control and stormwater management plan has either already been considered implemented (after the 2004 variance) or is required now. The Zoning Administrator is seeking to obtain copies of the previous variances on the property that were mentioned in the 2004 variance documentation.

2. Itasca County has issued a permit for the applicant's 24' x 24' garage with a condition that the 8-10' x 20' shed be removed as required by the 2004 variance. If Wabana Township grants the variance to allow the shed to remain, the County has indicated they would not require its removal.

3. The Zoning Administrator is confirming with Itasca County that all other conditions of the 2004 variance have been met, including a condition requiring a vegetative shoreline buffer. Given that they issued the permit, it is presumed that they have been.

Staff Recommendation: Based on the findings of fact and discussion listed below, Staff recommends approval of the proposed Variance only if it is found that the standards for approval have been met and the original intent of the County in requiring removal (elimination or reduction of a bluff setback nonconformity and improved stormwater management) are achieved in another manner.

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. The applicant shall relocate the 8-10' x 20' shed so that it meets the required 30 foot bluff setback requirement and all other applicable setback requirements.
2. The applicant shall submit a lakeshore mitigation plan consistent with the requirements of the Township Shoreland Ordinance designed to mitigate the impact of the proposed improvement to the property on lake water quality. The plan shall be subject to the approval of the Township and shall be implemented at the time the granted variance is implemented, or as otherwise reasonably stipulated by the Township.

OR

The applicant shall reduce impervious coverage on the lot to 15% or less and provide an as-built survey to confirm compliance with this requirement.

Applicable Statutes/Ordinances: See Appendix A.

Findings of Fact: The following findings of fact are presented by Staff for consideration by the Planning Commission in making its recommendation to the Board of Adjustment:

1) Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control.

The spirit and intent of the relevant ordinances are as follows:

Findings Supporting Approval

The proposed variance to retain an existing 8-10' x 20' shed on the property would be in harmony with the general purpose and intent of the requirements because the structure is a pre-existing legal nonconformity and the property will still meet the required impervious coverage limits given the previous Itasca County requirement for a shoreline buffer. Further, the applicant's are proposing to construct a detached garage that is 96 sq ft less in size (24' x 24' vs 24' x 28') than what was granted by the 2004 Itasca County variance.

Findings Supporting Denial

The proposed variance to retain an existing 8-10' x 20' shed on the property in its current location would not be in harmony with the general purpose and intent of the requirements

because the requirement to remove it was intended to eliminate a pre-existing bluff setback nonconformity and to reduce impervious coverage.

2) Variances shall only be permitted when they are consistent with the comprehensive plan.

Findings Supporting Approval

The granting of the requested variance(s) is not inconsistent with the Comprehensive Plan because it would represent an anticipated use within the shoreland district and the conditions of the variance approval (both the 2004 Itasca County variance approval and the current Wabana Township variance approval) contain conditions intended to meet the Comprehensive Plan's goal of preserving and protecting the Township's natural resources and ensuring development occurs in an environmentally sustainable manner.

Findings Supporting Denial

The granting of the requested variance(s) would be inconsistent with the Comprehensive Plan because it would conflict with the Township's goal of strengthening and expanding working relationships with Itasca County. The County imposed the requirement that the 8-10' x 20' shed be removed - presumably to eliminate a nonconformity relating to bluff setbacks and improve stormwater management on the property - and allowing the shed to remain will conflict with those purposes intended by the County when the variance was granted.

3) The property owner proposes to use the property in a reasonable manner not permitted by an official control.

Findings Supporting Approval

The proposed use of the property is reasonable because the site has limited storage and they are proposing a smaller garage than had been previously granted by Itasca County in the 2004 variance which will partially offset the reduction in impervious coverage within a bluff setback that would have been achieved with complete removal of the 8'x 20' shed.

Findings Supporting Denial

The proposed use of the property is not reasonable because the purpose of the 2004 requirement to remove the shed was to eliminate a nonconformity and improve stormwater management and allowing it to remain would conflict with that intention.

4) The plight of the landowner is due to circumstances unique to the property not created by the landowner.

Findings Supporting Approval

The plight of the landowner is due to factors that they did not create because the need for the variance(s) is due largely to the limited size of the lot, the presence of a bluff and the variance condition to remove the shed being imposed by Itasca County. The current owners of the property were not the owners at the time of the 2004 variance application or subsequent construction.

Findings Supporting Denial

The plight of the landowner is due to factors that they created themselves because they purchased a lot subject to the conditions of the 2004 variance and made improvements to the building that was to be removed that are now part of their reason for requesting that the shed remain.

5) The variance, if granted, will not alter the essential character of the locality.

Findings Supporting Approval

The essential character of the area would not be altered because both the current area and the proposed use are residential in character and it would simply maintain existing conditions in relation to the 8-10' x 20' shed.

Findings Supporting Denial

None

6) Economic considerations alone do not constitute practical difficulties.

Findings Supporting Approval

Economic considerations are not the only reason the applicant cannot meet the requirements of the ordinance because there are non-economic factors involved, as mentioned above.

Findings Supporting Denial

Economic considerations are the only reason the applicant cannot meet the requirements of the ordinance because a primary reason for requesting that the 8'x 20' shed be allowed to remain is to increase the value of the property.

7) No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.

Findings Supporting Approval

The presence of a storage building on the property is identified as a permitted use in the zoning district where the applicant's property is located.

Findings Supporting Denial

None

Appendix A

Applicable Statutes and 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.

Wabana Township Regulations

ARTICLE II: DEFINITIONS

2.1 Definitions. For the purposes of this Ordinance, the following terms shall have the meaning given them in this section. Any term not specifically defined in this Ordinance shall have the meaning given it in the County Ordinance, if not defined therein, it shall have the meaning given it in the most applicable Minnesota Statute or Rule, and if not defined therein, it shall the meaning given it in common usage in the context in which it is used herein.

(47) Impervious Surface. "Impervious Surface" means a constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in

greater quantities and at an increased rate of flow than prior to development. Examples include rooftops, sidewalks, patios, storage areas, and concrete, asphalt, or gravel driveways.

ARTICLE V: SHORELAND CLASSIFICATION, LAND USES, PERFORMANCE STANDARDS, VEGETATION AND LAND ALTERATIONS

5.5.5 Minimum Parcel Area, Width, and Setbacks. Table 2 contains the minimum parcel area, parcel width, setback standards, maximum impervious surface coverage, and maximum heights. The minimum suitable area per parcel shall be 10,000 square feet. Suitable area is calculated by excluding all wetlands, bluff, major utility easements greater than 30 feet in width, or land below the OHWL of public waters. The minimum setbacks for dwellings from the side yards shall be 15 feet and 30 feet from the rear yards. The minimum side and rear yard setbacks for structures housing livestock shall be 100 feet from the nearest parcel lines. Accessory buildings, including detached garages, must be setback at least 10 feet from the side and rear parcel lines. Setbacks are measured from the closest part of the structure, including decks, eaves, or overhangs. See Table 2.

Table 2. Residential Dwelling Unit Requirements

RESIDENTIAL DWELLING UNIT REQUIREMENTS								
	Minimum Parcel Size				Riparian Setbacks		Maximum	
	Riparian		Non-riparian		Structure	Sanitation	Impervious	Building
	Width (Ft.)	Area (Ac.)	Width (Ft.)	Area (Ac.)	(Ft.)	Septic Tank	Surface	Stories /
	Approx. Depth (Ft.)		Approx. Depth (Ft.)			Sewage Treatment	(% of Parcel)	Height (Ft.)
	87,120		108,900			150 Treatment		
Natural Environment-2	300 363 108,900	2.5	300 436 130,680	3	100	100 Tank 150 Treatment	12	2.5 / 35
Natural Environment-3	300 436 130,680	3	300 515 152,460	3.5	100	100 Tank 150 Treatment	12	2.5 / 35
Phosphorous Sensitive ²	<i>See Underlying Lake Classification</i>					100 Tank ³ 150 Treatment ³	12	2.5 / 35
River Class								
Tributary	150	Zone			100	75	12	2.5 / 35
Forested	200	Zone			150	100	12	2.5 / 35
Remote	300	Zone			200	150	12	2.5 / 35
¹ Incentive: Property owner can increase the coverage allowed by 5% if erosion control and stormwater management conform to the shoreline vegetative buffer standards. ² See County Subsurface Sewage Treatment System (SSTS) Ordinance. ³ Performance system required if setbacks not maintained.								

ARTICLE VIII: ZONING REQUESTS

8.2 Variances. No variances shall be granted by the Town except in conformance with this Section and in accordance with Minnesota Statutes, section 462.357, subd. 6.

8.2.5 Conditions of Granting a Variance. As is set forth in Section 8.2.3.4, the Planning Commission and the Board of Appeals and Adjustments may impose conditions in the granting of variances to insure compliance, to protect the environment, and to protect adjacent properties and the public interest, but any and all conditions must be directly related to and must bear a rough proportionality to the impact created by the variance. These conditions include, but are not limited to, the following:

(D) Lakeshore mitigation. Measures shall be required to mitigate the impacts of developments, nonconforming structures or uses on lake water quality. Lakeshore mitigation requirements shall be determined according to the following mandatory mitigation practices:

1. Evaluate and upgrade ISTS to comply with the requirements of Minnesota Rules Chapters 7080-7083.
2. Implement erosion control, storm water management, and mitigation plan. This may be accomplished by working with Itasca SWCD or other sources but final plan must be reviewed by Itasca SWCD.
3. The mitigation plan shall consist of restoring shore impact zone to effectively screen structure(s) as viewed from the waters as set forth in Section 5.8.1(B)1. A shoreline buffer consisting of trees, shrubs and ground cover of native plants and understory shall be required as follows:

Table 6. Buffer Requirements for Variances

Lake Class	Buffer (Distance from OHWL landward)
RD	15
NE	50
Sensitive	50

4. Plant materials for native vegetation buffers shall be as prescribed according to the landscape position, water table, soil type and exposure of the project site. For every 5,000 square feet of buffer area, there shall be a variety of types of native trees, shrubs, forbs, and grasses planted to achieve full coverage. The survival of planting materials must be maintained for a minimum of five years, so that the approved coverage plan is adhered to. This coverage plan may be inspected periodically to assure compliance.
5. Other mitigation practices may be required by the Board of Appeals and Adjustments such as the use of exterior building materials that blend with natural vegetation.