



Cass County
Planning Commission/Board of Adjustment

May 9, 2011

The Cass County Planning Commission/Board of Adjustment conducted a regular meeting May 9, 2011 in the meeting room of the Cass County Land Department in Backus. The field inspection was conducted May 2, 2011.

Sundberg called the meeting to order at 9:05 a.m.

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

Staff Present: Berg, Fairbanks, Freeman and Ringle.

Citizens Present: Julie Aldridge, Brian Alto, Craig Anderson, Jeff Balmer, Tom Cox, Terry Daudt, Roger Dolliff, Vivian Dolliff, Rick Ekstam, Steve Gutz, Jon Gyldevand, Al Griggs, Brian Hanson, Bill Harris, Marv Hartneck, Charles Hines, Kim Hopper, Mark Hopper, Sue Jaeger, Dennis Johnson, Sandi Krueger, Don Lundberg, Paul Regnier, Russell Schultz, Verdale Soukup, Mark Spitzak, Judith Thomas, Matthew Thomas, Grace Werner, Ron Wickham, Paul Widman, Tracy Wright,

MS/P Fitch/Bliss to approve the minutes of the 04/11/11 PC/BOA meeting as presented.

MS/P Ballenthin/Gould to conduct the 1st reading public hearing of the proposed revisions to the Land Use Ordinance and Subdivision and Platting Ordinance 07/13/11 commencing at 5:00 pm at the land Department Meeting Room.

Variance

Becker, William, Ponto Lake Township on property described as Part of Gov Lot 9, Section 4-139-29, PID # 32-004-3304 located at 1558 20th St NW. An application submitted to remove an existing 18 feet x 22 feet residence and replace with new construction of a 24 feet x 36 feet residence 31 feet from the lake along with a 170 square feet patio 27 feet from the lake. The application also calls for approval to construct a driveway with no setback for property boundary line. Section 1126.1 A. of the Land Use Ordinance requires structures to be located 100 feet from a lake classified Recreational Development (RD). Section 1126.1 B. allows for new driveways to be located 10 feet from property line. The property contains .53 acre riparian to Long Lake (RD).

Summary: Remove existing residence/deck located 23 feet from lake in order to construct a new 24 feet x 36 feet residence to be 31 feet from the lake along with a 10 feet x 17 feet patio to be 23 feet from the lake. The required lake setback of 100 feet is located within a wetland that occupies a large portion of the property. The wetland cannot be altered. A proposal for a 30 feet x 38 feet footprint was denied during the 02/14/11 meeting. A licensed SSTS professional has concluded that the residence and SSTS cannot be located between the wetland and the right-of-way of 20th St SW. This is an area variance subject to the practical difficulties standards.

PC members were at the site 12/06/10. 39 notices of the application were mailed with one response in support of the application received. The application was discussed and reviewed with Mr. Becker and Mr. Balmer.

MS/P Ballenthin/Moore - Ballenthin/Yes, Bliss/Yes, Gardner/No, Gould/No, Fitch/No, Moore/Yes, Sundberg/Yes to approve the application for the location of the residence/patio for 32-004-3304 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 prior to 1976 can be confirmed therefore it is reasonable to assume the original residence was constructed at less than the required lake setback prior to the adoption of land use regulation.
2. The wetland area prohibits residence location at the required lake setback.
3. The residence can be reconstructed at current footprint and volume as allowed by statute and ordinance but it seems that some increase in size is not unwarranted.
4. 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.
5. The residence will not affect area land use because similar style and construction is utilized by adjacent property along 20th St NW and because the new construction will not significantly alter to its view from the lake.
6. The location of the residence is reasonable based upon the size and configuration of the lot along with the location of the wetland area.
7. There is no evidence that financial consideration is the sole reason for the variance.
8. The residence will have 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 be connected to municipal or community waste water treatment system.
9. As verified by ESD staff alteration of the wetland is not an option.
10. No comments have been received from the township or agencies notified.
11. As verified by a licensed SSTS professional the area located between the south side of the wetland and 20th St is not large enough to accommodate a treatment system and a residence.
12. The applicant has volunteered to move/replace the 8 feet x 8 feet storage shed at least 100 feet from the lake

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 residence/patio shall not exceed the dimensions and setbacks of the structure and patio shown on the application site plan/elevation submitted 04/21/11.
2. The residence shall not exceed 22 feet to the peak with non-reflective glass in the lake side exposure.
3. The driving surface of the driveway shall not encroach upon the wetland area or the adjacent parcel.
4. The patio must be constructed of pervious material.
5. Any debris resulting from demolition and/or construction not recycled or reused must be disposed of in a permitted disposal facility.
6. 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.
7. 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.
8. 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 buffer within an area defined in the plan and 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.

9. 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.

Carey, Brian, Hiram Township on property described as Lot 1 "Elmhurst & Adjacent Vacated Portion of RDWY, Section 12-140-31, PID # 16-400-0010, 16-001-3311, and 16-001-3312 located at 5116 Aspen Trail NW. An application submitted as "Option A" to expand a non conforming structure at 30 feet from the lake with a 2300 + sq ft addition with an attached garage, or "Option B" to construct a new residence at 60 feet from the lake and construct an addition to a non conforming cabin and retain as guest quarters on a lot that is less than the minimum lot size requirements for guest quarters. Section 1113.1 of the Land Use Ordinance requires a minimum of 180 feet of width and 60,000 sq ft lot area in order to be allowed guest quarters; the existing lots contain 31,032 sq ft lot area and 140 feet in width. Section 1115.3 B states that any expansions to a non conforming structure shall require a variance. Section 1126.1 A of the Land Use Ordinance requires structures to be placed at 75 feet from Ten Mile Lake classified as General Development (GD). The property contains .72 acre riparian to Ten Mile Lake (GD).

Summary: Expand the existing non-conforming residence with a substantial addition or allow existing residence to remain as guest house and construct new residence. Applicant's representative at site visit indicated that a new residence would comply with required 75 feet setback and that request for 60 feet withdrawn. Existing residence can be maintained by replacement such as siding, shingles and windows/doors or it can be completely replaced at current footprint/volume by permit.

PC members were at the site 05/02/11. 35 notices of the application were mailed. Six responses opposed o the application, one favoring Option B from the Ten Mile Lake Association, of mostly no objection and one limited to a question as to the location of the drainage easement were received. The proposed options and variations thereof along with the proposed re-alignment of the drainage easement were compared and discussed with the applicant's representative Mr. Hanson.

MS/P Ballenthin/Gardner to table consideration of the applicant in order for Mr. Hanson to consult with the applicant in order to consider possible revisions to the application and the site plan.

Dolliff, Roger Wilkinson Township on property described as Pt of Gov Lot 3, Section 25-144-31, PID # 49-025-3207 located at 12117 Oak Point Rd NW. Application submitted to remove a 24' x 30' portion of an existing residence and replace with a 30' x 32' addition. The residence is non-conforming because it is 52 feet from the lake. Section 1126 A.1. requires structures to be setback 100 feet from a lake classified Recreational Development (RD). Section 1115.3.B. of the Land Use Ordinance allows for the expansion of a non-conforming residence only by variance. The property contains 11.17 acres riparian to Welsh Lake (RD).

Summary: Applicants propose to replace a portion of the existing non-conforming residence with new construction at the current non-conforming OHWL setback. Expansion of a non-conforming residence is deemed an area variance and subject to the practical difficulty standards.

PC members were at the site 05/02/11. 11 notices of the application were mailed with no responses received. The application was discussed and reviewed with Mr. Dolliff and his contractor Mr. Spitzak.

MS/P Ballenthin/Gardner to approve the replacement construction for the non-conforming residence at PID # 49-025-3207 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 1985.
2. The addition will not alter the configuration or setback of the residence
3. There is no indication or evidence that the location and configuration of the structure affects area land use because similar residential uses are located along Oak Point Road.
4. The location and configuration of the residence have no bearing to the need or demand for governmental services because the property already has direct access to Oak Point Road and is not nor will it be connected to municipal or community water or waste water treatment systems.
5. There is no evidence that financial consideration is the sole reason for the variance.
6. 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 addition configuration shall not exceed the dimensions as submitted 05/02/11.
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 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 buffer within an area defined in the plan and 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.
7. The owner of the adjacent parcel, PID # 49-025-3204, the applicant's brother, must acknowledge upon the Land Use Permit application there is no objection to the location of the replacement addition to the common boundary of PID #s 49-025-3207 and 49-025-0324.

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.

Ekstam, Richard, Wilkinson Township on property described as Pt of Govt Lot 5, Section 19-144-31, PID # 49-019-1102 located at 6831 131st St NW. An application submitted to expand the existing non-conforming residence with a 16 feet x 18 feet addition. The residence is non-

conforming because it is 47 feet from the lake. Section 1126 A.1. requires structures to be setback 75 feet from a lake classified General Development (GD). Section 1115.3.B. of the Land Use Ordinance allows for the expansion of a non-conforming residence only by variance. The property contains .23 acre riparian to Steamboat Lake (GD).

Summary: Expand an existing non-conforming residence located at less than the required lake setback with an addition located non-lakeside on the residence. 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.

PC members were at the site 05/02/11. 21 notices of the application were mailed. No responses were received. The application was discussed and reviewed with Mr. Ekstam.

MS/P Gould/Gardner to approve the expansion of the residence located at PID # 49-019-1102 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 lot was created in 1955 prior to the adoption of land use regulation and no permit activity for the lot prior to 1988 is available.
2. The original structure was expanded to the non-lakeside by variance in 1988.
3. There is no indication or evidence that the location and configuration of the structure affects area land use because similar residential uses are located in the general area.
4. The expansion will not be visible from the lake nor will it alter the view of the residence neighboring property.
5. The expansion will have no bearing to the need or demand for governmental services because the property already has direct access to a public road and is not nor will it be connected to municipal or community water or waste water treatment systems.
6. There is no evidence that financial consideration is the sole reason for the variance.
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 expansion shall not exceed the dimensions as submitted with the application 04/18/11.
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 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 buffer within an area defined in the plan and 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.

Hines, Charles, Sylvan Township on property described as Lot 41, Block 1 "Sylvan Beach", Section: 11-133-30, PID # 41-498-0132 located at 12515 Lower Sylvan Rd. An "After the Fact" application submitted to retain a deck with railings above an existing boathouse. Section 1126.4 C. of the Land Use Ordinance describes maintenance and roof repair on existing water oriented boathouses. Section 2 states the boathouse shall not exceed 10 feet in height, including a minimum 4:12 pitch roof. The property contains .3 acre riparian to Sylvan Lake (GD).

Summary: Railing attached to flat roofed boathouse. Application submitted "after the fact". County has no railing permit nor are new boathouses allowed. Boathouses are allowed to be maintained but not expanded by permit. When maintained by permit ordinance requires flat roof to be replaced with pitch roof. Review as expansion non-conforming structure according to the "after the fact" criteria.

PC members along with Sylvan Township PC members were at the site 05/02/11. 39 notices of the application were mailed with one response from Sylvan Township recommending approval received. The application was discussed and reviewed with Mr. Hines.

MS/P Ballenthin/Gould to allow the railing as constructed for the boathouse located at PID # 41-498-0132 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 lot was created in 1924 prior to the adoption of land use regulation and no record is available to determine construction of the boathouse.
2. Save for deck planking and siding there is no evidence that the boathouse has been altered from the original configuration.
3. There is no indication or evidence that the location and configuration of the boathouse has any affect to area land use.
4. The railing does not significantly alter the view of the boathouse from the lake or neighboring.
4. The railing has no bearing to the need or demand for governmental services because the property already has direct access to a public road and is not nor will it be connected to municipal or community water or waste water treatment systems.
5. There is no evidence that financial consideration is the sole reason for the variance.
6. The applicant installed the railing in good faith based upon advice from insurance professionals.
7. The applicant installed the railing prior to being informed of the impropriety.
8. There are similar railings throughout the county.
9. The benefits of removal would be far outweighed by the detriment to the health, safety and welfare to the applicant.
10. In light of the findings allowing the retention of the railing will serve the interests of justice.

Conditions:

1. No future boathouse alteration shall take place prior to consultation with ESD.
2. The applicant shall submit "after the fact" administrative fee as determined by ESD.
3. Shoreline vegetation must be restored from the OHWL to the top of the bank either by no mow or plantings as approved by ESD.

Miller, Nancy, Ponto Lake Township on property described as Lot 28, Blk 1, "Smith Estates", Section 21-139-29, PID # 32-427-0156 located at 1375 Smith Drive NW. An application submitted to expand the existing non-conforming residence with a reconfigured roof and the enclosure of a 10 feet x 12 feet deck which is considered as an addition. The residence is non-conforming because the deck is less than 50 feet from the lake which the setback permitted in "Smith Estates". Section 1115.3.B. of the Land Use Ordinance allows for the expansion of a non-conforming residence only by variance. The property contains 1.1 acres riparian to Lake Ada (RD).

Summary: Expand an existing non-conforming residence located at less than the required lake setback with an enclosure of a lakeside deck and roof reconfiguration. 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.

PC members were at the site 05/02/11. 57 notices of the application were mailed with no responses received. The application was discussed and reviewed with the applicant's representative Mr. Soukup.

MS/P Moore/Bliss to approve the expansion and roof reconfiguration as submitted for the non-conforming residence located at PID # 32-427-0156 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 1977 with permit at 52 feet.
2. There is no indication or evidence that the location and configuration of the structure affects area land use because similar residential uses are located in the immediate vicinity.
4. The expansion will not significantly alter the view of the property from the lake or neighboring property.
5. The expansion will have no bearing to the need or demand for governmental services because the property already has direct access to a public road and is not nor will it be connected to municipal or community water or waste water treatment systems.
7. There is no evidence that financial consideration is the sole reason for the variance.
8. The roof alteration is required to address deterioration of the residence which has been caused by the current roof configuration.
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:

1. The expansion shall not exceed the dimensions as submitted with the application 04/15/11.
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 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 buffer within an area defined in the plan and 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. Applicant consents 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.

Raza, Saleem, Powers Township on property described as Pt of Gov Lot 5, Section 13-139-30, PID # 34-013-4105 located at 2434 Rice Portage Trail. An application submitted to expand the existing non-conforming residence with 15 feet x 20 feet, 10 feet x 12 feet, 13 feet x 14 feet and 13 feet x 16 feet x 6 feet x 6 feet 7 feet 10 feet additions. The residence is non-conforming because it is located less than four feet from the closest property boundary line. Section 1126 1.B. of the Land Use Ordinance requires structures to be located 10 feet from a property boundary line. Section 1115.3.B. of the Land Use Ordinance allows for the expansion of a non-conforming residence only by variance. The property contains .4 acre riparian to Big Portage/Rice Lake (GD).

Summary: Expand an existing non-conforming residence located at less than the required side yard setback with various additions to essentially square the residence out. 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.

PC members were at the site 05/02/11. 57 notices of the application were mailed with no responses received. The application was discussed and reviewed with the applicant's representative Mr. Gutz.

MS/P Fitch/Gardner to approve the expansion as submitted for the non-conforming residence located at PID # 34-015-4105 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 attached garage which made the residence non-conforming was constructed by a previous owner in 1999 per agreement with the adjacent property owner to allow closer lot line setback.
2. There is no indication or evidence that the existing location and configuration of the structure affects area land use because similar residential construction is located Rice Portage Trail.
3. The expansions 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 including a 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. There is no evidence that financial consideration is the sole reason for the variance.
6. Based upon these 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 additions shall not exceed the dimensions as submitted with the application 04/13/11.
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 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 buffer within an area defined in the plan and 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.

Schultz, Debra & Russell, Wabedo Township on property described as Pt of SW SE, Section 3-140-28, PID # 46-003-4302 located at 4412 Cooper Lake Road NE. An application submitted to expand the existing non-conforming residence with 12 feet x 13 feet and 18 x 26 feet additions and a detached 24 feet x 30 feet garage to be located 66 feet from the lake. The residence is non-conforming because it is located 50 feet from the deck to the lake. Section 1126 A. 1. of the Land Use Ordinance requires structures to be located 100 feet from a lake classified Recreational Development (RD). Section 1115.3.B. of the Land Use Ordinance allows for the expansion of a non-conforming residence only by variance. The property contains 1.32 acres riparian to Cooper Lake (RD).

Summary: Expand an existing non-conforming residence located at less than the required side yard setback with various additions to essentially square the residence out. 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.

PC members were at the site 05/02/11. 15 notices of the application were mailed. One response from Wabedo Township recommending approval of the application was received. The application was discussed and reviewed with Mr. Schultz.

MS/P Moore/Ballenthin to table consideration of the application in order for the applicant to resolve fill questions/issues in regard to PID # 34-015-4105.

Steinkopf, Allen, Kego Township on property described as Pt of Gov Lot 2, Section: 33-141-28, PID # 19-033-1303 located at 5059 Sawmill Trail NE. An application submitted to remove an existing cabin and construct a new 1744 sq ft residence with a 728 sq ft attached garage at 50 feet from the lake. Section 1126.1 A of the Land Use Ordinance requires structures to be located 100 feet from a lake classified Recreational Development (RD). The property contains .93 acre riparian to Girl Lake (RD).

Summary: Application to construct new residence at less than required lake setback. The property is located on a peninsula bordered by Girl Lake and is about 170 feet wide which means that the lake setback overlaps. Obviously a variance is required to construct anything but enough questions have been raised in regard to the road easement width and location along with the location of the residence to require more information.

PC members were at the site 05/02/11. 35 notices of the application were mailed. One response inquiring as to the location of the described road easement as it relates to the setback of the proposed residence was received. The application was discussed and reviewed with the applicant's representative Mr. Daudt.

MS/P Ballenthin/Moore to table consideration of the application in order for the applicant's representative to prepare and submit a scale detailed site plan with applicable setback detail in regard to PID # 19-033-1303.

Thomas, Judith & Matthew, Crooked Lake Township on property described as Lot 8, Blk 1, "Washburn Lake Homesites", Section 16-139-26, PID # 12-431-0140 located at 1336 Sunflower Trail NE. An application submitted to expand the existing non-conforming residence with a 16 feet x 18 feet addition to be located 63 feet from the lake. The residence is non-conforming because it is located 50 feet from the deck to the lake. Section 1126 A. 1. of the Land Use Ordinance requires structures to be located 75 feet from a lake classified General Development (GD). Section 1115.3.B. of the Land Use Ordinance allows for the expansion of a non-conforming residence only by variance. The property contains one acre riparian to Lake Washburn (GD).

Summary: Expand an existing non-conforming residence located at less than the required lake setback with an addition to side of the residence. 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.

PC members were at the site 05/02/11. 20 notices of the application were mailed with two responses both supporting approval of the application were received. The application was discussed and reviewed with the applicants.

MS/P Ballenthin/Fitch to approve application for expansion of the residence located at PID # 12-431-0140 as submitted 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 formerly a DNR lease lot with no record available of original construction.
2. The topography of the lot has resulted in location of all structures in the area on the ridge parallel to the lake.
3. The property was platted after the construction of the residence.
4. 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.
5. The addition will not affect area land use because similar style and construction is utilized by adjacent property along Sunflower Trail.
6. There is no evidence that financial consideration is the sole reason for the variance.
7. 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.
8. Based upon these 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 expansion shall not exceed the dimensions shown on the site plan submitted with the application 04/18/11.
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 buffer within an area defined in the plan and 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.

Wear, Larry & Susan, Birch Lake Township on property described as NWLY 90 Ft of "Peaceful Shores", Section 13-140-31, PID # 16-410-0111 located at 4949 Woodland Drive NW. An application submitted to expand the existing non-conforming residence with a 12 feet x 28 feet addition. The residence is non-conforming because it is located less than 75 feet from the lake. Section 1126 A. of the Land Use Ordinance requires structures to be located 75 feet from a lake classified General Development (GD). Section 1115.3.B. of the Land Use Ordinance allows for the expansion of a non-conforming residence only by variance. The property contains .66 acre riparian to Birch Lake (GD).

Summary: Expand an existing non-conforming residence located at less than the required lake setback with an addition located non-lakeside on the residence. 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.

PC members were at the site 05/02/11. 78 notices of the application were mailed with no responses received.

MS/P Fitch/Ballenthin to table consideration of the application to expand the non-conforming residence located upon PID # 16-410-0111 in order for the applicant or their representative to be present.

Werner, Grace, Crooked Lake Township on property described as Lot 7, "Smoky Hollow Addition", Section 34-139-26, PID # 12-509-0070 located at 6303 Smokey Hollow Road. An application submitted to expand the existing non-conforming residence with a 4 feet x 12 feet addition. The residence is non-conforming because it is located less than 100 feet from the lake. Section 1126 A. of the Land Use Ordinance requires structures to be located 100 feet from a lake classified Recreational Development (RD). Section 1115.3.B. of the Land Use Ordinance allows for the expansion of a non-conforming residence only by variance. The property contains 2.5 acres riparian to Smoky Hollow Lake (RD).

Summary: Expand an existing non-conforming residence located at less than the required lake setback with an addition located non-lakeside on the residence. 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.

PC members were at the site 05/02/11. 51 notices of the application were mailed. One response offering no objection if no increase of setback encroachment was received. The application was reviews with Ms. Werner.

MS/P Ballenthin/Bliss to approve the expansion of the residence located upon 12-509-0070 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 lot was created in 1954 prior to the adoption of land use regulation.
2. The residence was permitted in 1975 at 70 feet from the lake.
3. There is no indication or evidence that the location and configuration of the structure affects area land use because similar residential construction and use are located in the immediate vicinity.
4. The expansion will not be visible from the lake nor will it alter the view of the residence neighboring property.
5. The expansion will have no bearing to the need or demand for governmental services because the property already has direct access to a public road and is not nor will it be connected to municipal or community water or waste water treatment systems.
6. There is no evidence that financial consideration is the sole reason for the variance.
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 expansion shall not exceed 12 feet x 12 feet.
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 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 buffer within an area defined in the plan and 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 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.

Conditional Use Permit

Alto, Brian & Cynthia, Shingobee Township on property described as Pt of Gov Lots 1 & 2, Section 2-141-31, PID # 38-002-4104 located at 6905 Winterberry Trail NW. An application submitted to establish a home business. The applicants will utilize an accessory structure for office space and storage of business related equipment. Home business is defined as "use of a residential property for a commercial use by the inhabitants thereof which may be conducted inside as well as outside the primary residence". Section 705 of the Land Use Ordinance establishes conditional use permit review criteria. Section 1110 of the Land Use Ordinance establishes home business review criteria. The property contains 1.55 acres riparian to Leech Lake (GD).

PC members were at the site 05/22/11. More than 100 notices of the application were mailed. Three responses of which two were opposed to approval of the application were received. The application was discussed and reviewed with Mr. Alto with considerable discussion devoted to the type of activity proposed, ingress and egress for the applicant's equipment, the effect of the business activity to neighboring property, and the history of the activity at that location.

MS/P Moore/Gardner - Ballenthin/No, Bliss/No, Gardner/Yes, Gould/No, Fitch/Yes, Moore/Yes, Sundberg/Yes to approve the proposed home business to be located at PID # 38-002-4104 upon review of Sections 705 and 1110 of the Land Use Ordinance with the following findings and conditions.

Findings:

1. Said equipment has been stored outside until construction of the garage
2. Indoor storage of the equipment and use only off site limits the potential to create unreasonable adverse effects to adjacent properties.
3. The home business will have no affect to streets, utilities, or other public facilities and require no additional public infrastructure.
4. No wetland or critical habitat will be disturbed by the home business.
5. No scenic or historic features will be negatively affected by the home business.
6. No unusual threat to public health, safety or welfare can be expected with indoor storage of the equipment.

Conditions:

1. No business related equipment shall be stored on the site other than within the garage/storage structure.
2. No cleaning of the concrete equipment shall take place other than within the garage/storage structure.
3. The equipment associated with the business activity shall not exceed two.

Anderson Brothers, Sylvan Township on property owned by Natural Resource Management LLC described as Pt of Section 13, Section 13-133-30, PID # 41-213-2401. A request submitted to revise CU00-133-30-1 which was approved 02/01/00 to allow gravel extraction and asphalt production. The 2000 approval allows crushing from 7:00 am - 7:00 pm Monday - Saturday with asphalt operation during daylight hours Monday - Saturday. Neither activity is allowed on Sunday. Anderson Brothers is requesting a limited revision of CU00-133-30-1 in order to complete a MN DOT TH #371 contract to pave in Baxter at night for traffic and safety considerations. Anderson Brothers request to be allowed to operate the asphalt plant through the night for a maximum of 14 days commencing May 16, 2011 through July 1, 2011.

More than 100 notices of the application were mailed. Two responses both of support were received. The proposed temporary modification to the conditional use permit was discussed and reviewed with Mr. Wickham, VP Anderson Brothers.

MS/P Ballenthin/Gardner to approve the revision of CU00-133-30-1 as proposed with the following findings and conditions.

Findings:

1. Improvement to TH #371 is in the best interest of public health, safety and welfare.
2. Construction and improvement to TH #371 during hours of less traffic activity is in the best interest of efficiency and public health, safety and welfare.
3. 24 hour operation is the only option to accomplish the overnight operations.
4. Baring unforeseen events or inclement weather, the project will be accomplished within 14 day operation days over a period of 45 days.

Conditions:

1. The Sylvan Township conditions are adopted as submitted for compliance by the applicant.
2. No construction activities shall take place on Sundays or the Friday, Saturday, Sunday, and Monday of Memorial Day weekend.

Hopper, Kimberly & Mark, Wilson Township on property described as Gov Lot 4, Section 9-137-29, PID # 50-009-4401 located at 1280 32nd St SW. An application submitted to establish a home business. The applicants will utilize a portion of their property for self pick berries, vegetables and flowers. Home business is defined as "use of a residential property for a commercial use by the inhabitants thereof which may be conducted inside as well as outside the primary residence". Section 705 of the Land Use Ordinance establishes conditional use permit review criteria. Section 1110 of the Land Use Ordinance establishes home business review criteria. The property contains 32.84 acres riparian to the Pine River (TR).

MS/P Ballenthin/Gardner that the proposed activity takes place on an existing agricultural use parcel of which offering for sale products raised therein is part and parcel of regular activity and therefore home business does not apply nor required.

Other Business

Request received from Marvin Hartneck to extend expiration of VP08-140-30-3 approved 05/12/08. Mr. Hartneck has been unable to start all expansion of residence as approved as well as the garage. Applicable permits for those aspects of the approval not yet commenced will be obtained.

MS/P Ballenthin/Gould to reinstate VP08-140-30-3 and extend to 05/12/12.

MS/P Moore/Fitch at 2:30 pm, to adjourn.

P. Fairbanks