



Cass County
Planning Commission/Board of Adjustment

January 14, 2013

The Cass County Planning Commission/Board of Adjustment conducted a regular meeting January 14, 2013 in the meeting room of the Cass County Land Department in Backus. The field inspection was conducted January 7, 2013 with Anderson, Fitch, Froehlig, Kostial, LaPorte, Moore and Sundberg present.

Sundberg called the meeting to order at 9:30 a.m.

Members present: Anderson, Fitch, Kostial, LaPorte, Moore and Sundberg.

Staff Present: Berg, Fairbanks and Ringle.

Citizens Present: Jerry Abts, Cathy Barnett, Geoff Barnett, Ken Berge, Mike Braun, Susan Braun, Eugene Christianson, Jane Christianson, John Erickson, Rosemary Goff, Robert Grussendorf, Jane Gunsbury, Cindy Hidde, Darren Hoverson, Brett Karnowski, Dave Karnowski, Kevin Larson, Meri Lysne, Travis Miller, Kari Rihn, Tom Steffens, Bonnie Schwable and Bob Torberg.

MS/P Fitch/LaPorte to approve the minutes of the 12/10/12 PC/BOA meeting as presented.

Request received for the Planning Commission to review/comment a revised site configuration for the Quarterdeck/Tom Steffens resort property. Mr. Steffens along with surveyor Cindy Hidde and architect Travis Miller presented proposed resort redevelopment configuration along with elevations of the proposed structure. Discussion, questions and written comments included density, waste water treatment, shoreline vegetation, boat slips, boat slip numbers and physical configuration of the boat slip structures. The Planning Commission did not offer any opinions on the merits of the proposal, not yet formally submitted as an application. Accordingly, no official action was solicited or taken.

Variance

Brandt, George & Sue, Shingobee Township on property as described as Lots 1 & 2 & Part of Lot 3, Block 2, "Ball's First Addition to Gitche Gumee Beach", PID #38-467-0210, Section 36-141-31 located at 5143 Boone Point Road NW. An application submitted to expand a non-conforming structure with 12 feet x 16 feet, 6 feet x 21 feet and 120 square feet additions along with 12 feet x 12 feet deck and 4 feet x 16 feet balcony all to be located on the non-lakeside of the

residence. The residence is non-conforming because it is located 43 feet from the lake. Section 1126.1 of the Land Use Ordinance (2010) requires structures to be 75 feet from a lake classified General Development (GD). In addition, Section 1115.3 requires a variance for any expansion of a non-conforming structure. The property contains 1.2 acres riparian to Ten Mile Lake (GD).

PC members were at the site 01/07/13. 37 notices of the application were mailed. One response offering no objection to approval of the application was received. The variance request was reviewed with applicant's representative Kevin Larson.

MS/P Moore/Kostial to approve the expansion of the non-conforming residence located upon PID #38-467-0210 based upon review of the criteria contained in Section 800 of the Land Use Ordinance (01/10/10) and in M.S. 394.27, Subdivision 7 with the following findings and conditions:

Findings:

1. The residence was obviously constructed prior to 1972 and the adoption of shoreland land use regulation.
2. The lot is bisected by what looks to be a dredged channel which is considered part of the lake resulting in the inability to comply with the 75 feet setback requirement from the lake either to the west or the east.
3. The residence is 74 feet from the dredged channel.
4. The residence is located along Boone Point Road which is not a through road.
5. The size and configuration of the lot limits expansion options.
6. The proposed expansion of the residence is to the east and unobservable from the main lake to the west.
7. The proposed expansion seems a reasonable use of the property when taking into account the area and topography of the lot and does not contradict the purpose of the Land Use Ordinance which is to protect, preserve and enhance the quality of the lakes, rivers, forests, wetlands, natural land forms and open space for future generations and to promote health, safety, and general welfare.
8. The proposed expansion will not be excessive of scale or obtrusive to neighboring property which does contradict the purpose of the comprehensive plan which is to 1. Provide a rational basis to make difficult land and resource decisions wisely, 2. Eliminate the conflicts caused by unplanned development, 3. Improve coordination and communication between county, local governments and the citizens in land use planning, and 4. Protect the County's natural resources from degradation.
9. The local area contains existing residences similar in scale and there is no compelling reason to conclude that area land use will be negatively affected or altered by the size or location of the proposed residence.
10. There is no reason to conclude that water quality will be in any way affected by the size or location of the proposed expansion.

11. There is no reason to conclude that financial consideration is the sole reason for the application.

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 suitable 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 per square foot of the buffer area for no-mow or \$3 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 dimensions of the expansion shall not vary from that submitted 12/20/12.
2. Approval does not allow or imply that the structure to be expanded can be removed by demolition or any other method from the site nor shall the structure to be expanded be reduced to "one wall".
3. Any debris resulting from construction or demolition not reused or recycled must be disposed of in a permitted facility.
4. ESD shall 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. ESD shall evaluate shoreline vegetation and determine the need for enhancement or maintenance. If enhancement is required, the applicant shall submit a written plan and implementation schedule for suitable vegetation to be approved by ESD and agreed to be implemented by applicant. At applicant's option, the vegetative plan may be substantially implemented as determined by ESD or financial assurance in the amount of \$1 per square foot of the buffer area for no-mow or \$3 per square foot for all other vegetative buffers or if less 125% of the cost estimate in favor of Cass County shall be submitted.
6. No run-off to the lake or adjoining properties is permitted. As determined necessary by ESD run-off from the residence shall be re-directed by gutters and if needed water retention structures such as rain gardens shall be installed to retain and prevent run-off to the lake and adjoining properties.
7. Applicant consents to inspection of the property from time to time by ESD to verify compliance with conditions.

8. Approval shall expire 01/14/15.

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.

Braun, Michael & Susan, Powers Township on property as described as Lot 4 "Engers Birchwood", PID #34-373-0040, Section 10-139-30 located at 1783 Lumberjack Trail NW. An application submitted to construct a 28 feet x 32 feet detached accessory structure/garage to be located two feet from the closest property boundary line and less than 10 feet from the right-of-way the township maintained road. In addition, the new construction of 896 square feet when added to 624 square feet of existing detached accessory structure will bring the total accessory square footage to 1,520 square feet which will exceed the total allowed based upon lot size. Section 1126.1 of the Land Use Ordinance (2010) requires structures to be 10 feet from a property boundary line and 20 feet from the right-of-way of a township road. Section 1101 of the Land Use Ordinance allows for not more than 1,200 square feet of detached accessory upon riparian lots that contain from .5 - .99 acre. The property contains .68 acre riparian to Oxyoke Lake (RD). Consideration of this application was tabled during the 12/10/12 meeting in order for the applicants to consider placement and size alternatives.

PC members were at the site 12/03/12. 32 notices of the application were mailed. Two responses including that of the adjacent neighbor with the property boundary line in question along with Powers Township offering no objection to approval application were received in response to the 12/10/12 meeting mailing. The variance request was reviewed with Sue and Mike Braun with discussion centering upon alternative for the location for the proposed structure possible reduction in size. Ms. Braun informed the members that their request has been revised to include a smaller structure reducing the proposed dimensions from 28 feet x 32 feet to 26 feet x 30 feet and increasing the property boundary setback request from 2 feet to 4 feet. She also pointed out that the storage structure to be removed is 4 feet x 8 feet, that the distance from their proposed structure to neighbor's garage will be 53 feet and that the their proposed structure will be more than 200 feet from the lake.

MS/P Kostial/Fitch to approve the location of the accessory structure to be located upon PID #34-373-0040 based upon review of the criteria contained in Section 800 of the Land Use Ordinance (01/10/10) and in M.S. 394.27, Subdivision 7 with the following findings and conditions:

Findings:

1. The property, which contains .68 acre, became a lot in record in 1959 prior to the land use regulation and the linkage of lot size to accessory structure size.
2. The residence is location along Lumberjack Trail which is not a through road.

3. The neighbor adjacent to the proposed garage location does not object to closer property boundary line setback.
4. Powers Township has offered no objection to a closer setback to the right-of way of Lumberjack Trail which they maintain.
5. The size and configuration of the lot limits placement options.
6. The proposed accessory structure seems a reasonable use of the property when taking into account the area and topography of the lot and that it will be mostly unobservable from the lake which does not contradict the purpose of the Land Use Ordinance which is to protect, preserve and enhance the quality of the lakes, rivers, forests, wetlands, natural land forms and open space for future generations and to promote health, safety, and general welfare.
7. The proposed accessory structure will not be excessive of scale or obtrusive to neighboring property which does not contradict the purpose of the comprehensive plan which is to 1. Provide a rational basis to make difficult land and resource decisions wisely, 2. Eliminate the conflicts caused by unplanned development, 3. Improve coordination and communication between county, local governments and the citizens in land use planning, and 4. Protect the County's natural resources from degradation.
8. The local area contains existing residences and accessory structures similar in scale and location.
9. There is no reason to conclude that water quality will be in any way affected by the size or location of the proposed expansion.
10. There is no reason to conclude that financial consideration is the sole reason for the application.
11. The structure will comply with the required setback from the right-of-way of Lumberjack Trail NW.
12. The applicants will be able to maintain the structure without encroaching upon the neighbor's property.

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 suitable 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 per square foot of the buffer area for no-mow or \$3 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 accessory structure shall not exceed 26 feet in width and 30 feet in length and not exceed 24 feet to the peak and shall be not less than 4 feet from the property boundary line referenced in the application.
2. Any debris resulting from construction or demolition not reused or recycled must be disposed of in a permitted facility.
3. ESD shall 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. ESD shall evaluate shoreline vegetation and determine the need for enhancement or maintenance. If enhancement required, the applicant shall submit a written plan and implementation schedule for suitable vegetation to be approved by ESD and agreed to be implemented by applicant. At applicant's option, the vegetative plan may be substantially implemented as determined by ESD or financial assurance in the amount of \$1 per square foot of the buffer area for no-mow or \$3 per square foot for all other vegetative buffers or if less 125% of the cost estimate in favor of Cass County shall be submitted.
5. No run-off to the lake or adjoining properties is permitted. As determined necessary by ESD run-off from the structure shall be re-directed by gutters and if needed water retention structures such as rain gardens shall be installed to retain and prevent run-off to the lake and adjoining properties.
6. Applicant consents to inspection of the property from time to time by ESD to verify compliance with conditions.
7. Approval shall expire 01/14/15.

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.

Christianson, Eugene & Jane, Unorganized 146-29 on property as described as E 100 Ft of W195 Ft of Gov Lot 8, PID #75-034-4202, Section 34-146-29 located at 990 River Drive NW. An application submitted to expand a non-conforming residence with an 8 feet x 24 feet addition, a 6 feet x 12 feet porch and a 10 feet x 12 feet deck. The residence is non-conforming because it is 85 feet from the river. The parcel is located within the jurisdiction of the Mississippi Headwaters Management Plan (MHMP). MHMP Section F. 1. requires that a structure be setback 200 feet from a river segment classified Wild (W). MHMP Sections V.2 & V.3 prohibit expansion of a non-conforming structure. The property contains .5 acre riparian to the Mississippi River (W).

PC members were at the site 01/07/13. 14 notices of the application were mailed. No responses were received. The variance request was reviewed with the applicants.

MS/P LaPorte/Kostial to approve the expansion of the non-conforming residence located at PID #75-034-4202 upon review of the criteria contained in Section 800 of the Land Use Ordinance (01/10/10) and in M.S. 394.27, Subdivision 7 with the following findings and conditions.

Findings:

1. The property became of record in 1951. Although there is no record in the permit archive it can be assumed the residence was constructed prior to the adoption of the MHMP.
2. The residence is located 85 feet from the river which in this area is classified as Wild (W) with a required setback of 200 feet and therefore deemed non-conforming.
3. The proposed deck shall be deleted from the application per MHMP Section F. 9 that allows for construction of a deck to a non-conforming residence constructed prior to 07/10/81. In this case current setback from the river is 85 feet x 15 % which would allow a deck to encroach 12.75 feet toward the river.
4. There are no reasonable alternatives for expansion other than variance for the property which is 215 feet deep with a required setback of 200 feet than that requested in the application.
5. The neighboring area consists of similar single family riparian lots to which this proposed expansion will be not be out of the ordinary and therefore does not pose any particular threat to the essential character of the locality.
6. The proposed expansions will not increase the encroachment toward the river.
7. The proposed expansions seem a reasonable use of the property when taking into account the size and configuration of the lot and that one of the proposed expansions will be mostly unobservable from the river which does not contradict the purpose of the MHMP which is to enhance and protect outstanding and unique natural, scientific, historical, recreational and cultural values of the first 400 miles of the Mississippi River.
8. The proposed expansions are small, not out of scale and not obtrusive to neighboring property which does contradict the purpose of the MHMP which is to enhance and protect outstanding and unique natural, scientific, historical, recreational and cultural values of the first 400 miles of the Mississippi River.
9. There is no reason to conclude that area land use will be in any way affected by the location of the expansion.
10. There is no reason to conclude that water quality will be in any way affected by the expansion.
11. There is no reason to conclude that financial consideration is the sole reason for the application.

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 suitable 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 per square foot of the buffer area for no-mow or \$3 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 dimensions of the additions shall not vary from that submitted 11/28/12.
2. Approval does not allow or imply that the structure to be expanded can be removed by demolition or any other method from the site nor shall the structure to be expanded be reduced to "one wall".
3. Gutters that directs run-off away from the river shall be added to the existing garage.
4. Any debris resulting from construction not reused or recycled must be disposed of in a permitted facility.
5. ESD shall determine the need for construction erosion control and if required applicant shall install ESD approved erosion control placement prior to the commencement of construction.
6. ESD shall evaluate shoreline vegetation and determine the need for enhancement or maintenance. If enhancement required, the applicant shall submit a written plan and implementation schedule for suitable vegetation to be approved by ESD and agreed to be implemented by applicant. At applicant's option, the vegetative plan may be substantially implemented as determined by ESD or financial assurance in the amount of \$1 per square foot of the buffer area for no-mow or \$3 per square foot for all other vegetative buffers or if less 125% of the cost estimate in favor of Cass County shall be submitted.
7. No run-off to the river or adjoining properties is permitted. The approved structure if determined necessary by ESD shall redirect run-off 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 and adjoining properties.
8. Applicant consents to inspection of the property from time to time by ESD to verify compliance with conditions.
9. Approval shall expire 01/14/15.

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.

Isaya, Grazia & Rinaldo, Piero, Birch Lake Township on property as described as Lots 7 & 8 & part of Lot 9, Block 1, "Arthur's Point", PID #05-433-0180, Section 28-140-30 located at 3675 Arthurs Point Drive NW. An application submitted to expand a non-conforming structure with a 3 feet x 12 addition. The residence is non-conforming because it is located less than 75 feet from the lake. Section 1126.1 of the Land Use Ordinance (2010) requires structures to be 75 feet from a lake classified General Development (GD). In addition, Section 1115.3 requires a variance for any expansion of a non-conforming structure. The property contains 1.15 acres riparian to Pleasant Lake (GD).

PC members were at the site 01/07/13. 26 notices of the application were mailed. Two responses supporting approval of the application were received. The variance request was reviewed with the applicant's contractor Kevin Smith.

MS/P Fitch/LaPorte to approve the application to expand the non-conforming residence located at PID #05-433-0180 upon review of the criteria contained in Section 800 of the Land Use Ordinance (01/10/10) and in M.S. 394.27, Subdivision 7 with the following findings:

Findings:

1. The property became of record in 1911 and is a peninsula configuration with no part of the residence 75 feet from the lake.
2. There is no record in the permit archive as to the date of original construction of the existing residence that is less than 75 feet from the lake and therefore deemed non-conforming.
3. The neighboring area consists of similar single family riparian lots with residences to which the expansion will not be noticed and poses no threat to the essential character of the locality.
4. Based upon the location and size of the proposed expansion, 3 feet x 12 feet, it seems not to be significant when considering that it is mostly unobservable from the lake and not out of scale with neighboring residences which does not contradict the purpose of the Land Use Ordinance which is to protect, preserve and enhance the quality of the lakes, rivers, forests, wetlands, natural land forms and open space for future generations and to promote health, safety, and general welfare.
5. The residence as expanded will not be excessive of scale and not obtrusive to neighboring property which does not contradict the purpose of the comprehensive plan which is to 1. Provide a rational basis to make difficult land and resource decisions wisely, 2. Eliminate the conflicts caused by unplanned development, 3. Improve coordination and communication between county, local governments and the citizens in land use planning, and 4. Protect the County's natural resources from degradation.
6. There is no reason to conclude that water quality will be in any way affected by the size or location of the proposed expansion.
7. There is no reason to conclude that financial consideration is the sole reason for the application.

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 suitable 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 per square foot of the buffer area for no-mow or \$3 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 dimensions of the proposed expansion shall not vary from that submitted 12/11/12.
 2. The addition shall not exceed one story in height.
 3. Approval does not allow or imply that the structure to be expanded can be removed by demolition or any other method from the site nor shall the structure to be expanded be reduced to "one wall".
 4. Any debris resulting from construction not reused or recycled must be disposed of in a permitted facility.
 5. ESD shall determine the need for construction erosion control and if required applicant shall install ESD approved erosion control placement prior to the commencement of construction.
 6. ESD shall evaluate shoreline vegetation and determine the need for enhancement or maintenance. If enhancement required, the applicant shall submit a written plan and implementation schedule for suitable vegetation to be approved by ESD and agreed to be implemented by applicant. At applicant's option, the vegetative plan may be substantially implemented as determined by ESD or financial assurance in the amount of \$1 per square foot of the buffer area for no-mow or \$3 per square foot for all other vegetative buffers or if less 125% of the cost estimate in favor of Cass County shall be submitted.
 7. No run-off to the lake or adjoining properties is permitted. As determined necessary by ESD run-off from the residence shall be re-directed by gutters and if needed water retention structures such as rain gardens shall be installed to retain and prevent run-off to the lake and adjoining properties.
- No run-off to the lake or adjoining properties is permitted. As determined necessary by ESD run-off from the residence shall be re-directed by gutters and if needed water retention structures such as rain gardens shall be installed to retain and prevent run-off to the lake and adjoining properties.

8. Applicant consents to inspection of the property from time to time by ESD to verify compliance with conditions.
9. Approval shall expire 01/14/15.

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.

Karnowski, Brett, Crooked Lake Township on property owned by Schrantz, Anthony described as Lot 12, Block 1, "Birch Bay on Washburn Lake", PID #12-438-0160, Section 17-139-26 located at 1375 Birch Bay Drive NE. An application submitted to expand a non-conforming with a 10 feet x 25 x 26 feet addition which would include a loft over the addition. The structure is non-conforming because it is located 46 feet from the lake. Section 1126.1 of the Land Use Ordinance (2010) requires structures to be 75 feet from a lake classified General Development (GD). In addition, Section 1115.3 requires a variance for any expansion of a non-conforming structure. The property contains .6 acre riparian to Lake Washburn (GD).

The application was revised to reflect on-site discussion 01/07/13 in regard to the condition of the existing foundation. Applicant now requests new construction of 28 feet x 38 feet x 22 feet to peak to be located 56 feet from the OHWL. The existing structure at 46 feet from the OHWL would be removed.

PC members were at the site 01/07/13. 30 notices of the application were mailed. Three responses supporting approval were received. The variance request was discussed and reviewed with Mr. Karnowski and included the size and location of the existing residence, size and location of the proposed residence and the configuration and location of the proposed SSTS.

MS/P Moore/Kostial to table consideration of the application to the 02/11/13 meeting in order for the applicant and designer of the proposed SSTS to assess possible re-configuration and/or re-location of the system to allow for the proposed residence could be located further from the lake.

Wachowiak, Ken, Thunder Lake Township on property owned by Nicklow, James & Jeanne described as Lots 7 & 8, Block 2, "Del Ray Point", PID #42-409-0250, Section 16-140-26 located at 3941 W Delray Trail NE. An application submitted to expand a non-conforming residence with a 12 feet x 24 addition and an 8 feet x 10 feet addition. The residence is non-conforming because it is located 65 feet from the lake. Section 1126.1 of the Land Use Ordinance (2010) requires structures to be 75 feet from a lake classified General Development (GD). In addition, Section 1115.3 requires a variance for any expansion of a non-conforming structure. The property contains .57 acre riparian to Thunder Lake (GD).

PC members were at the site 01/07/13. 32 notices of the application were mailed. One response supporting approval was received. The proposed variance was discussed and reviewed with the applicant's representative Mr. Hansen.

MS/P LaPorte/Fitch to approve the application to expand the non-conforming residence located at PID #42-409-0250 upon review of the criteria contained in Section 800 of the Land Use Ordinance (01/10/10) and in M.S. 394.27, Subdivision 7 with the following findings and conditions:

Findings:

1. The location of the residence was approved by variance in 1990.
2. The proposed expansion will be non-lakeside and unobservable from the lake.
3. Most of the expansion is above the existing attached garage therefore does not increase footprint or impervious coverage.
4. The neighboring area consists of similar single family riparian lots with residences and garages to which this proposed expansion will be little noticed and therefore poses no particular threat to the essential character of the locality.
5. The proposed expansion seems a reasonable use of the property when taking into account the configuration and size of the lot which does not contradict the purpose of the Land Use Ordinance which is to protect, preserve and enhance the quality of the lakes, rivers, forests, wetlands, natural land forms and open space for future generations and to promote health, safety, and general welfare.
6. The proposed expansion is not excessive of scale and not obtrusive to neighboring property which does not contradict the purpose of the comprehensive plan which is to 1. Provide a rational basis to make difficult land and resource decisions wisely, 2. Eliminate the conflicts caused by unplanned development, 3. Improve coordination and communication between county, local governments and the citizens in land use planning, and 4. Protect the County's natural resources from degradation.
7. There is no reason to conclude that area land use will be negatively affected or altered by the size or location of the proposed structure expansions.
8. There is no reason to conclude that water quality will be in any way affected by the size or location of the proposed structure expansions.
9. There is no reason to conclude that financial consideration is the sole reason for the application.

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 suitable 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 per square foot of the buffer area for no-mow or \$3 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 dimensions of the proposed expansions shall not vary from that submitted 12/20/12.
2. Approval does not allow or imply that the structure to be expanded can be removed by demolition or any other method from the site nor shall the structure to be expanded be reduced to "one wall".
3. Any debris resulting from construction not reused or recycled must be disposed of in a permitted facility.
4. ESD shall 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. ESD shall evaluate shoreline vegetation and determine the need for enhancement or maintenance. If enhancement required, the applicant shall submit a written plan and implementation schedule for suitable vegetation to be approved by ESD and agreed to be implemented by applicant. At applicant's option, the vegetative plan may be substantially implemented as determined by ESD or financial assurance in the amount of \$1 per square foot of the buffer area for no-mow or \$3 per square foot for all other vegetative buffers or if less 125% of the cost estimate in favor of Cass County shall be submitted.
6. No run-off to the lake or adjoining properties is permitted. As determined necessary by ESD run-off from the residence shall be re-directed by gutters and if needed water retention structures such as rain gardens shall be installed to retain and prevent run-off to the lake and adjoining properties.
7. Applicant consents to inspection of the property from time to time by ESD to verify compliance with conditions.
8. Approval shall expire 01/14/15.

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.

Other Business

Hoveida, Rebecca, Fairview Township - discussion of the District Court decision *Hoveida v. Cass County* to remand patio denial findings to Planning Commission for review.

MS/P Moore/Kostial to amend and supplement Hoveida patio variance denial findings with additional findings as presented by Kostial.

Findings - 10/10/11:

1. The lot was platted in 1974 with the residence constructed in 1992.
2. The width of the walkway was measured 10/03/11 at 60 inches and the patio at 52 feet from the lake.
3. The storage structure is less than 75 feet from the lake.
4. The applicant had knowledge that a permit was required for the walkway and patio because applicant had applied to Cass County for a permit in June 2011 for a deck expansion. The applicant's statement that she thought a permit was needed from the DNR is not credible based upon the applicant's prior permit application to Cass County.
5. The applicant had knowledge that approval by a third party was required because the proposed improvements require approval as set forth in the Covenants and Declarations governing the plat of "Timber Ridge Third Addition" of which the property is a part and the applicant failed to obtain that approval.
6. There is no evidence that the cost of compliance in moving the storage structure and correcting the violations relating to the walkway and patio as set forth in the conditions are excessive or unreasonable.
7. Approval of "after the fact" variance except as permitted in the conditions will alter the essential character of the neighborhood because of the lack of similar structures in the development of which the property is a part.
8. Allowance of the "after the fact" variance as requested except as permitted in the conditions is unreasonable.

Findings - 01/14/13:

1. The patio does not rise to the level of "structure" or improvement essential to the applicant's reasonable use of the property.
2. The patio does not abut the residence.
3. It has not been established that the non-conforming patio's encroachment into the minimum lake setback, was meant to address any "practical difficulties or circumstances unique to the property" that could otherwise have been accomplished while complying with the Land Use Ordinance/official controls.
4. The location and size of the patio is not in harmony with either the general purpose or intent of the official controls or consistent with the Cass County Comprehensive Plan both of which are meant to promote reasonable preservation or enhancement of the natural environment particularly in the shoreland areas as well as minimizing run-off erosion and sedimentation.

5. The applicant has produced no convincing evidence that it would be unreasonably difficult or costly to modify the patio's dimensions and/or design so that it complies with condition # 7. of the October 10/2011 Cass BOA variance denial which allowed for a minimum lake setback for the patio of approximately 64 feet from the OHWL rather than the 75 feet required by the Land Use Ordinance.

Conditions - 10/10/2011:

1. The storage structure shall be moved to a distance at least 75 feet from the lake.
2. 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.
3. Applicant consents to inspection of the property from time to time by ESD to verify compliance with conditions.
4. The property must be returned to compliance with the requirement of the Land Use Ordinance no later than 06/30/12.
5. The stairway within the 75 feet setback must comply with the maximum width as prescribed by Section 1126.1 of the land Use Ordinance.
6. The stairway beyond the 75 feet setback may remain as constructed.
7. The patio may encroach to the lake not more than 15 % of the 75 feet setback.

MS/P Moore/Kostial to adopt no net loss policy for Water Oriented Commercial classified land as presented by Moore.

No Net Loss of Water Oriented Commercial (WOC) Property

A "no net loss" policy is defined as a principle by which various governmental entities strive to balance unavoidable habitat, environmental and resources losses with replacement on a project by project basis so that further reduction to resources may be prevented. "No net loss" policies can be applied to wetland protection where the policy is most widely known, to farmland, public hunting lands and public waterfront access. "No net loss" policies have become important tools in protecting the environment and protecting the public's access to the natural environment.

The goal of a WOC No Net Loss is to create a baseline of WOC acres in Cass County in order to assure that future generation have similar privately owned WOC recreational opportunities as enjoyed today.

Whereas: Section 903.9 of the Land Use Ordinance establishes a WOC classification to accommodate commercial uses in the shoreland zone for to and use of surface water feature is

an integral part of the business. Marinas, resorts and restaurants with transient docking facilities are examples of such a use; and

Whereas: Travel and tourism has appositive economic impact upon a wide variety of business and commercial activity which supports business throughout Cass County; and

Whereas: The Comprehensive Plan acknowledges the importance of tourism as a major factor of the economy of Cass County; and

Whereas: Leisure and hospitality generates employment for more than 1,700 persons in Cass County; and

Whereas: Uses in the shoreland area should be balanced among those that help conserve environmental resources, provide recreational opportunities, support tourism and redevelopment and enhance the local economy; and

Whereas: The Minnesota DNR has acknowledged the cultural and economic benefits of commercial waterfront property to the State by creating standards specific to resorts and other waterfront activities;

Therefore Be It Resolved:

That Cass County establishes a policy of No Net Loss for property classified Water oriented Commercial (WOC).

That within six months of policy adoption ESD shall establish a base line of the total acres currently classified WOC as of January 1, 2010.

That acreage equally or more suitable for designation as WOC shall be from time to time designated as such to ensure no net loss of the total WOC acreage to which ESD may provide limits as to acceptable locations for such new WOC areas. and

That the numbers of acres re-classified from WOC in any given year be banked for future re-classification to WOC.

MS/P Fitch/Anderson at 12:24 pm, to adjourn.

P. Fairbanks