

MINUTES OF THE BOARD OF ADJUSTMENT

June 5, 2013

MEMBERS PRESENT: Jeremy Paquette, Irene Bright, Galen Tveit, Ed Spiel, Bob Lake

MEMBERS ABSENT: None

OTHERS PRESENT: Pete Gansen, Kristi Kunz, Becky Trapp

1. The Chair called the meeting to order at 4:01 p.m.
2. The Chair read the rules of the meeting. Introductions were made.
3. APPROVE AGENDA:

The Chair called for changes to the Agenda for the June 5, 2013 Board of Adjustment meeting. There were no changes necessary.

Bob Lake made a motion to approve the Agenda. **Ed Spiel** seconded the motion.

The Chair called the question. The motion carried 4.0 to approve the Agenda.

NEW BUSINESS:

4. **DOUGLAS W. POTTINGER, 12291 CHESHOLM LANE, EDEN PRAIRIE, MN 55347,** is requesting a variance from the required setback distance of 30 feet to a bluff to a setback distance of 7 feet to construct a 16 foot x 30 foot residence addition, in an area zoned Shoreland (Big Sandy). LOT 6 BIRCH VIEW ADDITION. Section 9, Township 49, Range 23, Aitkin County, MN.

PERMIT #39473V

The Chair noted the applicant was present.

STAFF REPORT:

Pete Gansen read the inspection report completed by Zoning Inspector Kevin Turnock. The septic system is compliant with an inspection done May 13, 2013. The variance as staked is greater than 75 feet to the Ordinary High Water Level (OHWL), greater than 30 feet from the road, greater than 10 feet from the property lines, and 7 feet from the existing deck to the bluff. Survey monuments were not located and there is no floodplain on the property.

Neighboring structure comments included: The Northeast residence is greater than 75 feet from the OHWL and is built into the top of a steep slope. The Southwest residence is the same.

Additional observations included: Both neighboring parcels have a steep slope due to not meeting the height requirement for a bluff.

If the variance is granted the Zoning office recommends one condition:

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- 1) Implement the Shoreland Performance Standards.

Photos of the site, prepared by Inspector Kevin Turnock, were passed around.

The Chair asked the applicant for comments.

Douglas Pottinger stated he would prefer to speak after the board comments. Mr. Pottinger stated they bought the cabin 10 yrs ago and planned to add on to the South side of the cabin. He stated it was built in 1973, at a time when there were no setbacks to meet. Mr. Pottinger stated his family size has grown and now they have run out of living space in the existing cabin. The applicant stated he felt the proposed addition would not affect erosion on the bluff and it fits in with the neighboring structures. He also noted, it would not be visible from the lake.

The Chair asked the board for discussion.

The Chair asked how much excavation will be done into the bluff.

Douglas Pottinger stated it will only be a crawl space and he was unsure of how much excavation will be done. The applicant clarified the bluff will not be excavated.

The Chair explained that the location of the building and proposed addition is in the bluff impact zone.

Douglas Pottinger stated the bluff will not be excavated.

The Chair stated he is in the bluff impact zone.

Douglas Pottinger stated there will be minimal excavation.
The Chair stated typically a crawlspace is 4-5 feet deep.

Irene Bright noted there is a deck on the garage and asked if there were living quarters. The applicant stated it is storage only. Irene Bright stated it seemed to have living quarters. Douglas Pottinger stated there is a couch, but no one uses it for sleeping quarters or living quarters.

Irene Bright asked about the impervious surface coverage on the lot. The applicant clarified it is not an issue and noted the lot is almost 10 acres in size.

Bob Lake stated he was confused with the design of the new addition.
Doug Pottinger clarified the design by stating there is an existing bathroom that they will be adding on to and he noted, his builder made the comment there may be water issues if gutters weren't installed.

Ed Spiel stated he was concerned with the 7 foot bluff setback.
Doug Pottinger stated the new addition is going further back to around 10 feet from the bluff.

Galen Tveit questioned the backfill between the addition and the bluff. The applicant stated there will be no backfill and they are planning on using erosion control plans if necessary during construction.

The Chair noted the natural grade of the lot is away from the bluff and lake.

Pete Gansen stated there were 20 notices sent out in regard to this application. One letter of correspondence was received from Shamrock Township. Pete Gansen read it into the record (on file).

The Chair asked the audience for comments in favor or neutral.

There were none.

The Chair asked the audience for comments in opposition.

There were none.

The Chair asked for additional board and applicant comments.

Irene Bright stated she would like to see the Shoreland Performance Standards implemented.

There being no further discussion, **the Chair called for a motion.**

Ed Spiel made a **motion to approve** the variance with one condition.

- 1) Implement Shoreland Performance Standards.

The Chair called for Findings of Fact:

1. Is the variance in harmony with the general purposes and intent of the official control and consistent with the comprehensive plan? Why or why not?

Yes, the residence addition will not reduce the existing setback to the bluff and the original structure was built before bluff setbacks and the proposed addition is in the most reasonable location.

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

Yes, the addition to the residence is being placed in the most reasonable location.

3. Is the practical difficulty due to circumstances unique to this property? Why or why not?

Yes, the property is largely affected by topography and bluff setback issues.

4. Is the need for the variance created by actions other than the landowner or prior landowners? Why or why not?

Yes, the original structure was built before bluff setback regulations.

5. Will the issuance of the variance maintain the essential character of the locality? Why or why not?

Yes, excavation will be minimal and the neighboring properties are similarly situated.

6. Does the practical difficulty involve more than economic considerations? Why or why not?

Yes, topography. See Findings 1-6.

The Chair called for any further discussion.

There was none.

The Chair called for a second to the motion. Irene Bright seconded the motion to approve.

The Chair called the question. The application was **approved** by a vote of **4.0**.

The Chair and the applicant signed the Notice of Decision and the Shoreland Performance Standards. Copies of the Notice of Decision, The Shoreland Performance Standards, and the Findings-of-Fact were given to the applicant.

5. ROBERT D. SCHAEFER, 860 DALE ST., HUTCHINSON, MN 55350, is requesting a variance from the required setback distance of 150 feet from the Ordinary High Water Level on a Natural Environment Lake (French) to construct a 20 foot x 16 foot residence addition and a 5 foot x 10 foot deck on an existing non-conforming residence located 136 feet from the Ordinary High Water Level, in an area zoned Shoreland. 1.89 ACS OF LOT 2 IN DOC 183883. Section 29, Township 48, Range 25, Aitkin County, MN.

PERMIT #39484V

STAFF REPORT: Pete Gansen stated there were 17 notices sent out in regard to this application. No letters of correspondence were received.

Pete Gansen read the inspection report completed by Inspector Kevin Turnock. There is a conforming septic on the property that was inspected in October of 2012. The variance as staked is 136 feet from the OHWL, greater than 30 feet from the road, greater than 10 feet to the property lines, and greater than 30 feet from the bluff. Survey monuments were not located. The variance as staked is 7 feet from the septic tank and there is no floodplain on the property.

Neighboring structure comments included: Structure to the NW is 78 feet from OHWL and there are no structures on the parcel to the SE. It was noted that the nearest structure to the SE meets setbacks.

Additional observations included: They will need an engineer's report for the septic tank encroachment unless addition is downsized.

Based on the submitted application the Zoning office recommends one condition: Implement the Shoreland Performance Standards.

Photos of the site prepared by Inspector Kevin Turnock were passed around.

The Chair noted the applicant was present.

The Chair asked the applicant for comments.

Robert Schaefer stated he had no comments at this time.

The Chair asked the board for discussion.

Irene Bright asked if there was a cement slab covered with mud or plastic on the property. Robert Schaefer stated he didn't have a cement slab, although there were some landscaping projects happening.

Irene Bright stated she agreed with the inspector's recommendation and would like to see the Shoreland Performance Standards are followed.

Bob Lake noted the addition will need include pillars because of the slope of the land.

Ed Spiel stated it was a perfect spot to build.

Galen Tveit stated he didn't have any issues with the proposed addition either.

The Chair noted the original structure was built with good intentions of meeting all setbacks; unfortunately there was a discrepancy with the lake setback measurement. The Chair also noted he would like to have the Zoning Office double check the setback to the septic.

The Chair asked the audience for comments in favor or neutral.

There were none.

The Chair asked the audience for comments in opposition.

There were none.

The Chair asked for additional board and applicant comments.

There being no further discussion, **the Chair called for a motion.**

Bob Lake made a motion to approve the variance with two conditions.

- 1) Implement the Shoreland Performance Standards.
- 2) Verify the septic tank setback.

The Chair called for Findings of Fact:

1. **Is the variance in harmony with the general purposes and intent of the official control and consistent with the comprehensive plan? Why or why not?**
Yes, the addition is well screened and is located in the most reasonable location.
2. **Is the owner proposing to use the property in a reasonable manner not permitted by the official control? Why or why not?**
Yes, a residence addition is reasonable in size and location.
3. **Is the practical difficulty due to circumstances unique to this property? Why or why not?**
Yes, the location was measured incorrectly during the original sighting of the building, however; the location still meets location requirements and ordinance intent.
4. **Is the need for the variance created by actions other than the landowner or prior landowners? Why or why not?**
Yes, the site was originally measured incorrectly.

5. Will the issuance of the variance maintain the essential character of the locality? Why or why not?

Yes, it is actually setback further than the neighbors.

6. Does the practical difficulty involve more than economic considerations? Why or why not?

Yes, see Findings 1-6.

The Chair called for any further discussion.

There was none.

The Chair called for a second to the motion. Irene Bright seconded the motion to approve.

The Chair called the question. The application was approved by a vote of 4.0.

The Chair and the applicant signed the Notice of Decision and the Shoreland Performance Standards. Copies of the Notice of Decision, Shoreland Performance Standards, and the Findings-of-Fact were given to the applicant.

6. STEVEN E. GUSTAFSON, 29243 350TH LN., AITKIN, MN, 56431, is requesting a variance from the required setback distance of 100 feet from the Ordinary High Water Level on a Recreational Development Lake (Dam) to construct a 10 foot x 24 foot residence addition and a 12 foot x 14 foot deck on an existing non-conforming residence located 63 feet from the Ordinary High Water Level. 2.72 AC OF LOT 1 IN DOC #262726 & 262081. Section 35, Township 47, Range 25, Aitkin County, MN.

PERMIT #39485V

The Chair noted the applicant was present.

STAFF REPORT: Pete Gansen stated there were 17 notices sent out in regard to this application. No letters of correspondence were received.

Pete Gansen read the inspection report completed by Inspector Kevin Turnock. There is a conforming septic system on the property that was inspected in May of 2013. The variance as staked is 68 feet from the OHWL, greater than 30 feet from the road, greater than 10 feet from the property line, and there is no bluff or floodplain on site.

The neighboring structure comments include: Structure to the East is greater than 100 feet to the OHWL. There are no structures to the West.

Additional observations included: Original house was built with a variance. The lot is the last one in the subdivision and the shoreline tapers back to the road.

If the variance is granted one condition is being recommended by the Zoning Office: Implement the Shoreland Performance Standards.

Photos of the site prepared by Inspector Kevin Turnock were passed around.

The Chair asked the applicant for comments.

Steven Gustafson stated he had no comments at this time.

The Chair asked the board for discussion.

Irene Bright stated she is familiar with the property, being from Kimberly Township. She stated she would like to see more vegetation by the lake.

Steven Gustafson stated someone had recommended what is currently being done at the lake shore.

Irene Bright asked if the proposed addition will be flush with the house. She noted the stakes were off just a little. The applicant stated the addition will be flush with the house.

Bob Lake stated he didn't see any real objections except for being too close to the lake. He noted there is a lot of grass to mow.

Ed Spiel stated he agreed with Irene Bright's comment regarding more vegetation needed by the lake.

Galen Tveit stated the addition will not be further encroaching on the lake and agreed that a little more could be done with the shoreline.

The Chair stated he disagreed, he felt that the addition is encroaching more into the lake and there seems to be a more suitable site which will increase the lake setback. The Chair explained that the addition could be on either side of the existing structure and it would not encroach further into the lake setback.

The Chair asked the audience for comments in favor or neutral.

Darlene Gustafson stated she is in favor of the application.

The Chair asked the audience for comments in opposition.

There were none.

The Chair asked for additional board and applicant comments.

Bob Lake asked for clarification on the request.

The Chair stated, based on the submitted, the deck that is currently there will be turned into a porch and will include a roof, which would be considered a residence addition.

There being no further discussion, The Chair made a **motion to deny** the variance.

Darlene Gustafson asked if an addition to the side would be allowed. The Chair stated that request would not be a part of this application.

Steven Gustafson stated the West side may be too close to the septic tank. The Chair stated an engineer's report could be obtained for the shorter setback.

Irene Bright stated the East side may be too close to the garage if they didn't downsize the addition.

The Chair called for Findings of Fact:

1. Is the variance in harmony with the general purposes and intent of the official control and consistent with the comprehensive plan? Why or why not?

No, the addition could be relocated to the side of the building and the given site is landowner preference.

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

No, given the location and preexisting building sited with a prior variance and the addition of the shoreland performance, however; it would be reasonable to build on the sides of the building to not encroach the lake setback.

3. Is the practical difficulty due to circumstances unique to this property? Why or why not?

No, the additions could be relocated to the side of the building.

4. Is the need for the variance created by actions other than the landowner or prior landowners? Why or why not?

No, the site is landowner preference. Additions could be placed off to the side of the building.

5. Will the issuance of the variance maintain the essential character of the locality? Why or why not?

No, it would replace the deck with a residence while there is reasonable area on either side of the building.

6. Does the practical difficulty involve more than economic considerations? Why or why not?

See Finding 1-6. The site is landowner preference the additions could be moved to the side of the building.

The Chair called for any further discussion.

There was none.

The Chair called for a second to the motion. Ed Spiel seconded the motion to deny.

The Chair called the question. The application was denied by a vote of 3.1.

The Chair and the applicant signed the Notice of Decision. Copies of the Notice of Decision and the Findings-of-Fact were given to the applicant.

7. PETER M. CAPISTRANT, 22848 170TH STREET, BIG LAKE, MN 55309, is requesting an after-the-fact variance from the required setback distance of 100 feet to the Ordinary High Water Level on a Recreational Development Lake (Big Pine) for a 998 square foot irregularly shaped deck and a variance from the required setback distance of 100 feet from the Ordinary High Water Level to a setback distance of 80 feet to construct a 36 foot x 52 foot residence addition, in an area zoned Shoreland. LOT 11 LESS W 26 FT, LOT 12, AND LOT 13 LESS E 32 FT. Section 29, Township 45, Range 27, Aitkin County, MN.

PERMIT #39507V

The Chair noted the applicant was present.

STAFF REPORT: Pete Gansen stated there were 22 notices sent out in regard to this application. No letters of correspondence were received.

Pete Gansen read the inspection report completed by Inspector Kevin Turnock. The septic is pending an upgrade and a design has been submitted. The variance as staked is 61 feet to the OHWL, greater than 30 feet from the road, greater than 10 feet from the property line, there is no bluff or floodplain on site, and survey monuments were not located.

The neighboring structure comments include: West neighbor is 72 feet from the OHWL. East neighbor is 96 feet from the OHWL with a variance in 2003.

Additional observations included: The proposed addition will put the building coverage at 20%, which is 5% over the allowed 15%. The property is divided by a road and therefore the property on the other side cannot be included in the calculation. The deck was built without a permit and the applicant is here to make it right.

Photos of the site prepared by Inspector Kevin Turnock were passed around.

The Chair asked the applicant for comments.

Peter Capistrant stated they will be removing part of the structure and the deck to keep within the building coverage allowance. The addition to the East will be removed and the deck to the front will be removed also.

Pete Gansen stated 16x40 has existing building and the 32x56 for the new addition will push them over the 15% to 20%. If the addition was eliminated entirely they would be 54 sq ft over the 15% allowance.

The Chair clarified for the applicant, by stating the Zoning inspector calculated the numbers with the removal and additions.

The Chair asked the board for discussion.

Irene Bright stated she had questioned the impervious surface coverage when on site.

The Chair noted to the Board, the after-the-fact has to be looked at as though it does not exist.

Irene Bright stated she is concerned with the size of the addition.

Bob Lake stated he was unaware that the back part of the lot couldn't be considered in the impervious coverage.

Ed Spiel asked the applicant if a basement will be constructed. The applicant stated yes, with two stories on top, and no walk-out.

Galen Tveit asked where the water drains now. The applicant stated, his assumption is, the drainage is to the East and then eventually to the lake.

The Chair asked for clarification on the staff report's notes regarding the septic inspection. Pete Gansen stated the proposed addition would require a larger septic and therefore, an inspection on the existing system was not required, as they had submitted a design for the new system that will be installed if the variance is granted.

The Chair stated the deck is an issue to him because the original structure is barely meeting setbacks itself.

The Chair stated there may be buildable area on both sides of the structure and noted the overage on the building coverage is very high.

A brief discussion followed regarding possible locations for future additions and the issues with the building coverage allowance.

The Chair asked the audience for comments in favor or neutral.

Roger Kamann stated they are the East neighbors and they are neutral to the application.

The Chair asked the audience for comments in opposition.

There were none.

The Chair asked for additional board and applicant comments.

There being no further discussion, **the Chair called for a motion.**

Irene Bright made a **motion to deny** the after-the-fact variance on the deck.

The Chair called for the after-the-fact Findings of Fact on the deck:

- 1. Is the variance in harmony with the general purposes and intent of the official control and consistent with the comprehensive plan? Why or why not?**
No, the deck was built without permit and attached to a structure that had been nearly meeting setbacks and without a variance.
- 2. Is the owner proposing to use the property in a reasonable manner not permitted by the official control? Why or why not?**
No, as in finding 1, the deck was built without a variance or permit and would not be allowed to be built in the location it exists without exhibiting practical difficulty or hardship through a valid variance.
- 3. Is the practical difficulty due to circumstances unique to this property? Why or why not?**
No, the deck location was landowner preference and deck location should have been considered at the time of the original construction. See Findings 1-2.
- 4. Is the need for the variance created by actions other than the landowner or prior landowners? Why or why not?**
No, the need for a variance has been created by the need of the existing landowner or previous landowner.
- 5. Will the issuance of the variance maintain the essential character of the locality? Why or why not?**
No see Findings 1-2.
- 6. Does the practical difficulty involve more than economic considerations? Why or why not?**
No practical difficulty has been demonstrated or exists on the subject property that has been documented.

7. Did the applicant act in good faith and attempt to comply with the law by obtaining the proper permits?

No, the landowner at the time of the deck addition did not obtain the required permits, however, the landowner is before the board today requesting permit.

8. Did the applicant make a substantial investment in the property and complete the repairs/construction before the applicant was informed of the impropriety?

No, considering the size of the house that was built with permits the applicant did not make a substantial investment.

9. Are there other similar structures in the area?

No, the adjacent neighbor has a variance to 96 feet and the West neighbor is at 72 and the existing building is at 85 feet.

10. Would the benefits to the county appear to be far outweighed by the applicant's burden if the applicant were required to comply with the ordinance?

No, it is reasonable to expect permits are applied for before the structures are built. See Findings 1-10.

Pete Gansen clarified that if the variance is denied for the deck, the applicant's will receive notice from the Zoning office to remove the deck.

The Chair called for any further discussion.

There was none.

The Chair called for a second to the motion. Ed Spiel seconded the motion to deny.

The Chair called the question. The application was denied by a vote of 4.0.

The Chair called for discussion on the proposed variance request for the residence addition.

Irene Bright asked for clarification on the location of the proposed addition.

The Chair summarized the submitted application.

Galen Tveit asked what the impervious coverage will be after removing the deck.

Pete Gansen stated, if all decking is removed, they will still be over the allowed coverage by 54 sq ft.

A brief discussion followed regarding the calculations of the lot coverage.

There being no further discussion, **the Chair called for a motion on the proposed variance request on the addition.**

Ed Spiel made a motion to deny the variance.

The Chair called for Findings of Fact:

1. Is the variance in harmony with the general purposes and intent of the official control and consistent with the comprehensive plan? Why or why not?

No, the building as proposed is over the impervious surface coverage allowance and can be reduced to meet ordinance requirement.

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

No, the building size can be reduced to meet building coverage amounts while no practical difficulty to exceed this has been demonstrated.

3. Is the practical difficulty due to circumstances unique to this property? Why or why not?

No unique features or practical difficulty or hardship has been demonstrated to warrant granting a variance. The building size requested needs to be reduced to meet ordinance requirements.

4. Is the need for the variance created by actions other than the landowner or prior landowners? Why or why not?

No, variance request is landowner created.

5. Will the issuance of the variance maintain the essential character of the locality? Why or why not?

No, the building coverage proposed exceeds the allowed building coverage.

6. Does the practical difficulty involve more than economic considerations? Why or why not?

No, the applicant needs to reconfigure and design the project to better suit the available building area on the lot and remain in compliance with the 15% building coverage requirements.

The Chair called for any further discussion.

There was none.

The Chair called for a second to the motion. Bob Lake seconded the motion to **deny**.

The Chair called the question. The application was **denied** by a vote of **4.0**.

The Chair and the applicant signed the Notice of Decision. Copies of the Notice of Decision, and the Findings-of-Fact were given to the applicant.

The Chair stated he would be abstaining from voting on the next two items of business. The Vice Chair, Ed Spiel, stepped in as Chair.

8. ROGER SCHNASER, 50503 218TH PLACE, MCGREGOR, MN 55760, is requesting a variance from the required setback distance of 75 feet from the Ordinary High Water Level on a General Development Lake (Big Sandy) to a setback distance of 72 feet, a variance from the required setback distance of 30 feet from a bluff to a setback distance of 25 feet, and a variance from the 15% building coverage allowance to 16% to construct a 24 foot x 24 foot accessory building, in an area zoned Shoreland. .29 AC OF LOT 3 IN DOC #269408. Section 7, Township 49, Range 23, Aitkin County, MN.

PERMIT #39477V

The Chair noted the applicant was present.

STAFF REPORT: Pete Gansen stated there were 28 notices sent out in regard to this application. One letter of correspondence was received. Pete Gansen read the letter into the record (on file).

Pete Gansen read the inspection report completed by Inspector Kevin Turnock. The septic on the property is complaint, with an inspection dated May 2013. The variance as staked is 72 feet to the garage, 29 feet to the road, 11 feet to the property line, it was noted there is a steep slope on site, not a bluff. Survey monuments were located and the property is out of the floodplain.

The neighboring structure comments include: North neighbor was built with a variance to the road r-o-w setback, South neighbor also was granted a road r-o-w variance. Additional observations included: Steep slope and lot size limit available building area. The slope was not meeting bluff requirement. Proposed construction will bring impervious structure to 15.1%. The cabin was originally built with a variance.

Photos of the site prepared by Inspector Kevin Turnock were passed around.

The Chair asked the applicant for comments.

Roger Schnaser stated he had nothing further to add.

The Chair asked the board for discussion.

Irene Bright stated she was on site and it seemed to be a reasonable location for the garage. Mrs. Bright asked if the deck was built at the time of the residence. The applicant clarified that the deck was added in 1990.

Bob Lake stated going from 15% to 15.1% is very minimal and he didn't see a problem with it.

Galen Tveit stated it seemed to be the only location for the garage.

The Chair asked the audience for comments in favor or neutral.

Nick Buckentin stated he was in favor.

The Chair asked the audience for comments in opposition.

There were none.

The Chair asked for additional board and applicant comments.

There being no further discussion, **the Chair called for a motion.**

Bob Lake made a **motion to approve** the variance with one condition.

- 1) Implement the Shoreland Performance Standards.

The Chair called for Findings of Fact:

1. **Is the variance in harmony with the general purposes and intent of the official control and consistent with the comprehensive plan? Why or why not?**
Yes, the available building envelope on the lot is very limited due to road setbacks and site topography.
2. **Is the owner proposing to use the property in a reasonable manner not permitted by the official control? Why or why not?**
Yes, the owner is proposing to use the property for a garage when one would not be allowed because of setbacks this is really the only reasonable location for the garage.
3. **Is the practical difficulty due to circumstances unique to this property? Why or why not?**
Yes, the topography of the lot limits buildable area.
4. **Is the need for the variance created by actions other than the landowner or prior landowners? Why or why not?**
Yes, the topography of the lot.
5. **Will the issuance of the variance maintain the essential character of the locality? Why or why not?**
Yes, the variance request is seasonal lakeshore residential similar to the surrounding properties.
6. **Does the practical difficulty involve more than economic considerations? Why or why not?**
Yes, the practical difficulty involves site topography that limits buildable area. See Findings 1-6.

The Chair called for any further discussion.

There was none.

The Chair called for a second to the motion. Galen Tveit seconded the motion to approve.

The Chair called the question. The application was approved by a vote of 3.0.

The Chair and the applicant signed the Notice of Decision and the Shoreland Performance Standards. Copies of the Notice of Decision, Shoreland Performance Standards and the Findings-of-Fact were given to the applicant.

9. LESLIE G. WINSLOW, 12429 ALLEN DR., BURNSVILLE, MN 55337, is requesting an after-the-fact variance from the required setback distance of 30 feet from the road right-of-way to a setback distance of 18 feet to construct a 24 foot x 32 foot residence and a 526 square foot irregularly shaped deck, in an area zoned Shoreland (Big Sandy). .19 AC LOT 3 IN DOC 170455. Section 7, Township 49, Range 23, Aitkin County, MN.

PERMIT #39510V

The Chair noted the applicant was present.

STAFF REPORT: Pete Gansen stated there were 39 notices sent out in regard to this application. One letter of correspondence was received. Pete Gansen read the letter into the record (on file).

Pete Gansen read the inspection report completed by Inspector Kevin Turnock. There are conforming holding tanks on the property that were inspected in 2012. The variance as staked is 52 feet from the OHWL, 16 feet from the road, greater than 10 feet from the property line, and no bluff was found on site. Survey monuments were located and the property is not in the floodplain.

The neighboring structure comments include: West neighbor residence is 34 feet from OHWL and the East neighbor is 58 feet from OHWL.

Additional observations included: Building footprint was not changed. Addition squared out upper level of structure. The site is severely limiting and the only way to add is to go up. If the variance is granted the Zoning Office recommends one condition: Obtain standard residence addition permit.

Photos of the site prepared by Inspector Kevin Turnock were passed around.

The Chair asked the applicant for comments.

Mr. Winslow stated all the structures in the area are close to the road and therefore, this was the only option for additions.

A brief discussion followed regarding the existing deck.

The Chair asked the board for discussion.

Irene Bright stated the addition looked reasonable.

Mrs. Bright asked what they do to maintain the shoreline. The applicant stated he doesn't mow to the lake and they usually have flower/rain gardens. Mr. Winslow stated the flooding last year ruined most of the vegetation by the lake shore but they are planning to maintain it the same once it re-vegetates.

Bob Lake stated the shoreland area looked like it needed more vegetation, which due to the flooding it was removed.

Galen Tveit stated the Township didn't have a problem with the road setback and he didn't either.

The Chair noted there were no other audience members present for comments.

The Chair asked for additional board and applicant comments.

There being no further discussion, **the Chair called for a motion.**

Bob Lake made a motion to approve the variance with two conditions.

- 1) Obtain residence addition permit.
- 2) Increase the shoreline performance approval contingent to discretion of the Zoning Office.

The Chair called for Findings of Fact:

1. **Is the variance in harmony with the general purposes and intent of the official control and consistent with the comprehensive plan? Why or why not?**
Yes, lot size and configuration limit buildable area. The owner did not reduce setbacks on the site and the road authority has no issue with the road setback.
2. **Is the owner proposing to use the property in a reasonable manner not permitted by the official control? Why or why not?**
Yes, the addition is for increased living area in the house without increasing overall footprint.
3. **Is the practical difficulty due to circumstances unique to this property? Why or why not?**
Yes, they are limited by road and lake setbacks.
4. **Is the need for the variance created by actions other than the landowner or prior landowners? Why or why not?**
Yes, the building already does not meet the road r-o-w setback.
5. **Will the issuance of the variance maintain the essential character of the locality? Why or why not?**
Yes, it is residential lake shore similar to adjacent properties.
6. **Does the practical difficulty involve more than economic considerations? Why or why not?**
Yes, it involves a limited building envelope where the only way to build is to go up. See additional after-the-fact Findings.
7. **Did the applicant act in good faith and attempt to comply with the law by obtaining the proper permits?**
Yes, applicant voluntarily brought the issue to the permitting Office.
8. **Did the applicant make a substantial investment in the property and complete the repairs/construction before the applicant was informed of the impropriety?**
Yes, the roof pitch was modified.
9. **Are there other similar structures in the area?**
Yes, there are several seasonal/year-round lake houses in the area.
10. **Would the benefits to the county appear to be far outweighed by the applicant's burden if the applicant were required to comply with the ordinance?**
Yes, no setback distances would be reduced and the owner would need to reconstruct the roof.

The Chair called for any further discussion.

There was none.

The Chair called for a second to the motion. Galen Tveit seconded the motion to approve.

The Chair called the question. The application was approved by a vote of 3.0.

The Chair and the applicant signed the Notice of Decision and the Shoreland Performance Standards. Copies of the Notice of Decision, the Shoreland Performance Standards worksheet and the Findings-of-Fact were given to the applicant.

10. Approval of minutes, May 1, 2013.

The Chair called for changes to the minutes of the May 1, 2013 meeting. There were no changes necessary.

The Chair made a motion to approve the minutes of the May 1, 2013. **Irene Bright seconded** the motion to approve.

The Chair called the question.

The motion passed unanimously 4.0 to approve the minutes of the May 1, 2013 Board of Adjustment meeting.

11. There being no further discussion, the Chair called for a motion to adjourn.

Irene Bright made a motion to adjourn. The Chair seconded the motion.

The Chair called the question. The motion passed unanimously 4.0 to adjourn.

The meeting was adjourned at 6:26 p.m.

Respectfully submitted,

Kristi Kunz
Secretary/Clerk

LAST REVISION: June 10, 2013.

APPROVED: July 3, 2013