

STAFF REPORT

Application:	Requests related to the reconstruction of a dwelling. Approvals required include a Variance to reconstruct a 24' x 37' dwelling with walkout basement approximately 20 feet from the ordinary high water level of Indian Lake (min. 100 ft required) and 0-3 feet from a side property line (min. 15 ft required). Building and impervious coverage will remain at the current 19.9% and 31.6% coverages (max. 15% and 25% allowed respectively).
Applicant and Property Owner:	Vicky & John Skoog
Agenda Item:	4(b)

Background Information:

- **Proposal:** The applicants are proposing to tear down their existing 24' x 37' single-story dwelling and replace it with a dwelling of the same size, but also adding a walkout basement underneath. The new cabin would have two bedrooms on the main floor and none on the lower level. The old cabin also had two bedrooms in it. Building and impervious coverage on the property are above the maximum allowed but would not change and are considered legal nonconformities.
- **Location:**
 - Property address: 10806 Gulden Ave NW , Maple Lake
 - Sec/Twp/Range: 12-121-27
 - Parcel number(s): 206046000030
- **Zoning:** R1 - Urban/Rural Transition / S2 - Residential-Recreational Shorelands, Indian Lake (General Development lake)
- **Lot size:** Approx. 4,461 sq ft (0.1 acres) according to Beacon GIS estimate.
 - Existing Impervious Coverage:
 - Buildings: About 888 sq ft (19.91%)
 - Total: About 1,408 sq ft (31.56%)
 - Proposed Impervious Coverage:
 - Buildings: About 888 sq ft (19.91%)
 - Total: About 1,408 sq ft (31.56%)
- **Septic System Status:** The property is served by a septic system that involves a tank on their property and a community drainfield across the road to the west.
- **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. The applicant indicates the lowest floor will meet this requirement and are having a survey completed to document that.

- 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.

- **Permit History:**

- 1955 - Apparent date the existing home was constructed on the lot (from Assessor's records).
- 1997 - Septic system (community drainfield) installed.

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. The applicant indicates a survey is being completed. There is some question as to whether the existing cabin location is entirely on their property or not as it appears very close to the property line.

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 that the expansion of inside living area is justified and won't create parking or environmental problems for the area.

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) The applicant shall modify their existing building plans to eliminate the lower level entirely or create space with no more than a 6 ft ceiling height for utilities and storage only. No more than 2 bedrooms may be within the home.
2. The applicant shall ensure that the reconstructed building is entirely on their property and at least 5 feet from all property lines.
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 into the lake, wetlands, road right-of-way or onto adjoining properties. These may include directing rain gutters to appropriate areas, rain barrels, establishing or maintaining a buffer of native vegetation along the shoreline, 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.

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.

Findings Supporting Approval

The proposed improvements would be in harmony with the general purpose and intent of the requirements because it would not enlarge anything that already exists - only replace it (in terms of ground coverage) and would not expand the number of bedrooms in the building.

Findings Supporting Denial

The proposed improvements would not be in harmony with the general purpose and intent of the requirements because it would allow an existing building which already makes the lot nonconforming with building and impervious coverage limits to not just remain, but be expanded in size. This will create the need for additional parking and possibly impervious coverage on the lot.

- 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) and would not increase building or impervious coverage from what already exists or burden the community drainfield that serves the lot any more than what previously existed.

Findings Supporting Denial

The granting of the requested variance(s) would be inconsistent with the Comprehensive Plan because it would allow for an existing nonconformity to be expanded in very close proximity to the lake.

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 they are proposing what amounts to a replacement of what currently exists on the property and was considered a legal nonconformity.

Findings Supporting Denial

The proposed use of the property is not reasonable because it allows for a nonconformity to be expanded in very close proximity to the lake.

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 1955) 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 are requesting that a previously existing nonconformity be expanded in inside living area when an exact replacement could be allowed without 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 use would create more of a visual impact as viewed from the lake than what currently exists.

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 request (making the building larger and more valuable to renters or future owners).

- 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 inability to meet all required setbacks.

Findings Supporting Denial

The applicant could avoid (or minimize) the need for variances by only replacing what currently exists - not expanding the dwelling in its inside living area.

- 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 beyond what already occurs provided proper measures are taken to manage stormwater and erosion. The proposed conditions of approval require such a plan.

Findings Supporting Denial

The proposal would increase the potential for adverse impacts on the environment because the additional living area will allow more people to be in the home and possibly more impact on 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.