

## STAFF REPORT

<b>Application:</b>	Requests related to the construction of a detached garage. Approvals required include a Variance to construct an approx. 36' x 56' detached garage approx. 45 ft from the centerline of Ladyslipper Lane (min. 68 ft required).
<b>Applicant and Property Owner:</b>	Thomas and Lori Moore
<b>Agenda Item:</b>	4(a)

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### Background Information:

- **Proposal:** The applicants are proposing to construct a new 36' x 56' detached garage (with bathroom) and a septic system on a previously undeveloped lot. The proposed garage would be closer to the road than allowed by ordinance. While the lot is large and deep the applicant notes in their application that possible locations for the garage are limited due to "irregularity in the shape of the plat" and "topographical constraints". The lot does have steep slopes over most of the lot and is heavily wooded with some of that land near the road having been cleared (presumably for the garage location).
- **Location:**
  - Property address: XXXXX Ladyslipper Lane
  - Sec/Twp/Range: 19-57-25
  - Parcel number(s): 41-019-1407
- **Zoning:** Farm Residential/Shoreland, Pickerel (Natural Environment-2 Development lake 31-398)
- **Lot size:** Approx. 69,696 sq ft (1.6 acres) according to County GIS estimate.  
Existing and Proposed Impervious Coverage: Well under required limits.
- **Septic System Status:** The proposed bathroom requires the installation of a private sewer system. The applicant indicates they have spoken with Schwartz Excavating about a design for their system and a plan has been identified for its design and location.
- **Natural Features:**
  - Floodplain: The proposed structure is not within an identified floodplain.
  - 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. There are wetlands at the shoreline of the lake.
  - Current Shoreline Conditions: The shoreline of the property consists primarily of naturally wooded land and wetland fringe/aquatic vegetation.

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**Planning Commission Action:** The Planning Commission may recommend approval of the request, denial of 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.

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**Staff Comments:**

1. A primary question in a variance request such as this is whether it is reasonable to relocate the proposed structure so that it would meet the required setback (an additional 22 feet further back in this case). The primary impediments to doing so in this case appear to be the steep slopes.
2. Impacts of the proposed structure and its not meeting the required 68 foot setback from the centerline of the road should be considered in the review of this variance request.
3. Pickerel Lake (Pickeral according to DNR terminology) does not have an established ordinary high water level. The site has been evaluated by Itasca County Environmental Services and they've indicated that the open water reflects the ordinary high water level - not the upslope side of the wetlands near the shoreline. They have confirmed that the proposed garage would meet the required lake setback.
4. Itasca County Environmental Services has also indicated that the grading/fill work already completed related to the building pad would be addressed as part of the garage permit they'd issue should the Township approve the requested variance.
5. The variance request does not directly address any permitting of the required septic system. A separate SSTS permit will need to be obtained from Itasca County.

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**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 moving the garage further back in the lot (and the associated additional grading/fill/erosion control measures) are not feasible or consistent with other Township goals.

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. 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.
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.

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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 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:

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.

Findings Supporting Approval

The proposed improvements would be in harmony with the general purpose and intent of the requirements because the proposed road setback is as far back as is reasonably possible given the limitations of the steep slopes and it will reasonably be protected at the proposed distance from damage by road maintenance or vehicles accidentally leaving the road. Moving the structure further back would require more fill on the lot in an area of steep slopes and would conflict with other purposes and intents of the Township and County ordinances.

Findings Supporting Denial

The proposed improvements would not be in harmony with the general purpose and intent of the requirements because there is room to shift the proposed structure further back in the lot such that it would meet all setbacks.

**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 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 maintaining safe and efficient township roads. The proposed location of the shed increases the chance of harm to persons and structures and property that can be avoided by building the structure further back in the lot.

**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 potential locations for a garage are inhibited by the steep slopes that cover almost the entire lot and that same limitation would apply to the construction of any building on the property.

Findings Supporting Denial

The proposed use of the property is not reasonable because it would increase the possibility of harm to persons and structures and property by placing a structure within the road setback.

- 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 steep topography that covers much of the lot.

Findings Supporting Denial

The plight of the landowner is due to factors that they created themselves because moving the structure further back so as to meet setbacks is possible, even if not ideal and more costly to the applicant.

- 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 detached garages are not an uncommon use of property in the shoreland and Farm Residential zoning districts.

Findings Supporting Denial

The essential character of the area would be altered because the proposal would place a structure closer to the road than is typical for the immediate area, where most nearby structures meet the required road setback.

- 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 it is primarily the additional cost of placing more fill on the property and installing the proper improvements to control erosion which prevents the applicant from meeting the required setback.

- 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, conditional or interim use 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.

#### **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.

## **Itasca County Regulations**

### **Section 3.8 Road Setbacks**

The following minimum provisions apply to setback distances for permitted structures from roads. Other provisions of this Ordinance may require a greater setback in certain zoning districts or for certain structures or uses.

3.8.1 Classes. For the purpose of determining the distance that buildings and structures shall be set back, highways, streets, roads, and alleys are divided into the following classes:

A. Class A Highways

1. All state and federal highways are hereby designated as Class A Highways.

B. Class B Highways

1. All County State Aid Highways or those Class B Highways as designated by the County Director of Transportation / Highway Engineer are hereby designated as Class B Highways.

C. Class C Highways

1. All Town and county roads not otherwise classified are hereby designated as Class C Highways.

2. Private roads. Any private road having a dedicated right-of-way of 33 feet or greater and serving three or more dwellings shall be classified as a Class C Highway.

3. Setback. The setback for Class C Highways shall be 68 feet from the centerline of the highway or 35 feet from the right-of-way line, whichever distance is greater.

**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

Table 2. Residential Dwelling Unit Requirements

RESIDENTIAL DWELLING UNIT REQUIREMENTS								
Lake Class	Minimum Parcel Size				Riparian Setbacks		Maximum	
	Riparian		Non-riparian		Structure (Ft.)	Sanitation Septic Tank Sewage Treatment (Ft.)	Impervious Surface (% of Parcel)	Building Stories / Height (Ft.)
	Width (Ft.)	Area (Ac.)	Width (Ft.)	Area (Ac.)				
	Approx. Depth (Ft.)		Approx. Depth (Ft.)					
	Area in Sq. Ft.		Area in Sq. Ft.					
Recreational Development-2	200 327 65,340	1.5	200 436 87,120	2	100	75 Tank 100 Treatment	15 <sup>1</sup>	2.5 / 35
Recreational Development-1	200 436 87,120	2	200 545 108,900	2.5	100	75 Tank 100 Treatment	15 <sup>1</sup>	2.5 / 35
Natural Environment-1	200 436	2	200 545	2.5	200	100 Tank	12	2.5 / 35

**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.