



Staff Report

Application: 2016 – 20A

Application #: 2016 – 20A

Parcel number: 87-029-1110

Applicants: Bob and Carol Faye Muller on property described as: All that part of Government Lot 1, Section 29 Township 134 Range 29, Cass County, Minnesota, described as follows: Commencing at a point 1120 feet South of the northeast corner thereof; thence west and parallel with the north line of said Lot 1 to the shore of Gull Lake; thence southerly along said shoreline at a distance of 200 feet more or less to the South line of said Lot 1; thence East along said South line of Lot 1 to the southeast corner thereof; thence North 200 feet more or less to the place of beginning, except that part lying East of highway as described in Document 206758 and except that part of Government Lot 1 described as follows: Commencing at a point 1220 feet south of the northeast corner thereof; thence west and parallel with the north line of said Lot 1 a distance of 821.93 feet to the centerline of Township Road and part of beginning of the tract to be herein described; thence continuing West parallel with said North line a distance of 202.55 feet thence South at right angles 7.24 feet; thence west at right angles 27.0 feet; thence North at right angles 7.24 feet; thence west at right angles 83.10 feet more or less, to the shore of Gull Lake; thence southerly along said shoreline a distance of 100 feet more or less, to the south line of said Lot 1, thence East along said south line of Lot 1 to a point on the center line of existing town road, a distance of 868.47 feet West of the southeast corner of said Government Lot 1; thence northerly along said town road a distance of 100 feet more or less to the point of beginning.

Directions to property: From City Hall proceed across the Gull Lake Dam heading west and proceed to Cass County 70, one mile south on Cass County 70 to take a right one mile south to Steamboat Bay Road. Proceed 400 feet south to address # 11333 East Steamboat Bay Road.

Proposed Findings/Conditions based on MN Statute and East Gull Lake (EGL) Land Use, Zoning and Subdivision Ordinance

MS 462.357 Subdivision 6 - Appeals and Adjustments – Appeals to the board of appeals and adjustments may be taken by any affected person upon compliance with any reasonable conditions imposed by the zoning ordinance. The board of appeals and adjustments has the following powers with respect to the zoning ordinance:

1. To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of the zoning ordinance.
2. To hear requests for variances from the requirements of the zoning ordinance including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties" as used in connection with the granting of a variance, means that 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 the landowner; and the variance, if

granted, will not alter the essential character of the 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. Variances shall be granted for earth sheltered construction as defined in section 216C.06 subdivision 14, when in harmony with the ordinance. The board of appeals and adjustment or the governing body as the case may be, may not permit a variance as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located. The board or governing body as the case may be, may permit a variance the temporary use of a one family as a two family dwelling. The board or governing body as the case may be may impose conditions in the granting of variances. A condition must be directly related to a must be directly related to and must bear a rough proportionality to the impact created by the variance.

East Gull Lake Land Use, Zoning and Subdivision Section 8.2-1 – This ordinance is adopted for the purpose of:

1. Protecting the public health, safety, comfort, convenience and general welfare.
2. Inaugurating and effectuating the goals of the Comprehensive Plan.
3. Promoting order in development by dividing the area of the City into zones and regulating therein the location, construction, reconstruction, alteration and use of the structures and the land.
4. Conserving the natural and scenic beauty and attractiveness of the City, for health and welfare of the public.
5. Providing for adequate light, air and access to property by regulating the use of the land and buildings and the bulk of structures in relation to surrounding properties.
6. Providing for the administration of the provisions of the ordinance and defining the authority and duties of the Administrator, Planning Commission, Board of Adjustment and City Council under this ordinance.

EGL Comprehensive Plan Policies:

1. Protect the area's lakes from damage and degradation.
2. Maintain and support the resort community in the City.
3. Preserve and enhance the scenic beauty and natural plant communities of the area.
4. Work to improve recreation opportunities for residents and visitors throughout the City.
5. Strengthen the bond that make the people who live in, work in, and visit East Gull Lake identify with the community.

Staff Review:

1. History:
 - a. The existing garage was constructed prior to the property division. There was a property line division/alteration done when the adjoining property was sold in 1977 by Mr. Alex Artimovitch, who owned both lots, to Ed Bebenroth, who received ownership of PID 87-029-1113 now owned by Mr. Tim Engel. The alteration of the property line for Bebenroth's was done when the setback requirement was 5 feet. The current 10 foot setback rule of Section 8.5.5 has created a non-conforming structure through no fault of the owner. This has been confirmed by conversations with a previous P & Z official of East Gull Lake.
 - b. The house and garage on the neighboring property (PID 87-029-1113 - Tim Engel) which was built in 1993, is nonconforming, despite being constructed after passage of the current setback requirements.

- c. The existing Muller home is 47 feet from the OHW with a deck that partially extends to 41 feet from the OHW and the existing garage was 5 feet at the corners to the property line. It was expanded in 1993 as a conforming structure and is only a non-conforming house due to the shoreline erosion through no fault of the homeowner.
 - d. There are many structures/cabins/houses in East Gull Lake, as well as in all of Minnesota built prior to adoption of the shoreline management act and thus made non-conforming through no fault of the owner.
 - e. Currently there are three other pre-existing accessory structures on the 2.23 acre parcel that extends from Gull Lake across East Steamboat Bay Road to Cass County 70; a combination guest house and storage pole barn at the top of the hill, a small shed and a boathouse on the lake. Using recent ordinance language addressing homes that have City streets dividing their lot, only the riparian portion of the property is considered for this application. That portion has pre-existing impervious coverage of 7,891 square feet (23.55%) to the right of way on East Steamboat Bay Road. The 438 sf addition would increase impervious coverage to 8,329 sf (24.83%).
2. Any time a non conformity exists, a conditional use permit or a variance must be acquired to make changes to the existing structure.

Applicant Proposed Changes: Provide additional living and garage space by the following actions:

1. Reconstruct the existing 16 x 24 feet (384 sf) garage, using the same footprint, but realigning it to be parallel with the property line while maintaining all pre-existing setbacks.
2. Add additional 368 sf of garage and living space to attach to the existing house, all meeting the side yard setback, thus attaching the entire new structure to the main house with a common wall. The depth of the garage has been reduced to a minimum to accommodate vehicle turn-around due to the driveway slope at the house.
3. Add a second story above the new structure for additional living and storage space, with interior access to the second floor. The structure will have a roof height of 27.5 feet to the peak, below our maximum height allowance of 30 feet. By attaching the garage to the home, the property will have one less accessory structure on the property and will be more conducive to year around use.
4. Redesign the interior of the house to provide direct interior access from the new space into the house.
5. Install a new well to conform to Minnesota water well codes. The old well will be sealed per code.
6. Revise driveway and back deck to accommodate the new access to the house and garage.
7. Remove the back deck on the main home. A new design will be incorporated into the new addition for an entryway entering his home.

Staff Recommendation: Staff recommends that the variance be approved based on the findings of this report. We also recommend the following conditions:

1. Construction shall conform to plans provided to the Commission as amended by the approved conditions.
2. Silt fence shall be installed to control erosion prior to any disturbance of the property.
3. As part of the storm water management plan, driveway improvements in the area of the house and the expanded garage shall be constructed of porous pavement, designed for a 25 year storm and to accept all runoff from the roof slopes facing the drive and that portion of the driveway from the wood storage shelter to the house due to the steep slopes on the property.

4. A bituminous curb shall be installed along the north side of the drive to direct all drive runoff to the new porous pavement so as to minimize runoff from running around the north side of the house.
5. No windows shall be installed on the south side of the second story of the structure.
6. Gutters shall be placed on the back side of the garage with the discharge directed to the porous pavement drive.
7. All landscaping shall be completed within one month after the structure shell and drive are completed.
8. All areas shown as grass shall be sodded to prevent erosion due to the steep slopes.
9. Rear deck of the home shall be removed and changed to pervious pavers to reduce impervious coverage and provide new entryway.
10. Maintain the 10 foot setback to property lines on all new construction of the garage addition and entryway.
11. New water well will be drilled and located in accordance with all Department of Health requirements and the existing well shall be sealed in accordance with all codes.

Findings of Fact:

1. The proposed use is consistent with the Comprehensive Plan and a permitted use in accordance with Section 8.5.5 of the zoning ordinance of the City.
2. Granting of the variance will not be adverse to the general purpose and intent of Section 8.5.5 of the zoning ordinance.
 - a. Single family residences with appropriate accessory structures.
3. There is a practical difficulty in conforming to the ordinance due to the steep slopes, existing construction done by others, and the need for reasonable access for normal use of the property for the use intended.
 - a. The access drive is a shared drive with adjoining properties to the north with no other reasonable access.
 - b. The existing structures were constructed initially by others prior to acquisition by the current owner with the property divisions created to conform to the construction at the time.
 - c. Implementation of statewide shoreland management and several City ordinances since initial construction has created the nonconformities that exist through no fault of the current owner.
 - d. Relocating the garage would provide insufficient space in which to turn a vehicle around, would create steeper slopes already in existence and would create more impervious surfaces.
4. Approval of the variance will not change the essential character of the neighborhood.
 - a. The neighborhood is and remains single family residences.
 - b. The height proposed is similar to heights of adjacent structures.
5. The proposal conforms to the height requirements contained in the City ordinances. In fact, should the owner wish, he could completely remove the existing structures and rebuild with a regular permit to a height that is higher than that which is proposed but still in conformance to height requirements of the ordinance, while meeting all setbacks.
6. The existing use does not harm the public health, safety, welfare and comfort of the City.
7. The proposed changes will provide some additional protections of the environment and the lake through the implementation of a storm water management plan.
8. Inasmuch as all work is being done behind the existing home outside the shoreland setback, there will be no changes to the visibility from the lake.

9. Reconstruction will maintain the setbacks established many years ago and reduce the nonconformities present.
10. The second story is designed with a setback to conform with the walls of the new space so the view of the adjoining property will not be affected any more than it would be should a full two story house be built conforming to all setbacks.
11. The proposed changes conform to the impervious requirements of Section 8.5.5.6B upon implementation of the stormwater plan.

Planning Commission Direction: The commission can recommend approval of the variance, recommend denial of the variance, or table the request if additional information is needed. If the recommendation is for approval or denial, findings of fact should be cited.