

PUBLIC HEARING – VARIANCE

Application: Variance
Applicant: Alan J. Brown
Agenda Item: 3 (a) - Continuation



Additional information was requested by the Planning Commission at the September 19 meeting. The new submittals were not complete when the packet was put together. The submittals will be emailed to the Planning Commission prior to the October 17 meeting. The information below is the same information submitted for the September 19 meeting.

Background Information: The applicant is requesting a Variance to construct a new cabin within the lake setback. Applicant proposes to remove the

existing cabin that is 10 feet from the Ordinary High Water (OHW) mark and build a new cabin located 39 feet from the OHW.

The subject property is located at 27713 Janco Lane. The subject property contains a 673.56 square foot cabin that includes a 3-season porch and an entry deck, and a 192 square foot detached shed and is zoned Shoreline Residential.

The subject property is accessed via Janco Lane, which is a private roadway off of Pow Wow Point. There is a recorded easement across the subject property for access to the lot to the north.

Applicant proposes to remove the existing 673.56 square foot cabin and construct a new 950 square foot cabin 39 feet from the OHW, reducing the nonconformity by 29 feet.

The applicant proposes to increase the height of the new cabin by 7 feet. The existing cabin is 13 feet in height and the new cabin would be 20 feet in height. The increase in height would maximize interior space options for the new cabin.

Applicant proposes to install a depression area south of the proposed new cabin to maintain the stormwater on their property. Applicant also proposes to install gutters along the roofline of the new cabin to direct runoff to the depression area.

The subject property is .64 acres in size. There is a wetland behind the shed to the west. Approximately half of the subject property (including the proposed location of the dwelling) is located within the 100-year floodplain of East Twin Lake (identified in green below).



The adjacent properties to the north and south are also seasonal cabins and zoned Shoreline Residential. The subject property is bounded on the west by State Highway 371.

The subject property is served by a shallow well and two holding tanks. Applicant proposes to seal the shallow well and have a deep well drilled for the new cabin. Applicant proposes to move the existing lift tank and utilize the existing holding tanks for the new cabin.

Applicable Regulations:

Section 17-5.8 SHORELINE RESIDENTIAL (SR)

1. Purpose and Intent: To provide a zoning classification for riparian residential development. The zone may or may not be served by municipal sewer and water, depending on availability.
2. Compatibility: The Shoreline Residential zone can only be established next to the Water Resource zone. The shoreline residential zone should be established to extend through the first tier of parcels on developed lake shore and to a public road or 500 feet from the OHW, whichever is closer to the water body on undeveloped shoreline.
3. Lot, Use and Density Requirements.

	<u>GD Riparian Only</u>	<u>RD, Non-Riparian GD</u>	<u>NE Lake</u>
Lot width at OHW and building line – feet, minimum	100	150	200
Lot width with guest quarters or duplex	180	225	300
Buildable lot area – square feet, minimum	20,000	40,000	80,000
Buildable lot area with guest quarters or duplex – square feet, minimum	40,000	80,000	160,000
Setback, right-of-way, local streets – feet, minimum	10	10	10
Setback, right-of-way, collector and arterial streets – feet, minimum	30	30	30
Setback, OHW – feet, minimum	75	100	200
Setback, bluff – feet, minimum	30	30	30
Setback, side – feet, minimum	10	10	15
Setback, corner side – feet, minimum	30	30	30

Setback, sign – feet, minimum	1	1	1
Setback, wetland – feet, minimum	30	30	30
Impervious coverage – maximum	20%	15%	10%
Building height - feet, maximum	25	25	25
Building height, accessory structure - feet, maximum	13	13	13
Accessory Structure Size – square feet, maximum, cumulative	1,280	1,280	1,280
Flag Pole Height – feet, maximum	30	30	30
Building above highest known groundwater or lake level – feet, minimum	3	3	3
Maximum Density	1 unit/20,000 sq. ft.	1 unit/40,000 sq. ft.	1 unit/80,000 sq. ft.
ISTS setback from OHW – feet, minimum	75	75	100

4. Performance Standards. The following performance standards apply to all development in this zone:

A. Guest Quarters. A dwelling guest quarters must meet the following restrictions:

- (1) Shall be located along with the principal structure on the smallest lot meeting the above requirements.
- (2) Shall not cover more than 700 square feet of land and must not exceed 15 foot height.
- (3) Shall be located to reduce its visibility as viewed from public waters and adjacent shorelands.
- (4) Shall be screened from adjacent parcels and public waters by vegetation, topographical location, increased setback, color or other methods assuming summer leaf on conditions.

B. Impervious Coverage. Impervious coverage may be increased by 5% through a conditional use permit if the following is provided:

- (1) A storm water retention plan showing containment of the 5-year, 24-hour storm event on the parcel.
- (2) Direct runoff of stormwater to adjacent water bodies, including wetlands and adjacent parcels, shall be eliminated through the use of berms or other

permanent means.

C. Setback from OHW. On parcels with municipal sanitary sewer service, if a structure exists on either side of a proposed structure, the waterfront setback may be altered without variance to conform to the adjoining setbacks provided that the building site is not in a bluff impact zone or the setback less than 50 feet minimum. If no structure exists on either side, a new structure may encroach up to a 50-foot setback from the OHW.

D. Stairways, lifts and landings. Stairways and lifts are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas. Stairways and lifts must meet the following design requirements:

- (1) Stairways and lifts must not exceed 4 feet in width on residential lots. Wider stairways may be used for commercial properties, public open-space recreational properties, and planned unit developments.
- (2) Landings for stairways and lifts on residential lots must not exceed 32 square feet in area.
- (3) Canopies or roofs are not allowed on stairways, lifts or landings.
- (4) Stairways, lifts and landings may be either constructed above the ground on posts or pilings, or placed into the ground, provided they are designed and built in a manner that ensures control of soil erosion.
- (5) Stairways, lifts and landing must be located in the most visually inconspicuous portions of lots, as viewed from the surface of the public water assuming summer, leaf-on conditions, whenever practical.
- (6) Facilities such as ramps, lifts or mobility paths for physically handicapped persons are also allowed for achieving access to shore areas, provided that the dimensional and performance standards of sub-items (1) to (5) are complied with.

E. Boardwalks. Boardwalks are the required alternative for

achieving access to shore areas across delineated wetlands. Boardwalks must meet the following design requirements:

- (1) Boardwalks must not exceed four (4) feet in width on residential lots. Wider boardwalks may be used for commercial properties, public open space, recreational properties, and planned unit developments if specifically authorized in a conditional use permit.
- (2) Landings for boardwalks on residential lots must not exceed thirty-six (36) square feet in area. Landings larger than 36 square feet may be allowed for commercial properties, public open space recreational properties, and planned unit developments if specifically authorized in a conditional use permit.
- (3) Canopies or roofs are not allowed on boardwalks or landings. Boardwalks shall be constructed above the ground on posts or pilings.
- (4) Boardwalks should be located in the most visually inconspicuous portion of the lot, as viewed from the surface of the public waters assuming summer, leaf-on conditions.
- (5) Boardwalks shall be made of nontoxic materials.

F. Fertilizer and Pesticides. Use of fertilizer and pesticides in the shoreland management district must be done in such a way as to minimize runoff into the shore impact zone or public water by the use of earth, vegetation or both. The use of fertilizers containing phosphorus is prohibited within the shore impact zone.

G. Duplexes. On Natural Environment lakes, subdivisions of duplexes must also meet the following standards:

- (1) Each building must meet setback at least 200 feet from the Ordinary High Water Mark.
- (2) Each building must have common sewage treatment and water systems that serve both units in the building.
- (3) Watercraft docking facilities for each lot must be centralized in location and serve all dwelling units in

the subdivision.

(4) No more than 25% of lake shoreline can be in duplex development.

H. Docks. The landward end of all docks must meet a 10-foot setback from the nearest lot line. Docks must be placed so that no portion of the dock, including “L” extensions or additions, and no accessory or ancillary structures or equipment (including mooring buoys, boat lifts, shore trackers or swimming platforms), extends across the projection of the setback from the lot line into the lake. Docks must also be placed so as not to block access from an adjacent property to open water. The storage of all docks, and all watercraft or water oriented items shall also be subject to this property setback rule.

Notwithstanding any provision of this section to the contrary, the 10-foot setback for docks shall not apply to the extent necessary to allow ingress or egress of a pre-existing boat house.

In order to protect the environmental and aesthetic qualities of the lakes, docks shall not extend further than 75 feet from the shoreline into the water and shall not be placed in water depth greater than 10 feet. The Board of Adjustment may grant a variance, through the variance process, to these provisions where it can be demonstrated that it is environmentally beneficial to do so. The variance hearing fee would be refunded if the variance is approved.

These provisions shall apply to the use, maintenance and installation of any dock and accessory or ancillary structures or equipment at any time.

I. Screening. Screening consisting of native trees and shrubs covering a minimum of 75 percent of the area (leaf on conditions) is required in the shore impact zone, bluff impact zone and wetland setback in order to retain the scenic beauty and rural character as viewed from lakes. To obtain a construction permit in this district, a revegetation plan shall be required for existing properties that do not meet this standard.

J. Accessory Structure Size. Where a parcel contains buildable land area outside of the Required OHW Setback listed in the following table, additional accessory structure size

cumulative maximum may be constructed on the parcel outside of the setbacks listed below and at a rate consistent with the following table:

Lake Classification	Required OHW Setback	Square feet of additional accessory structure per 1,000 square feet of land area beyond required setback
General Development	300 feet	64
Recreational Development	300 feet	32
Natural Environment	400 feet	16

- K. Fences. Fences not exceeding 36 inches in height may be constructed within the OHW setback area so long as the fencing is transparent. Fences not exceeding 72 inches in height may be constructed up to the OHW setback area. Under no circumstances shall a fence be constructed closer than 10 feet from the surface of a public road and in all cases not within the public right-of-way. Materials shall consist of usual fencing materials with posts and fence of metal, wood, concrete, brick or smooth wire. Barbed or electrified wire is prohibited.

Section 17-6.8 FLOODPLAIN MANAGEMENT OVERLAY DISTRICT

1.0 Statutory Authorization and Purpose:

1.1 Statutory Authorization: The legislature of the State of Minnesota has, in Minnesota Statutes Chapter 103F and Chapter 462, delegated the responsibility to local government units to adopt regulations designed to minimize flood losses.

1.2 Purpose:

1.21 This ordinance regulates development in the flood hazard areas of Pequot Lakes. These flood hazard areas are subject to periodic inundation, which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base.

It is the purpose of this ordinance to promote the public health, safety, and general welfare by minimizing these losses and disruptions.

- 1.22 National Flood Insurance Program Compliance. This ordinance is adopted to comply with the rules and regulations of the National Flood Insurance Program codified as 44 Code of Federal Regulations Parts 59 – 78, as amended, so as to maintain the community’s eligibility in the National Flood Insurance Program.
- 1.23 This ordinance is also intended to preserve the natural characteristics and functions of watercourses and floodplains in order to moderate flood and stormwater impacts, improve water quality, reduce soil erosion, protect aquatic and riparian habitat, provide recreational opportunities, provide aesthetic benefits and enhance community and economic development.

2.0 General Provisions:

- 2.1 Lands to Which Ordinance Applies: This ordinance applies to all lands within the jurisdictions of the City of Pequot Lakes shown on the Flood Insurance Rate Maps adopted in Section 2.2 as being located within the boundaries of the Floodplain District. The Floodplain District is an overlay district that is superimposed on all existing zoning districts. The standards imposed in the overlay districts are in addition to any other requirements in this ordinance. In case of a conflict, the more restrictive standards will apply.
- 2.2 Adoption of Flood Insurance Study and Maps: The Flood Insurance Study for Crow Wing County, Minnesota, and Incorporated Areas, and Flood Insurance Rate Map panels 27035C0140C, 27035C0150C, and 27035C0275C; all of these documents being dated August 15, 2017 and prepared by the Federal Emergency Management Agency, are hereby adopted by reference and declared to be a part of this ordinance and the Official Zoning Map. These materials are on file in the City’s Administration Office.

- 2.3 Interpretation: The boundaries of the Floodplain District are determined by scaling distances on the Flood Insurance Rate Map.
- 2.31 Where a conflict exists between the floodplain limits illustrated on the official zoning map and actual field conditions, the flood elevations must be the governing factor. The Zoning Administrator must interpret the boundary location based on the ground elevations that existed on the site on the date of the first National Flood Insurance Program map showing the area within the regulatory floodplain, and other available technical data.
- 2.32 Persons contesting the location of the district boundaries will be given a reasonable opportunity to present their case to the Board of Adjustment and to submit technical evidence.
- 2.4 Abrogation and Greater Restrictions: This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provisions of this ordinance prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.
- 2.5 Warning and Disclaimer of Liability: This ordinance does not imply that areas outside the floodplain districts or land uses permitted within such districts will be free from flooding or flood damages. This ordinance does not create liability on the part of the City of Pequot Lakes or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.
- 2.6 Severability: If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of law, the remainder of this ordinance shall not be affected and shall remain in full force.
- 2.7 Definitions: Unless specifically defined below, words or phrases used in this ordinance must be interpreted so as to give them the same meaning as they have in common usage

and so as to give this ordinance its most reasonable application.

- 2.711 Base Flood – the flood having a one percent chance of being equaled or exceeded in any given year.
- 2.712 Base Flood Elevation – the elevation of the “regional flood,” as defined. The term “base flood elevation” is used in the flood insurance survey.
- 2.713 Development – any man-made change to improved or unimproved real estate including, but not limited to, buildings, manufactured homes, and other structures, recreational vehicles, mining, dredging, filling, grading, paving, excavation, drilling operations, or storage of materials or equipment.
- 2.714 Farm Fence – a fence as defined by Minn. Statute 344.02 Subd. 1 (a) – (d). An open type fence of posts and wire is not considered to be a structure under this ordinance. Fences that have the potential to obstruct flood flows, such as chain link fences and rigid walls, are not permitted in the Floodplain District.
- 2.715 Flood Fringe – the portion of the floodplain located outside of the floodway. Flood fringe is synonymous with the term “floodway fringe” used in the Flood Insurance Study, Crow Wing County, Minnesota and Incorporated Areas.
- 2.716 Flood Insurance Rate Map (FIRM) – an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).
- 2.717 Floodplain – the areas adjoining a watercourse which have been or hereafter may be covered by the regional flood.
- 2.718 Floodway – the bed of a wetland or lake and the channel of a watercourse and those portions of the

adjoining floodplain which are reasonably required to carry or store the regional flood discharge.

- 2.719 **Manufactured Home** – a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include the term “recreational vehicle”.
- 2.720 **Obstruction** – any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence (with the exception of farm fences), stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory floodplain which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.
- 2.721 **Recreational Vehicle** – a vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to self-propelled or permanently towable by a light duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. For the purposes of this ordinance, the term recreational vehicle is synonymous with the term “travel trailer/travel vehicle”.
- 2.722 **Regional Flood** – a flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 1% chance / 100-year recurrence interval. Regional flood is synonymous with the term “base flood” used in the Flood Insurance Study.
- 2.723 **Regulatory Flood Protection Elevation** – an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the floodplain that result from designation of a floodway.

- 2.724 Structure – anything constructed or erected on the ground or attached to the ground, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, and other similar items.
- 2.725 Substantial Damage – damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
- 2.726 Substantial Improvement – within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures that have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:
- (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.
 - (b) Any alteration of a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure”. For the purpose of this ordinance, “historic structure” is as defined in 44 Code of Federal Regulations, Part 59.1.

- 2.8 Annexations: The Flood Insurance Rate Map panels adopted by reference into Section 2.2 above may include floodplain areas that lie outside of the corporate boundaries of the City of Pequot Lakes at the time of adoption of this ordinance. If

any of these floodplain area are annexed into the City after the date of adoption of this ordinance, the newly annexed floodplain lands will be subject to the provisions of this ordinance immediately upon the date of annexation.

3.0 Establishment of Floodplain District

3.1 Areas Included: The Floodplain District for the City of Pequot Lakes includes those areas designated as Zone A on the Flood Insurance Rate Maps adopted in Section 2.2. The Floodplain District is an overlay district to all existing land use districts. The requirements of this ordinance apply in addition to other legally established regulations of the community. Where this ordinance imposes greater restrictions, the provisions of this ordinance apply.

3.2 Compliance: No new structure or land shall hereafter be used and no structure shall be constructed, located, extended, converted, or structurally altered without full compliance with the terms of this ordinance and other applicable regulations. Within the Floodplain District, all uses not listed as permitted uses in Section 4.0 are prohibited.

4.0 Permitted Uses and Standards in the Floodplain District

4.1 Permitted Uses: The following uses are permitted within the Floodplain District without a permit provided that they are allowed in any underlying zoning district and not prohibited by any other ordinance; and provided that they do not require structure, fill, obstructions, excavations, drilling operations, storage or materials or equipment or any other form of development as defined in Section 2.712 of this ordinance. If the use does require fill, obstruction, excavation, storage or materials or any other form of development as defined in Section 2.712 of this ordinance, a permit and compliance with Section 4.2 of this ordinance is required. The permit requirement may be waived if there is an application for a public waters work permit from the Department of Natural Resources.

4.11 Agricultural uses such as general farming, pasture, grazing, forestry, sod farming, and wild crop

harvesting. Farm fences that do not obstruct flood flows are permitted.

- 4.12 Outdoor plant nurseries and horticulture.
- 4.13 Private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, shooting preserves, target ranges, hunting and fishing areas, and single or multiple purpose recreational trails.
- 4.14 Lawns, gardens, parking areas, and play areas.
- 4.15 Railroads, roads, bridges, utility transmission lines, pipelines and other public utilities, provided that the Department of Natural Resources is notified at least ten (10) days prior to issuance of any permit.

4.2 Standards for Permitted Uses:

- 4.21 The Use must have low flood damage potential.
- 4.22 The use must not cause any increase in the stage of the 1% chance or regional flood or cause an increase in flood damages in the reach or reaches affected. This provision applies to structures (temporary or permanent), fill (including fill for roads and levees), deposits, obstructions, storage of materials or equipment, and all other uses.
- 4.23 Floodplain developments must not adversely affect the hydraulic capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system.
- 4.24 Public utilities, roads, railroad tracks and bridges to be located within the floodplain must be designed in accordance with Sections 4.22 and 4.23 above, or must obtain a Conditional Letter of Map Revision meeting the requirements of 44 CFR 603 (d).
 - (a) When failure or interruption of these public facilities would result in danger to the public

health or safety or where such facilities are essential to the orderly functioning of the area, such facilities must be elevated to the regulatory flood protection elevation.

- (b) Where failure or interruption of service would not endanger public health or safety, minor or auxiliary roads, railroads or utilities may be constructed at a lower elevation.

4.25 New or replacement water supply systems and sanitary sewage systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

5.0 Administration

5.1 Zoning Administrator: A Zoning Administrator or other official designated by the City Council must administer and enforce this ordinance.

5.2 Development Approvals: Any construction, enlargement, alteration, repair, improvement, moving or demolition of any building or structure must comply with the requirements of this ordinance. No mining, dredging, filling, grading, paving, excavation, obstruction, drilling operation or other form of development as defined in Section 2.0 of this ordinance are allowed, other than the uses permitted in Section 4.1 and the activities allowed under Section 6.

5.3 Permit Required. A permit must be obtained from the Zoning Administrator prior to conducting the following activities:

- (a) Expansion, change, enlargement, or alteration of a nonconforming use as specified in Section 6 of this ordinance. Normal maintenance and repair also required a permit if such work, separately or in conjunction with other planned work, constitutes a substantial improvement as defined in Section 2.7 of this ordinance.

- (b) Any use that requires fill, obstruction, excavation, storage of materials, or any other form of development as defined in Section 2.7 of this ordinance.

- 5.31 Permit applications submitted to the Zoning Administrator on forms provided for that purpose and shall include the following where applicable: plans drawn to scale, showing the nature, location, dimensions, and elevations of the lot; existing or proposed structures, fill, or storage of materials; and the location of the foregoing in relation to the stream channel.
- 5.32 Prior to granting a permit, the Zoning Administrator must verify that the applicant has obtained all necessary state and federal permits.

5.4 Variances:

- 5.41 An application for a variance to the provisions of this ordinance will be processed and reviewed in accordance with applicable state statutes and this Chapter 17.
- 5.42 A variance must not allow a use that is not allowed in that district, a permit a lower degree of flood protection than the regulatory flood protection elevation for the particular area, or permit standards lower than those required by state law.
- 5.43 The following additional variance criteria of the Federal Emergency Management Agency must be met:
 - (a) Variances must not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
 - (b) Variances may only be issued by a community upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to the public safety, extraordinary public expense,

create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

- (c) Variances may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

5.44 The Zoning Administrator must submit hearing notices for proposed variances to the Department of Natural Resources sufficiently in advance to provide at least ten days' notice of the Board of Adjustment hearing on the proposed variance. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

5.45 A copy of all decisions granting variances must be forwarded to the Commissioner of the Department of Natural Resources within ten days of such action. The notice may be sent by electronic mail or U.S. Mail to the respective DNR area hydrologist.

5.46 The Zoning Administrator must notify the applicant for a variance that: 1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and 2) Such construction below the base or regional flood level increases risks to life and property.

5.47 The Zoning Administrator must maintain a record of all variance actions, including justification for their issuance, and must report such variances in an annual or biennial report to the Administrator of the National Flood Insurance Program, when requested by the Federal Emergency Management Agency.

5.5 Notifications for Watercourse Alterations: Before authorizing any alteration or relocation of a river or stream, the Zoning Administrator must notify adjacent communities. If the applicant has applied for a permit to work in public waters pursuant to Minnesota Statute, Chapter 103G.245, this will suffice as adequate notice. A copy of the notification must also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).

5.6 Notification to FEMA When Physical Changes Increase or Decrease Base Flood Elevations: As soon as is practicable, but not later than six months after the date such supporting information becomes available, the Zoning Administrator must notify the Chicago Regional Office of FEMA of the changes by submitting a copy of the relevant technical or scientific data.

6.0 Nonconformities

6.1 Continuance of Nonconformities: A use, structure, or occupancy of land which was lawful before the passage or amendment of this ordinance but which is not in conformity with the provisions of this ordinance may be continued subject to the following conditions. Historic structures, as defined in Section 2.733 (b) of this ordinance, are subject to the provisions of Sections 6.11 – 6.14 of this ordinance.

6.11 A nonconforming use, structure, or occupancy must not be expanded, changed, enlarged, or altered in a way that increases its nonconformity. There shall be no expansion to the outside dimensions of any portion of a nonconforming structure located within the Floodplain District.

6.12 The cost of all structural alterations or additions to any nonconforming structure over the life of the structure may not exceed 50% of the market value of the structure unless the conditions of this Section are satisfied. The cost of all structural alterations and additions must include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the cost of all previous and proposed alterations and additions exceeds 50 percent of the market value of the structure, then the structure must meet the standards of Section 6.2 of this ordinance.

6.13 If any nonconforming use, or any use of a nonconforming structure, is discontinued for more than one year, any future use of the premises must conform to this ordinance. The Assessor must notify the Zoning Administrator in writing of instances of

nonconformities that have been discontinued for a period of more than one year.

6.14 If any nonconformity is substantially damaged, as defined in Section 2.7 of this ordinance, it may not be reconstructed unless it is located in the flood fringe portion of the floodplain and it is reconstructed in accordance with the standards of Section 6.2 of this ordinance.

6.15 A substantial improvement, as defined in Section 2.7 of this ordinance, to a nonconforming structure, may only be made to an existing nonconforming structure that is located in the flood fringe portion of the floodplain, and must meet the requirements of Section 6.2 of this ordinance.

6.2 **Standards for Reconstruction of Nonconforming Structures.**

The following standards and procedures apply to nonconforming structures in the flood fringe portion of the floodplain, as allowed under Section 6.1.

6.21 All structures, including manufactured homes, must be elevated on fill so that the lowest floor including basement floor is at or above the regulatory flood protection elevation. The finished fill elevation for structures shall be no lower than one foot below the regulatory flood protection elevation and the fill shall extend at such elevation at least 15 feet beyond the outside limits of the structure.

6.22 Fill must be properly compacted and the slopes must be properly protected by the use of riprap, vegetative cover or other acceptable method.

6.23 Floodplain developments must not adversely affect the hydraulic capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system.

6.24 All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground

anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.

6.25 Onsite Sewage Treatment and Water Supply Systems: Where public utilities are not provided: 1) Onsite water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems; and 2) New or replacement onsite sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the State's current statewide standards for onsite sewage treatment systems shall be determined to be in compliance with this Section.

6.26 Certification. The applicant is required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this ordinance. Floodproofing measures must be certified by a registered professional engineer or registered architect.

6.27 Record of First Floor Elevation. The Zoning Administrator must maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations to existing structures in the floodplain. The Zoning Administrator must also maintain a record of the elevation to which structures and alterations or additions to structures are floodproofed.

7. Penalties and Enforcement

7.1 Violation Constitutes a Misdemeanor: Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances) constitutes a misdemeanor and is punishable as defined by law.

- 7.2 Other Lawful Action: Nothing in this ordinance restricts the City of Pequot Lakes from taking such other lawful action as is necessary to prevent or remedy any violation. If the responsible party does not appropriately respond to the Zoning Administrator within the specified period of time, each additional day that lapses will constitute an additional violation of this ordinance and will be prosecuted accordingly.
- 7.3 Enforcement: In responding to a suspected ordinance violation, the Zoning Administrator and City Council may utilize the full array of enforcement actions available to it including but not limited to prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The City must act in good faith to enforce these official controls and to correct ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

8. Amendments

- 8.1 Floodplain Designation – Restrictions on Removal: The floodplain designation on the Official Zoning Map shall not be removed from floodplain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regulatory flood protection elevation and is contiguous to lands outside the floodplain. Special exceptions to this rule may be permitted by the Commissioner of the Department of Natural Resources if the Commissioner determines that, through other measures, lands are adequately protected for the intended use.
- 8.2 Amendments Require DNR and FEMA Approval: All amendments to this ordinance must be submitted to and approved by the Commissioner of the Department of Natural Resources (DNR) prior to adoption. The Commissioner of the DNR must approve the amendment prior to its final approval by the City Council.
- 8.3 Map Amendments Require Ordinance Amendments: The floodplain district regulations must be amended to incorporate any revisions by the Federal Emergency Management Agency to the floodplain maps adopted in Section 2.2 of this ordinance.

Section 17-11.7 VARIANCES

6. Variances shall be decided within the required time frame with consideration for the following:
 - A. The applicant establishes that there are practical difficulties, as defined in this ordinance, in complying with the official control, and
 - B. The plight of the landowner is due to circumstances unique to the property not created by the landowner, and
 - C. The deviation from the Ordinance with any attached conditions will still be in harmony with the general purposes and intent of the Ordinance and the Comprehensive Plan, and
 - D. The variance will not create a land use not allowed in the zone, and
 - E. The variance will not alter the essential character of the locality, and
 - F. The variance is not for economic reasons alone, but reasonable use of the property does not exist under the Ordinance.

Planning Commission Direction: The Planning Commission can approve the variance, deny the application, or table the request if additional information is needed. If the motion is for approval or denial, Findings of Fact should be cited.

Staff Findings: Staff provides the following Findings of Fact for consideration by the Planning Commission:

1. The subject property is located at 27713 Janco Lane and is in the "Shoreline Residential" zone.
2. The property contains a 673.56 square foot cabin and a 192 square foot shed.
3. The applicant proposes to remove the existing cabin that is 10 feet from the OHW and build a new 950 square foot cabin 39 feet from the OHW.
4. The applicant proposes to increase the height of the new cabin by 7 feet.
5. The applicant proposes to install a depression area south of the proposed new cabin to maintain stormwater. Applicant also proposes to install gutters along the roofline of the new cabin to direct runoff to the depression area.

6. There is a recorded easement across the subject property for access to the lot to the north.
7. There is a wetland behind the shed to the west. The subject property must meet floodplain minimum elevation standards as it is located within the floodplain of East Twin Lake.
8. The existing dwelling (to be replaced) is located within the 100-yr floodplain of East Twin Lake. The Floodplain standards allow pre-existing structures located in the floodplain to be reconstructed in accordance with the standards in Section 6.2, “Standards for Reconstruction of Nonconforming Structures” of the zoning ordinance.
9. The subject property is served by a shallow well and two holding tanks. Applicant proposes to seal the shallow well and have a deep well drilled for the new cabin. Applicant proposes to move the existing lift tank and utilize the existing holding tanks for the new cabin.
10. The applicant has established that there are practical difficulties in complying with the Code. Applicant is unable to meet the 75-foot setback from the OHW. There is only approximately 69 feet from the OHW to the east edge of the easement road and approximately 32 feet from the west edge of the easement road to the wetland. The area to the west contains the shed and holding tanks for the septic system.
11. The property owner proposes to use the property in a reasonable manner.
12. The deviation from the Code will still be in harmony with the general purposes and intent of the City Code and Comprehensive Plan.
13. The variance will not create a land use not permitted in the Shoreline Residential zone.
14. The variance will not alter the essential character of the locality as the neighboring seasonal cabins have limited buildable area as well.
15. The variance has not been made based on economic considerations.

Staff Recommendation: We recommend that the variance request to construct a new cabin within the lake setback allowed be approved, based on the above findings and subject to the following conditions:

1. Existing trees and vegetation between the dwelling and the OHW shall remain in a live state to provide screening as viewed from the lake. In the event the existing trees and vegetation dies or is damaged by a natural event, additional trees and vegetation shall be planted to provide screening as viewed from the lake.
2. All disturbed areas shall be stabilized with properly installed erosion control mats, bio-logs and/or silt fence until vegetation is permanently established.
3. The structure must be elevated on fill so that the lowest floor including basement floor is at or above the regulatory flood protection elevation (1,221.6' - NAVD88) or 3 ft above the Ordinary High Water level (constructed at an elevation 1,222' - NGVD 29) - *whichever is higher*.

4. The finished fill elevation for the structure shall be no lower than one foot below the regulatory flood protection elevation and the fill shall extend at such elevation at least 15 feet beyond the outside limits of the structure.
 5. Before the foundation for the dwelling is constructed the applicant shall submit certification by a licensed land surveyor verifying the fill meets the minimum elevation requirements of this variance approval.
 6. After the dwelling is constructed the applicant shall submit certification from a professional land survey verifying the finished fill and building elevations were accomplished in compliance with the conditions of this variance approval and the standards of the Floodplain Management Overlay District.
 7. Gutters shall be installed on the north and south sides of the dwelling. Stormwater shall be directed to the “existing depression area” identified on the survey.
 - a. *The planning commission should consider requiring a more comprehensive stormwater management plan.*
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October 9, 2019

Alan J. Brown
1401 Blaine Ranch Street
Henderson, NV 89012

Re: Variance Request

Dear Mr. Brown:

We are approaching the end of the review period mandated by statute. We are notifying you that we will be extending our review period an additional 60 days to have the opportunity to receive the updated survey and elevation drawings. When this information is received, we will continue our review.

Sincerely,

Dawn Bittner
Zoning Specialist

C: Planning Commission