

## STAFF REPORT

<b>Application:</b>	Requests related to the construction of a fireplace addition to a dwelling and a water-oriented accessory structure. Approvals required include Variances to allow for the construction of an approximate 2' x 8' dwelling addition to accommodate a fireplace approximately 90 feet from a side lot line (minimum 100 feet required) on a nonconforming dwelling located approximately 91 feet from Big Mantrap Lake (min. 100 feet required) and for the construction of an approximate 5'6" x 8'8" water-oriented accessory structure approximately 60 feet from a side lot line (minimum 100 feet required).
<b>Applicant and Property Owner:</b>	Tim & Marcy McFarland
<b>Agenda Item:</b>	4(a)

### Background Information:

- **Proposal:** The applicants are proposing to construct a roughly 2' x 8' addition to the west side of their existing dwelling to accommodate the placement of a fireplace in their home. Also, they are proposing to construct a 5'6" x 8'8" water-oriented accessory structure on the property approximately 20 feet from the lake. Both structures would not meet the minimum 100 ft side yard setback required by the Thorpe Township zoning ordinance. The parcel on which the home sits is approximately 204 feet wide.
- **Location:**
  - Property address: 29207 Juniper Trl
  - Sec/Twp/Range: 30-142-33
  - Parcel number(s): 26.30.01400
- **Zoning:** Lake Shore (L)
- **Lot size:** Approx. 98,881 sq ft (2.27 acres) according to provided survey.  
Existing and Proposed Impervious Coverage: Well under required limits
- **Septic System Status:** The property is served by an existing private septic system that is located to the north of the home and was last found compliant in an August 2014 inspection.
- **Natural Features:**
  - Floodplain: The existing and proposed structures are not within an identified floodplain.
  - Bluff/Steep Slopes: The lot does not contain a bluff.
  - 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 mowed grass in portions and numerous mature trees in the near-shoreline area.
- **Permit History:**

- 1973 - Permit for 24' x 32' dwelling.
- 1991 - Permit for 12' x 12' storage building
- 1995 - New septic system
- 2003 - New decking on 8' x 30' deck
- 2014 - Septic system inspection (found compliant)

**Board of Adjustment Action:** 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 Comments:**

1. Hubbard County has submitted the following comment: "This parcel falls under the County Shoreland Management Ordinance's (SMO) jurisdiction. My comments are thus in regard to sharing the SMO requirements with your Board of Adjustment. The house was permitted in 1973 to be built in compliance with the 100' ordinary high water mark (OHW) structure setback. The certificate of survey provided with the public notice has the house OHW setback labeled as 92'. Thus, if the house OHW setback is indeed less than the required 100', before the County can consider a land use permit application for the proposed addition (if the requested Township variance is approved), an after-the-fact variance to address the house's noncompliance with the 100' OHW setback will be required. I would recommend that the applicants include the proposed addition in the County variance application so our Board of Adjustment can be aware of and consider/act on the full scope of the proposal.

Regarding the proposed water-oriented accessory structure (WOAS), its dimensions and setbacks comply with the SMO's WOAS regulations that are located in Section 601 of the SMO. If the requested Township variance is granted, a land use permit for the WOAS and compliance with the applicable shore impact zone vegetation mitigation component will be required per the SMO. Section 601's pertinent content is shown below and highlighted.

Section 601. Accessory Uses and Structures

Where a lot is devoted to a permitted principal use, customary accessory uses and structures are authorized except as prohibited specifically or by necessary implication in this or any other ordinance. The following special rules are applicable:

3. Each residential lot may have one water-oriented accessory structure, deck, or platform located closer to public waters than the structure setback if all of the following standards and requirements are met:
  - A. The structure must not exceed ten feet in height above grade at any point. A deck cannot exceed eight feet in height above grade at any point. The structure cannot occupy an area greater than 48 square feet and a deck or platform cannot occupy an area greater than 150 square feet.
  - B. The setback of the structure, deck, or platform from the ordinary high water level must be at least twenty feet.

- C. The structure, deck, or platform must be earthtone in color and screened with vegetation to reduce visibility as viewed from public waters and adjacent shorelands.
- D. The structure, deck, or platform must not be located in a bluff impact zone.
- E. A structure's roof cannot be used as a deck or storage area.
- F. The structure must not be designed or used for human habitation and must not contain water supply or sewage treatment facilities.
- G. Where grading or filling or excavation is necessary for construction, a shoreland alteration permit shall be required and there shall be no excavation waterward of the building line.
- H. Mitigation to offset the aesthetic and impervious surface area impact of the allowed WOAS/deck/platform is required unless Environmental Services Department (ESD) staff determine the property's shore impact zone (SIZ) is fully vegetated in native tree, shrub, and ground cover aside from any allowed access path, SRUA, and WOAS/deck/platform. IF ESD staff determine the SIZ is fully vegetated, a 500 sq. ft. portion thereof (with a minimum width of 20' parallel to the shoreline) will be designated as an area to be permanently kept in natural vegetative cover. If ESD staff determine the property's SIZ is not fully naturally vegetated, 500 sq. ft. of the property's SIZ must be restored to and maintained in permanent native tree, shrub, and ground cover vegetation. If less than 500 sq. ft. of the SIZ requires restoration, then permanent restoration of said area that is less than 500 sq. ft. and preservation of it and additional shore impact zone area to reach the 500 sq. ft. amount will satisfy this mitigation requirement. In all the above scenarios, the 500 sq. ft. area must have a 20' minimum width parallel to the shoreline.
- I. Any structure or facility not meeting the above criteria, or any additional accessory structures or facilities must meet or exceed structure setback standards.

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**Staff Recommendation:** Staff recommends approval of the requested variances only if the Planning Commission finds that a sufficient practical difficulty exists for each proposed structure. For the proposed dwelling addition, there is no way for the applicant to meet the required 100 ft setback on each side of the home except possibly to build the fireplace addition in the approximate middle of the home. For the proposed water-oriented accessory structure the applicant appears to be able to meet (or very nearly meet) the proposed 100 ft setback on both side lot lines only by placing the structure in the exact middle of the lot.

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 maintain all natural vegetation which currently exists between the proposed additions and the nearest side property line, as much as possible. As trees and vegetation die or are felled by storms, new trees and vegetation shall be re-established.
2. The applicant must obtain all necessary permits and/or variances required by Hubbard County.

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**Applicable Statutes/Ordinances:** See Appendix A.

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**Findings of Fact:** The following findings of fact are presented by Staff for consideration by 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:

The spirit and intent of the ordinance's setback requirements between a building or structure and a side lot line is to 1) ensure sufficient room for adjustments should future surveys create a lot line discrepancy; 2) ensure maintenance of the building would not encroach on a neighbor's land; and 3) maintain a buffer between neighbors to ensure the natural settings that currently exist.

Findings Supporting Approval

The proposed improvements would be in harmony with the general purpose and intent of the requirements because the proposed dwelling addition is very small and extends only 2 feet closer to the lot line than the existing structure and the proposed water-oriented accessory structure would be better screened from view from the lake in the proposed location than in the location that would meet the 100 ft setback requirement from both sides of the lot.

Findings Supporting Denial

The proposed improvements would not be in harmony with the general purpose and intent of the requirements because it would extend the dwelling closer to the lot line than it already is and place a wholly new water-oriented accessory structure 40 ft closer to the side lot line than it would normally be required to be.

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

Findings Supporting Approval

Thorpe Township does not have a Comprehensive Plan.

Findings Supporting Denial

Thorpe Township does not have a Comprehensive Plan.

**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 proposed dwelling addition is very small in relation to the overall dwelling and will not create a significant additional impact on privacy for the neighboring property. For the proposed water-oriented accessory structure the Hubbard County shoreland ordinance would allow for such structures at a distance much closer than is proposed and the intent of the proposed location is to better meet the intent of the County ordinance to screen the building from view from the lake.

Findings Supporting Denial

The proposed use of the property is not reasonable because the proposed dwelling addition could be built on the north or south side of the dwelling to avoid encroaching further on the

property line and for the water-oriented accessory structure the applicant has enough room to meet the minimum required side yard setback of 100 feet (or at least much closer to it).

**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 location of the existing house and the width of the lot not being wide enough to accommodate 100 ft setbacks on each side of the house and forcing any water-oriented accessory structure to be in the middle of the lot and directly in front of the home.

Findings Supporting Denial

The plight of the landowner is due to factors that they created themselves because both the proposed dwelling addition and water-oriented accessory structure involve structures they could be placed elsewhere on the lot that would not involve a variance (or at least lesser variances).

**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. Other buildings on neighboring lots are also located within the required side yard setback.

Findings Supporting Denial

The essential character of the area would be altered because the proposed water-oriented accessory structure would place an entirely new structure at 60 feet from the side lot line instead of the required 100 feet.

**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 the location of the proposed structures will increase the value of the property more than if they were placed in locations that meet the required setbacks.

**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 proposed uses are identified as a permitted uses in the zoning district where the applicant's property is located.

Findings Supporting Denial

None

# Appendix A

## Applicable Statutes and Ordinances

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### 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.

### Thorpe Township Regulations

#### ARTICLE II - GENERAL ZONING DISTRICTS AND REGULATIONS

##### Section 30.10.4 Minimum Lot Requirements and Setbacks

The following minimum requirements shall apply to all property and structures in the Lake Shore District\*. Requirements in Article III on Performance Standards and other standards as noted, shall also apply.

- A. Lot Area: 5 acres
- B. Lot Width: 300 feet (at building and front lot line)

C. Setbacks (from lot lines): 100 feet from existing lot lines\*

\* Hubbard County Shoreland Standards shall also apply to setbacks from the Ordinary High Water Mark of public waters.