

STAFF REPORT

Application:	Requests related to the expansion of a dwelling. Approvals required include an After-the-fact Variance to elevate an existing dwelling and create living space below approximately 45 feet from the ordinary high water level of Indian Lake (min. 100 ft required), 3 feet from a side property line (min. 15 ft required) and 45 feet from the centerline of a township road (min. 65 ft required). Variance required to expand a dwelling served by a holding tank.
Applicant and Property Owner:	Marilyn Intharaphet
Agenda Item:	4(a)

Background Information:

- **Proposal:** The applicant was granted a permit in 2020 to elevate the existing cabin and add a crawlspace below that was to not have a ceiling height taller than 6 feet. During building inspections of the property, it was determined that some of the basement space does have a height of 6'8" (the ceiling level is irregular and in some places it is 6 feet or less in height).
- **Location:**
 - Property address: 10862 Gulden Ave NW , Maple Lake
 - Sec/Twp/Range: 12-121-27
 - Parcel number(s): 206045000170
- **Zoning:** R1 - Urban/Rural Transition / S2 - Residential-Recreational Shorelands, Indian Lake (General Development lake)
- **Lot size:** Approx. 6,131 sq ft (0.14 acres) according to Beacon GIS estimate.

Existing Impervious Coverage:

- Buildings: About 798 sq ft (13.02%)
- Total: About 1,412 sq ft (23.03%)

Proposed Impervious Coverage:

- Buildings: About 798 sq ft (13.02%)
- Total: About 1,412 sq ft (23.03%)

- **Septic System Status:** The property is served by a holding tank that was last found compliant in 2013.
- **Natural Features:**
 - Floodplain: The existing and proposed structures are not within an identified floodplain. The ordinance, however, requires that the lowest floor of a dwelling be constructed at least 4 feet above the highest known water level. It appears the lowest floor will easily meet this requirement.

- Bluff/Steep Slopes: The lot does not contain a bluff. 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 primarily of mowed grass with a few trees.

● **Permit History:**

- 1954 - Apparent date the existing home was constructed on the lot (from Assessor's records)
- 1988 - Variance request to add on to home (Dismissed)
- 1989 - Holding tank installed
- 2012 - Holding tank inspection (compliant)
- 2020 - Land alteration
- 2020 - House elevated on crawlspace

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. Staff was invited inside the building and found one bedroom and a family room in the lower level and no bedrooms on the upper level.

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.

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. (For discussion) That the applicant must reduce the height of at least ____% of the lower level to no more than 6 feet.
2. That the resulting cabin may not have more than one (1) bedroom in the home.

Applicable Statutes/Ordinances: See Appendix A.

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 lake or river, according to the DNRs SONAR statement in 1989, is: "In general, structure setbacks are needed to provide an adequate distance between the development of a shoreland area and the adjacent waterbody or near bluffs to control the resource damaging effects of non-point source pollution. Soil erosion and subsequent sedimentation in water bodies and the loading of nutrients, toxics and other pollutants to the water body from shoreland area surface water runoff are examples of non-point source pollution."

The spirit and intent of the ordinance's setback requirements between a building or structure and a side lot line 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 spirit and intent of the ordinance's setback requirements between a building or structure and a road 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.

Findings Supporting Approval

The proposed improvements would be in harmony with the general purpose and intent of the requirements because while it would be an expansion of the inside living area, it will not increase building or impervious coverage or add any bedrooms to what previously existed.

Findings Supporting Denial

The proposed improvements would not be in harmony with the general purpose and intent of the requirements because it would allow for an expansion of the inside living area of the dwelling.

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 relevant zoning district(s).

Findings Supporting Denial

The granting of the requested variance(s) would be inconsistent with the Comprehensive Plan because it would allow for the expansion of a dwelling that is already nonconforming.

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 existing cabin is very small and the additional living space is minimal, with no additional bedrooms being added.

Findings Supporting Denial

The proposed use of the property is not reasonable because it would allow for the expansion of a dwelling that is already nonconforming.

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 (originally built in 1954) and the very small size of the lot.

Findings Supporting Denial

The plight of the landowner is due to factors that they created themselves because they had the opportunity to make an additional crawlspace for storage purposes without the need for a variance.

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.

Findings Supporting Denial

The essential character of the area would be altered because the proposed cabin has a greater visual impact as viewed from the lake than what previously existed.

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 a primary reason for the requested variance as it would increase the value of the dwelling on 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 proposed use is identified as a permitted use in the zoning district where the applicant's property is located.

Findings Supporting Denial

None

8) The practical difficulty cannot be alleviated by a method other than a variance.

Findings Supporting Approval

Avoidance of the need for a variance is not possible because of the very small size of the lot and the location of the existing dwelling.

Findings Supporting Denial

The applicant could avoid (or minimize) the need for variances by reducing the ceiling height in the lower level to no more than 6 feet.

9) The granting of the variance will not adversely affect the environmental quality of the area.

Findings Supporting Approval

The proposal will not have any significant adverse impact on the environmental quality of the area as it will not add building or impervious coverage.

Findings Supporting Denial

The proposal would increase the potential for adverse impacts on the environment because the additional living space makes the building suitable for more occupants and likely more use of the lake.

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.

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.

612.5 Shoreland Performance Standards

612.5 (1) General Performance Standard for Lakes

Performance standards in shoreland areas are additional to standards of the primary zoning district. In case of a conflict, the stricter standard shall apply as well as any additional requirements if flood plain elevations have been established.

(b) Recreational Development Standards:

Structure setback from OWHL	100 ft.
Structure setback from Bluff	30 ft.
Structure setback from unplatted cemetery	50 ft.
Lot Size	As per underlying zoning district
Lot Width	As per underlying zoning district
Height	2 1/2 stories (35 ft.)
Elevation of lowest floor above highest known water level (livable structures only)	4 ft.
Water Oriented Accessory Structure setback from OWHL	10 ft.

605. URBAN/RURAL TRANSITIONAL R-1

605.5 Performance Standards

(Parcels in the R-1 District shall be limited to 1/2 animal unit per acre and less than 10 animal units total, except as allowed under Section 405.2 of this Ordinance.)

(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>
130	130	State Highway
130	130	County Road State Aid
65	100	Local Street (Twp. Rd.)
25	100	From right of way of cul-de-sac or approved "T"

(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.