



Cass County
Planning Commission/Board of Adjustment

April 11, 2011

The Cass County Planning Commission/Board of Adjustment conducted a regular meeting April 11, 2011 in the meeting room of the Cass County Land Department in Backus. The field inspection was conducted April 4, 2011.

Sundberg called the meeting to order at 9:02 a.m.

Members present: Bliss, Fitch, Gardner, Gould, Moore and Sundberg.

Staff Present: Berg and Fairbanks.

Citizens Present: Gene Alderson, Bill Barington, Tom Emery, Kyle McCann, Mark Moriarty, Clarence Rueter, Kyle McCann, and Olga Ugorets.

MS/P Gould/Gardner to approve the minutes of the 03/14/11 PC/BOA meeting as presented.

Variance

Barington, Janice & William, Thunder Lake Township on property described as Pt of Gov Lot 3, Section 34-140-26, PID # 42-034-2103 located at 6154 S Bass Lake Drive NE. An application submitted to replace an existing low slope roof over a 12 feet x 14 feet porch with a higher pitch roof. Section 1115.3 of the Land Use Ordinance requires a variance for any expansion on a non-conforming residence. The residence is non-conforming because it is located 75 feet from Bass Lake which requires structures to be setback 100 feet. The property contains .49 acre riparian to Bass Lake (RD).

PC members were at the site 04/04/11. 33 notices of the application were mailed. No responses were received. The application was discussed and reviewed with Mr. Barington.

Summary: Expand an existing non-conforming residence located at less than the required lake setback with a replacement of the existing roof at a steeper pitch which will increase the size of the structure. Such increase in volume although not of living area is deemed an expansion. As discussed during the 03/11/11 land use seminar such expansion can now be considered an area variance and as such subject to the practical difficulties standards.

MS/P Fitch/Gould to approve the expansion of the residence located at PID # 42-034-2103 upon review of Section 800 of the Land Use Ordinance (01/10/10) along with criteria established by court decisions with the following findings and conditions.

Findings:

1. The residence was constructed in 1973 with permit 75 feet from the lake.
2. The current roof configuration has resulted in water damage to the structure.
3. There is no indication or evidence that the existing location and configuration of the structure affect area land use because similar residential uses are located along Bass Lake Drive and the increased roof pitch will not significantly alter the view of the residence to the lake or from neighboring property.
4. The existing location and configuration of the residence along with the proposed higher roof pitch have no bearing to the need or demand for governmental services because the property already has direct access to Bass Lake Drive and is not nor will it be connected to municipal or community water or waste water treatment systems.
5. The roof expansion is required to address deterioration of the residence which has been caused by the current roof configuration.
7. There is no evidence that financial consideration is the sole reason for the variance.
8. In light of the findings allowing the variance will serve the interests of justice.

NOTICE TO APPLICANT: If the following conditions are included, No permit to implement shall be issued until and if:

1. ESD required and approved erosion control is installed.
2. A written plan for native vegetation is approved by ESD and agreed to be implemented by applicant.
3. At applicant's option, the vegetative plan is substantially implemented as determined by ESD or financial assurance in the amount of \$1.00 per square foot of the buffer area for no-mow or \$3.00 per square foot for all other vegetative buffers or if less 125% of the cost estimate.
4. As required by other Conditions as set forth.

NOTICE TO THE APPLICANT: No site preparation or building construction shall be commenced until issuance of Permit. Commencement of either prior to issuance of a Permit may result in withholding, withdrawal or revocation of a Permit until inspection by ESD, correction of any circumstances in violation of laws or ordinances or the terms of this Variance, deposit of financial assurance as determined by ESD to secure correction of violations and completion of other measures required by ESD.

Conditions:

1. The roof configuration shall not exceed the dimensions/pitch as submitted with the application 03/17/11 including a two feet extension of the roof eave along the east side of the residence.

2. Any debris resulting from demolition and/or construction not recycled or reused must be disposed of in a permitted disposal facility.
3. ESD must determine the need for construction erosion control and if required applicant shall install ESD approved erosion control placement prior to the commencement of construction.
4. No storm water run-off to the lake, to the access road from the approved structure(s), or to adjoining properties is permitted. The approved structure, and any structure to which the approved structure is attached, if necessary, shall be equipped with gutters to redirect storm water and if needed water retention structures such as rain gardens shall be installed to retain structure run-off and prevent run-off to the lake, the access road, and adjoining properties.
5. Shore vegetation shall be installed and maintained in a buffer area, subject to a 14 feet wide lake access area. The applicant shall submit a written plan for a native vegetation buffer to reduce/eliminate nutrient run-off to the lake which shall have written approval by ESD. The plan shall include a schedule for implementation and an estimate of the cost to implement. The plan shall include:
 - a. A buffer within an area defined in the plan and approved by ESD.
 - b. A buffer meeting the following conditions and approved by ESD.
 - c. Restoration or installation of a berm approved by ESD.

Financial assurance shall be returned to the applicant upon a schedule approved by ESD and in all events upon substantial implementation of the vegetation plan as determined by ESD. Portions of the approved plan for vegetation not completed in accordance with the implementation schedule will be installed at the direction of ESD and charged against the financial assurance.

6. Applicants consent to inspection of the property from time to time by ESD to verify compliance with all conditions.

COMPLIANCE WITH ALL CONDITIONS IS REQUIRED. FAILURE TO COMPLY WITH ANY CONDITION SHALL RESULT IN A VIOLATION AND SUBJECT THE APPLICANT TO ENFORCEMENT PROCEDURES WHICH MAY INCLUDE, BUT NOT LIMITED TO, REVOCATION OF THIS VARIANCE, REMOVAL OF VIOLATIONS AND MITIGATION.

McCann, Kelly & Kyle, Smoky Hollow Township on property described as Lot 4, Blk 1, "Little Thunder Hills", Section 5-140-25, PID # 40-352-0140 located at 7886 S Little Thunder located at 7886 S Little Thunder Drive NE. An application submitted to expand the existing non-conforming residence with a 14 feet x 32 feet addition to be located at the top of a bluff. The residence is non-conforming because it is located less than 30 feet from the top of a bluff. Section 1126 B. of the Land Use Ordinance requires structures to be located 30 feet from the toe or top of a bluff. A bluff is a topographic feature located either part or fully within the shoreland area and having the following characteristics; the slope rises at least 25 feet vertically above the toe of the bluff, the grade of the slope from toe of the bluff to a point 25 feet or more above the toe of the bluff averages 30% or greater and the slope drains toward public waters. Section 1115.3.B. of the Land Use Ordinance allows for the expansion of a non-conforming residence only by variance. The property contains 1.08 acres riparian to Little Thunder Lake (RD).

Summary: Applicant proposes to utilize concrete slab poured in anticipation of constructing an addition the existing residence which has been verified by staff at less than the required setback from the top of a bluff located on the property. This application was on the 11/08/10 agenda which at that time would have been reviewed as use variance. The application was withdrawn from consideration. Recent events/opinions now allow application such as this one, expansion of a non-conforming residence, to be considered as an area variance subject to the practical difficulties standards.

PC members were at the site 11/01/10. 33 notices of the application were mailed with no responses received. The application was discussed and reviewed with Mr. McCann.

MS/P Gardner/Fitch to approve the expansion of the residence located at PID # 40-352-0140 upon review of Section 800 of the Land Use Ordinance (01/10/10) along with criteria established by court decisions with the following findings and conditions.

Findings:

1. The residence was constructed with permit in 1988 prior to the administration of the bluff criteria.
2. The property was platted in 1988 prior to the adoption of the buildable lot area requirements which consider the bluff area.
4. The garage and retaining wall along with the small size of the lot restricts placement at the required bluff setback.
5. The addition will not affect ground or surface water because run-off and erosion control best management construction and post construction practices must be implemented.
6. The addition will not affect area land use because similar style and construction is utilized by adjacent property along Little Thunder Road and because existing vegetation will reduce the visual exposure of the new construction from the lake and neighboring properties.
7. There is no evidence that financial consideration is the sole reason for the variance.
8. The residence has no bearing to the need or demand for governmental services because the property already has access to a public road and is not nor will it be connected to municipal or community water or waste water treatment system.
9. In light of the findings allowing the variance will serve the interests of justice.

NOTICE TO APPLICANT: If the following conditions are included, No permit to implement shall be issued until and if:

1. ESD required and approved erosion control is installed.
2. A written plan for native vegetation is approved by ESD and agreed to be implemented by applicant.
3. At applicant's option, the vegetative plan is substantially implemented as determined by ESD or financial assurance in the amount of \$1.00 per square foot of the buffer area for no-mow or \$3.00 per square foot for all other vegetative buffers or if less 125% of the cost estimate.
4. As required by other Conditions as set forth.

NOTICE TO THE APPLICANT: No site preparation or building construction shall be commenced until issuance of Permit. Commencement of either prior to issuance of a Permit may result in withholding, withdrawal or revocation of a Permit until inspection by ESD, correction of any circumstances in violation of laws or ordinances or the terms of this Variance, deposit of financial assurance as determined by ESD to secure correction of violations and completion of other measures required by ESD.

Conditions/Approve:

1. The expansion shall not exceed the dimensions shown on the site plan submitted with the application 03/21/11.
2. The addition shall not exceed height to the peak of the existing residence.
3. Any debris resulting from demolition and/or construction not recycled or reused must be disposed of in a permitted disposal facility.
4. ESD must determine the need for construction erosion control and if required applicant shall install ESD approved erosion control placement prior to the commencement of construction.
5. No storm water run-off to the lake, to the access road from the approved structure(s), or to adjoining properties is permitted. The approved structure, and any structure to which the approved structure is attached, if necessary, shall be equipped with gutters to redirect storm water and if needed water retention structures such as rain gardens shall be installed to retain structure run-off and prevent run-off to the lake, the access road, and adjoining properties.
6. Shore vegetation shall be maintained in its existing type, configuration, and density or as determined by ESD shall be installed and maintained in a buffer area, subject to a 14 feet wide lake access area. The applicant shall submit a written plan for a native vegetation buffer to reduce/eliminate nutrient run-off to the lake which shall have written approval by ESD. The plan shall include a schedule for implementation and an estimate of the cost to implement. The plan shall include:
 - a. A buffer within an area defined in the plan and approved by ESD.
 - b. A buffer meeting the following conditions and approved by ESD.
 - c. Restoration or installation of a berm approved by ESD.

Financial assurance shall be returned to the applicant upon a schedule approved by ESD and in all events upon substantial implementation of the vegetation plan as determined by ESD. Portions of the approved plan for vegetation not completed in accordance with the implementation schedule will be installed at the direction of ESD and charged against the financial assurance.

7. Applicants consent to inspection of the property from time to time by ESD to verify compliance with conditions.

COMPLIANCE WITH ALL CONDITIONS IS REQUIRED. FAILURE TO COMPLY WITH ANY CONDITION SHALL RESULT IN A VIOLATION AND SUBJECT THE APPLICANT TO ENFORCEMENT PROCEDURES WHICH MAY INCLUDE, BUT NOT LIMITED TO, REVOCATION OF THIS VARIANCE, REMOVAL OF VIOLATIONS AND MITIGATION.

Moriarty Mark & Tammy, Slater Township on property described as Pt of Gov Lot 2, Section 14-142-26, PID # 39-014-2113 located at 8767 Old County 52 NE. An application submitted to remove the existing residential structure and construct a 30 feet x 26 feet residential/deck structure located 140 feet from OHWL of Grave Lake (NE). Section 1126.1 A. of the Land Use Ordinance requires structures and Subsurface Sewage Treatment Systems (SSTS) to be setback 150 feet from the ordinary high water level (OHWL) of a lake classified Natural Environment (NE). The property contains .62 acre riparian to Grave Lake (NE).

Summary: Applicants propose to replace existing structure with new construction at less than required OHWL setback. This is an area variance.

PC members were at the site 04/04/11. 31 notices of the application were mailed with one response received. The application was discussed and reviewed with Mr. Moriarity.

MS/P Bliss/Gardner to approve the location of a residence at PID # 39-014-2113 upon review of Section 800 of the Land Use Ordinance (01/10/10) along with criteria established by court decisions with the following findings and conditions.

Findings:

1. The property was platted in 1952 prior to the adoption of minimum total area and buildable area lot size standards.
2. The fringe wetland which is considered part of the lake extends from 165 feet to 195 feet inland from the riparian lot line and when considered with the township road right-of way setback of 20 limits placement options.
3. The location of the residence will not affect ground or surface water because run-off and erosion control best management construction and post construction practices must be implemented.
4. The residence will not affect area land use because similar style and construction is utilized by adjacent property along Old County 52 Road and because existing vegetation will reduce the visual exposure of the new construction from the lake and neighboring properties.
5. There is no evidence that financial consideration is the sole reason for the variance.
6. The residence will have no affect to the need or demand for governmental services because the property already has access to a public road and is not nor will it be connected to municipal or community water or waste water treatment system.
7. In light of the findings allowing the variance will serve the interests of justice.

NOTICE TO APPLICANT: If the following conditions are included, No permit to implement shall be issued until and if:

1. ESD required and approved erosion control is installed.
2. As required by other Conditions as set forth.

NOTICE TO THE APPLICANT: No site preparation or building construction shall be commenced until issuance of Permit. Commencement of either prior to issuance of a Permit may result in withholding, withdrawal or revocation of a Permit until inspection by ESD, correction of any circumstances in violation of laws or ordinances or the terms of this Variance, deposit of financial assurance as determined by ESD to secure correction of violations and completion of other measures required by ESD.

Conditions:

1. The structure shall not exceed the dimensions shown on the site plan submitted with the application 03/08/11 and must not be closer to the lake than the existing residence.
2. Any debris resulting from demolition and/or construction not recycled or reused must be disposed of in a permitted disposal facility.
3. ESD must determine the need for construction erosion control and if required applicant shall install ESD approved erosion control placement prior to the commencement of construction.
4. No storm water run-off to the lake, to the access road from the approved structure(s), or to adjoining properties is permitted. The approved structure, and any structure to which the approved structure is attached, if necessary, shall be equipped with gutters to redirect storm water and if needed water retention structures such as rain gardens shall be installed to retain structure run-off and prevent run-off to the lake, the access road, and adjoining properties.
5. Shore vegetation shall be maintained in its existing type, configuration, and density subject to a 14 feet wide lake access area.
6. Applicants consent to inspection of the property from time to time by ESD to verify compliance with conditions.

COMPLIANCE WITH ALL CONDITIONS IS REQUIRED. FAILURE TO COMPLY WITH ANY CONDITION SHALL RESULT IN A VIOLATION AND SUBJECT THE APPLICANT TO ENFORCEMENT PROCEDURES WHICH MAY INCLUDE, BUT NOT LIMITED TO, REVOCATION OF THIS VARIANCE, REMOVAL OF VIOLATIONS AND MITIGATION.

Turtle Lake Township Board of Supervisors, Turtle Lake Township on property described as 1 Acre in SW Corner SW SE, Section 32-140-32, PID # 45-132-4302 located at 4196 72nd St NW. An application submitted to remove the existing town hall and construct a 36 feet x 50 feet town hall structure located 41 feet from the right-of-way of CSAH # 13. Section 1126.1 A. of the Land Use Ordinance requires structures to be setback 50 feet from the right-of-way of a county, state or federal roadway. The property contains one acre in the non-shoreland area.

Summary: Applicants propose to replace existing town hall with new construction at less than required county road right-of-way setback. This is an area variance.

PC members were at the site 04/04/11. 25 notices of the application were mailed. No responses were received. The application was discussed and reviewed with Mr. Alderson and Mr. Emery.

MS/P Gould/Gardner to approve the location of the structure at PID # 45-132-4302 upon review of Section 800 of the Land Use Ordinance (01/10/10) along with criteria established by court decisions with the following findings and conditions.

Findings:

1. No permit activity for the parcel can be located but it is acknowledged that the town hall was constructed prior to the adoption of land use regulation.
2. The parcel contains one acre bounded by the county road on the west and a township road on the south.
3. The location of the town hall will not affect ground or surface water because run-off and erosion control best management construction and post construction practices must be implemented.
4. The town hall will not affect area land use because it has been located at this site for more than 75 years with no appreciable effect to the area.
5. There is no evidence that financial consideration is the sole reason for the variance.
6. The town hall will have no affect to the need or demand for governmental services because the property already has access to a public road and is not nor will it be connected to municipal or community water or waste water treatment system.
7. In light of the findings allowing the variance will serve the interests of justice.

NOTICE TO APPLICANT: If the following conditions are included, No permit to implement shall be issued until and if:

1. ESD required and approved erosion control is installed.
2. A written plan for native vegetation is approved by ESD and agreed to be implemented by applicant.
3. At applicant's option, the vegetative plan is substantially implemented as determined by ESD or financial assurance in the amount of \$1.00 per square foot of the buffer area for no-mow or \$3.00 per square foot for all other vegetative buffers or if less 125% of the cost estimate.
4. As required by other Conditions as set forth.

NOTICE TO THE APPLICANT: No site preparation or building construction shall be commenced until issuance of Permit. Commencement of either prior to issuance of a Permit may result in withholding, withdrawal or revocation of a Permit until inspection by ESD, correction of any circumstances in violation of laws or ordinances or the terms of this Variance, deposit of financial assurance as determined by ESD to secure correction of violations and completion of other measures required by ESD.

Conditions:

1. The structure shall not exceed the dimensions shown on the site plan submitted with the application 03/14/11.

2. Any debris resulting from demolition and/or construction not recycled or reused must be disposed of in a permitted disposal facility.
3. ESD must determine the need for construction erosion control and if required applicant shall install ESD approved erosion control placement prior to the commencement of construction.
4. No storm water run-off, to the adjacent roads from the approved structure(s), or to adjoining properties is permitted. The approved structure, and any structure to which the approved structure is attached, if necessary, shall be equipped with gutters to redirect storm water and if needed water retention structures such as rain gardens shall be installed to retain structure run-off and prevent run-off to the lake, the access road, and adjoining properties.

Ugorets, Olga, Ottertail Peninsula Township on property described as lot 5, Blk 1 "Ni Gig Wah Noe Shores", Section 14-143-30, PID # 28-374-0110 located at 10970 Ottertail Point Drive NW. An application submitted to construct a 26 feet x 54 feet residence and retain existing residence for a guest quarters. Section 1113.1 of the Land Use Ordinance requires that a lot riparian to a general development lake contain at least 60,000 square feet total area, 27,000 square feet, and must be at least 180 feet wide at the ordinary high level and the structure setback. The property contains .57 acre (24,800 square feet) and is 100 feet wide.

Summary: Request to allow retention of an existing structure as a guest house while constructing new primary residence. The lot does not comply with the guest quarter GD lot standards. Relates to use therefore hardship/reasonable use standards apply.

PC members were at the site 04/04/11. 30 notices of the application were mailed. No responses were received. The application was discussed and reviewed with Ms. Urogets with discussion as to options that might implemented to reach compliance and eliminate the need for variance.

MS/P Fitch/Gardner to table consideration of the application in order for Ms. Urogets to consult with her contractor to determine possible construction options.

MS/P Fitch/Gardner at 10:55 am, to adjourn.

P. Fairbanks