

PUBLIC HEARING – VARIANCE

**Application:** Variance  
**Applicant:** Jason Forrest  
**Agenda Item:** 3 (b)



**Background Information:** The applicant is requesting a Variance to construct a new dwelling within the lake setback. Applicant proposes to remove the existing dwelling that is 40 feet from the Ordinary High Water (OHW) mark and build a new dwelling located 54 feet from the OHW.

The subject property is located at 5577 Wilderness Road. The subject property contains a 1,016 square foot dwelling, an attached 352 square foot screen porch, a 168 square foot shed, and a 255 square foot water oriented accessory structure and is zoned Shoreline Residential.

The subject property is accessed via Wilderness Road and Walleye Bay, which is a private roadway off of Wilderness Road.

Applicant proposes to remove the existing 1,415 square foot dwelling and construct a new 2,571 square foot dwelling 54 feet from the OHW, reducing the nonconformity by 14 feet. Applicant proposes to remove the existing shed.

Applicant proposes to re-contour the lot to ensure proper drainage and stormwater runoff. Applicant has not provided a separate grading/stormwater management plan, but has indicated on the survey that the house will be guttered

and stormwater from the gutters will be directed to underground pipes to a retention area.

The subject property is .98 acres in size. The north half of the lot is a bluff. A portion of the subject property (including the proposed location of the dwelling) is located within the 100-year floodplain of Lower Cullen Lake (identified in green below).



The adjacent properties to the north, east and south are zoned Shoreline Residential. The subject property is bounded on the west by Wilderness Road.

The subject property is served by a shallow well and a Subsurface Sewage Treatment System (SSTS). Applicant proposes to seal the shallow well and have a deep well drilled for the new dwelling. Applicant proposes to install a new SSTS.

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### **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 floodpolain 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.

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**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.

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

1. The subject property is located at 5577 Wilderness Road and is in the “Shoreline Residential” zone.
2. The property contains a 1,415 square foot dwelling, a 168 square foot shed and a 255 square foot water oriented accessory structure.
3. The applicant proposes to remove the existing dwelling that is 40 feet from the OHW and build a new 2,571 square foot dwelling 54 feet from the OHW.
4. The applicant proposes to re-contour the lot to ensure proper drainage and stormwater management. Stormwater from the gutters on the new dwelling will direct stormwater through underground pipes to a retention area.
5. The subject property will meet floodplain minimum elevation standards as it is located within the floodplain of East Twin Lake.
6. The existing dwelling (to be replaced) is not located within the 100-yr floodplain of Lower Cullen Lake.
7. A portion of the proposed structure will be located in an area which is currently in the floodplain. Said area will be elevated with fill (per conditions of approval) so it is outside the floodplain area.
8. The subject property is served by a shallow well and a Subsurface Sewage Treatment System (SSTS). Applicant proposes to seal the shallow well and have a deep well drilled for the new dwelling. Applicant proposes to install a new SSTS.
9. 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 a very small building envelope to meet the 75-foot setback from the OHW and the 30-foot setback from Wilderness Road.
10. The property owner proposes to use the property in a reasonable manner.

11. The deviation from the Code will still be in harmony with the general purposes and intent of the City Code and Comprehensive Plan.
12. The variance will not create a land use not permitted in the Shoreline Residential zone.
13. The variance will not alter the essential character of the locality as the neighboring seasonal cabins have limited buildable area as well.
14. The variance has not been made based on economic considerations.

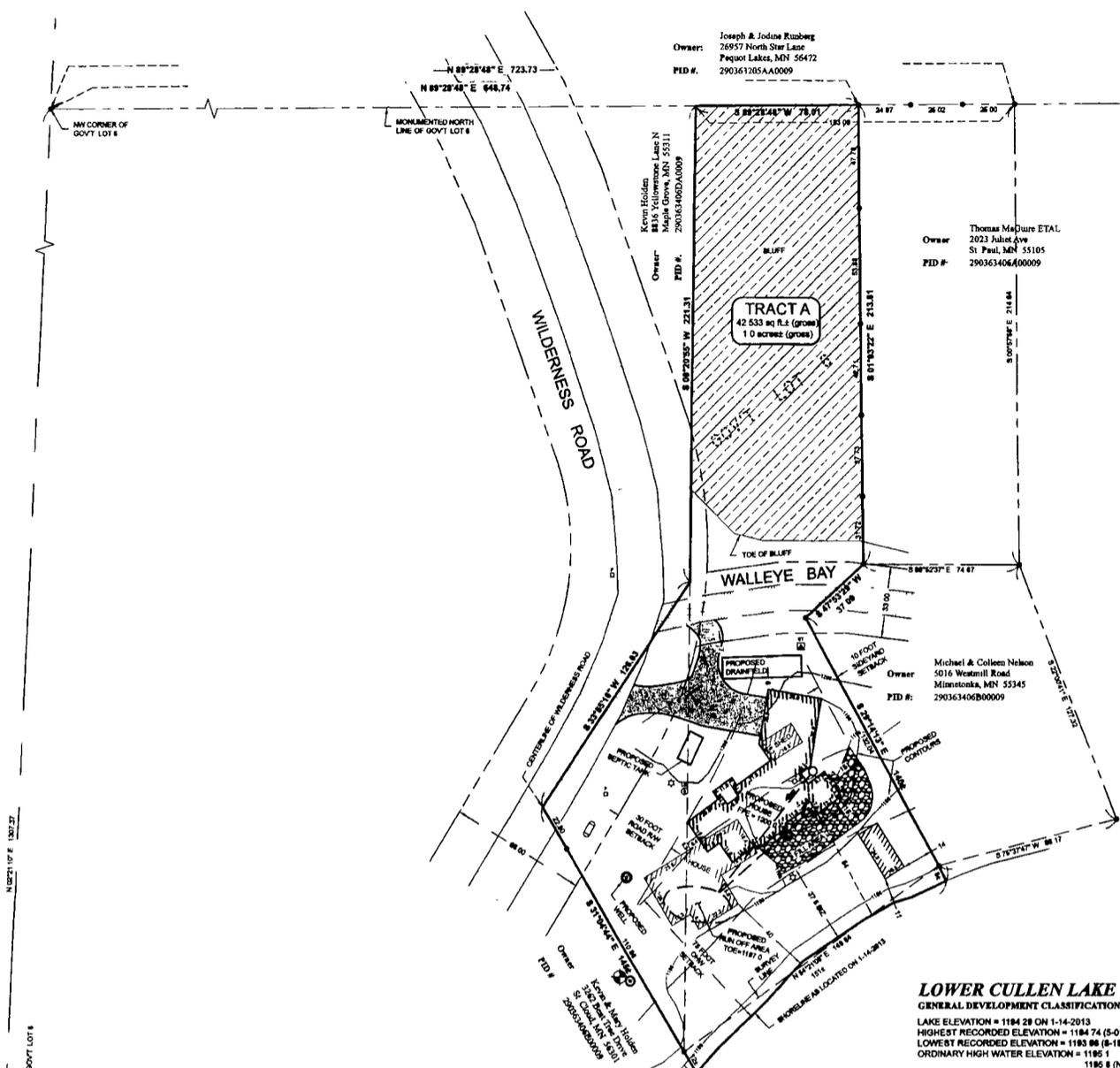
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**Staff Recommendation:** We recommend that the variance request to construct a new cabin within the lake setback allowed be approved, based on the above findings and subject to the following conditions:

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 1,198.8' - NAVD 88 Datum (3 ft above OHW level and also exceeds the regulatory flood plain elevation of 1,198.6').
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.

# CERTIFICATE OF SURVEY

PART OF GOVERNMENT LOT 6,  
SECTION 36, TOWNSHIP 136 NORTH, RANGE 29 WEST,  
CROW WING COUNTY, MINNESOTA



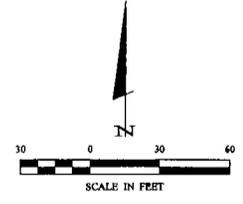
**LOWER CULLEN LAKE**  
GENERAL DEVELOPMENT CLASSIFICATION  
LAKE ELEVATION = 1184.28 ON 1-14-2013  
HIGHEST RECORDED ELEVATION = 1184.74 (5-01-2002)  
LOWEST RECORDED ELEVATION = 1183.88 (8-18-2008)  
ORDINARY HIGH WATER ELEVATION = 1185.1  
1185.1 (NAVD 88 DATUM)

BENCHMARK Description Found 2012 3/2" rebar in S side of 1' Ø dia. white pipe, 40' S of outcrop on S end of lake  
Elevation = 1188.97  
BASED ON NGVD 29 DATUM, UNLESS OTHERWISE STATED  
INFORMATION OBTAINED FROM MNDNR

**LEGAL DESCRIPTION PER DOCUMENT NUMBER A-873315**

Part of Government Lot 6, Section 36, Township 136 North, Range 29 West, Crow Wing County, Minnesota, described as follows: Commencing at an iron pipe monument at the Northwest corner of said Government Lot 6, thence North 89 degrees 28 minutes 48 seconds East, assumed bearing, along the monumented north line of said Government Lot 6 for a distance of 648.74 feet to an iron pipe monument, thence South 01 degree 03 minutes 22 seconds East 213.81 feet to an iron pipe monument, thence South 47 degrees 53 minutes 29 seconds West 37.09 feet to an iron pipe monument and point of beginning of the tract to be herein described, thence North 47 degrees 53 minutes 29 seconds East 37.09 feet, thence North 01 degree 03 minutes 22 seconds West 213.81 feet to said north line, thence South 89 degrees 28 minutes 48 seconds West along said north line 78.01 feet, thence South 00 degrees 20 minutes 55 seconds West 221.31 feet, thence South 33 degrees 55 minutes 16 seconds West 126.03 feet, thence South 31 degrees 04 minutes 44 seconds East 133.66 feet to an iron pipe monument, thence continuing South 33 degrees 55 minutes 16 seconds West 12 feet, more or less, to the shoreline of Lower Cullen Lake, thence northeasterly along said shoreline to the intersection with a line bearing South 29 degrees 14 minutes 13 seconds East from the point of beginning, thence North 29 degrees 14 minutes 13 seconds West 140 feet, more or less, to the point of beginning.

together with all hereditaments and appurtenances belonging thereto subject to the following exceptions: None



**IMPERVIOUS CALCULATIONS**

EXISTING	IMPERVIOUS AREA (sq ft)	Net Area (sq ft)	Percent Impervious (sq ft)
House	1,415	36,471	3.9%
Shed	168	36,471	0.5%
Water Oriented Accessory Structure	255	36,471	0.7%
<b>Total</b>	<b>1,838</b>	<b>36,471</b>	<b>5.0%</b>

**IMPERVIOUS CALCULATIONS**

PROPOSED	IMPERVIOUS AREA (sq ft)	Net Area (sq ft)	Percent Impervious (sq ft)
Water Oriented Accessory Structure	255	36,471	0.7%
Proposed House	2,571	36,471	7.0%
Proposed Driveway	896	36,471	2.7%
<b>Total</b>	<b>3,822</b>	<b>36,471</b>	<b>10.6%</b>

NET AREA EXCLUDING ROAD RIGHTS-OF-WAY

**RUN OFF CALCULATIONS**

Total Impervious Surface Area: 3,822 sq ft x 0.0833 ft = 318 cu ft (from table above)

**PROPOSED RUN OFF AREA**

TOP SURFACE AREA = 438 SQ. FT  
BOTTOM SURFACE AREA = 223 SQ. FT  
1' DEEP WITH 3:1 SIDE SLOPES  
TOTAL RUN OFF STORAGE PROPOSED = 331 CU. FT

**LEGEND**

- X — DENOTES EXISTING FENCE LINE
- — — DENOTES EDGES OF EXISTING BUTTENDIKS
- — — DENOTES EDGES OF EXISTING GRAYL
- BLUFF DENOTES BLUFF AREA
- 204 — DENOTES EXISTING INTERMEDIATE CONTOURS
- 1210 — DENOTES EXISTING INDEX CONTOURS
- ☆ DENOTES EXISTING MOUNTED LIGHT
- DENOTES EXISTING UTILITY POLE
- ⊕ DENOTES EXISTING GROUND TRANSFORMER
- DENOTES EXISTING LP TANK
- ⊕ DENOTES EXISTING PHONE PEDestal & PHONE BOX
- ⊕ DENOTES EXISTING WELL
- ⊕ DENOTES EXISTING SEPTIC VENT, SEPTIC CLEANOUT, & SEPTIC TANK LID
- DENOTES UTILITY WITH UNDERGROUND DRAIN PIPE TO RUN OFF AREA
- ⊕ DENOTES BENCHMARK HIGH POINT OF WELL. ELEV = 1208.81
- DENOTES MONUMENT FOUND

ORIENTATION OF THIS BEARING SYSTEM IS BASED ON THE MONUMENTED NORTH LINE OF GOVERNMENT LOT 6 TO HAVE AN ASSUMED BEARING OF 118°41'4".

**NOTES:**

1. Zoning for subject tract = "Shoreline Residential"
2. Parcel ID of subject parcel 29360687
3. The property address of subject parcel 5577 Wilderness Road.
4. Fill area as shown is designed to meet FEMA requirements for flood plain management. Grade at and within 15 feet of proposed house will remain above flood elevation of 1197.6 feet (NAVD 88 datum)
5. For survey reference information see Certificate of Survey drawing signed by Cyntia M. Hilde on February 2, 2013 - Stonemark Land Surveying, Inc. file #13003

CERTIFICATE OF SURVEY Kevin A Yeager Studio of Design	PROJECT MANAGER PAT	PROJECT No 19284	DATE 8-18-2019	REVISIONS		I HEREBY CERTIFY THAT THE SURVEY PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER OR LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA. PATRICK A. TROTTER, PLSM1192 DATE 10-11-2019 LIC. NO. 41002	STONEMARK LAND SURVEYING 30206 Knappesman Road Suite 1 P.O. Box 874 Pequot Lakes, MN 56472 218-566-4940 www.stonemarksurvey.com
	CHECKED BY PAT	FILE NAME C19284.dwg	SCALE HORIZ. 1"=20'	DATE 11-22-2019	DESCRIPTION Revised proposed house and impervious calc		
	DRAWN BY R.J.F.	FIELD BOOK BOOK PG.	VERT. NONE	DATE 10-11-2019			

APP # 19-91  
 SF # \_\_\_\_\_  
 Date 9-18-19  
 (for office use only)

**CITY OF PEQUOT LAKES  
 VARIANCE APPLICATION**

Name of Applicant JASON FORREST Phone 612-991-3256  
 Address 18131 72ND AVE N. Email JFORREST@VENPRO.COM  
 City, State, Zip MAPLE GROVE, MN, 55311 COM

Applicant is: \_\_\_\_\_ Title Holder of Property: \_\_\_\_\_  
 Legal Owner  SAME AS ABOVE.  
 Contract Buyer  (Name)  
 Option Holder  \_\_\_\_\_  
 Agent  (Address)  
 Other \_\_\_\_\_ (City, State, Zip)

Signature of Owner, authorizing application: [Signature]  
 (By signing the owner is certifying that they have read and understood the instructions accompanying this application.)

Signature of Applicant (if different than owner): \_\_\_\_\_  
 (By signing the applicant is certifying that they have read and understood the instructions accompanying this application.)

Location of property involved in this request: 5577 WILDERNESS ROAD  
PEQUOT LAKES, MN. 55047

Legal Description (if metes and bounds, attach sheet): (ATTACHED SHEETS.)  
29036.34060 0000 9

Parcel ID No. 29360687 Zoning District SHORELINE RESIDENTIAL.

State nature of request in detail: (What are you proposing for the property?)  
DEMO EXISTING STRUCTURE & SEPTIC SYSTEM, CAP SAND POINT  
& BUILD NEW HOME, NEW SEPTIC AND INSTALL NEW  
WELL. RE CONTOUR LOT TO INSURE PROPER STORM WATER  
RUN OFF.

What changes (if any) are you proposing to make to this site?  
 Building: REMOVE EXIST, BUILD NEW STRUCTURE, BOATHOUSE TO  
REMAIN.  
 Landscaping: RE CONTOUR TO INSURE PROPER DRAINAGE, AND STORM WATER  
RUN OFF.  
 Parking/Signs: WE ARE INSTALLING A NEW DRIVE WAY.

Pursuant to the Pequot Lakes City Ordinance, Section 17-11.7, the applicant should be prepared at the public hearing to explain the practical difficulty in complying with the ordinance for the proposed variance. Practical Difficulties is described as: *The property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include but are not limited to, inadequate access to direct sunlight for solar energy systems.*

- (1) What are the practical difficulties, or unique circumstances of the parcel size, shape, topography or other characteristics that make strict interpretation of the Ordinance impractical?

"  
THE "BUILDABLE" ENVELOPE IS SIMPLY TOO SMALL  
TO ACCOMMODATE A MODEST HOME WITH GARAGE.

- (2) Are the conditions upon which the petition for a variation based unique to the parcel of land for which the variance is sought? If so, were the conditions created by the landowner?

THE CONDITIONS WERE CREATED DECADES AGO AND  
UNIQUE TO THIS PARCEL.

- (3) If the variance is granted, will it alter the essential character of the locality? Explain.

NO, THE PROPOSED STRUCTURE IS A MODEST  
STRUCTURE IN KEEPING WITH SURROUNDING BUILDINGS.

- (4) Is the variance request in harmony with the general purposed and intent of the Ordinance?

YES, WE ARE TRYING TO FIND BALANCE  
WITH MEETING AS MANY OF THE CURRENT ORDINANCES  
WE CAN.

- (5) Does the need for a variance involve more than economic considerations? Explain.

YES, THE ENVELOPE IS UNBUILDABLE SIZE.

- (6) Is the variance request consistent with the Comprehensive Plan?

I AM UNFAMILIAR WITH THE COMP PLAN,  
BUT THE BUILDING IS IN PROPORTION TO THE SURROUNDINGS  
AND WILL UPDATE THE BUILDING, MECHANICALS  
AND DRAINAGE TO CURRENT MN. CODES.

- (7) Describe character of the area and the existing patterns and uses of development in the area. How is this proposal consistent with those patterns and uses?

THE LAKE IS SURROUNDED BY MODEST  
NON CONFORMING LOTS & STRUCTURES.

- (8) Describe the impact on the capacity of existing or planned community facilities (sewer, drainage, other). Describe if additional facilities will be required.

WE ARE BRINGING THE PROPERTIES UP TO  
CURRENT STANDARDS.

- (9) Describe the impact on the character of the neighborhood in which the property is located.

THE LAKE IS BEING BROUGHT UP TO  
NEW STANDARDS & NEW HOMES ARE BEING  
BUILT.

- (10) Describe the impact to traffic on roads and highways in the vicinity, and expected traffic generated by this application. Is there adequate parking available to accommodate the proposal?

WE KEPT THE NEW CONSTRUCTION  
OUT OF ROAD SET BACKS FOR  
FUTURE CONSIDERATIONS.

- (11) Discuss any environmental limitations of the site or area.

THE LIMITATIONS ARE THE LOT SIZE  
FOR REASONABLE LONG TERM USE.

- (12) Please include any other comments pertinent to this request.

THE NEW HOME WILL MEET ALL SIDE &  
ROAD SET BACKS AND WILL BE MOVED  
AWAY FROM THE LAKE AN ADDITIONAL 14'-0"  
FROM EXIST. STRUCTURE.

WE ARE ASKING FOR VARIANCE FOR:

- 1) LAKE SET BACK 54'-0" INSTEAD OF 75'-0"
- 2) DRAIN FIELD 9'-0" TO STRUCTURE INSTEAD OF 20'-0"
- 3) DRAIN FIELD 7'-0" TO ROAD SETBACK INSTEAD OF 10'-0"

CITY OF PEQUOT LAKES  
PLANNING COMMISSION/BOARD OF ADJUSTMENT  
NOTICE OF PUBLIC HEARING  
OCTOBER 17, 2019  
6:00 P.M.  
AT  
CITY HALL

TO WHOM IT MAY CONCERN:

The following will be the subject of a public hearing on Thursday, October 17, 2019 beginning at 6:00 P.M.

**Hearing:** Variance request to construct a single-family dwelling within the OHW setback.

**Property Owner/Applicant:** Jason Forrest

**Property Location:** The subject property is located at 5577 Wilderness Road.  
Parcel ID: 29360687

A map identifying the subject property is on the reverse side of this notice.

**Purpose:** The applicant is requesting a variance to remove a pre-existing dwelling and construct a single-family dwelling 54' from the OHW of Lower Cullen Lake (75' required).

**Property Owners Please Note:** Please share this information with your neighbors in the event that any property owner has been overlooked or is not contained in our records.

All interested persons are invited to attend this hearing and be heard or send written comments to City Hall. Copies of the permit, maps, drawings and staff report are available at City Hall at least one week prior to the hearing date. Copies of the Staff Report regarding this application are available at City Hall or online at [www.pequotlakes-mn.gov](http://www.pequotlakes-mn.gov).

The staff report regarding the request will be available approximately one week before the meeting.

Justin Burslie, City Planner  
City of Pequot Lakes

The subject property is located at 5577 Wilderness Road:

