



Environmental Services

301 Court Avenue, Park Rapids, MN 56470

Phone: 218.732.3890

www.co.hubbard.mn.us/departments/environmental_services/index.php

April 26, 2021 Planning Commission/Board of Adjustment Hearing/Meeting Staff Report

Planning Commission:

Approval of Minutes: March 22 and 23, 2021 meeting.

Old Business:

[Conditional Use Amendment Application 2-CU-20 by Green Pine Villas Owners Association, Inc:](#)

Common Interest Community No. 25, Green Pine Villas, Section 20, Township 141, Range 34, Lake Emma Township on Potato Lake, a recreational development lake. Parcel ID 16.44.91200. Applicant is requesting to amend Conditions 2 and 8 of Conditional Use Permit 1-CU-09.

Enclosed Document(s):

- Conditional Use Permit Application 1-CU-09
- Feb. 10, 2009 Planning Commission mtg minutes re: 1-CU-09
- Feb. 18, 2009 County Board mtg minutes re: 1-CU-09
- 2-CU-20 application, as amended as of 04/15/2021
- 2020 aerial imagery w/2' elevation contours
- October 26, 2020 Planning Commission (PC) Hearing/Meeting Minutes re: CUP Amendment App 2-CU-20
- 10/28/2020 staff site visit photos
- 11/09/2020 notice of violation letter
- 12/02/2020 staff ADA accommodation request response letter
- 12/14/2020 ADA accommodation request for Unit 7 deck
- October and November 2020 PC Hearing/Meeting Staff Reports re: CUP Amendment App 2-CU-20
- 04/15/2021 department letter regarding 03262021 amendment to CUP Amendment App. 2-CU-20
- 04/16/2021 email thread confirming 04/15/2021 amendment to CUP Amendment App 2-CU-20

This application was first heard by the Planning Commission at the October 2020 meeting. At that time, the application consisted of a request to amend Condition 8 of CUP 1-CU-09 to allow a 28' x 40' storage structure to be constructed on the common element area just north of an existing similarly sized storage structure. Condition 8 specifically prohibits any additional accessory structures.

During the October lot viewals, several PC members observed multiple Shoreland Management Ordinance (SMO) and CUP 1-CU-09 condition violations. The application was thus tabled to allow staff an opportunity to conduct a site inspection to document any and all such violations. Staff conducted the site visit on 10/28/2020 (photos enclosed) and sent the owners an accompanying notice of violation letter (enclosed) on 11/09/2020. Several lakeside decks and accessory structures constructed without the required permits and in violation of Conditions 2 and 8 of CUP 1-CU-09 were identified. The portion of the shore impact zone that Condition 2 required to be placed into native vegetation was also found to be noncompliant as it was still being actively managed as lawn.



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The applicants have submitted written documentation stating that they will work to bring the SIZ into compliance. As of this report's writing (i.e. 04/16/2021), after-the-fact land use permits were obtained for the Units 1 and 8 platforms and the plastic storage lockers on Unit 5 have been removed per an 11/08/2020 email Kay Lloyd sent to the ESD. No ATF permit applications have been submitted to bring the platforms on Units 2 and 3 into compliance.

Additional amendments to the application made subsequent to the November 9, 2020 notice of violation letter were significant enough in nature that the application date changed to November 30, 2020 when the amendment materials were submitted. The amendments ask: 1. that the three existing decks on Units 5, 6, and 7 be allowed to stay "as is" which requires an amendment to Condition 2 of 1-CU-09, and include an Americans with Disabilities Act (ADA)/Fair Housing Act (FHA) accommodation request as part of the reasoning for the Unit 7 deck request; and 2. that the four existing storage sheds on Units 1, 5, 6, and 9 be allowed to stay "as is" which requires an amendment to Condition 8 of 1-CU-09. The amendment materials also propose to move the Unit 5 shed to a conforming 100' OHW structure setback and remove the enclosed woodshed on the north side of the Unit 6 storage shed. Later, on February 5, 2021, a certificate of survey was submitted that shows the exact OHW setbacks to the decks and storage sheds.

On March 26, 2021, an additional amendment was submitted that proposed allowing expansion of cabins and decks located outside of the shore impact zone to be allowed by permit. This amendment was withdrawn from the application by the applicants on April 15, 2021.

In response to the ADA/FHA accommodation request for Unit 7's deck, staff sent the applicants a letter dated December 2, 2020 requesting more information on the request. The applicants submitted this requested information in a letter dated December 14, 2020. Specific guidance regarding the ADA/FHA accommodation request will be provided by counsel. Counsel will also attend the April PC hearing/meeting. Staff and counsel believe the owners of Unit 7 have provided evidence to support the need for some modification of Condition 2 to accommodate access needs, the extent of which the PC will need to decide.

On December 2, 2020, the applicants submitted a voluntary MS 15.99 application processing time extension request so the PC need not be concerned with this logistical aspect of the application's processing.

Staff's recommendation on what action to take on the application remains largely unchanged. The exception would be what staff wrote above regarding modifying Condition 2 to accommodate Unit 7 access needs. This resort conversion was allowed to exceed the normally allowed dwelling unit density in exchange for the conditions that prohibit cabin/deck expansion and additional accessory structures. The applicant for the CUP agreed to these conditions. Allowing the requested decks and accessory structures (both existing and proposed) would not be in keeping with the ordinance's intent and the PC's and County Board's intent when the original CUP was granted.



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Please reference the bottom of page 1 and the top of page 2 of the enclosed October meeting staff report for information on how findings of fact are handled for CUP amendment applications as it differs from how findings are developed for an initial CUP application. There also will be a need to create findings that support the PC's action regarding the ADA/FHA accommodation request for Unit 7's deck. That said, below are staff's proposed amendment to Condition 2 (edits shown using Word's "Track Changes" tool) and findings of fact. The PC can certainly add to the proposed findings of fact and should if the PC has additional reasons for whatever decision it makes. Any and all reasons for a decision should be put into writing as findings of fact supporting the decision.

Condition 2 Amendment

2. The first sentence of Item 10 found in the "Conditional Use Application No. 1-CU-09 Conditions and Restrictions" application addendum (Item 10 shown below) is the only portion of that Item that is approved with the sole exception being that a 4' wide x ?' long ADA compliant access ramp is allowed to be placed on the lakeside exterior wall of the Unit 7 dwelling unit according to the drawing comprising attached Exhibit A for the time period in which the party in need of the ADA/FHA accommodation occupies said dwelling unit. When said party no longer occupies said unit, said access ramp must be removed. The balance of Item 10 is eliminated as a condition of this approval.

10. There shall be no future additions or alterations to the existing cabins which increase (i) the footprint of the existing cabins, including the decks, or (ii) the interior living space of the existing cabins. Adjacent cabins under the same ownership may be altered to be a single cabin and deck, provided that the footprint for the single cabin does not to exceed the total footprint of the combined cabins and the footprint for the deck does not exceed the total footprint of the combined decks.

Findings of Fact

1. The property's existing dwelling unit density that is 175% over the density allowed by the Shoreland Management Ordinance (SMO) was allowed in the original conditional use permit on the condition voluntarily agreed-upon by the developer to prohibit the enlargement of any existing structure or the addition of any new structure. This is in keeping with: 1. Item 2.C of Section 1013, PUD Maintenance and Design Criteria in the SMO that requires a permanently binding legal document such as a deed restriction be provided for any residential PUD that states construction of additional buildings is prohibited; and 2: Item 4 in Section 1014, Conversion to PUDs, in the SMO that requires during a conversion to a planned unit development (PUD), efforts must be made to limit impacts of high densities by requiring seasonal use, improving vegetative screening, centralizing shore recreation facilities, installing new septic systems, or other means. Allowing a new 28' x 40' storage structure to be placed on the property, and the existing non-permitted decks and accessory structures to be placed on the property would not be in keeping with this ordinance language or the Planning Commission's and County Board's intent when it originally approved Conditional Use Permit 1-CU-09.



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2. Future space of original, undisturbed soil for future drainfield needs is at a premium on this property due to the high dwelling unit density that requires a sizable amount of drainfield area. The proposed 28' x 40' storage structure and related cleared area/driveway would reduce the potential drainfield area and is thus not beneficial to the development's long-term septic system needs.
3. Ten violations of Conditions 2 and 8 of Conditional Use Permit 1-CU-09 were documented during the October Planning Commission lot viewals and by Environmental Services Department staff. Multiple accessory structures, decks, and platforms were constructed without permits in violation of these conditions. Eight of the eleven dwelling units are involved. Additionally, the Shoreland Management Ordinance and CUP Condition 2 requirement that the north 50% of the property's shore impact zone be placed into natural vegetation has not been met as this area consists of mown lawn and a small concrete platform with the applicants admitting during the public hearing that this area has been actively mown. This property's developers voluntarily agreed to all the CUP's conditions. It does not make sense to grant additional flexibility to Conditions 2 and 8 when the property owners have not followed the existing conditions to which they agreed in exchange for being allowed to have a dwelling unit density greatly in excess of the allowed density.
4. ADA/FHA accommodation request: As to the Unit 7 cabin, additional considerations apply due to a documented medical condition which restricts mobility and thereby access to the cabin by one of the residents of the cabin. A 4' wide x ?' long Americans with Disabilities Act (ADA) compliant access ramp is allowed to be placed on the lakeside exterior wall of the Unit 7 dwelling unit according to the drawing comprising attached Exhibit A for the time period in which the party in need of the ADA/Fair Housing Act (FHA) accommodation occupies said dwelling unit. When said party no longer occupies said unit, said access ramp must be removed.

Board of Adjustment:

New Business:

[Variance Application 4-V-21 by Laurie Koehly](#): Part of Gov't Lot 8, Section 22, Township 141, Range 33, Mantrap Township on Spider Lake, a recreational development lake. Parcel 20.22.02200. Applicant is requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed accessory structure to be located within the 100' ordinary high water mark structure setback.

Enclosed Document(s):

- 4-V-21 application
- 2020 aerial imagery w/2' elevation contours

The request is to remove an existing shed and old outhouse and replace them with a proposed 20' x 22' detached garage at a 50' OHW setback (100' OHW setback required.)

Eric Buitenwerf, Env. Services Director • Bryan Haugen, Asst. Env. Services Director • Staci Lee, Admin. Asst.
Demey DeJong, Env. Specialist • Nick Macklem, Env. Specialist • Sam Lively, GIS Supervisor • Jonathan Hernandez, GIS Tech.



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The SSTS on the property is compliant and the application sketch indicates the proposed garage location would meet the required 10' setback from the existing septic tank and the drainfield is located across the road.

The lot is just under 100' wide and 185-195' deep. The cabin is sited on the flat portion of the lot. The rear half of the lot has an approximate 34% slope with 24' of rise. So the only feasible location for a garage is either in the proposed location or right behind (non-lakeside) the cabin. The septic tank location is not exactly clear from a review of the records, but it appears to be right behind the proposed garage location. If a vehicle is meant to enter/exit the garage, that begs the question of it appearing like vehicles would be driving over the tank. If the tank is behind the cabin, then the question would be if a "T" backout area is proposed so vehicles exiting the garage can then drive forward up the slope to exit the property. This is the primary logistical detail identified by staff. If it can be satisfactorily addressed, then staff is supportive of the request as there would be definite construction and use challenges related to placing the garage at a conforming OHW setback.

Below are the findings of fact questions for your consideration:

1. Is the variance in harmony with the general purposes and intent of the official controls?
Yes (X) No ()

Why or why not? The lot is just shy of 100' in width and 185-195' deep with the back half of the lot having a 34% slope with 22' of rise that makes placing the proposed garage at a conforming OHW setback impractical. The proposed location is on the only flat spot on the lot and makes sense from a convenience standpoint for proximity to the cabin.
2. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?
Yes (X) No ()

Why or why not? A 20' x 22' garage is a reasonable request and placing it near the cabin is the only viable option given the lot constraints described in the response to question 1 above.
3. Is the need for a variance due to circumstances unique to the property and not created by the current or prior property owners?
Yes (X) No ()

Why or why not? Per the lot dimensions and topographic characteristics listed in the response to question 1.
4. Will the issuance of the variance maintain the essential character of the locality?
Yes (X) No ()

Why or why not? The neighborhood consists of seasonal residences that are similar in size and ordinary high water mark setback to the cabin on this lot and the slope present on this lot also exists on the neighboring lots. The neighboring lots also have similar size outbuildings or garages to what is proposed for this lot.
5. Does the stated practical difficulty involve more than just economic considerations?
Yes (X) No ()



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Why or why not? Economics are not cited in the application as a practical difficulty. The difficulty on the lot is its small size and topography as detailed in the answer to question 1 above.

Variance Application 5-V-21 by Richard and Jodi Palmiscno: Lot 3 and part of Lot 4, Eagle Bay, Section 9, Township 139, Range 34, Hubbard Township on Long Lake, a recreational development lake. Parcels 14.41.00300 and 14.41.00410. Applicants are requesting: Part 1: a variance from Section 502.2 of the Shoreland Management Ordinance (SMO) for a proposed deck to be located within the 100' ordinary high water mark structure setback, and Part 2: an after-the-fact variance from Section 502.2 of the SMO for an accessory structure located within the 100' ordinary high water mark structure setback.

Enclosed Document(s):

- 5-V-21 application
- 2020 aerial imagery w/2' elevation contours
- 03/23/2021 notice of violation letter
- Variance 83-18 authorizing dwelling at 85' OHW setback and SSTS at 110' OHW setback

There are two parts to this application. First, a 12' x 35' lakeside platform is proposed in front of the existing dwelling that would result in it being 74' from the OHW assuming the cabin was placed at the 85' OHW setback allowed by Variance 83-18. Second, an after-the-fact request is made for 10' x 18' shed located south of the dwelling at a 68' OHW setback. The shed was placed there without a permit by a prior owner.

The SSTS servicing the dwelling is compliant and will not be impacted by the two requested items.

The dwelling has two lakeside sliding doors that open onto lawn. A platform in front of these doors is thus a reasonable request to provide safe ingress/egress and to protect the soil from erosion. The question is then what size of platform is reasonable. Maybe the depth could be scaled back a few feet.?

The lot is 175' deep on the north side and 195' deep on the south side due to the shoreline being angled. The slope on the lot is consistent so it appears to be possible to move the shed to a conforming 100' OHW setback. Staff thus recommends denial of the shed request as it appears to be able to be placed at a conforming location with a permit.

Below are the findings of fact questions for your consideration:

Part 1

1. Is the variance in harmony with the general purposes and intent of the official controls?

Yes (X) No ()

Why or why not? The dwelling was allowed to be placed at an 85' OHW setback per Variance 83-18. The dwelling has two lakeside sliding doors to which a platform would provide more safe ingress/egress than the existing step down onto lawn. The approved platform is reasonable in size and still at least 24' from the shore impact zone. The lot is heavily wooded and with the platform sitting on the ground, it will not be visually obtrusive to neighboring property owners or visible from the lake. As the dwelling does not have



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entrance doors on its other three sides and it is built into the slope, placing a platform on either side or the rear of the structure is not reasonable.

2. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?

Yes (X) No ()

Why or why not? Having a platform on the lakeside of a dwelling on which there are two lake-facing sliding doors and a standard entrance door for safe ingress/egress is a reasonable request.

3. Is the need for a variance due to circumstances unique to the property and not created by the current or prior property owners?

Yes (X) No ()

Why or why not? The variance need is due to the dwelling being allowed to be placed at an 85' OHW setback per Variance 83-18. Because the dwelling is built into a hill and all the entrance doors are on the lakeside wall, a platform cannot be placed in a location meeting the 100' OHW setback.

4. Will the issuance of the variance maintain the essential character of the locality?

Yes (X) No ()

Why or why not? The neighborhood is comprised of mostly seasonal and a few year-round residences on lots of similar size. Many of the neighboring properties have a lakeside deck or platform on the dwellings. The platform will not be visible from the lake or neighboring properties.

5. Does the stated practical difficulty involve more than just economic considerations?

Yes (X) No ()

Why or why not? Economic considerations are not cited in the application as a practical difficulty. The difficulty is caused by the dwelling being allowed to be placed at an 85' OHW setback by Variance 83-V-18 and because of the structure being built into a hill and all the entrance doors thus being located on the lakeside exterior wall, the only place a platform can go is lakeside of the dwelling within the 100' OHW setback.

Part 2

1. Is the variance in harmony with the general purposes and intent of the official controls?

Yes () No (X)

Why or why not? The lot is 175' to 195' deep and roughly 130' wide. The slope on the property is consistent from front to rear. Given the dwelling and septic system components locations, there is room to move the shed to a conforming location by permit. When a permissible option exists, no practical difficulty exists.

2. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?

Yes (X) No (X)



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Why or why not? Yes, in that having a storage shed on a property that has no other storage structure is reasonable as is having the shed in close proximity to the dwelling. No, in that the lot is wide and deep enough that there is room to place the shed in a conforming location by permit.

3. Is the need for a variance due to circumstances unique to the property and not created by the current or prior property owners?

Yes () No (X)

Why or why not? As mentioned in the answers to questions 1 and 2 above, there is room on the lot where the shed can be placed by permit. The requested OHW setback for the shed is due to the prior owner illegally placing it in this location within the required 100' OHW setback without the required variance and permit.

4. Will the issuance of the variance maintain the essential character of the locality?

Yes () No (X)

Why or why not? Along this stretch of shoreline, this lot is the least deep of the lots in the locality because of how the shoreline runs relative to the access road that runs north-south along the rear lot lines of these properties. Thus, most of the structures on the nearby properties are located at conforming 100' OHW setbacks. Allowing a 180 sq. ft. shed to be 68' from the OHW when there is room on the lot for it to meet setbacks would not maintain the locality's character of structures complying with setbacks.

5. Does the stated practical difficulty involve more than just economic considerations?

Yes (X) No ()

Why or why not? Economic considerations are not cited in the application as a difficulty. The difficulty alleged in the application is that of moving the shed to an alternate location on the lot.

Add On for an After-The-Fact Variance

If the Board of Adjustment answers yes to all 5 questions for a variance in the first instance, thereby finding that all of the criteria set forth in Section 1103, Item 1, parts 1 through 5, are met, then the following additional criteria may be considered and weighed by the Board of Adjustment in determining whether to grant or deny a request for the after-the-fact variance:

1. Why did the applicant fail to obtain the required permit or comply with the applicable official control before commencing work? Was there any attempt to comply with the applicable official controls?

Yes () No ()

Why or why not?

2. Did the applicant make a substantial investment in the property before learning of the failure to comply with the applicable official controls?

Yes () No ()

Why or why not?



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3. Did the applicant complete the work before being informed of the violation of applicable official controls?

Yes () No ()

Why or why not?

4. Are there structures, circumstances, or conditions in the area similar to those that are the subject of the variance request?

Yes () No ()

Why or why not?

5. Based on all of the facts, does it appear to the Board of Adjustment that the applicant acted in good faith?

Yes () No ()

Why or why not?

6. Would the benefit to the county appear to be outweighed by the detriment the applicant would suffer if forced to remove the structure?

Yes () No ()

Why or why not?

Variance Application 6-V-21 by Tom and Rollin Anton: Lot 6, Block 1, Paine Lake Points, Section 21, Township 143, Range 34, Lake George Township on Paine Lake, a natural environment lake. Parcel 17.43.00600. Applicants are requesting an after-the-fact variance from Section 502.1 of the Shoreland Management Ordinance for a residential dwelling unit located within the 150' ordinary high water mark structure setback.

Enclosed Document(s):

- 6-V-21 application
- 2020 aerial imagery w/2' elevation contours
- 05/04/2021 staff site visit sketch and photos
- 03/09/2021 land use permit denial letter
- 03/09/2021 notice of violation letter
- 10/23/2015 house land use permit
- 04/13/2016 garage land use permit
- 03/07/2017 16' x 16' deck land use permit
- 03/07/2017 8' x 16' deck land use permit
- 03/09/2021 denied decks land use permit application

This is an after-the-fact request for a primary residence to be located within the required 150' OHW setback. Staff measured the structure as being 111' from the OHW in a southerly direction and 126' from the OHW in a westerly direction as the lot has a unique shoreline on two sides of the dwelling.



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The structure was constructed in 2015 by the owner immediately preceding the current owners. The prior owner also was issued permits for a detached garage and two decks on the house in 2016 and 2017 respectively. These four permits were issued based on the owner's representation in the permit applications that all items met the 150' OHW setback. At the time these permits were issued, there was no staff verification of the setbacks as the permit applications indicated everything would meet the required setbacks and there were no obvious topographic or wetland issues on the lot that are the usual "triggers" that can lead to staff field verifying setbacks prior to permit issuance. Given limited staff resources, the department's policy is not to field verify all OHW setbacks on all permit applications.

The SSTS on the property is compliant and was installed on April 13, 2016.

This March, the owners applied for and were denied a land use permit application for two proposed deck additions to the house. The review of this application led to staff visiting the property to verify the house OHW setbacks as aerial imagery measurements indicated the house did not meet the 150' OHW setback and thus that the proposed decks likely would not as well. Staff's site visit confirmed the house was not placed according to the 2015 land use permit issued for it and led to a notice of violation letter being generated for the house and the decks permit application being denied. The decks are not part of the variance application, but may come up during the hearing and are something for the Board to keep in mind when considering the request – i.e. is the Board willing to consider allowing the proposed decks.?

As the area between the house and shoreline is well vegetated in mature tree cover and the garage and SSTS locations limit the ability to move the structure to a conforming setback, from a pragmatic standpoint, staff finds it to be unrealistic given the expense of moving the house to require it to be relocated. Thus, approving the variance with a condition that the variance is only valid for the existing modular home and if any structural changes/additions are ever desired, then the structure must be moved to a conforming location seems reasonable. With such a condition, then eventually the lot can be brought into conformance with the setbacks and not be perpetually bound to this apparent measurement error by the prior owner. Question 3 of the findings of fact is the one that is difficult to answer "yes" because had the prior owner properly measured the OHW setbacks and laid out the structures on the lot accordingly, the lot could have been developed in a way that met all setbacks by permit without need of a variance.

Below are the findings of fact questions for your consideration:

1. Is the variance in harmony with the general purposes and intent of the official controls?

Yes (X) No ()

Why or why not? Given the location of the detached garage, driveway, and septic system and the unique shape of the lot and its fronting the lake on two sides, there is no feasible alternate location to which the structure could be relocated. The dense, mature tree cover between the house and lake provide effective screening and serves as a stormwater buffer to the structure's impervious surface area.

2. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?

Yes (X) No ()



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Why or why not? Having a residence on a lot platted for such a residential use is a reasonable request. The lot's unique shape and having lake frontage on two sides of it significantly limits where a structure can be placed on the lot.

3. Is the need for a variance due to circumstances unique to the property and not created by the current or prior property owners?

Yes () No (X)

Why or why not? While the lot does have limitations on where structures can be placed in conformance with setbacks due to its narrowness and fronting the lake on its west and south sides, there is room where a house and garage and septic system could have been placed that met all setbacks. The need for the variance is caused by the prior owner not properly measuring setbacks and said owner's placement of the detached garage and SSTS.

4. Will the issuance of the variance maintain the essential character of the locality?

Yes (X) No ()

Why or why not? This is the furthest south lot of six lots in this plat. The furthest north lot is undeveloped. The next four lots in the middle of the plat are owned by two parties that each own two lots – each having a residence on the north of the two lots owned with the south lots being undeveloped. The residences on these two neighboring lots meet the 150' OHW setback. This said, these other lots are seasonal residences and the house on the subject lot does fit with the locality's residential use and thus maintains its character.

5. Does the stated practical difficulty involve more than just economic considerations?

Yes (X) No ()

Why or why not? The lot is narrow in width and fronts the lake on its west and south sides which limits the area that meets setback requirements. The difficulty is created by the placement of the detached garage and septic system which prevent the house from realistically being able to be moved back to a conforming setback.

Add On for an After-The-Fact Variance

If the Board of Adjustment answers yes to all 5 questions for a variance in the first instance, thereby finding that all of the criteria set forth in Section 1103, Item 1, parts 1 through 5, are met, then the following additional criteria may be considered and weighed by the Board of Adjustment in determining whether to grant or deny a request for the after-the-fact variance:

1. Why did the applicant fail to obtain the required permit or comply with the applicable official control before commencing work? Was there any attempt to comply with the applicable official controls?

Yes () No ()

Why or why not?



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2. Did the applicant make a substantial investment in the property before learning of the failure to comply with the applicable official controls?
Yes () No ()
Why or why not?
3. Did the applicant complete the work before being informed of the violation of applicable official controls?
Yes () No ()
Why or why not?
4. Are there structures, circumstances, or conditions in the area similar to those that are the subject of the variance request?
Yes () No ()
Why or why not?
5. Based on all of the facts, does it appear to the Board of Adjustment that the applicant acted in good faith?
Yes () No ()
Why or why not?
6. Would the benefit to the county appear to be outweighed by the detriment the applicant would suffer if forced to remove the structure?
Yes () No ()
Why or why not?

[Variance Application 7-V-21 by Todd and Deborah Moeller:](#) Lot 7, Block 1, Re-Arrangement Minndiana, Section 36, Township 141, Range 34, Lake Emma Township on Little Sand Lake, a recreational development lake. Parcel 16.43.00700. Applicants are requesting two variances: Part 1: Section 506 of the Shoreland Management Ordinance (SMO) for a proposed guest cottage that exceeds the 700 sq. ft. maximum allowed footprint on a lot that does not meet the minimum lot width and area requirements, and Part 2: Sections 503 and 703 of the SMO for a proposed expansion of an existing lakeside deck located in a bluff impact zone.

Enclosed Document(s):

- 7-V-21 application
- 2020 aerial imagery w/2' elevation contours
- Assessor photos of cabin and garage
- 12/14/2020 department site visit photos documenting bluff impact zone

Part 1 is a request to construct a 2nd story guest cottage (GC) over an existing 896 sq. ft. detached garage. The ordinance only allows a guest cottage to be a maximum footprint of 700 sq. ft. The lot is also substandard for a GC in that it is 30,878.8 sq. ft. (40,000 sq. ft. required) and not quite 100' wide (150' required.)

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Part 2 is a request to expand an existing lakeside deck on the cabin by 2' x 12' on its east side. The cabin is located in a bluff impact zone (BIZ) – see enclosed departmental photos documenting bluff. The ordinance does not allow a deck to be located or expanded in a BIZ.

The SSTS is compliant, but undersized for the proposed GC so a design for expanding the SSTS to accommodate the GC is included in the application. The proposed GC will meet the required SSTS setbacks. There was a privy next to the garage that is visible in provided photos. It has been abandoned and a design has been submitted to relocate the privy to a conforming location near the SSTS.

Staff is supportive of the deck expansion as it is reasonable in order to have the proposed table and chairs on the deck. Staff recommends denial of the GC request as the lot is only ¾ of the required lot area and 2/3 of the required lot width.

Below are the findings of fact questions for your consideration:

Part 1

1. Is the variance in harmony with the general purposes and intent of the official controls?
Yes (X) No ()

Why or why not? The proposed deck expansion is only 2' x 12' in size and will be placed along the east side of the existing deck which will not cause the deck to go any closer to the OHW.
 2. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?
Yes (X) No ()

Why or why not? Having extra width on part of the deck to accommodate placement of a table and chairs that doesn't cause the deck to go any closer to the OHW or waterward into the bluff impact zone is a reasonable proposal.
 3. Is the need for a variance due to circumstances unique to the property and not created by the current or prior property owners?
Yes (X) No ()

Why or why not? The cabin and attached deck were constructed prior to the Shoreland Management Ordinance being enacted and are located in a bluff impact zone.
 4. Will the issuance of the variance maintain the essential character of the locality?
Yes (X) No ()

Why or why not? The proposed deck expansion is very reasonable in scale. The locality consists of a mixture of seasonal and year-round residences with the dwellings being located at a similar OHW setback and also on the slope present on this lot. Most of these dwellings have some form of a lakeside deck or platform. The proposed deck enlargement is very small and will not harm or alter the locality's character.
 5. Does the stated practical difficulty involve more than just economic considerations?
Yes (X) No ()
-



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Why or why not? Economics are not cited in the application as a practical difficulty. The difficulty is due to the cabin and its attached deck having been constructed prior to the ordinance in what is now a bluff impact zone per the ordinance.

Part 2

1. Is the variance in harmony with the general purposes and intent of the official controls?

Yes () No (X)

Why or why not? The lot does not meet the minimum lot size requirements by a significant amount as it is only $\frac{3}{4}$ of the required lot area and $\frac{2}{3}$ of the required lot width. Additionally, the proposed guest cottage footprint is 196 sq. ft. greater than the 700 sq. ft. maximum footprint allowed for a guest cottage.

2. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?

Yes () No (X)

Why or why not? As stated in the response to question 1 above, the proposed guest cottage would exceed the 700 sq. ft. maximum footprint by 28.6% and the lot is significantly shy of meeting the required minimum lot width and area.

3. Is the need for a variance due to circumstances unique to the property and not created by the current or prior property owners?

Yes () No (X)

Why or why not? The variance need is really a "want" by the current owners. There is no property circumstance that causes the proposed guest cottage to need to exceed the 700 sq. ft. threshold. And the lot significantly fails to meet the minimum lot size requirement in order to have a guest cottage.

4. Will the issuance of the variance maintain the essential character of the locality?

Yes () No (X)

Why or why not? All of the lots in this plat do not meet the minimum lot width or size requirements in order to have a guest cottage. Allowing a guest cottage that exceeds the 700 sq. ft. threshold by 28.6% would further exacerbate the incongruity with the locality's small residence feel.

5. Does the stated practical difficulty involve more than just economic considerations?

Yes (X) No ()

Why or why not? Economic considerations are not cited as a practical difficulty in the application.

Variance Application 8-V-21 by Kenneth Thompson: Lot 28, Block 1, North Oaks, Section 21, Township 140, Range 33, Nevis Township near Lake Belle Taine, a recreational development lake. Parcel 21.61.02800. Applicant is requesting a variance from Section 904.6 of the Shoreland Management Ordinance for an after-the-fact variance to exceed the 25% of lot area impervious surface area threshold.

Enclosed Document(s):

Eric Buitenwerf, Env. Services Director • Bryan Haugen, Asst. Env. Services Director • Staci Lee, Admin. Asst.
Demey DeJong, Env. Specialist • Nick Macklem, Env. Specialist • Sam Lively, GIS Supervisor • Jonathan Hernandez, GIS Tech.



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- 8-V-21 application
- 2020 aerial imagery w/2' elevation contours
- 12/23/2020 notice of violation letter re: impervious surface area
- 3-CUP-17 operating permit
- 03/24/2021 staff impervious surface area calculation

This is an after-the-fact request to exceed the 25% impervious surface area threshold on the lot and a new request to further exceed the threshold by constructing two proposed additions, each 45' x 50' in footprint to the existing 60' x 120' structure.

The commercial use of the property was authorized by Conditional Use Permit 3-CU-17. The proposed additions do not conflict with Condition 4 of the CUP as verified with counsel.

The SSTS on the property is compliant and the proposed east addition to the structure will meet the required setbacks from the SSTS components.

The existing impervious surface area on the lot created by the recent construction of the paved driveway is 26.3% of the lot area calculated using GIS parcel map measuring tools. The proposed additions would increase the impervious surface area percentage to 26.8%.

The property is ~680' from Lake Belletaine and ~1,615' from 6th Crow Wing Lake. It is separated topographically from Lake Belletaine by the Highway 34 right-of-way that abuts its northern boundary.

Practically speaking, the impervious surface area overage will not have any negative impact on Belletaine. Mitigation could be required, but the lot has extremely sandy soil and is grassed all around the impervious area which probably absorbs all the generated stormwater runoff more than sufficiently. This said, similar to the other after-the-fact variance application covered earlier in this report, question 3 of the findings of fact is difficult to answer "yes" as the impervious surface overage is entirely the current owner's doing. With the proposed structure additions factored in, the impervious area that exceeds the 25% threshold is roughly 3,300 sq. ft. If the concrete south of the structure would be removed for the full east-west width as it exists, this would bring the lot into compliance and would not seem to harm the driveway's functionality. For these reasons, staff recommends denial of the application.

Below are the findings of fact questions for your consideration:

1. Is the variance in harmony with the general purposes and intent of the official controls?
Yes () No (X)
Why or why not? Not all of the existing concrete surface is needed in order for the driveway to provide the desired access to the existing garage doors on the structure. There is an area of the concrete that can be removed to bring the property into compliance with the 25% impervious surface area threshold and not affect the business' onsite traffic flow functionality.
2. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?
Yes () No (X)



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Why or why not? This is a 4.13 ac. property. To exceed the impervious surface area threshold on the lot means more than 1 ac. of the property is covered by impervious surface. An area of the existing concrete on the south side of the structure does not serve any noticeable purpose and could be removed to bring the property into compliance.

3. Is the need for a variance due to circumstances unique to the property and not created by the current or prior property owners?

Yes () No (X)

Why or why not? The impervious surface area overage is entirely caused by the current owner's actions. The lot is 4.13 ac. in size and the cited need for hard surfaces for the business' vehicles and vendor vehicles to be able to drive on can be accommodated while having the impervious surface area brought into compliance.

4. Will the issuance of the variance maintain the essential character of the locality?

Yes (X) No ()

Why or why not? As the requested variance involves impervious surface area that is largely driveway, the paved surfaces do not harm the mixed residential/commercial character of the locality.

5. Does the stated practical difficulty involve more than just economic considerations?

Yes (X) No ()

Why or why not? Economic considerations are not cited in the application as a practical difficulty.

Add On for an After-The-Fact Variance

If the Board of Adjustment answers yes to all 5 questions for a variance in the first instance, thereby finding that all of the criteria set forth in Section 1103, Item 1, parts 1 through 5, are met, then the following additional criteria may be considered and weighed by the Board of Adjustment in determining whether to grant or deny a request for the after-the-fact variance:

1. Why did the applicant fail to obtain the required permit or comply with the applicable official control before commencing work? Was there any attempt to comply with the applicable official controls?

Yes () No ()

Why or why not?

2. Did the applicant make a substantial investment in the property before learning of the failure to comply with the applicable official controls?

Yes () No ()

Why or why not?

3. Did the applicant complete the work before being informed of the violation of applicable official controls?

Yes () No ()



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Why or why not?

4. Are there structures, circumstances, or conditions in the area similar to those that are the subject of the variance request?

Yes () No ()

Why or why not?

5. Based on all of the facts, does it appear to the Board of Adjustment that the applicant acted in good faith?

Yes () No ()

Why or why not?

6. Would the benefit to the county appear to be outweighed by the detriment the applicant would suffer if forced to remove the structure?

Yes () No ()

Why or why not?

Variance Application 9-V-21 by Joseph and Kristi Crawford: Lot 3 and part of Lot 2, Block 1, Lady Slipper Beach, Section 6 and 31, Township 141 and 142, Range 33, Mantrap Township and Thorpe Township on Big Mantrap Lake, a recreational development lake. Parcels 20.39.00300, 20.39.00400, and 26.37.00100. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed accessory structure to be located within the 10' property line and 20' road right-of-way structure setbacks.

Enclosed Document(s):

- 9-V-21 application
- 2020 aerial imagery w/2' elevation contours
- Assessor photos of structures on lot

The request proposes to remove an existing detached garage and carport and replace them with a 30' x 50' detached garage located 3' and 6' from two rear lot lines. Island View Drive, a township road, runs along the rear lot lines and requires a 20' structure setback. The lot lies near the end of this dead-end road. There are four lots beyond this lot that have access by this road to take into consideration given the significant deviation from the 20' setback that is requested.

The SSTS on the property is compliant and located to the south of the existing residence so it will not be impacted by the proposed garage and the applicable setbacks are able to be met.

A positive is that the application indicates the owners recently had the lot lines surveyed so the proposed setbacks ought to be accurate vs. other typically seen situations where it is unknown if an applicant measured to the correct ROW boundary or edge of the traveled road, etc. A concern is that the compound rear lot line with its unique angle would cause the proposed structure to obscure sight lines of parties driving vehicles to the lots beyond this one on the road. Admittedly, such vehicles would likely be traveling at a slow rate of speed, but the 20' setback is in place



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for these types of safety considerations. It seems to be a situation where seeing things in person will be key to making a decision. Based on information available at the time of this report's writing, staff is not able to offer a recommendation one way or the other. If sight lines prove to be a valid concern, possibly scaling back the size of the garage would be appropriate in order to gain more ROW setback.

Below are the findings of fact questions for your consideration:

1. Is the variance in harmony with the general purposes and intent of the official controls?
Yes () No ()
Why or why not?
2. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?
Yes () No ()
Why or why not?
3. Is the need for a variance due to circumstances unique to the property and not created by the current or prior property owners?
Yes () No ()
Why or why not?
4. Will the issuance of the variance maintain the essential character of the locality?
Yes () No ()
Why or why not?
5. Does the stated practical difficulty involve more than just economic considerations?
Yes (X) No ()
Why or why not? The property is limited in its size (i.e. 47,529 sq. ft., 130' east-west dimension at its midpoint, and 318' north-south dimension) for being able to fit a residential mobile home, restaurant/bar, septic system, and customer parking lot. With Hay Creek running along its south boundary and the creek's accompanying 150' OHW setback, variances from one or more aspects of the Shoreland Management Ordinance are thus not unreasonable.

Variance Application 10-V-21 by Scott and Delora Peterson: Part of Lot 14, Perry's Sunset Beach, Section 7, Township 140, Range 32, White Oak Township on 8th Crow Wing Lake, a recreational development lake. Parcel 28.38.01300. Applicants are requesting an after-the-fact variance from Section 702 of the Shoreland Management Ordinance for an addition to a nonconforming structure located in the shore impact zone.

Enclosed Document(s):

- 10-V-21 application
- 2020 aerial imagery w/2' elevation contours
- 03/31/2021 notice of violation letter re: cabin addition
- 03/30/2021 deck permit denial letter due to outstanding violation
- 08/01/2019 covered entry land use permit – issued based on incorrect setback info in application

Eric Buitenwerf, Env. Services Director • Bryan Haugen, Asst. Env. Services Director • Staci Lee, Admin. Asst.
Demey DeJong, Env. Specialist • Nick Macklem, Env. Specialist • Sam Lively, GIS Supervisor • Jonathan Hernandez, GIS Tech.



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This is an after-the-fact variance request for a covered entry over an existing exterior door on the rear of a cabin located in the shore impact zone. The entry is 4' x 8' in size.

A permit application for the covered entry was submitted and approved in 2019 based on the application stating the cabin was 70' from the OHW and thus outside of the shore impact zone which would allow a permit to be issued. At the time of permit issuance, staff reviewed the cabin's setback using GIS and aerial imagery, but the parcel map boundaries are off in this area and staff noted an adjacent dwelling that fit the dimensions and setback listed in the application and thus reasonably concluded it was the cabin on this property. The permit application photos of the project area were also zoomed in enough on the area that there were no visual signs of the cabin's proximity to the lake. Later, in 2021, when staff visited the site to measure the cabin's existing deck for a proposed rebuild to the existing dimensions that is allowed by permit, staff noticed that the cabin was 16' from the OHW instead of 70'. A notice of violation letter was thus sent to the owner regarding the covered entry because the permit was issued based on a submitted 70' OHW cabin setback that was incorrect. The deck permit application was also denied as the ordinance prohibits issuing new permits when a violation exists on a property.

The SSTS on the property is compliant and the covered entry does meet setback requirements from the SSTS.

Given the small scale of the covered entry and its being located on the non-lakeside exterior of the cabin, and the fact that the water-related reasons for constructing the entry are valid, staff does not object to granting the variance. If the Board finds it appropriate to answer the add on after-the-fact findings of fact questions, it will be important to ask the applicant those questions during the hearing in order to obtain the applicant's responses that will allow the Board to then answer the questions accurately.

Below are the findings of fact questions for your consideration:

1. Is the variance in harmony with the general purposes and intent of the official controls?

Yes (X) No ()

Why or why not? The covered entry is only 4' x 8' in size and located on the non-lakeside exterior wall of the cabin which was constructed in the shore impact zone prior to the Shoreland Management Ordinance taking effect. The entry will address water-related damage being caused to the structure where the exterior door that it covers is located.

2. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?

Yes (X) No ()

Why or why not? Having a roof over an exterior door to shelter it from water-damage and residents entering/exiting the cabin is a reasonable request.

3. Is the need for a variance due to circumstances unique to the property and not created by the current or prior property owners?

Yes (X) No ()



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Why or why not? The cabin was built before the Shoreland Management Ordinance took effect at what is now a nonconforming 16' ordinary high water mark setback. The ordinance prohibits additions to structures located in the shore impact zone unless a variance for such is granted.

4. Will the issuance of the variance maintain the essential character of the locality?

Yes (X) No ()

Why or why not? The covered entry is only 4' x 8' in size and will not harm the locality's residential use character whatsoever.

5. Does the stated practical difficulty involve more than just economic considerations?

Yes (X) No ()

Why or why not? Economic considerations are not cited in the application as a practical difficulty. Rather, the difficulty is the fact that the cabin was constructed prior to the ordinance at what is now a nonconforming ordinary high water mark setback.

Add On for an After-The-Fact Variance

If the Board of Adjustment answers yes to all 5 questions for a variance in the first instance, thereby finding that all of the criteria set forth in Section 1103, Item 1, parts 1 through 5, are met, then the following additional criteria may be considered and weighed by the Board of Adjustment in determining whether to grant or deny a request for the after-the-fact variance:

1. Why did the applicant fail to obtain the required permit or comply with the applicable official control before commencing work? Was there any attempt to comply with the applicable official controls?

Yes () No ()

Why or why not?

2. Did the applicant make a substantial investment in the property before learning of the failure to comply with the applicable official controls?

Yes () No ()

Why or why not?

3. Did the applicant complete the work before being informed of the violation of applicable official controls?

Yes () No ()

Why or why not?

4. Are there structures, circumstances, or conditions in the area similar to those that are the subject of the variance request?

Yes () No ()

Why or why not?



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5. Based on all of the facts, does it appear to the Board of Adjustment that the applicant acted in good faith?

Yes () No ()

Why or why not?

6. Would the benefit to the county appear to be outweighed by the detriment the applicant would suffer if forced to remove the structure?

Yes () No ()

Why or why not?

Variance Application 11-V-21 by Martin and Suellen Brown: Part of Gov't Lot 8, Section 9, Township 140, Range 33, Nevis Township on Lake Belle Taine, a recreational development lake. Parcel 21.09.03210. Applicants are requesting a variance from Sections 501.2, 1001, 1003, and 1005 of the Shoreland Management Ordinance and Section 4, Subdivision A.c.2 and Section 4, Subdivision A.c.5 of the Subdivision Ordinance to create a lot that does not comply with the 150' minimum lot width or the four lot limit on the number of lots within a government lot allowed to front a given side of a public road.

Enclosed Document(s):

- 11-V-21 application
- 2020 aerial imagery w/2' elevation contours

The request is to be able to subdivide the existing tract into two new tracts. Both tracts would amply meet the minimum lot area (i.e. 40,000 sq. ft.) and RLSA (i.e. 20,000 sq. ft.) for riparian lots on a recreational development lake like Belletaine. The proposed west tract would be 45' shy of the required 150' minimum lot width. This is the first variance requested. The second variance sought is from the ordinance requirement that no more than four lots can front a side of a public road in a government lot or quarter quarter section. There are presently six lots fronting this north side of 200th Street which is a dead-end Nevis Township road. There are approximately 33 other properties beyond the subject property along 200th Street.

The jogs in the proposed boundary line between the two proposed tracts are there to work around existing structures on the property and maintain the required 10' side lot line structure setback.

The SSTS on the property is compliant. A new SSTS design is included in the application to show there is room on the proposed west tract for such.

The west tract's deviation from the 150' minimum lot width requirement is insignificant. The access management provision is the larger concern which can be addressed by placing a condition on any approval that the two tracts must share the existing driveway approach onto 200th Street and the necessary easements to accomplish that must be developed and submitted as part of the required administrative subdivision application.

Below are the findings of fact questions for your consideration:



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1. Is the variance in harmony with the general purposes and intent of the official controls?
Yes (X) No ()
Why or why not? The west tract is only .45' feet shy of the required 150' minimum lot width and both proposed tracts greatly exceed the minimum lot area and residential lot suitable area (RLSA) requirements. The ordinance's access management provision can be effectively addressed by the condition placed on this approval requiring the two tracts to share the existing driveway approach onto 200th Street.

2. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?
Yes (X) No ()
Why or why not? As stated in the response to question 1 above, both proposed tracts amply meet the minimum lot area and RLSA requirements. The east tract meets the 150' minimum lot width and the west tract is only .45' shy of this minimum width. The access management provision can be effectively addressed by requiring the two tracts to share the existing driveway approach onto 200th Street. Thus, as the lot width deviation is minimal and the access management provision can be addressed through the aforementioned condition, the proposed property use is reasonable.

3. Is the need for a variance due to circumstances unique to the property and not created by the current or prior property owners?
Yes (X) No ()
Why or why not? The lot width variance is due to the current tract's being found to not fully be 300' wide for its full width once it was surveyed. The access management ordinance provision is not something created by the current or prior property owners. Also, the number of tracts fronting this north side of 200th Street is not something created by current or prior owners of this property.

4. Will the issuance of the variance maintain the essential character of the locality?
Yes (X) No ()
Why or why not? Many of the tracts in the locality are substandard in area and lot width so the proposed two tracts will not harm the character as they will still be much larger than surrounding properties. Both tracts will be used for residential dwelling purposes which will also fit the locality's residential use feel that consists of a mixture of seasonal and year-round residential uses.

5. Does the stated practical difficulty involve more than just economic considerations?
Yes (X) No ()
Why or why not? Economics are not cited in the application as a practical difficulty. The difficulty lies in the fact that the property is not fully 300' wide for its full depth as identified through recent survey work and that there are more than four tracts in this government lot fronting the north side of 200th Street.



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Variance Application 12-V-21 by Jeffrey Gast: Part of Gov't Lot 1, Section 16, Township 139, Range 33, Crow Wing Township on 3rd Crow Wing Lake, a recreational development lake. Parcel 06.16.00200. Applicant is requesting a variance from Section 702 of the Shoreland Management Ordinance for a proposed lakeward addition to a nonconforming residential dwelling.

Enclosed Document(s):

- 12-V-21 application
- 2020 aerial imagery w/2' elevation contours
- Assessor Dept photos of structures on property
- 03/19/2021 notice of violation letter re: RV used as guest cottage

The request is to construct a 14' lakeward x 18' 8" wide addition onto a nonconforming residence located at an 88' OHW setback per the application (OHW setback not verified by ESD.) The addition would be placed where an existing platform and concrete block retaining wall area currently provides access to the structure's basement.

The SSTS on the property is compliant and sized for a three bedroom, classification II dwelling (i.e. no more than two water-using appliances or 500-800 sq. ft/bedroom when the cabin area is divided by the # of bedrooms.) The applicant informed staff that the cabin has three bedrooms and no more than two such appliances. The proposed addition will comply with required SSTS setbacks and not increase the number of bedrooms in the cabin.

There was a recent notice of violation letter sent to the applicant regarding the travel trailer on the property constituting a guest cottage. In staff conversation with the applicant, the applicant stated the trailer is only used by his parents and no more than three weeks total in a year consisting of weekends and a week or two stay here or there. Staff informed the applicant that such use falls under the ordinance's "occasional and intermittent use" definition and thus the trailer would not be viewed as a guest cottage on the condition the applicant submit photos documenting removal of the non-permitted wooden platform at the trailer's entry door and an email stating the above-described trailer's use. As of this report's writing, staff is awaiting said email and photos.

While staff understands why the applicant wants to place an addition in the proposed location due to the existing concrete platform and retaining walls, there is room and thus opportunity to add the desired living area to the cabin to either side or the cabin's rear and thus by permit. When permissible alternatives exist, granting a variance to make a structure more nonconforming in terms of its OHW setback would not be in keeping with the ordinance's intent. Staff thus recommends denial of the request.

Below are the findings of fact questions for your consideration:

1. Is the variance in harmony with the general purposes and intent of the official controls?
Yes () No (X)

Why or why not? The addition would cause this structure that sits at an 88' OHW setback per the application to encroach another 14' lakeward when permissible options exist to add the desired living space to the cabin.

2. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?

Yes () No (X)



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Why or why not? There is room and thus the ability to add the desired living space to the cabin by permit. The proposed addition would move the structure another 14' lakeward.

3. Is the need for a variance due to circumstances unique to the property and not created by the current or prior property owners?

Yes () No (X)

Why or why not? As mentioned in the responses to the above two questions, there is room to add onto the cabin by permit. The variance request is thus not a "need", but a "want" caused by the owner's preference of where to place an addition.

4. Will the issuance of the variance maintain the essential character of the locality?

Yes () No (X)

Why or why not? Residences on neighboring residential use properties meet or exceed the 100' ordinary high water mark setback. Thus, allowing this cabin to go 14' lakeward would not maintain the locality's character of having residences that comply with the setback.

5. Does the stated practical difficulty involve more than just economic considerations?

Yes (X) No ()

Why or why not? Economics are not cited in the application as a practical difficulty. The application alleges no practical difficulty.