STAFF REPORT

Application: Variance to construct an 897 sq ft dwelling within the Bluff Impact Zone.

Applicant: Jeromy Kunz – Wes Hanson Builders Inc (agent), Blaine Jones (owner)

Agenda Item: 3.1

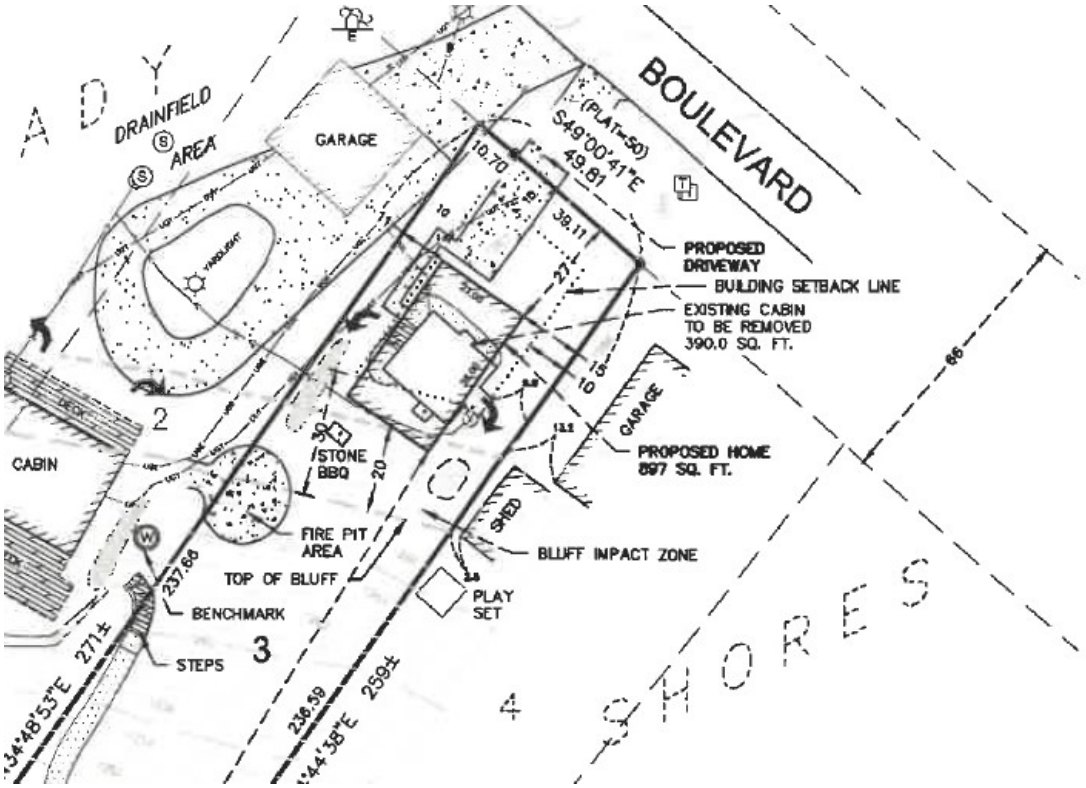
Background Information: The applicant is requesting a variance from the Bluff Impact Zone (BIZ) setback to construct a proposed 897 sq ft dwelling on the property located at PID 29151078. The subject property is zoned Shoreline Residential.

The subject parcel is located along Pequot Blvd & equates to approximately 13,130 sq ft. The parcel is within a mapped FEMA floodplain & National Wetland Inventory along the shoreline:

Based on the provided Certificate of Survey & Variance application, the proposal is to remove the existing 390 sq ft dwelling & reconstruct a 897 sq ft dwelling, with a provided measurement by the applicant of 17' to the top of a bluff, where 30' is required.

The subject parcel is serviced by a shared septic system located on PID 29151079. The latest compliance inspection on the system was conducted on 6/18/24 where the system was deemed compliant. The SSTS is a Type I, 4 bedroom system.

An excerpt from the submitted Certificate of Survey is pictured below with the proposal:



Applicable Regulations: Section 17-11.7 outlines the criteria that should be considered when reviewing a variance request. Section 17-5.8 outlines the requirements and performance standards for the Shoreline Residential Zone. Section 17-4.3 outlines the criteria for the use of pre-existing non-conforming lots in the Shoreland.

Section 17-3.2. DEFINITIONS

190. **Practical Difficulties**. 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.

38. **Bluff.** A topographic feature such as a hill, cliff or embankment having all of the following characteristics:

A. Part of all of the feature is located in a shoreland area.

B. The slope rises at least twenty-five (25) feet above the ordinary high water mark of the water body.

C. The grade of the slope from the toe of the bluff to a point twenty-five (25) feet above the ordinary high water level averages thirty (30) percent or greater.

D. The slope must drain towards the water body.

An area with an average slope of less than eighteen (18) percent over a distance for fifty (50) feet or more shall not be considered part of the bluff.

39. **Bluff Impact Zone**. A bluff and the land located within twenty (20) feet inland from the top of the bluff.

166. **Non-conforming.** The building, structure, or land lawfully existing prior to and not in conformance with the provisions of this ordinance.

Section 17-11.7 VARIANCES

1. Variances shall not create a use not provided for in a zoning district.

2. Variances shall be issued to the property and are not transferable.

3. Variances shall be issued to the property for structures or other specified uses only after a public hearing and approval by the Board of Adjustment. All applications for a Variance shall be submitted to the Zoning Administrator 30 days ahead of the hearing date, accompanied by a certificate of survey (unless waived by the Zoning Administrator) showing the details of the proposal and an accurate legal description, along with the appropriate fee. The fee or contract owner of the property shall sign the application. The Zoning Administrator shall notify all property owners within a minimum of 350 feet by regular mail and shall advertise the hearing once in the legal section of the official newspaper at least 10 days ahead of the public hearing. The Zoning Administrator shall send the same notice 10 days in advance of this hearing to the DNR if the proposed is in shoreland. At the applicant's option, the applicant may request a sketch plan review with no action by the Planning Commission and with no fee by giving 14 days notice thereof to the Zoning Administrator, meeting time permitted.

4. Submissions for Variances. The applicant shall complete the Variance application approved by the City Council. The application shall contain submittal requirements, criteria for approval, procedure for consideration and City contact

information. The City shall not accept applications where the applicant has past due fees or charges due to the City until the account is made current.

5. In evaluating all variances the zoning authority shall require the property owner to address, when appropriate, storm water runoff management, reducing impervious surfaces, increasing setback, restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation-designed actions.

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.

7. The Board of Adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

8. When costs to the City involved in processing and reviewing an application exceeds the original application fees, the applicant shall reimburse the City for any additional costs. Such expenses may include, but are not limited to, payroll, mailing costs, consultant fees and other professional services the City may need to retain in reviewing permits.

9. Failure by the owner to act within 6 months on a Variance unless extended by the Board of Adjustment shall void the Variance. A second extension shall require a new

public hearing. This provision shall apply to any Variance outstanding at the time of the Ordinance adoption.

10. Appeals from the action of the City Council shall be filed with the District Court within 30 days after Council action.

11. The Variance shall be filed with the County Recorder within 45 days.

Section 17-5.8 SHORELINE RESIDENTIAL (SR)[1]

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.

	GD Riparian Only	RD, Non-Riparian GD	NE Lake
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

[1] Amended 2/5/2024

Impervious coverage – maximum	20%	15%	10%
Building height – (excluding guest cottages) feet, maximum	25	25	25
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 Cottages/Guest Quarters. One guest cottage or one guest quarter may be allowed on lots meeting or exceeding the duplex lot area and width dimensions presented in Section 5.8 (3), provided the following standards are met:

(1) For lots exceeding the minimum lot dimensions of duplex lots, a guest cottage must be located within an area equal to the smallest duplex-sized lot that could be created including the principal dwelling unit.
(2) Shall be screened from adjacent parcels and public waters by vegetation, topographical location, increased setback, color or other methods assuming summer leaf on conditions
(3) A guest cottage must not cover more than 700 square feet of land surface and must not exceed 15 feet in height.
(4) The building footprint for an accessory structure containing a guest quarter is limited by impervious surface limits according to Article 5.8 and the livable area shall not exceed 700 square feet.
(5) An accessory structure contacting a guest quarter may not exceed 25 feet in building height.
(6) Only one guest cottage or one guest quarter is allowed on a lot.
(7) All setbacks and impervious surface coverage

limits of the Shoreline Residential Zone shall be met.

(8) Shall not be utilized as short-term or long-term rental dwelling units.

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 form 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 places 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[2]. A permit shall not be required for up to two accessory structures totaling no more than 160 square feet. Accessory structures shall meet all zoning requirements in the Section. Ground-mounted solar panel installations shall not count against this limit.

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.

[2] Amended 2/5/2024

Section 17-4.3 USE OF PRE-EXISTING LOTS

1. A nonconforming single lot of record located within a shoreland area may be allowed as a building site without variances from lot size requirements, provided that:

    a. All structure and septic system setback distance requirements can be met;
    b. A Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080 and the City of Pequot Lakes SSTS regulations, can be installed or the lot is connected to a public sewer; and
    c. The impervious surface cover does not exceed the requirements of the underlying zone.

2. In a group of two or more contiguous lots of record under a common ownership, not meeting the requirements of Section 4.3 (4), an individual lot must be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements:

    a. The lot must be at least 66 percent of the dimensional standard for lot width and lot size for the shoreland classification consistent with Minnesota Rules, chapter 6120;
    b. The lot must be connected to a public sewer, if available, or must be suitable for the installation of a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080 and the City of Pequot Lakes SSTS regulations;
    c. Impervious surface coverage must not exceed the requirements of the underlying zone; and
    d. Development of the lot must be consistent with the City of Pequot Lakes Comprehensive Plan.

3. A lot subject to Section 4.3(2) not meeting the requirements of that section must be combined with the one or more contiguous lots so they equal one or more conforming lots as much as possible.

4. Notwithstanding Section 4.3(2), contiguous nonconforming lots of record in shoreland areas under a common ownership must be able to be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots are suitable for, or served by, a sewage treatment system consistent with the requirements of Minnesota Rules, section 115.55 and Minnesota Rules, chapter 7080, or connected to a public sewer.

Staff Findings: Staff provides the following findings of fact for consideration by the Board of Adjustment:

1. The applicant is requesting a variance to construct a dwelling within the Bluff Impact Zone (BIZ) setback.
2. The subject property is zoned "Shoreline Residential".
3. The subject property currently has a pre-existing non-conforming 390 square foot dwelling.
4. The pre-existing non-conforming dwelling is non-conforming because it is located within the Bluff Impact Zone.
5. The proposed dwelling requires a variance due to the proposed expansion of the pre-existing non-conforming dwelling.
6. Per the Certificate of Survey & application, the proposed structure meets all other setbacks required for the Shoreline Residential lot use requirements.
7. The proposed structure sits 13' into the 30' BIZ setback from the top of the bluff.
8. The variance request is for an 897 square foot structure at 17' to the top of the bluff, where 30' is required.
9. The application submitted proposes the removal of the existing dwelling & reconstruction of a proposed new dwelling.
10. The current dwelling is serviced by a four-bedroom septic system which is located on PID 29151079 under common ownership.
11. A compliant septic inspection was submitted to the City on June 18th, 2024.
12. The impervious calculation on the subject parcel is currently 6.0%, & the proposed impervious calculation is 12.6%, under the maximum allowed amount.
13. The subject parcel is Lot 3, Block 2 of the "Pequot Shady Shores" Plat, dated 1923.
14. Lots 1 & 2 have been consolidated by the owner. Lot 3 is presented as a single lot of record in this application.
15. The DNR was noticed of this application & provided comment on 8/21/24.
16. Staff conducted a site visit on 8/21/24 for a review of the existing conditions & stability of the bluff area on the parcel.
17. Property owners within the applicable radius were provided notice & no comments were present from the public at the time of the drafting of this report.

<u>Potential Findings for Approval:</u>

1. The applicant has established there are practical difficulties in complying with the official control.
    a. The plight of the landowner is due to circumstances unique to the property not created by the landowner.
        i. All other setbacks can be met with the exception of the Bluff Impact Zone.
    b. The deviation from the Ordinance with any attached conditions will still be in harmony with the general purposes and intent of the Ordinance and Comprehensive Plan.

i. The deviation from the ordinance is consistent with the purpose and intent of the Shoreline Residential zone, the land use Ordinance, and the comprehensive plan.
ii. The proposed use of the property is for residential purposes, consistent with the Shoreline Residential zone.

c. The variance will not create a land use not permitted in the zone.
i. The use of the property (residential) is permitted in the Shoreline Residential Zone.

d. The variance will not alter the essential character of the locality.
i. The proposed dwelling will be similar in size and character with other residential buildings in the vicinity of the subject property.
ii. There are parcels in the vicinity of the subject parcel with developments within the shore impact zone & potential Bluff Impact zone.

e. The variance is not for economic reasons alone, but reasonable use of the property does not exist under the ordinance.
i. The request has not been made based on economic considerations.

<u>Potential Findings for Denial:</u>

2. The applicant has not established there are practical difficulties in complying with the official control.
   a. The plight of the landowner is not due to circumstances unique to the property not created by the land owner.
      i. The City of Pequot Lakes Code allows for the continuation (replacement/reconstruction) of an existing dwelling without the need for a variance so long as there is no expansion.
      ii. The existing dwelling may be reconstructed without expansion with the approval of a Land Use permit.
      iii. Per the Certificate of Survey, there is a buildable area on the parcel that provides the ability to reconstruct & lessen the non-conformity of the proposed structure without impeding on required setbacks.
   b. The deviation from the Ordinance with any attached conditions will not be in harmony with the general purposes and intent of the Ordinance and the Comprehensive Plan.
      i. The Comprehensive Plan discusses water preservation by limiting the increase of impervious surfaces near public waters.
         1. The proposed impervious surface on the existing lot is almost double the existing amount, from 6% to 12%.

ii. The Comprehensive Plan discusses how "development and altered gradients along slopes…can contribute to erosion and slope instability".
    1. The proposed infringement of the Bluff Impact Zone is not in harmony with the Comprehensive Plan policies on page 19 to deter development away from sensitive slope/bluff areas.

c. The variance will not create a land use not permitted in the zone.
    i. The use of the property (residential) is permitted in the Shoreline Residential zone.
d. The variance will not alter the essential character of the locality.
    i. There are parcels in the vicinity of the subject parcel with developments within the shore impact zone & potential Bluff Impact zone.
e. The variance is not for economic reasons alone, but reasonable use of the property does not exist under the ordinance.
    i. The request has not been made solely based on economic consideration.

Board of Adjustment Direction: The Board of Adjustment can approve, amend & approve, deny, or table this variance request. Findings of fact should be cited if the decision is for approval or denial.

Staff Recommendation: Staff recommends the planning commission review the potential findings for approval & potential findings for denial for this request. Section 17-4.4 notes that non-conformities may be continued (replaced) without expansion without the need for a variance. Per City of Pequot Lakes Zoning Staff & MN DNR: Documentation of the shared septic system on the parcel should be recorded with the County by the owner to detail the maintenance criteria/responsibility for SSTS compliance for the shared system between PIDs 29151078 (subject) & 29151079 (parcel with SSTS).

If the planning commission wishes to approve the request, staff has one (1) recommended condition for approval.

Potential condition for approval:

1 Soil erosion & stormwater runoff temporary best management practices (silt fencing) must be installed *prior to* approval of a land use permit to reduce any potential runoff toward Sibley Lake & neighboring properties. Staff will verify the installation of such BMPs prior to issuance of approval of a land use permit.