



# Hubbard County Environmental Services

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## Public Hearing and Public Meeting Cancellation Notice

### **Staff:**

**Eric Buitenwerf,**  
*Env. Services Officer*

**Scott Navratil,**  
*Env. Specialist*

**Steve Pachel,**  
*GIS Technician*

**Maria Shepherd,**  
*Admin. Assistant*

**Jeff Woodford,**  
*Env. Specialist*

The Hubbard County Board of Adjustments Public Hearing and Meeting scheduled for Monday, January 17<sup>th</sup> at 9:00AM in the Lower Level Meeting room of the Hubbard County Courthouse has been cancelled for lack of an agenda.

Please check back after January 24, 2012 for the February 2012 agenda.

**Board of Adjustment  
Meeting Minutes  
February 21, 2012**

Board of Adjustment members present were: Chick Knight, Tom Krueger, Tim Johnson, and Ken Grob. Earl Benson was absent.

**Meeting commenced at 9:00 a.m. in Lower Level Board Room, Courthouse**

**Chick Knight:** We will bring the meeting to order, but first thing we need to do is to elect a new chairman and so I am going to call the meeting to order and ask for nominations. We need, our president is away and we have one Board member who isn't here. His wife broke his arm, broke her arm, not his. So anyhow nominations are in order.

**Tom Krueger:** I would like to nominate Chick as the chair.

**Knight:** Nominate Chick.

**Tim Johnson:** I'll second that.

**Knight:** All right. Is there any other nominations? I'll move that the nominations cease and the chair will be elected. Okay. But now we need a vice chairman to serve in case the chairman cannot. I would like to nominate Tom Krueger for the Vice Chairman.

**Ken Grob:** Second.

**Knight:** Any others? Then Tom Krueger is nominated as vice chair. We would like to welcome you all to the Board of Adjustment hearing. That's what this is. I am definitely going to have to do this stuff from memory because I usually have a book in front of me that I can read from, but you as you are called on your name to come up, have a chair here. Tell your name, your address and then you'll be asked to explain to the Board what your situation is. Then we will be asking for hearing from the audience and you'll be given a total of five minutes to express your point of view and then we will continue back to the meeting. When you stand up, you can use the microphone over here and give us your name and address so that in order to know who you are and where you are speaking from. Now, at this time I would like to introduce the Board. On my left is Tom Krueger. He has been on the Board before and I am Chick Knight. Then we have a new member here Ken Grob. He is our newly elected member and then we have Tim Johnson who is a substitute for the other person who is gone down south. Then there is Eric Buitenwerf, the our illustrious in charge of everything and let us know what's going on and then his secretary Maria Shepherd and she takes down every word said so you know what you say will remain on paper probably

by the end of the day. All right? Then I have no other choice than to start the meeting today. Is there anything that I have left out Eric that I should be?

**Eric Buitenwerf:** The two items would be one that the meeting procedure is written out and available on the back table along with copies of all the applications and any correspondence that has been received on those applications.

**Knight:** Thank you Eric. So first item of business now, we've had election of officers, and the old business is the minutes of the last meeting. If you have read those, is there a motion to approve or disapprove of those minutes?

**Grob:** I would like to make the motion of approval.

**Knight:** Motion to approve by Ken. Second?

**Johnson:** Yeah I will second.

**Knight:** Seconded by Tim. All in favor say aye. The minutes are approved.

We have new business and our first item of new business is **Variance Application 1-V-12 by Ronald Schaefer:** Unit 5 of Sunny Point Estates and the common elements (Lot 1, Block 1, Sunny Point Estates), Section 20, Township 139, Range 33, Crow Wing Township on 2<sup>nd</sup> Crow Wing Lake. Parcel #s 06.62.00500 and 06.62.01200. Part 1: Applicant is requesting an after-the-fact variance from Section 502.2 of the Shoreland Management Ordinance for a zero foot setback from a unit boundary line to allow a storage shed to remain placed over the boundary line – partly within the unit and partly on the common element. Part 2: Applicant is requesting an after-the-fact variance for less than the required 100 foot ordinary high water mark setback for said storage shed. Second Crow Wing Lake is a recreational development lake.

Would the person representing...

**Krueger:** Well first of all my name is Tom Krueger and I am on the Board and since I am representing the Schaefers, I need to recuse myself from voting on this item. Okay, I am Tom Krueger, like I said, my address is 12701 Beach Drive, Nevis. Well as I told you, when you came out on lot viewal that the Schaefers made a purchase agreement, or presented me with a purchase offer in which they wanted an 8' X 6' storage facility. If I had written and approved it or agreed to it then, then I would have been the one responsible for getting the permit so I countered with an addendum that said they had to get the, they needed to have County approval. So that's...

**Knight:** That's what you are representing?

**Krueger:** That is what I am representing. I am also president of the association.

**Knight:** Do you want to tell us what the problem is with the storage shed there?

**Krueger:** Well it is sitting right on property line and as I told you each unit does, you know does need a storage facility. It is a residential unit. I mean all of you have places to put your stuff. I mean if it was still a resort all you know the gas cans, minnow buckets, all of that stuff would be on the outside of the cabin. They need someplace neatly to tuck it away, but if you look at your plat, we do have a place designated to build a permanent facility in the future, but at this time the majority owners will not vote for building it right now and there is no time table for building the facility. So in the mean time, they do need a temporary place to put their things so that the property can have a neat, orderly appearance to it, instead of just laying out like a resort would be.

**Knight:** All right. Any questions from the Board to clarify this in your mind?

**Grob:** Do any of the other units have storage sheds at all?

**Krueger:** Two of them do and each of them are on the association property.

**Grob:** Right next to their, right next to their unit?

**Krueger:** Yep, real close to their unit too.

**Grob:** Do they meet the setbacks?

**Krueger:** Yes I believe they do, yep. And also as I wrote in the as president of the association's opinion, the ground coming to the cabin, you saw it. It is not level. There is not really a place near the cabin, you know within outside of the 100 foot and outside the ten foot from the cabin that it could be placed. It would have to be placed you know like 50 feet back from the cabin where we have got some level ground. So I am asking the Board for, at the very least, approval until such time that the Schaefers are able to get majority vote to build the permanent storage facility.

**Grob:** How large are the units that the other, how large are the storage sheds that the other units have?

**Krueger:** They are quite a bit smaller. One is really small. It is probably only 5' X 5' and the other one might be 8' X 8', something like that.

**Grob:** And did he ask for permission to place this unit?

**Krueger:** As part of his purchase offer, he asked for the 8' X 6' cabin and I countered with that addendum saying that the association would approve it, but

he would have to get approval from the County. So he does have permission to have it.

**Grob:** 6' X 8'? But moving this unit in, did he ask for permission to move this unit in?

**Krueger:** No. He just showed up with the 10' X 12'. And of course I always try and maintain the peace out there. I don't want to; I just want everyone to get along because we all live in a unique situation that's more than just people being neighbors to each other, we are common owners.

**Grob:** When we were there for the viewal, you did point out a couple of other locations or at least one that is relatively close to his unit that this storage unit could be placed.

**Krueger:** It would be at least 50 feet or more from his unit. Now when we do get the permanent storage facility, that would probably be more like 100 feet from his unit.

**Grob:** But the alternate location would be acceptable to the association or to the covenants?

**Krueger:** Oh yes.

**Grob:** Okay.

**Krueger:** We would prefer to see one move and that would be to move once the permanent facility is built.

**Grob:** The other observation, I think made at the viewal, that he might be able to meet the setback requirements with a smaller unit on the opposite side of the building. I know it would be tucked up next to his dwelling unit, but there might be space for a 5' X 5' or something to store some of the things.

**Krueger:** He could meet, he could have, with a smaller unit on the other side of the building, he could have it completely within his building envelope, but it still wouldn't meet that 100 foot setback. I think that 100 foot line runs just about at the end of the back end of the cabin.

**Grob:** I thought the current one is 87 feet or 89 feet. I thought there would still be some space left by the unit and besides we don't have the information on that.

**Krueger:** I think even if he went to a smaller one and put it there, he would still be here in front of this Board for the 100 foot setback variance.

**Knight:** Tim, do you have some questions?

**Johnson:** I didn't, the hardship of moving it would be the rock landscaping around that.

**Krueger:** There would be landscaping and then there would be a potential for two movings then because if moved it to this one flat area where I showed you and then it would have to be moved again once we build the permanent facility.

**Johnson:** Okay. He wouldn't be able to leave it anywhere else with you having the new storage?

**Krueger:** Well as of right now I am still majority owner so I can speak very much on behalf of the association so even though my opinion could change once there is more owners in there 'cause then there would be more opinions, but right now the opinion of the association is that these small storage units, even for the other two that have them would be out of there once the permanent facility is built, but other owners may feel different. I would like to get down to just one vote and then that is all that my opinion would be is just one vote. But right now I have seven votes.

**Knight:** Now on the, would the rest of the owners at this time want to build and move a unit in too?

**Krueger:** I can foresee, there is one owner who doesn't have one, but I can foresee, you know future owners wanting some place. It is like I said it has been zoned, each unit has been zoned residential. I mean what is the alternative; put the gas can in the closet of your bedroom or something like that? I mean nobody wants to do that. You have got to have some place to put your things. You store the grill for the winter and you know.

**Knight:** You are saying that there is a need for a storage building there. Now in the beginning you said that gave permission for a 6' X 8' building and it is now an 8' X 10' building.

**Krueger:** 10' X 12'.

**Knight:** 10' X 12' or whatever and this is larger than what was expected. You gave him, the association gave him permission to put that size of building on or did they? What did the association do?

**Krueger:** Once he moved it in and he did his landscaping and it all looked really good. He fixed the road; you know I had no problem with it. I mean, like I said I want to maintain peace out there since we are all common owners so I just accepted it as it was.

**Knight:** All right well we will close this particular section and ask for public comment. Is there any public comment on this? If you would step over to the mic.

**Everette Langland:** Excuse me, Everette Langford, 12585 Beach Drive, Nevis. I live just down the lake from the property involved here this morning and there is one questions, several questions I would like to have answered. Does the County have a fire districting so that their fire code will tell you how close that building could be to the house?

**Knight:** I would have to defer that to Eric.

**Langland:** Having spent 27 years in the Fire and Rescue Service prior to moving up here, the way that that storage shed is set in relation to the cabin to store gas in there would be a highly toxic area. It is only about two foot as I looked at it with you gentlemen the other day. It is only about two foot, maybe 30 inches from the cabin to the storage shed. I am not sure I would like to be sleeping with gas cans stored that close to my bedroom.

**Krueger:** May I respond to that?

**Knight:** Yeah sure.

**Krueger:** Many people have attached garages in which they store gas cans and things like that in.

**Knight:** Okay. Eric?

**Buitenwerf:** As far as a setback for fire code, the County does not enforce any setbacks. That is up to the landowner to make sure that they comply with the provisions of the fire code.

**Langland:** Okay. The other thing is why can't that be moved back far enough to at least clear the 100 foot requirement for lakeshore? Or it is at what 87 or 89 feet?

**Krueger:** I think that it is at 87 right now.

**Langland:** Why do we have to move that shed closer to the lake?

**Krueger:** Well Schaefers would probably say something different than I am saying right now, but I am asking just for temporary approval of it until the permanent facility is built.

**Langland:** It is very easy to, I witness it and I am sure you people have seen more of it, it is very easy to temporary it in, but temporary gets to be awful permanent.

**Knight:** Do you have more questions?

**Langland:** Pardon?

**Knight:** Do you have more questions?

**Langland:** Just why does it have to be where it is at?

**Knight:** Thank you for your comments. Any others?

**Bill Cowman:** My name is Bill Cowman, 16231 Dakota Shores Drive, and I am here representing COLA. First I would like to make the comment I am glad to see that Mr. Krueger recused himself from voting. I guess I am a little disappointed that he didn't also recuse himself from making any comments with reference on this based on his interest in what is going on out there, but having said that, our position is that we support Mr. Buitenwerf's position of denial for the reasons that he has spelled out. If there is still a question, it seems to me that there doesn't seem to be any great big hurry to get this moved. Why not table it? We'll let the Schaefers get here and let them explain question number seven on the findings of fact. Why did they do what they did? The other comment that I have is this is the type of project that doesn't happen during the middle of the night. It happened over a period of time and I guess I am surprised if Mr. Krueger is the majority owner out there, then for whatever reason he didn't stop the activity before it got as far as it did. But if in fact the decision is to relocate, it seems to me that with the shed should go the concrete slab that the shed is sitting on.

**Knight:** Okay. Do you wish to respond?

**Krueger:** I don't see how I can't have an opinion on this in either way because I am, I happen to be the president of the association. I am majority owner. I mean I am going to be involved in this one way or the other. That is why I agreed to represent the Schaefers because they are gone. They won't be here until April. You could table it if you want to hear what he's got to say about it.

**Knight:** Any other public comment? No others, then we will come back to the Board here. You have heard the audience comments. Are there any comments that you would like to ask or anything to add or barter with?

**Johnson:** Well since the owner is not here and you are acting for him Tom, I have got to assume some things of what the owner, what his intentions were

there. I see he did know that he needed a permit in the purchase agreement he signed.

**Krueger:** Yeah I said even if he didn't know before then once I gave him the addendum that says I am not going to agree with what you want, I would think that would have been noticed. And plus he is not too, he is fairly well off and he made his money by developing land. I have no doubt that some of that was lake front property so I would think he would have been aware of ordinances from other counties.

**Knight:** Any more comments?

**Grob:** Yeah I think that my view is that moving, there is an easy place to move it to. It is not that very far from his unit and if in the long haul there is a major overall unit going to be built, which would be even farther away, it doesn't seem moving it to the temporary location would be unreasonable. I also think that a smaller unit could in fact be placed on the other side and meet the setbacks. The fact that the owner knew he needed permission and willingly didn't I think all of those comments are valid.

**Knight:** Okay. On this, well at least in my opinion why I would like to see the storage building be moved back to the temporary location in as much as we have a problem there, although the association says that they can have the building there and there would be a should we do give our permission to allow the building to be there why then but what you are asking for is that if I mean when the association builds a storage building in the back that the unit would be then demolished or removed from that particular location. That is the way I see it with what you have said. Is there a motion or would you like to add, anybody like to add anything? Okay. Is there a motion to and that?

**Grob:** I will make the motion that we deny the variance request to add an accessory building which is not consistent with the ordinance and also that is within 100 feet of the setback.

**Knight:** Okay. Is there a second?

**Johnson:** I'll second that.

**Knight:** Moved and seconded to deny the request. Are there any other?

**Buitenwerf:** Need a copy?

**Knight:** I need a copy. Each time we vote on something, why we have to read a bunch of questions off and so the state is satisfied.

Is the variance in harmony with the intent of comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes or no and why.

**Grob:** Well I would say no because the current ordinance prohibits accessory structures for PUDs and there is ample room on common on other areas.

**Knight:** Without the variance, is the owner deprived of a reasonable use of the property?

**Grob:** No. There is plenty, he has all the use of the property. He has the unit. He has access to the lake. He has all of the, where with all he would have reasonable use.

**Knight:** Is the stated practical difficulty due to circumstances unique to this property?

**Grob:** No. I don't see anything unique about it.

**Johnson:** Rock landscaping is cited as the difficulty and rock landscaping is not unique to the property.

**Knight:** Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Grob:** No, the landowner created the problem without asking permission.

**Knight:** Will the issuance of the variance maintain the essential character of the locality?

**Grob:** I would say no. The accessory storage unit sticks out pretty obviously and it is not consistent with the other units.

**Knight:** Eric, now do I have to read all fourteen in this case?

**Buitenwerf:** Yes.

**Knight:** Excuse me. Does the stated practical difficulty involve more than economic considerations?

**Johnson:** Yes. The owner wants the shed in the shore impact zone.

**Knight:** I didn't miss question five, will the issuance of the variance maintain the essential character of the locality?

**Buitenwerf:** No, we answered that one.

**Knight:** We answered that one. Okay.

**Buitenwerf:** Yup.

**Knight:** Why did the applicant failed to obtain a variance or comply with the applicable requirements before commencing work? Did the applicant act in good faith?

**Grob:** We don't have any information to answer that, as to why he why he didn't.

**Johnson:** He could have had a bad memory of signing the purchase agreement, but I don't know what to say.

**Knight:** Okay. Did the applicant attempt to comply with the law by obtaining the proper permits?

**Grob:** No.

**Johnson:** No.

**Knight:** Did the applicant obtain a permit from another entity that violated the law? Provide an explanation below.

**Knight:** Not that we know of.

**Knight:** Did the applicant make a substantial investment in the property?

**Knight:** I would have to say no. The shed is a 10' by, that's not that much money.

**Knight:** Did the applicant complete the repairs/construction before the applicant was informed of the impropriety?

**Grob:** Yes as far as we know.

**Knight:** Are there similar structures in the neighborhood?

**Johnson:** Not in violation no.

**Knight:** Would the minimum benefits to the county appear to be far outweighed by the detriment the applicant would suffer if forced to remove the structure?

**Grob:** I don't think so. The detriment of moving the structure to the new location is not significant.

**Knight:** In light of all of the above factors, would denying a variance serve the interests of justice? Why or why not?

**Johnson:** Yes. Justice is served by requiring the owner to move the shed.

**Knight:** All right. All in favor of the motion say aye? The question was denied.

**Krueger:** Eric, do you notify the Schaefers of the outcome of this meeting?

**Buitenwerf:** Uh huh.

**Krueger:** Do you let them know that there is an alternate place to put the shed or do I need to go over that?

**Buitenwerf:** They will receive notice that the variance is denied and then they will be given a timeline in which they need to remove it.

**Krueger:** To remove it. Okay. So I will need to contact him and tell him there is another spot. Will he need to a permit for putting it in the alternate spot?

**Buitenwerf:** Yes.

**Krueger:** All right.

**Knight:** The second item of business today that we bring up is **Variance Application 2-V-12 by Ralph Hermann:** Part of Government Lot 1, Section 20, Township 139, Range 33, Crow Wing Township on 3<sup>rd</sup> Crow Wing Lake. Parcel # 06.20.01800. Part 1: Applicant is requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance (SMO) for a proposed addition to a non-conforming residential structure located in the shore impact zone. Part 2: Applicant is requesting a variance from Section 502.2 of the SMO for a proposed garage that will not comply with the required 100 foot ordinary high water mark setback, 10 foot rear and side lot line setbacks, or the 50 foot road right-of-way setback. Part 3: Applicant is requesting a variance from Subdivision 2.10 of the Individual Sewage System Standards Ordinance and Sections 502.2 and 801 of the SMO for a proposed SSTS drainfield that will not meet the required 10 foot rear lot line setback. Part 4: Applicant is requesting a variance from Section 904.6 of the SMO to exceed the required 25% maximum impervious surface area on the lot with the proposed cabin addition and garage. Third Crow Wing Lake is a recreational development lake.

Would you introduce yourself, your address and so forth?

**Ralph Hermann:** I am Ralph Hermann. I am the owner and 23806 State Highway 87, Nevis, Minnesota.

**John Mason:** I am John Mason, John Mason Construction, helping represent Ralph. My address is 18610 109<sup>th</sup> Ave., Park Rapids.

**Knight:** Would you go ahead and tell us your problem.

**Mason:** I can lead off if that is all right with you Ralph. As you all know, you have been to the site. It is a postage stamp size lot. That is why there is four parts to this. The homeowner, Ralph, would really like to add onto his structure, the number one thing. I was there the other day having coffee and I was sitting at his kitchen table and it is quite small living there. What he is proposing is adding onto the living space no additional bedrooms or bathrooms. I feel that that is a valid request and he is staying underneath the 50% addition. The second thing I believe is the garage. As you might have noticed when you pulled up, it looks a little like shanty town there. That is only because he has no place to keep anything. He has a temp shed, in case anyone wants a shed. He also has a trailer parked there with stuff stored in it and stuff strewn about the yard on top of that because there is no adequate storage space. Number three, I believe, is the septic system and that just falls into place with keeping up to date with the codes and everything. The only place for that septic system is where we proposed, in the back corner of the lot towards the highway and on the neighbors' zero foot setback. I believe the number four was also with the, oh maximum of 25% impervious surface. That reflects back to the postage stamp size lot again. We are over by a small amount, I can't remember the digit, but Eric expressed it once. It is not in my notes how much we are over, but it is not a great amount on the impervious surface. I feel that the addition to the property, Ralph as well, would help beautify the lot for sure by picking up the junk and it would make a more livable structure and that's it. Thanks.

**Knight:** Okay. Do you have any comment Ralph?

**Hermann:** Not really. He pretty much said it all for me.

**Mason:** He doesn't do good with this.

**Knight:** All right. The Board have some questions on this at this time?

**Grob:** Confirm, the lot is about 107' X 73' if I remember reading right and the current structure is about 30 feet from the lake. Is that right? So the current home is in the shore impact zone. A question is have you pursued any other options for maybe purchasing an acre or something close by that your could build a garage to store the things that are there that are in your current storage unit and in the trailer. Have you pursued that at all? It seems there is a lot of vacant land around that one might be able to find an alternate place for a garage or storage area.

**Hermann:** I haven't, there's nothing available in the area now. Everything has been bought. My one neighbor bought the property across the street and there's nothing else available.

**Grob:** How much does he own across the street?

**Hermann:** The neighbor?

**Grob:** Yeah.

**Hermann:** Oh I don't have any idea.

**Grob:** I mean is it multiple acres or just a little bit.

**Hermann:** Well it is big enough so he could put a drainfield in.

**Grob:** Okay.

**Knight:** Tom? Tim?

**Johnson:** Did you, were you the one that flagged off the septic area there?

**Mason:** Yes.

**Johnson:** Okay. Did you go off the design that was?

**Mason:** Not strictly on the septic system because that was Dave's gig and I just flagged what I thought it would be for size and who flagged the rest all way out close to.

**Hermann:** I did.

**Johnson:** Okay.

**Hermann:** I called Dave and he gave me the exact amount of room he needed, so many feet.

**Johnson:** Oh okay. It looked a little small when the design shows that the drainfield is 23' X 25'. You included the square footage over top of the septic tanks?

**Hermann:** Yes.

**Johnson:** And that drainfield can't be over top of the septic tanks.

**Hermann:** No.

**Johnson:** So we are looking at, even if you were tight to the property line with the septic tank, you were...

**Hermann:** Thirty-three feet from the one property line and twenty five feet wide is what he needs.

**Mason:** And did you go that distance so that would encompass also the tanks?

**Hermann:** Yes. That included the tanks. That was what he needed for the whole area was 33 feet.

**Mason:** So he has that allowance in there for the tanks.

**Johnson:** Okay.

**Hermann:** He's got to dig the existing tank out of there.

**Johnson:** No.

**Hermann:** No he said he does. He is going to put in two new tanks right up against the property line, or within a foot or so and then go from there.

**Knight:** Okay. Tom do you have some questions?

**Grob:** The garage seems very, very large considering your unit size and so on. Does it have to be that large? Do you have, like how many vehicles do you have to put in it?

**Hermann:** Typically two plus I have got a boat, but I probably could put that someplace else, but two cars for sure.

**Grob:** Do you live there all year round or is this seasonal?

**Hermann:** Yes. That is my primary residence as of the first of December. Prior to that it was not but now it is.

**Krueger:** The proposed garage it is a setback of 74 feet from the lake?

**Mason:** That is correct.

**Knight:** You have a problem here that you are over the density for the entire area and you are, so you would need to cut down the size of the garage and if you did that you have a problem with being in the, encroaching in the area of the setback from the highway, minimum highway. I have no problem with your addition to your house. I think that's great that you are adding that and your

house was made long before the rules were ever made on the shoreline or that. You only have a 500 and some square foot house and I think that you deserve to have in particularly since you are going to be here permanent residence why I certainly have no problem with doing that. I do have a problem with the increased area in the garage. The septic system is in why acceptable why then we have a problem in the garage situation which would necessarily need to be cut down to accommodate.

**Mason:** I am John sorry I am used to saying that. Could you tell me how much I am over again please Eric? How much on the impervious surface are we over?

**Buitenwerf:** Sure. It is 189 odd square feet over the 25% that is allowed.

**Mason:** This is up to the homeowner to request what would you be willing to give up? What would the Board be good at seeing? If I lopped off four feet off on the side to the east that would put us at 24' wide, 28' deep. That would knock off 112 square feet. Is that something that you guys would approve? Well I shouldn't say approve because it need to be voted on, but is that something that interests you?

**Grob:** Couple of thoughts. It is kind of hard to tell, but it would appear to me that the garage door's at the edge of the garage, its location to the road could be a safety issue. You have to back out of the garage. You have got to be able to watch traffic coming around that corner and so on. It would just seem to me that to get fully backed out of a garage and to be able to see through car windows, and I realize that may not be Shoreland Ordinance thing but still placing that garage, a large garage and poor visibility would create a safety issue. I don't know whether MnDOT or somebody has to look at that. I know there are setbacks from the road.

**Mason:** That's no different than the tree line that is already pre-existing and the sheds that are already pre-existing; all of those, which obstruct the view of the cars coming and obstruct the view of the person backing up. So I don't believe that is going to change anything in that situation at all. I hear what you are saying.

**Grob:** I would think that a solid garage would be more difficult to see out of and get out far enough than the trailer and the things that are there now, but I understand the other point. The other thing with the garage, and I realize that you are butting right up against the impervious surface number, the entire lot to me, any time there is any water, rain, snow melt, whatever, everything ends up in the lake the way it is today. This would even make that more severe as far as I am concerned, as far as my view is literally, and that is one of the things that you are trying to do in terms of protect the lake and that is the whole, one of these ideas behind the Ordinance is co-defined as trying to protect the lake and already most of the run off if not all of it is ending up in the lake and I just think

that the garage, I look at the safety issue and its location on the lot that will just add to that issue, an observation.

**Johnson:** I don't believe that because of the date this was constructed he's not; he doesn't have to put in an alternate site for septic because this is variance. I am looking at, I read the soils description and it is 84 inches and it is good medium sand, and I am sure that the septic is going to treat what you use and you won't have to pump your septic because you are going to get some drainage there, but because it being a parking lot we don't know how compact that it is and you might have to increase that drainfield into the garage area. That's what I am thinking.

**Mason:** Okay. If we were to reduce the garage in both directions and bring it to a 24' X 24' garage, that would get us under the impervious surface allotment. That would bring us down by 208 square feet bringing it to 24' X 24'. That would rectify most all the situations, the dangers, the impervious surface. It would be eliminated and it would also allow us a to give us a little bit more move for drainfield expansion should the need arise like you say Tim. I am in agreeance. Anything underneath a packed driveway is a dangerous situation, but like you said, it is a medium gravel and it is an excellent drain system, the soil condition I should say. Excellent drain. So if a 24' X 24' would work for the homeowner here, I would feel that that would be adequate and also to help all of the above situations.

**Knight:** Tom, do you have any more questions?

**Krueger:** Well I am kind of leaning with what Tim was saying and he would need more room for his drainfield and also I feel pretty strongly about the idea of not exceeding the 25% impervious surface. I have seen many cases where, where if they don't have enough area for the water to seep in why, like Ken says, it is going to go straight to the lake.

**Knight:** You are in agreement to remove the shed that is back there if this is approved?

**Hermann:** Yup.

**Knight:** What do you have now for a septic system?

**Hermann:** It is a holding tank. It is pumped from the house up to the tank and then I have it pumped, 1500 gallon tank.

**Knight:** A 1500 gallon tank.

**Hermann:** Another thing too is Dave-I wish he was here, but he is not-told me that this is sized for a three bedroom and I don't have three bedrooms. I have

two bedrooms and I am not going to have any more than that. So it is oversized already. He almost refuses to put in anything other than a three bedroom. That's just because that's how he like to do it I guess. I can't really speak for him. So what I am saying is that he has got this thing sized plenty big and he put in, he actually told me that he would like to have the garage slab and the garage done and then he would come in and put that in. He would be the last thing that would happen in this sequence.

**Grob:** Is there room for foot traffic even?

**Hermann:** I can't speak for Dave, but I am just repeating what.

**Grob:** I can't remember where the flags are. If you put the garage in at the size you are requesting and a drainfield, is there a foot path space to be walking where you are not walking on the drainfield all of the time? I can't remember when we were out.

**Johnson:** There was about two feet I believe.

**Grob:** Two feet?

**Johnson:** In the original request.

**Knight:** Eric, on the situation with the garage there and it only seven feet from the property line and then he is 50 foot from the center of the road, is that correct? So the cars would be outside of the garage if the car was outside of the garage?

**Buitenwerf:** The right-of-way is 33 feet and then there is a 50 foot setback in addition to the 33 foot from center line. So the garage south wall would be 40 feet from the drawing that was submitted.

**Knight:** Okay.

**Grob:** From the center of the road?

**Buitenwerf:** Correct.

**Grob:** So if he parked outside of the garage, he is actually parking in the right-of-way?

**Buitenwerf:** Yes. Unless you have a very compact vehicle.

**Johnson:** I would like to respond to your sizing, I don't disagree you're your designer. I think he designed everything right and did probably over design.

Even a well designed system has a life span. Eventually it will fail. Do you agree with that Eric?

**Krueger:** What happens then? You have to go back to pump tank if there is no room to put an alternate.

**Knight:** You would have to go back.

**Mason:** It will never fail. He is a one person living there.

**Krueger:** Yeah, but that's not going on forever.

**Knight:** All right at this time, let's open this up to public. Anybody comments on this?

**Ed Mustch:** Good morning. My name is Ed Mutsch. Address 18401 Elk Drive, Nevis. I have been before this group a few times in the past and am likely to be before it a few times in the future. So it is probably worth stressing that the address that I just gave is on the 5<sup>th</sup> Crow Wing. It is in Nevis Township. My wife and I live there. We have been permanent year-round residents there for almost ten years. So when I appear here I am speaking on behalf of myself personally as one who has an interest in preserving and protecting the quality of the water on the 5<sup>th</sup> Crow Wing Lake, but I also speak as a representative of COLA which has, of course, as its mission the preservation and protection of all the lakes in Hubbard County. This morning I would like to speak specifically to part one of this four part variance request and fairly briefly say that to my mind, it seems fairly clear that this variance request, this part of the variance request should not be allowed if you look at SMO Section 704.1 that deals with nonconforming structures. It does not allow for additions to nonconforming structures that are in the shore impact zone. Now while that may be clear to me, it apparently isn't totally clear to this particular Board because as I look back over a large number of decisions that have been made where this particular issue is involved, that is to say the addition to structures that are non, in the shore impact zone. It has been very much of a mixed picture. That is to say that sometimes these requests have been allowed, sometimes they have not been allowed, even though the circumstances in most of these cases have not really differed in major ways on other aspects of the issue. So whatever the Board ends up deciding to do on this specific request, I would urge the ESO office to at least seek a legal opinion on this particular aspect because it might, a legal opinion made on this particular issue might, might offer a lot of clarification for instances in the future where this same issue arises and might end up simplifying decisions on this type of issue. Thank you.

**Knight:** Are there others?

**Dennis Schaefer:** I am Dennis Schaefer, 23828 State 87, my lot borders Ralph's on the side where the garage is being proposed and I just had a question. If, as discussed, the dimensions were reduced to 24', currently one corner of that garage is two feet from the lot line. Would that then retreat to being six feet from the lot line? My concern is the row of trees we have along there. It would minimize how much we had to trim and I wasn't sure what the proposal was as far as how the garage would be cut down. That is all I had. Just curiosity.

**Knight:** Eric, can you?

**Buitenwerf:** I don't know yet because that hasn't been discussed.

**Mason:** Personally I would like to see it split the difference two and two. That would allow us all to leave the foot traffic on the one side plus the additional drainfield if needed and it would also put us at four feet from the lot line on Dennis' property which would in turn keep us from doing any harm to his trees.

**Buitenwerf:** And then the other north-south dimension John? How would that change?

**Mason:** Ken brings up a good point being close to the road like that. I would suggest leaving it at the 74 foot from the water and pulling it off of the road personally so it works best for safety issues. Do you have a thought Ralph?

**Hermann:** Well I pull in and out of there every day and it is a little bit hazardous to say the least, but what you have got to do is pay attention to what you are doing. That's all. The garage gets built. The garage door opens and I drive right into the garage. When I leave, the garage door opens of course and I back up. And I can see, part of my truck would be on the right-of-way true, but you can still see. What I do is I just back around and drive down the shoulder like this. So there is a way of getting in and out of there. It wouldn't change with the garage there any different than it is already. It is just the way it is. There is a tree line with the one direction and the other direction is okay. So the garage structure itself is not going to change the way the safety of me getting in and out of there.

**Knight:** Okay well then we would say that if you would agree then to cut the garage down to 24' X 24' and the placement would be two foot away, further away from the property line so that the trees wouldn't be bothered and then you would still have enough room on the other side so that you would have a walkway between the septic system and the garage to go down to the unit. Okay we will close the hearing on the public hearing and come back to the Board. You have heard the...

**Mutsch:** Excuse me Chick?

**Knight:** Yes.

**Mutsch:** Could I ask one question?

**Knight:** Sure.

**Mutsch:** It is basically, Ed Mutsch, 18401 Elk Drive, Nevis, Minnesota, it is basically a question directed to Eric if I may. I have been to a number of these meeting, but I have not been in very many where there has been a fair amount of proposed horse trading away from what the original proposal was and my question merely is when that happens Eric, is it necessary for the applicant to circle back around and do another application or can that be handled right in the meeting itself?

**Buitenwerf:** It depends on the situation.

**Mutsch:** The degree of...

**Buitenwerf:** The degree of variation, how complex it is versus what they proposed to do to the garage in terms of mending its dimensions and then stating for the record what the altered dimensions will do in terms of the various setback variances that necessary. I feel we have got sufficient documentation that we don't need anything further from them to be brought back to us at a later date.

**Mutsch:** Understood. Thank you.

**Knight:** Any other questions we have? All right is there a motion from the Board?

**Grob:** I was going to make a couple of comments.

**Knight:** Oh. Comments? Go ahead.

**Grob:** Well after hearing everything, there are lots of problems with this variance, not the least of which is non-conforming structure in the shore impact zone, all of setbacks, property lines, lake setback, right-of-way setback from the road in terms of safety and so on. However, 588 square feet or 76 square feet is not particularly livable, at least in today's standards. So that may be reasonable use by expanding the cabin's not unreasonable however also, and a new septic system which is a preferred approach I believe by MPCA. However it does bring the uncertainties that Tim brings up. So with that, I don't know if you want a motion from me or not or from somebody else? I would make the motion that we approve the expansion of the cabin by the 288 square feet and the septic system, but deny any construction of a garage or storage building on the property and that would alleviate the impervious surface of exceeding the 25% and deal with all of the other uncertainties. That would be my motion.

**Knight:** Should we just take it up though part one, part, part two?

**Grob:** That is a good question, a good question, okay. I have made my, I guess I made the point that but if Eric, because of the way it is broken out prefers to do them one at a time what's your, how is the easiest way to handle this?

**Buitenwerf:** Sure. Right now you have made a motion to approve part one for the house addition and part three for septic system and deny parts two and four.

**Grob:** Yes.

**Buitenwerf:** If that is seconded, then what I would recommend would be to do separate findings for each of the parts and then that way it is clear as to the reasons for or against a particular item and then once all four findings are done, then vote on the motion.

**Knight:** Is there a second to the motion?

**Krueger:** I will second it.

**Knight:** Seconded. All right then we moved and seconded it. Is there discussion on this from the Board?

**Mason:** It's ah, excuse me, John, it has been brought to my attention by Ralph here that he is more interested in the garage rather than the structure addition. Any particular reasons why Ralph?

**Hermann:** Well I can live in the square footage I have got because I am doing it, but I don't have any place to put my stuff. So I need a garage. If you live in northern Minnesota in the wintertime, you need a garage. Maybe you need to buy a property that has a garage, but anyway I need a garage. That is what I need.

**Mason:** Thank you.

**Knight:** It has been moved and seconded. Is there any further comment from the Board? I mean before we vote?

**Buitenwerf:** We have to do our findings for all of them first.

**Knight:** First?

**Buitenwerf:** Can you pass that to Chick please?

**Knight:** Do we have all twelve or fourteen or five?

**Buitenwerf:** Use the regular findings for each of these parts. So I would specify that first you will go through part one.

**Knight:** Part one, that's the addition onto the house. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Do you want to go ahead?

**Grob:** That is a difficult one, but I will say yes in the context of the lot size, which is been in existence for a number of years, which prevents meeting the ordinary high water mark setback and road setbacks, so being consistent with trying to be reasonable, and give him use of the property, I would say that that part is in harmony.

**Knight:** Without the variance, is the owner deprived of a reasonable use of the property?

**Knight:** I believe he is, yes, in as much as he has very limited space for living and so therefore I think it should be on.

**Knight:** Is the stated practical difficulty due to the circumstances unique to this property?

**Knight:** I would have to say yes again. It is a small piece of property. It was built before rules and regulations were adopted and so we should do everything we can to accommodate, in my opinion, the owner.

**Knight:** Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Knight:** Once again, I would have to say yes because it was done before the law was made, and it was made earlier and so therefore it was created by government.

**Knight:** Will the issuance of the variance maintain the essential character of the locality?

**Knight:** I would have to say yes. The locality is lake homes and all along the lake and it is right near the river.

**Knight:** Does the stated practical difficulty involve more than economic considerations?

**Knight:** No economic considerations were made in this particular unit.

**Knight:** Now that is part one. Part two is the wait a minute

**Grob:** Detached garage.

**Knight:** Part three.

**Grob:** It is the garage.

**Knight:** The garage?

**Grob:** Yeah.

**Knight:** We will go ahead. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

**Grob:** I would say no. It is 70 some feet back from the ordinary high water mark, setback from property line, road right-of-way setbacks are not accommodated and it exceeds the impervious surface so I would say not in harmony.

**Knight:** Without the variance, is the owner deprived of a reasonable use of the property?

**Krueger:** No. He does have an existing storage shed to put his stuff in.

**Knight:** Is the stated practical difficulty due to circumstances unique to this property?

**Grob:** I would say yes, the size of the lot and the dimensions of the lot make it unique to this property.

**Knight:** Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Grob:** I would say yes. The lot and the cabin were created before any enactment of the Shoreland Ordinance.

**Knight:** Will the issuance of the variance maintain the essential character of the locality?

**Grob:** I don't think so; impervious surface, its location close to the road. I don't think it maintains the character.

**Knight:** Does the stated practical difficulty involve more than economic considerations?

**Grob:** Yes. Basically, it comes back to lot size and depth again.

**Knight:** Okay. Then we go to, what part are we going to next? Two?

**Grob:** The septic system.

**Buitenwerf:** Three.

**Johnson:** Part three.

**Knight:** Three. Part three. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

**Krueger:** I would say yes. It is more desirable to have a septic tank with a drainfield than it is a pump tank.

**Knight:** Without the variance, is the owner deprived of a reasonable use of the property?

**Krueger:** No. He could use it as is. He just has to pump that all the time which isn't good.

**Johnson:** So the answer is yes.

**Knight:** Yes, the answer is yes.

**Knight:** Is the stated practical difficulty due to circumstances unique to this property?

**Knight:** I would have to say yes. It is unique to this property, because it was done before the law was made.

**Knight:** Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Knight:** Once again, I would have to say yes because it was done before the laws were made.

**Knight:** Will the issuance of the variance maintain the essential character of the locality?

**Knight:** They would have to say yes again. It is lake homes around the area.

**Knight:** Does the stated practical difficulty involve more than economic considerations?

**Knight:** Yes. Economic considerations were not put forth.

**Knight:** So now we are, on which one?

**Buitenwerf:** Part four.

**Knight:** Part four. And part four is the addition of the too much...

**Johnson:** Impervious surface.

**Knight:** Impervious surface of the area lot. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

**Krueger:** I would say no. I have seen it myself. You really need to keep impervious surface below 25%.

**Knight:** Without the variance, is the owner deprived of a reasonable use of the property?

**Grob:** No.

**Knight:** Go ahead and say. You have to give a reason. He said no.

**Grob:** Well, the owner still has access to his home. He has access to the lake, the use of the lake, enjoy the outdoors. All of those things for which reasonable use is expected and he still has all of those opportunities.

**Knight:** I want to remind the Board that this is a temporary position and I don't have to answer all of these questions. You are expected to answer the questions too. All right.

Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Johnson:** Yes. The lot is small which restricts the size of buildings that could be placed on the lot.

**Knight:** Will the issuance of the variance maintain the essential character of the locality?

**Krueger:** No. We need to have impervious surfaces at 25% or less. That is why it is in the Ordinance.

**Knight:** Does the stated practical difficulty involve more than economic considerations? Why or why not?

**Knight:** No economic considerations were considered at this time and they were brought forth.

**Buitenwerf:** Mr. Chairman, just a question for clarification, did I miss it? Did you answer question three on part four?

**Knight:** Is the stated practical difficulty due to circumstances unique to this property?

**Knight:** I would have to say yes. It is.

**Grob:** Yes. Illegal lot size.

**Grob:** I think you skipped four though.

**Knight:** Did I skip four? Which one did I skip?

**Buitenwerf:** Three or four?

**Maria Shepherd:** Tim Johnson responded to three saying yes it is because the lot is small and it restricts the size of the buildings that can be on it and then I think. Yeah you skipped four or five that you skipped because then Tom answered that's why it is in the Ordinance with impervious surface and I don't know if that answer was for four or five.

**Knight:** Well it is no harm to read it again then. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Grob:** Yes. The lot was created by party of the landowner prior, even prior to the Shoreland Ordinance.

**Knight:** Okay. All in favor of the said motion say by saying aye? Opposed?

The motion carried on a three to one vote with Knight voting nay.

**Knight:** So the motion is carried and so your number one, your house was accepted to be expanded. You're drainfield is accepted to be expanded and as I see it your too much land agreement and so your garage was not acceptable. Is there any other? Thank you for coming. I appreciate it. I'm sorry.

**Mason:** John. That was read as is. There was no addendum to making the garage the 24' X 24' so it would not affect the impervious surface, at all if we made the addendum to make it a 24' X 24'.

**Knight:** No that wasn't in the motion.

**Mason:** I thought you were just reading through these as a preliminary thing and then we would rehash the 24' x 24' size which is not reflect on the impervious surface.

**Krueger:** There are other issues too. The garage is only 74 feet from the lake, two feet from property lines.

**Mason:** Correct.

**Krueger:** Seven feet from the right-of-way. I mean there are other issues involved too.

**Mason:** Okay.

**Grob:** That would not have changed my vote.

**Knight:** Any other comments? If there are no other comments, then thank you for coming. Thank you. We appreciate it.

The next item of business then, where would it be, **Variance Application 3-V-12 by Jon and Tina Boughner:** Part of the Northeast Quarter of the Southwest Quarter and Government Lot 8, Section 36, Township 143, Range 32, Lakeport Township on the Kabekona River. Parcel # 19.36.00213. Applicants are requesting a variance from Section 502.7 of the Shoreland Management Ordinance for a zero foot setback from the Highway 200 road right-of-way for a proposed residential structure. The Kabekona River is a tributary.

Introduce yourself.

**Jon Boughner:** Good morning. My name is John Boughner. I live at 3006 15<sup>th</sup> Ave South in St. Cloud.

**Knight:** Tell us why you need this.

**Boughner:** The property in question is a very large lot, but because of a 200 foot road right-of-way imposed by the State, it consumes the majority of that, you know it is a strip of land basically, and it consumes the majority of that and then with the 50 foot setback from the County on top of that, there is no room between that and the 150 foot setback from the river. With the variance, taking that set back to zero is still 200 feet from the right-of-way of the highway and that would give us enough room then to build a residential structure.

**Knight:** Okay. Are there any questions here to start with? I will start it off with one question and me. I guess, I don't like the zero setbacks so and I would like

to see that you, to see if you could buy the property from the State before coming and making a Board of Adjustment on the property because from now on should you, should you want to do anything on the property, you would have to come back through the Board each and every time even though it is a legal thing but still would present that. So anyhow if you presented if you tried to get the property and in due time why I would be from the State then he wouldn't even need our permission and so you wouldn't need to work it through the Board of Board and I will go ahead and say that at this time if you went ahead and try to go through the State and try to get that property, so that we wouldn't have to do it that way, why I would say that we could waive the Board of Adjustment coming back to the Board of Adjustment for a zero setback if the State denied your request.

**John Boughner:** Part of the problem that we have with doing that of course is that we have been in communication with the Sate and unfortunately they are not, they are saying right now that they are willing to move ahead on it, but they give us no timeframe on it at all, which basically, two months prior to this they were saying that they wouldn't even look at this for two to four years even. You know so, that's the only thing we have had so far is out of Rod Gunderson up north which was actually because of us putting some heat on his supervisors was that he wasn't really interested in even looking at it. They didn't have the time to pursue it. So unfortunately, what that would mean is that it could be an undetermined amount of time you know before they would ever get around to doing that. Now the lot has been surveyed, two different times and even by the State came in and did a survey so the markers for that 200 foot right-of-way we know that those are right on the money. Like I said three times, they have been surveyed to identify that that is the exact 200 foot right-of-way. In addition to that, this is actually coming back, we have already gone through this process on this property and we do have a variance right now to zero on the property, but it is for a park model structure not a permanent residential structure. My understanding is that, you know, we have is all laid out so that we are in conformance if we get zero. I can assure you that it will be exactly on line and that includes that even the eaves would not go over that, would not go over that property line, over that right-of-way. In the future we would like to acquire that property back from the State, but in the meantime, probably the residential structure would sit very, would fit very nicely on the property.

**Grob:** John you had got an approval on a variance about a year ago for this RV and appeared to proceed with modifying the property to building it and now you changed your mind. What prompted you to change your mind as to what you wanted to construct?

**Boughner:** Well basically what happened is that we had a park model on Moon Light Bay Resort. As soon as a person that was knew of that wanted to move into that resort photo that we were going to move our structure. Well they offered me more money than I could refuse to, to relocated. And that was the initial plan

was that we are going to relocate our park model over to that. But because of you know the price that I got for the park model allowed us the funding, already preapproved for the building of the structure. Everything is already to go. It is a great time for us because interest rates are low so we are hoping that we can move forward with the you know the construction of a residential home.

**Johnson:** John, when I, I showed up, I don't believe you were there in your initial variance last year.

**Boughner:** No I wasn't. Perry the other owner.

**Johnson:** I did show up and I gave verbal support. I wasn't on the Board, but I gave support of that while abandoning that structure setback for you to put in the park model because I know what park models are. They are a temporary situation and I always, I thought it and I am not saying that you may have said it, but I have always thought that the plan was for you to use this in that way so that you could eventually get that right-of-way back so you could not have a problem with putting a structure in there without you know, following the rules.

**Boughner:** Okay. Initially that was kind of the intention you know was that like I said we thought we were just going to bring the park model over there, you know, but through developments, you know it works out better and you know I would you know hope that, you even for the County as a whole I mean there is certainly going to be more tax base out of a residential structure there. Then there would be out of a park model that is sitting on wheels you know. So not only that, but I mean, I would certainly think that even the neighbors you know would much prefer to see a structure there than to have a trailer.

**Knight:** Tom?

**Grob:** Eric, in some of the write ups, there was discussion about the having to dig out, move dirt for basement entrance in the front. There was some issue over whether that in fact, would be in conflict with the Ordinance in terms of the level above the, the lake, or the wetlands, that's there. Is that uncertain still in this case, as to whether if we approve this that there is still potential issue with not meeting the Ordinance requirements on that?

**Buitenwerf:** No there is not concern any longer. Last Thursday prior to the site visit, staff were able to go out and visit the site and measure the separation vertically of the proposed building site to the highest known water level and there was sufficient space there for them to be able to comply with the three feet and then as was discussed at the lot viewal, if the building site is moved to the East slightly to accommodate the 150 foot setback. Then there is a rise in elevation as you move east, so there would be less of a concern than with the initially presented site.

**Krueger:** I think Tim didn't you, did you say that you were in a situation with some property like this and the State sold you the land privately?

**Johnson:** About a mile, I would say it is west or northwest, I had a piece of property that was unbuildable because of State or because of the County's structure setbacks overlapping on a, same piece, same side of the highway same everything and within a year I had purchased the property.

**Krueger:** There was no problem with the State?

**Johnson:** No. However I will-that was about ten years ago.

**Krueger:** But didn't you mention that the State doesn't tend to convert it back at some time in the future?

**Boughner:** From all indications that were, you know, at first, like I say, we were in a situation where they were saying if and when we would ever look at something like this to where now they are saying well you know, we found out that the purpose and actually, I found this out through the board of records here and basically what they were saying is that the reason the 200 foot setback was there was for a proposed the possibility of a four-lane highway someday going through that area. Now for what the board of records is saying is that they have never seen any intention of ever doing a four-lane highway there.

**Krueger:** Have you begun your intent of building this property was approaching the State to purchase the land to begin with?

**Boughner:** We are not to begin with, to begin with. We were going you know this route because we were told by the State that if and when we would ever even look at it.

**Krueger:** Well, my thought is that you are using this route to try and save money from purchasing and I don't think that the Board should be in the position where we are trying to save you money from purchasing this property for the variance.

**Boughner:** Well, we already own the property, but I guess you know that would be an aspect of this. I have no idea what it would cost actually buy back the property from the State.

**Krueger:** I personally think that your first route should be to make an offer for the property before going for a zero foot setback.

**Boughner:** I wish I could do that, you know, but at this point we are trying to do that, and regardless of if we get this or not, if we get the variance or not we are still going to move forward on that because I would also like to have a garage some day and that would have to go over onto the, onto that 200 foot setback

area. For now though, you know the home would be fine and there is actually enough room to even put a garage off to the one side towards the septic even if that was to happen as long as I had the variance, the change in setback.

**Grob:** Jon if we were to approve this and then you, for some reason or other the State would deny any opportunity for you to buy any of that right-of-way, you will have a building right on the right-of-way line and virtually there can be no entrance no use, no anything. That seems very problematic to me that you now have a structure sitting right on a line, a property in which you have no use, no access and you will need permits and stuff to even spend any time quote to spend any time on that property. It seems very problematic for us to grant a variance for you to have a permanent structure, a home in that situation. It just doesn't seem to me, you know, to create a nonconforming situation for this particular case in some ways doesn't make sense to me especially there is a fairly logical and I will say reasonably timely opportunity for you to get that. Then you have all kinds of freedom. You can set the house back little bit, get you a little bit more off of that slope or he'll or whatever you want to say down to the lake and the whole bit. So somehow or another approving this now, I am kind of with Tom, puts it out of sequence to what would make sense.

**Boughner:** It actually, the house is designed in such a way that the entrance is right on the side, so there would be no additional permits. There is no access to the back of the house. It will all be through the front and the side of the home which is all right on the 50 foot variance region. So if that never even happened. It is not going to affect the usability of the home or require additional permits; even for building a garage. A garage would fit within. Again, this lot is 435 feet wide. We have 435 feet of shoreline. There is plenty of room as long as I just go the long way and I don't go deep with it. One of the, I am trying to remember the other issue that you brought up.

**Grob:** The possibility of possibly setting it back a little bit more. I realize that it meets the setback, but a lot of the setback area is very wetlandy and so on and you are right on that hill. It seems to me that good shoreline practices would encourage you to, would want to have that house back maybe another, twenty, thirty, forty or fifty feet from the edge of the hill.

**Boughner:** And I can't. I can't. I probably should have pointed this out to you. But basically, right behind where that is, there are probably 100-year-old Norway pines that I just would not take those trees down. You know they are just, if you drive on that, they are huge majestic trees. So even with, if I receive the variance or if I was able to purchase that property, the home would still end up being in its exact location that is it now.

**Knight:** One other question there you need, if I read my material right, you need to have permission from the State in order to maintain the rear of the house. Has

that already been obtained or is that, I mean, if that has already been done, that seems like it is a fairly easy way to do it but...

**Boughner:** I have talked with Tom, actually, I was told to talk with Frisco, I can't remember his name, Stephen, and he wasn't in, but I talked with Tom up there and told him the situation that we are in with it and he emailed me the permits that I need to fill out for that, but that was just last week so I have got those permits now I need to fill those out for the, yeah during the building process and for maintenance on that area.

**Knight:** I guess, my thinking about this problem, you do have a very deep lot. Do you plan on developing the lot in behind? Because if you are, I mean across the highway and up the hill you have an 800 foot lot and my thought was that in this particular situation if you didn't have to have the Board of Adjustment statement, why then, but if you go through and you did want to develop that lot in the back, every step of the way you would have to have the Board of Adjustment approval.

**Boughner:** Develop which lot are you referring too?

**Johnson:** It is the same lot. He is talking about the 800 usable feet that you have to the north.

**Boughner:** Okay. But why would the Board of Adjustments have to be included?

**Johnson:** Because you have, he has the initial variance from last year anyway so anything that you do on that entire lot will require a variance, even putting your structure that you may potentially buy to go across the road right Eric?

**Buitenwerf:** No, that is not correct.

**Johnson:** Oh. That is what I thought.

**Knight:** Explain it then.

**Johnson:** Can you explain that part then?

**Buitenwerf:** The portion of the Ordinance you are referring to is Section 704.7 and that states that if a variance has been granted to a structure, then any addition or alteration to the structure would require subsequent variance approval. It does not say that the entire lot falls under that condition.

**Johnson:** Anything on the entire property.

**Knight:** It wouldn't fall under that then?

**Buitenwerf:** Correct.

**Knight:** Okay then I stand corrected then.

**Johnson:** Well I guess the way I felt about it Jon is that you had reasonable use with the granting of your park model and you have a choice to go to the north side with whatever you decide to, even now without a variance. That is where I stand.

**Knight:** We will open this up to the public. Anybody wish to stand up and say anything? Seeing none, why we will close then the public hearing part and come back to the Board.

**Boughner:** I would like to make a comment if I could.

**Knight:** Yes. Go right ahead.

**Boughner:** During the meeting, I don't know if he was still there, but Chuck the neighbor back behind was there for the lot viewal on Friday and Jeff had voiced his concern about bringing in park models initially. He didn't really approve of that, you know for us doing that. When I met with him on Friday, then he very strongly agreed, you know, really liked the idea of building something instead moving in.

**Knight:** That is hearsay so we don't...

**Boughner:** It is and like I say, it is just something that we discussed.

**Knight:** Yeah. Alright then what is the...

**Krueger:** I would like to make a, I believe his first step should have been to try to purchase from the State rather than a zero setback so I'd make a motion to deny the request.

**Knight:** Would we deny or would we table it?

**Krueger:** There is no need to table because if he purchases the property why then and you really don't know what the timeframe, well there is not telling what the timeframe would be to for the purchase to go through and it might exceed the limits. I think we just need to deny it and if it doesn't get, if he is not able to purchase it, then he has to come back for another attempt.

**Knight:** Okay. Is there a second to the motion?

**Grob:** I will second it.

**Knight:** It has been moved by Tom and seconded by...

**Grob:** Ken.

**Knight:** Ken that we deny the request. Any, we have to read things now. Is it the big one of the little one?

**Buitenwerf:** It is the normal six questions.

**Knight:** Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

**Krueger:** I would say no. A zero setback just isn't in harmony with the intent of the Ordinance.

**Knight:** Without the variance, is the owner deprived of a reasonable use of the property?

**Krueger:** No he has already got a variance for park model.

**Knight:** Is the stated practical difficulty due to circumstances unique to this property?

**Knight:** I would have to say yes.

**Johnson:** What number was that Chick?

**Knight:** Number three. Is the stated practical difficulty due to circumstances unique to this property?

**Knight:** It is a big property, but the state highway request or 200 foot is a difficulty.

**Johnson:** No. The application fails to say why a structure can be placed on the lot north of Highway 200.

**Knight:** Okay. We will go along with him.

**Knight:** Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Johnson:** No, the owner has a promotable option on the north side of the road.

**Knight:** Will the issuance of the variance maintain the essential character of the locality?

**Johnson:** No the well the way I see it a permanent structure is different than a temporary park model.

**Knight:** Alright. Does the stated practical difficulty involve more than economic considerations? Why or why not?

**Grob:** I am thinking that economic considerations are cited in the application with basically the right-of-way setback.

**Knight:** Fine. Okay. All those in favor vote aye. The motion denied. Good luck with your situation. Thank you for coming.

**Boughner:** Thank you.

**Knight:** All right next item of business is **Variance Application 4-V-12 by Reynard and Marlynn Stendell:** Lots 5 and 6 of Pritchett's Retreat. We'll wait awhile. Let's have a break. We need a break here. We will take five or seven minutes.

The meeting reconvened at 10:47 a.m.

**Knight:** We will continue the hearing. This is **Variance Application 4-V-12 by Reynard** Didn't I just do that? No here I just called for it.

**Variance Application 4-V-12 by Reynard and Marlynn Stendell:** Lots 5 and 6 of Pritchett's Retreat, Section 7, Township 142, Range 35, Clover Township on Little Mantrap Lake. Parcel # 05.38.00500. Applicants are requesting a variance from Sections 502.2 and 704.7 of the Shoreland Management Ordinance for a proposed covered porch addition to the side of a residential structure that does not meet the 100 foot ordinary high water mark setback and was constructed per a variance. Little Mantrap Lake is a recreational development lake.

**Larry Olson:** Good Morning. I am Larry Olson. I am the builder for Reynard Stendell.

**Knight:** Okay. Go ahead.

**Buitenwerf:** If we could get your address please Larry.

**Olson:** Oh. 22082 400<sup>th</sup> Avenue in Detroit Lakes. We just came to the meeting to see what we were going to do with that, to see if you are going to accept that roof over the entrance of his house.

**Knight:** Are there any other questions by the Board here?

**Krueger:** You said it was going to be open roof, just a roof and no enclosure?

**Olson:** Yes. Right.

**Knight:** How much of a platform are you putting in?

**Olson:** It comes off five feet from the house and the covered part will be, well with the overhang would be eight feet wide. Six foot the main entrance is and then a foot on each side for the overhang.

**Knight:** Okay. Ken?

**Grob:** So about half of the twenty foot deck in the original?

**Olson:** It will be close to being half, not quite yeah.

**Grob:** It is an A-frame type of structure?

**Olson:** Yeah. It will be a twelve pitch same as the house.

**Grob:** Open? And then steps in front of it?

**Olson:** Correct.

**Knight:** Tim any questions?

**Johnson:** No questions.

**Knight:** I don't have any questions. We will open this up for the public. Seeing none, why we will close that portion of the minutes and we go to anybody have any other questions? I feel as though this is a necessity and I would go along with it and I would move to approve the request.

**Johnson:** I will second it.

**Knight:** It has been moved and seconded. Do we have the long form or the short form?

**Buitenwerf:** The short one.

**Grob:** Thank goodness.

**Knight:** I have got to find it. Where did I put it? Oh, there it is. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

**Knight:** And I would have to say yes. We gave him permission to rebuild his house and this is necessary and a safety rule on the house particularly.

**Knight:** Without the variance, is the owner deprived of a reasonable use of the property?

**Johnson:** Yes.

**Knight:** You have to say why.

**Johnson:** Well because the new proposal, covered entry is a reasonable use. It protects the door from the elements and is easy on the sweeper.

**Knight:** Is the stated practical difficulty due to circumstances unique to this property?

**Knight:** Yeah. I would say yes again because this was an old standing structure of years ago and it was allowed to be rebuilt and it is unique to this particular piece of property.

**Knight:** Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Johnson:** Yes the lot was created before the Shoreland Ordinance was enacted.

**Knight:** Will the issuance of the variance maintain the essential character of the locality?

**Knight:** I would say yes. It is lake homes around the area and it would maintain those.

**Knight:** Does the stated practical difficulty involve more than economic considerations?

**Knight:** No economic considerations were put forth so that answer is yes.

**Knight:** So the motion, all those in favor say aye. Those opposed same sign. The motion is carried. Thank you for appearing.

**Larry Olson:** Thank you gentlemen.

**Knight:** Then we have our last item of business for the day is **Variance Application 5-V-12 by Cheryl Bond Etal:** Part of Government Lot 5, Section 9, Township 141, Range 35, Arago Township on Island Lake and Hay Creek. Parcel # 02.09.02310. Part 1: Applicants are requesting an after-the-fact

variance from Section 502.7 of the Shoreland Management Ordinance (SMO) to keep a playground structure in the shore impact zone of Hay Creek at less than the required 150 foot ordinary high water mark setback. Part 2: Applicants are requesting an after-the-fact variance from Section 1013.2 of the SMO to exceed the allowed rental unit density in tier one of Island Lake by one RV unit. Hay Creek is a tributary and Island Lake is a recreational development lake.

Introduce yourself.

**Brad Bond:** Brad Bond, 25896 Happy Hollow Road, Park Rapids.

**Knight:** Why don't you go ahead and explain your position on this.

**Bond:** Is this just addressing the playset right now?

**Buitenwerf:** No I was going to clarify that a second Brad.

**Bond:** Yeah.

**Buitenwerf:** The agenda was set before the density issue was added to the variance. The way the notices are sent out is that they include a statement that there may be additional variance, is considered by the Board beyond what is stated on the notice. So that encompasses the density issues so for the Board's record as well as the public record and your information. This would also include the density request for the fourth rental unit in the first tier of Island Lake.

**Krueger:** How do we treat it? As two different items?

**Buitenwerf:** Yeah I would separate them as two parts just for ease.

**Bond:** All right, I will start with the play structure. I kind of have basically a twofold explanation on this. One being that when we placed that playset there, we were under the impression that it wasn't a structure and didn't require a permit. As I told you guys when you are out on the property, I talked to the City of Park Rapids. They don't consider it a structure. I talked to a neighboring county. They don't consider it a structure. If you do some research, which I did on the Internet and regarding playsets and play structures which are very common nowadays, most counties call them recreational equipment, and it says that swing set slides and sandboxes which is what I have been there what a lot of counties do is put a square footage on it to be considered recreational equipment and the playhouse portion of our swing set is under 25 square feet. It is 5' X 4'. It is 20 square feet and 90% of the counties I am seeing out there where I was able to find information on this was limiting it to 25 square feet, which is what I am under. I don't feel that Hubbard County really has a specific guideline or ordinance on swing sets. I think the structure definition is very vague and entails well it really entails everything so that was my first position on it. If we were

going to consider it a structure, I will say that last spring when we had that spring storm is the reason that we replaced it to begin with and that is because we had a tree limb fall on it and tear up the existing one. We put this playset back in the exact same footprint as the old one and that would just be more reason I guess I feel that the Board should approve my variance on the swing set.

**Grob:** Brad, just to, one can debate the word structure okay, but the intent is, and especially in the shore impact zone, the intent is not to do any alteration or changes in vegetation, property from runoff and all of those kinds of things and especially in the shore impact zone. So whether we argued over whether it's a structure or not the fact that you have something in the shore impact zone that was, and I realize there was one there previously, but the whole idea behind that statement is in fact to control or manage properly any alterations, variations of the property in the shoreland zone and especially in the shore impact zone.

**Bond:** Sure I understand that.

**Grob:** And the question would be, whether you call it a structure or recreational equipment or whatever, the point would be when you got done with it...

**Bond:** Does it affect...

**Grob:** Does it really affect or does it affect run off and or alterations to vegetation that could occur on any kinds of property. And that is what you are trying to manage, or we would try and manage. I don't want to get into a big argument over structure or non structure. The point is you are doing something in the shore impact zone that could potentially affect water quality and that is what, you know that is the purpose of the Shoreland Ordinance. I think I am right in that observation so. And if you read more into the Ordinance, you will realize that's what's behind it.

**Bond:** Okay.

**Johnson:** I would like to ask you a question Eric. If he would have come in and took down an existing swing set, what would he have been permitted to put one back in that same place with an existing swing set there?

**Buitenwerf:** There was not documentation that could be provided showing that that previous swing set playground had been legally placed there.

**Johnson:** Oh okay.

**Krueger:** There would have been a very detailed survey when that PUD was done and whether this was included in as part of the survey or was it just a survey done just on that part that was done?

**Buitenwerf:** Correct. It was only done on the portion that Mr. Durnan converted into the residential PUD.

**Bond:** I can tell you that it was on my parent purchase agreement and it was on the purchase agreement on the property of the previous owner. I don't know how long it was there.

**Krueger:** When we, I was on the Planning Commission that approved this, when we went out to the lot viewal we went into that, is that still a motel building where you live?

**Bond:** It is not a motel now no.

**Krueger:** Okay. It used to be having individual rooms like a motel. We met in there because it was kind of cold and I do remember seeing a swing set there.

**Johnson:** Okay back to my question, then if it was legal and in that spot how would you handle a new replacement?

**Buitenwerf:** If it had been documented that that was prior to the enactment of the Shoreland Ordinance, then it would be a legal nonconforming structure and it would be allowed to be replaced in an exact copy, duplicate of what was there.

**Johnson:** Okay. And if he wanted to increase it to, because I am sure what is there now wasn't there maybe, but if he was to increase it, would he then just come to ask for a variance of that?

**Buitenwerf:** A variance would be needed if it was not able to meet the setback.

**Knight:** You have a conditional permit that people have to apply for? In other words they come in. They apply. They have to go through the variance committee or do can they get a conditional permit to have a swing set? In other words, if all of the people in Hubbard County come and ask you for a swing set permit I mean is there a conditional permit that you must buy to have a swing set in your front yard.

**Buitenwerf:** The Ordinance, as Mr. Bond indicated, the definition of a structure entails this particular structure so a permit would be needed. It would have to meet setback. There is no conditional use permit that applies to a structure. It is a matter of a building permit if it meets setback and if it doesn't meet setback, the appropriate mechanism for seeking relief of the Ordinance is the variance application process which he is going through.

**Johnson:** So to operate his resort the way it is, he does have a conditional use permit for that?

**Buitenwerf:** Yes. That is a different issue.

**Johnson:** Could anything be added to that like a swing set being left and then removed if it was never a resort again?

**Buitenwerf:** I am not quite sure what your question is Tim.

**Johnson:** Well I am just looking at...

**Bond:** I understand what you're saying because I see on conditional use permits that they permit stuff on the shorelines and things that are temporary in nature until it has to be removed if the resort quit operating.

**Grob:** We keep talking about a swing set. This is not a swing set. This is a piece of recreational equipment. I think of a swing set as something where you have couple of cross bar and a couple of stand bars you have got a few swings back and forth on it. That is what I would think of as a swing set. This is really more of a structure and it is recreational equipment. It has got the slides. It's got the tubes and so on. So I was trying to address Chick's thing but I you know. Lots of people have a couple of little, yeah okay.

**Johnson:** I agree with Ken, but I don't believe that the difference between the one that was there or this one does any more harm to the lake that what the original one does.

**Grob:** Yeah I am not speaking to that.

**Bond:** And speaking of which the timber retaining type thing around, which we call it the landscaping timbers, you know it has got pea rock that is two to three inches deep though out the whole thing. When that water runs off of that 4' X 5' roof is going straight into the ground. It's not running down to the creek or running down to the Lake, it is going straight into the ground. All of the ground underneath that is pure sand. It is very sandy soil there. I don't see it being an impact at all on the environment.

**Grob:** Was that structure around there on the ground?

**Bond:** Yes Sir.

**Grob:** It was there before. Same dimensions?

**Bond:** Yes Sir.

**Grob:** What was the swing set like that was there before?

**Bond:** Well the slide was very similar. It is leaning up against the garage. I don't know if you saw it sitting there. The only difference that I would say is that it didn't have the tube going across the swings, and it's really not at tube. It is just a piece of plastic that is folded in a "U" and fits in some slots. It is not an actual solid tube.

**Grob:** Okay.

**Knight:** I would call for public input, but I see none is there so no public input at this time. So we can go ahead and ask questions.

**Grob:** We should go ahead and move out discussion to the unit four if we are done discussing the swing set we should talk about unit four. I'm sorry.

**Johnson:** Well no, that's okay because I was just looking on this. It is 68 feet from the Hay Creek and he needs to be at what to be?

**Grob:** 75.

**Buitenwerf:** 150.

**Bond:** 150.

**Johnson:** 150. And that puts it in front of the camper or RV site that is over there or some other spot that's not visible from the lodge.

**Bond:** Well I have two issues with it being put over there Sir. One being that it puts it in front of the RV site to if I move it to the other direction and puts it in front of the septic tanks and three. Is, where they enter and exit from the RV site and I really don't want people driving in and out of there next to a place that where I have little kids and worry about somebody backing over someone. So yeah is it possible to place it over there? Yes, but I don't think it's the best idea.

**Knight:** I have a particular, I do feel that recreational equipment is needed in resorts and the fact that the resorts bring up people from the area. And that's many of the reasons why they buy homes in the area. They must adhere to the rules and regulations, but on the same token resorts need a visible, to the public or to the users any piece of recreational equipment. Now maybe it is too close, we could move it back to the 100 feet or something like that, but still on the same token that doesn't cut it in as much as it is 150 feet is the regulation.

**Johnson:** But it this was to be, if we were, if this was to be approved, is it normal to come up with conditions along with these since this is my first meeting, Eric for it to be removed if the resort was to all of a sudden become a PUD of some kind or some other kind of development? Can we ask that or can we propose that in a variance approval?

**Buitenwerf:** You can place a condition on a variance so long as the condition has a nexus to the request, so there has to be some obvious connection. You wouldn't be able to say we grant the variance for the playground structure, but you have to tear down the old lodge that is up on the hill. That would not have a nexus to give you an example of what you couldn't do. But what you suggested would be a condition potentially that would have a nexus to request. I...

**Grob:** Is this not a PUD right now or is this run as a resort?

**Bond:** It is run as a resort Sir.

**Grob:** It is a resort. Okay.

**Bond:** Yes Sir.

**Johnson:** Do I remember right that you had an overnight rental there too?

**Bond:** We have a cabin yes Sir.

**Johnson:** So if a carload of kids with parents pulled in, it might make a difference whether they see that or not see that.

**Bond:** Absolutely. Just marketing wise on the Internet too I mean they look at what type of facilities and what type of recreation equipment that you have, things that they can do when they come visit your property, and quite frankly, if we didn't have that, it would make an impact. It gets used a lot in the summer especially by our campers.

**Krueger:** I think your resort lacks a swimming area so the swing set kind of, you don't have a swimming area, I mean preferably you want a swimming area and the swing set, but you don't have a swimming area so you need a swing set as least.

**Johnson:** I didn't know there was no swimming area.

**Bond:** We have an incredible wetland though.

**Johnson:** Okay.

**Knight:** We discussed that enough right now. We will go to the second part then. Eric, do we bring that up or would we do?

**Buitenwerf:** Yeah at some point you would certainly want to discuss the second item.

**Knight:** Well, let's go with the second item first.

**Johnson:** Oh well I, oh go ahead Tom.

**Krueger:** I have one question on the second item. Is your intent, when it's what you are applying for a variance for is approved. What would your intent to be for additional units in the last tier?

**Bond:** In the last tier?

**Krueger:** Yeah.

**Bond:** To stay within density.

**Krueger:** So apply for only one?

**Bond:** No. I would still be allowed two.

**Krueger:** Well then I have problems of approving that one if you want two more in the next tier two.

**Bond:** Well I am allowed three in the next tier.

**Krueger:** Is he Eric? I thought it was just two.

**Buitenwerf:** It is two additional I believe.

**Johnson:** Okay. I didn't realize that.

**Bond:** I currently have, I currently have five in that tier and I am approved 8.9. Correct?

**Buitenwerf:** Eight units are allowed. It is 8.9 and it always...

**Bond:** So almost four and I am asking for two.

**Grob:** So that now the way the density is he could putting in unit four, if unit four weren't there he could validly put three more units in tier three, or two?

**Bond:** Correct.

**Grob:** I understood only two.

**Krueger:** Yeah that was what I was thinking too.

**Knight:** So was I.

**Bond:** No.

**Knight:** A new interpretation. Well let's see what, Eric what is the...

**Buitenwerf:** It depends on how you rule on the variance. If the variance is approved, it is two. If the variance is denied and if he is required to have three units only in the first tier, then, there are five existing in the second tier so he would be allowed three. So the two, I apologize, I will clarify is predicated on there being the four in the first tier.

**Krueger:** Okay. Is there a way to, if the one is approved, the variance is approved, to prevent him from putting three in the last tier say, is that a condition that can be placed on it?

**Buitenwerf:** Yes. I would say that that is reasonable.

**Johnson:** Unless we find it was allowed.

**Bond:** I guess I don't understand. Because if I am allowed three in the first tier and I am allowed to eight in the second tier, 8.9 correct? That's 11 RV sites. I currently have nine. So I would be allowed two additional ones without going over anything.

**Grob:** Yeah. I think that is what everyone is saying.

**Bond:** I guess that's not what I understood Eric just said. He said if I got four granted in the first tier then I would still only be allowed two which is what I am looking for. Yeah, I am, you got me lost. Sorry.

**Buitenwerf:** It's not a matter of number total. It is a matter of where that particular unit in question is; whether it is in tier one or tier two.

**Bond:** Okay.

**Grob:** And if I understand if you, if you are under density in the first tier, you can push units to a second tier and meet the overall density, but you can't push units from a second tier to the first tier?

**Buitenwerf:** Correct.

**Grob:** I hope I said that right.

**Bond:** And if I pushed density from the first tier into the second tier, that would give me more than 8.9. Correct?

**Johnson:** In the second tier.

**Bond:** In the second tier.

**Grob:** No.

**Bond:** Yes it would.

**Johnson:** You just explained that I believe Ken.

**Buitenwerf:** What Ken was saying is, if, say, hypothetically you are allowed five units in the first tier and you only place three units in the first tier, then you could take the two unused units, and add them to what you would be allowed in the second tier. So, hypothetically you are allowed five units as well in the second tier you could place those five units plus the two unused from the first tier in the second tier.

**Grob:** But you can't move them the other direction?

**Buitenwerf:** Correct.

**Knight:** Okay.

**Bond:** Can I address something? What I am basically asking for is, first of all, so you understand we didn't place this site there. It was done well before, there's been to changes of ownership since that site was placed there. It just recently came to our attention. We didn't know of any of this. Two we are shore 200 square feet of meeting density for that site to be in tier one. State statute, and I couldn't find anything in regards to County, maybe Eric can help me out understand that, but State statute I found will allow up to 50% density increase on your property if you meet certain criteria, if I can find it; maximum density increases may only be allowed to structure set back where ordinary high water level are increased to at least 50% greater than the minimum set back where the impact on the water body is reduced in equivalent amount through vegetative management, topography, or other means acceptable to local unit government and the setback is at least 25% greater than the minimum set back. That setback on site four is three times the normal setback. Not only that, when it talks about vegetative management, there is an entire wetland and tree line in front of it. You cannot see one RV site on my property in the summertime. It is that thick. It meets the State statute's criteria as far as allowing it to go over 50% density increase. I am only needing less than 50% density increase to keep that site where it is currently at and that would follow State Shoreland rules.

**Buitenwerf:** The language you are referring to is typically known as the density multiplier and Hubbard County chose not to include that in its Ordinance when

the State made that provision available to counties back in the early 90s so we do not have that density multiplier provision in our Ordinance.

**Bond:** Okay. My other question Eric, help me understand this, in the Shoreland Ordinance it talks about the density limitation shall be increased by 15% when rebuilding rental units if the unit to be rebuilt is at conforming setback and the unit accommodates the same number of guests as previously. I do know that site one and site two our property was previously cabins there and were torn down. So if the density limitation for the County allows a 15% increase, wouldn't that apply to our property?

**Buitenwerf:** That would apply if you had stick built cabins that you wish to enlarge. Those cabins would be able to be enlarged that 15% if those criteria were met, but we don't have that situation here since you have got RV units.

**Bond:** But this is just talking about density limitation, why would it matter whether it is a stick built cabin or an RV site? I guess I don't understand that because we have a cabin on the property that is counted in the density. We also have RV sites that are counted in the same density.

**Grob:** Isn't the density numbers and limits?

**Bond:** Density is density I thought.

**Grob:** It is the number of units. There is also a size thing, but the density issue we're talking about here is the number of units you are allowed per, per area.

**Buitenwerf:** That language you are referencing was inserted to, at the time, to accommodate resorts that had small stick built structures that didn't have adequate elbow room to meet fire code or ingress egress issues for bedrooms. So that was why it was placed in the Ordinance.

**Bond:** Irregardless, I would like you guys to take into consideration that we would not be breaking State Shoreland rules and statutes by allowing the site to stay where it is at. Regardless whether the county decided to put it in the Ordinance, the State of Minnesota did.

**Johnson:** Eric, I don't know who brought it up, but the lot viewal button he said he is short of 200...

**Bond:** 200 square feet.

**Johnson:** 200 square feet. So did that put the density at 3.5?

**Bond:** Five.

**Johnson:** Allowable density in the first tier at 3.5 units?

**Krueger:** That's what I was thinking too, plus this one is really close. So 3.5 plus being really close to the next tier...

**Johnson:** So do we automatically exclude that .5?

**Grob:** It goes down to whole units.

**Buitenwerf:** That is the way it operates according to the State as far...

**Johnson:** Unless they are charging sales tax. Then if it is a half of a cent, they round up.

**Buitenwerf:** That is a different issue.

**Bond:** And what you are addressing, I looked and couldn't find anything addressing what happens when it is 3.5, 3.8, I mean on tier two I have got 8.9, but I am only allowed eight. I can't find anything in the State statute that addresses that.

**Johnson:** Did your staff measure out all of the square footage then of the impervious surface inside that first tier? Was it our staff, or the County?

**Buitenwerf:** We haven't done any impervious surface measurements.

**Johnson:** It is just that his density is counted as...

**Grob:** The number of units.

**Johnson:** Just the number of units. Not square footage of impervious area?

**Buitenwerf:** It's, it doesn't concern impervious surface; what concerns is the quantity and the square footage occupied by the rental units in a given tier.

**Johnson:** Okay. Are those decks included in those calculations?

**Buitenwerf:** No, it is based on square footage that can be occupied by a guest when they are staying at that unit. So it would be the inside of the RV, if they had an attached three season porch that was added on to the side, then that space would be counted as well.

**Bond:** And RV sites are automatically calculated as 400 square feet unless they are larger than that. So the RVs that I have out there that are smaller than 400 square feet, I am still getting density set for 400 irregardless. The other thing that I would like to bring up is for me to move that camper over 40 feet, which is

possible to do, but I'm going to have to cut down trees. I am going to have to tear up the ground to put a new sewer line, water line and electrical. It is going to make an impact on the environment. I really don't want to cut any of my trees down if I don't have to, I will to move a camper over 40 feet. That is not impacting anything and it hasn't been for the last eight years.

**Johnson:** I guess I would just like to make a comment to the rest of them, the Board; I have dealt with these before. Besides the reason that he just gave, he has got to get a hold of a licensed electrician and go through the Department of Labor and Industry for permit to move the electrical. He has got to go through a licensed plumber to get through the plumbing and engineering unit in St. Paul and get a permit through them. Then he needs to move the septic lines and water and you may have to get the State of Minnesota Department of Health involved, the sanitarian, to make sure that everything is okay there and then you have to have County approval. Reusing the materials being a plumber is unrealistic for moving the water and sewer. You are going to ruin it. I don't know if it that is a reason, but it is just...

**Knight:** Would you like to say anything more before we talk it over here?

**Bond:** Please approve.

**Knight:** Eric, have a covered most of the things that are necessary or have we left out anything that was not...

**Buitenwerf:** We have discussed both items. So I would say you are at the point in the process where you are ready to entertain a motion on one or both items.

**Johnson:** I would like to maybe to ask one more thing. He stated that State Statute-if this went beyond us, would that come into play in this decision?

**Grob:** No.

**Krueger:** Just like with this shed that Schaefers have, the State's setback is 75 feet so that would meet it just fine.

**Grob:** State sets minimum standards and County's can put requirements that are more restrictive, but not less restrictive. That pretty much basically is what it is.

**Bond:** I have a question on that. I understand exactly what you are saying, but then when it comes to municipalities like cities, do they have to follow County guidelines and then enforce stricter or equal? Or are cities and municipalities completely separate?

**Buitenwerf:** It is an entirely different set of standards for cities that the State sets and then the cities are doing the same process as the County would be.

**Bond:** That has got to be really weird when you have got lakeshore property inside a city.

**Grob:** It isn't very well managed.

**Buitenwerf:** It is different in cities because, understandably you have got municipal sized lots that you are dealing with whereas in the County that isn't going to be the case.

**Grob:** And most of them have city sewer systems and all, and a lot of the other things that...

**Bond:** Sorry. I didn't mean to get off track.

**Grob:** Would you like a motion?

**Knight:** I need a motion to come up.

**Grob:** I would make the motion I think that the recreational equipment situation, the way he has built the walls around it, the pea gravel with soil, and it's elevation, I don't think has any effect at all on runoff or any other degradation to the river so with that as a preference and all of the other, other things we have talked about resorts and so on, so I would make the motion that we approve the swing set and I would like to make the motion that unit four can remain with two conditions. One is that it be included in any second-tier calculations that are made and secondly if it ever has to be replaced, it will have to be moved out of the first tier.

**Krueger:** That is precisely how I would have done it.

**Grob:** What?

**Krueger:** That is precisely the kind of motion I would've made so I will second it.

**Grob:** Oh. Okay. I will let you have credit for it then.

**Krueger:** Just the seconding of it.

**Johnson:** Did you put a condition on the swing set too?

**Grob:** No I did not bring that into it. I didn't see any reason to, but if you would want to modify the motion, that's fine if you have something else.

**Knight:** My problem is that the unit four is so far back from the lake or stream, it isn't viable, or a detriment to the lake, or to the area so I would reconsider that as a first tier and that, but I am just in opposition to that. So we need to act on your question because it has been, the motion has been approved the other first part and accept the other part with the certain conditions. Is that correct?

**Buitenwerf:** Mm hmm. So, if I may, Mr. Chairman and Mr. Grob, just to make sure that everyone is on the same page with your two conditions. The first one regarding density. If I understand that correctly would mean that there would be two units, new units that they would be allowed to add into the second tier so that the total density does not exceed eleven?

**Grob:** Total density. Yes. That is on the basis that your staff has identified that there is space for eleven units okay?

**Buitenwerf:** Okay. And then on the second of his condition as far as that RV site being replaced, could you elaborate somewhat on what replaced means so that if his current guest who has brought in that RV, if I understand that right Brad, if that guest moves off-site, then the new guest would have to place their RV in the second tier?

**Grob:** In the second tier, yeah, if that building is, yes.

**Buitenwerf:** Okay. I just wanted to make sure that everybody is clear.

**Krueger:** I wasn't clear on that one.

**Knight:** No.

**Buitenwerf:** Well that is my reason for asking.

**Krueger:** I was assuming, I was assuming that that intent was if the condition of the property were to, the conditional use of the property were to...

**Johnson:** The use of the property was changed.

**Krueger:** But as allowing this as a resort, it doesn't matter what owner is there, they could keep using...

**Grob:** You bring a different slant to it. My perception was this was a fixed unit, not replaceable with anyway. It is a fixed unit. It looked like there was structure around it and so one and that if it degraded to the point where somebody wanted to replace it, then that replacement should be put in the second tier to get it into conformity. You bring up another one. Someone could haul that one away and bring another one in. I had not even thought that as a possibility, but I guess I would like it to apply to that too. The point is that we are trying to make a

conforming property situation. We don't want to perpetuate nonconformity. So if that unit is ever removed and/or replaced, it should go in the second tier. That was my intent, if you want to modify that.

**Knight:** My problem is that he has been given approval for nine units in the second tier. Is that correct?

**Bond:** Eight. I am approved for eight Chick.

**Knight:** You have nine now and you were given eleven.

**Buitenwerf:** Yeah. He has got five currently.

**Knight:** He has five currently?

**Buitenwerf:** In the second tier.

**Knight:** And so if that unit that we're discussing comes into, has to be in tier two and we approve the other request that he have two more, would we be in violation then?

**Grob:** No. It would still be there. He has eleven total units that he is allowed on site; three in the first tier and eight in the second tier. He has four in the first one now so he would be allowed seven in the second tier. If one had to be removed it would be moved to the second tier and that would keep him in, that would keep him in conformance with the eleven maximum.

**Krueger:** I think in RV parks, the RV itself comes and goes. It is the site that we would be approving, not whether or not there is a, or who the owner is. RVs come and go so if that is going to be your motion, then I will withdraw my second.

**Grob:** Okay.

**Knight:** Well then...

**Grob:** Okay, if that brings lots of complications and complications to managing it and so on and then, well, wait a minute explained to me why you withdraw.

**Krueger:** When you get an RV park, you aren't going to have the same owner in perpetuity. I mean, you are going to have different RV owners, but lots four would be the same because you could get different RVs coming in.

**Grob:** But this is a stationary RV, I mean it is a fixed structure.

**Bond:** Sir, can I step in. I think I understand what you are wanting to get at as far as putting some type of limitation on it to where the property would become

conforming at a later date if it were used differently. I am totally in agreement where if we ever switched strictly to residential property or convert it from a resort or whatever, then it has to conform back to the way it is supposed to be; three sites in the first tier. I am good with that.

**Krueger:** That was my thought.

**Grob:** Okay.

**Bond:** But it is the site, and I agree with you...

**Krueger:** It is the site.

**Bond:** It is the site because even though the party there has been there a very long time, they have put a deck on there and it does look very permanent there. I can't guarantee that they are always going to be there. So, and if they ever left I would want to be a little bring somebody else into that site.

**Grob:** So you would, Tom, what you would say is that the second condition should be if the use of the property were to ever change. Is that adequate definition? The use of the property is ever changed, then that site has to be moved. In other words, if it went from resort to a PUD or whatever, then it would move, not if somebody wanted to upgrade what was there or somebody wanted to pull that one off and put a different one in and I am okay with that change.

**Krueger:** Okay. Then that changes what I would be seconding then.

**Grob:** And that makes it easier to for you to manage.

**Buitenwerf:** It doesn't really matter one way or the other as far as that goes. I just needed to be clear as to what you had meant by...

**Johnson:** It now prevents him from having to buy that camper.

**Krueger:** Yeah. That is the only way you could keep it being there.

**Knight:** Okay. A motion is on the floor again. Any further discussion?

**Buitenwerf:** Tom, you reaffirm your second?

**Krueger:** Yes.

**Buitenwerf:** Okay.

**Knight:** Do we use the long form or short form?

**Buitenwerf:** Long.

**Knight:** Long.

**Johnson:** Okay. Do we, are we going to do swing set separate from...

**Buitenwerf:** You can do it both ways. If you do them together, then I would make sure that for each question you distinguish this is my rationale for saying yes or no on the swing set and this is my rationale for saying yes or no on the playground or the RV site. It might be easier to keep you from getting confused to go through it two times, first for the part one and then again for part two.

**Grob:** That would be my preference.

**Knight:** Part one would be the swing set. Is the variance, well then I can cut it down to only five then if we have to do both?

**Buitenwerf:** You have to do the after-the-fact questions both times.

**Knight:** After-the-fact both times. Is the variance in harmony with the intent, I should make you read these.

**Buitenwerf:** That's part of the responsibility of the chair.

**Knight:** No that's part of your job. Gosh. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland management rules? Why or why not? And this is on the swing set.

**Johnson:** Yes, because I believe there was one there before and he has the right to replace one that was there.

**Knight:** He has no swimming beach so it will be another asset to it.

**Knight:** Without the variance is the owner deprived of a reasonable use of the property?

**Johnson:** Yes. The kids needed a place.

**Knight:** Is the stated practical difficulty due to circumstances unique to this property?

**Knight:** I would have to say yes again. It is a resort and this is a difficulty of not having recreational activities.

**Knight:** Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Johnson:** Well the previous, yes, the previous design of the resort makes it difficult for a user-friendly alternate spot.

**Knight:** Am I on number five now?

**Johnson:** Six.

**Buitenwerf:** Five.

**Johnson:** Oh, five.

**Knight:** Will the issuance of the variance maintain the essential character of the locality?

**Knight:** Yes I believe it will, because it is a resort area.

**Knight:** Does the stated practical difficulty involve more than economic considerations?

**Krueger:** Yes. I think there is also a safety issue. With a centralized location for the swing set, the parents can keep a better eye on the kids.

**Knight:** Why did the applicant fail to obtain a variance or comply with the applicable requirements before commencing work? Did the applicant acting good faith?

**Johnson:** He had no knowledge of the Ordinance and yes I believe he acted in good faith.

**Knight:** Did the applicant obtain a permit from another entity that violated the law?

**Knight:** Not that we know of, no.

**Knight:** Did the applicant make a substantial investment in the property? Provide details below.

**Grob:** I say no.

**Johnson:** In the property? The swing set?

**Buitenwerf:** It's the swing set, the playground structure.

**Johnson:** I would say yes because I few thousand dollars is a lot to me.

**Bond:** If you saw my checking account, it is substantial.

**Knight:** Did the applicant complete the repairs/construction before the applicant was informed of the impropriety?

**Johnson:** Yes.

**Knight:** Are there other similar structures in the neighborhood? Please provide details below.

**Krueger:** There are similar structures at other resorts many in that same common location.

**Knight:** Okay. Will the minimum benefits of the county appear to be far away by the detriment the applicant would suffer if forced to remove the structure?

**Grob:** I would say yes. Keeping the swing set. There is minimal impact and therefore very little benefit to the County to move it.

**Knight:** In light of all the above factors would denying a variance serve the interest of justice?

**Knight:** Do we answer that yes?

**Grob:** I am trying to read the words and think whether it should be a yes or a no here. It is new for me.

**Grob:** I would say no. It does not serve the best interest of justice.

**Knight:** We don't always have to say yes. All right, now the second part, should we vote on that part or should we wait until the second one?

**Grob:** I think we should vote on it.

**Knight:** Vote on it? All those in favor?

**Buitenwerf:** Well, wait a minute here. The way your motion...

**Knight:** Well, we made one motion so we...

**Buitenwerf:** Yeah, your motion was made in whole so I think you should vote on it in whole.

**Grob:** So we should go through the findings of fact for the second one.

**Knight:** All right. Findings of fact for the second one. I am not answering any of these. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

**Krueger:** I would say yes. The way we worded the approval he is not going to exceed the total density for the property and plus we are considering the fact that the property or the cabin is almost into the second tier and it has been there far before his purchasing the property.

**Knight:** Without the variance, is the owner deprived of a reasonable use of the property?

**Krueger:** Yes. Resorts need to maximize their profit. In order to make a living off of them. So he needs to make use of the property to its fullest.

**Knight:** I am glad you said that. Is the stated practical difficulty due to circumstances unique to this property?

**Knight:** I would have to say yes, due to the fact that there is both a river and a lake and the setbacks are different and changed on this. So therefore the trade-off could be stated and I think it is correct.

**Knight:** Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Krueger:** I can say yes. They were in place before the law. The swing set. He replaced it, but still there was a swing set there.

**Grob:** Eric, can I ask a question? In the case of a normal variance request, the six questions have to be answered all yes in order for it to be able to be approved? Do the first six items here have to be answered yes for an after-the-fact or can they be a mixed along with the rest of the stuff?

**Buitenwerf:** As best everyone knows. Given the lack of case law since the Supreme Court decision that led to these findings of fact starting to be used best answer. Our legal counsel can offer right now is that you can answer with a mixture of yes and no to these questions.

**Grob:** Even on the first six?

**Buitenwerf:** Yeah. The final question is it in the justice to approve or deny is kind of your final balance question so to speak where you take your yeses and your nos, and see you know if you had a majority of questions supporting denial or a majority supporting approval than that gives you the ability to sum it up so that it doesn't have to be a straight party line vote so to speak, like you would possibly do with a political candidate ballot.

**Knight:** What number are we on?

**Buitenwerf:** Five.

**Knight:** Five. Will the issuance of the variance maintain the essential character of the locality?

**Grob:** Yes.

**Johnson:** It is an RV park in use.

**Knight:** Does the stated practical difficulty involve more than economic considerations?

**Krueger:** Yes, like the swing set, I already stated a safety issue and there is also for the RV there is...

**Johnson:** The owner wants maximum use of his tier one density.

**Krueger:** Plus there is all of the tearing up the ground and rerouting.

**Knight:** Why did the applicant failed to obtain a variance or comply with the applicable requirements before commencing work? Did the applicant act in good faith?

**Knight:** I believe he acted in good faith.

**Grob:** It already existed at the time of purchase.

**Knight:** Go ahead with that Ken.

**Grob:** I would say that he acted in good faith when it was purchased; actually you said two prior purchases, not aware of the conflict of nonconformance.

**Shepherd:** Mr. Chair can I ask a question really quick? I am sorry. On number four Tom, you gave the answer, but you were talking about the swing set so can I just have a clarification on that because you mentioned that the swing set was in place and this one is about the RV site so I was confused. I'm sorry.

**Krueger:** Oh this one is the RV site. I got it mixed up. We were just on the RV site.

**Johnson:** So you need an answer to number four?

**Shepherd:** If you could just restate your answer to number four just because it was about the swing set.

**Krueger:** Yeah. Let's see.

**Knight:** Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Johnson:** The previous landowner created the RV site in its current location.

**Shepherd:** You just said swing set so thank you.

**Krueger:** Yeah I threw you off. Sorry.

**Shepherd:** Sorry. We are on number eight now.

**Knight:** Did the applicant attempt to comply with the law by obtaining the proper permits?

**Johnson:** No.

**Grob:** No, he was unaware of the need.

**Knight:** Did the applicant obtain a permit from another entity that violated the law?

**Knight:** Not that we know of.

**Knight:** Did the applicant make a substantial investment in the property? Provide details below.

**Johnson:** I would say yes.

**Buitenwerf:** We need an answer why.

**Johnson:** Do I have to?

**Buitenwerf:** Yes or someone does.

**Johnson:** Did he make a substantial...

**Grob:** He put in water and sewer system is not an insignificant investment so I would say a substantial investment and based on what you said that the components can't be reused so you would have to redo.

**Knight:** Did the applicant complete the repairs/construction before the applicant was informed of the impropriety?

**Krueger:** Well yes they were already completed and in place.

**Knight:** Are there other similar structures of the neighborhood?

**Knight:** Not that I could see.

**Johnson:** Can't see the neighbors from the site.

**Knight:** Would the minimum benefits to the County appear to be far outweighed by the detriment the applicant would suffer if forced to remove the structure? Would the minimum benefits of the County appear to be far outweighed by the detriment the applicant would suffer if forced to remove it?

**Grob:** I say yes because the variation is very minor in terms of both and setbacks.

**Knight:** In light of all the above factors would design a variance serve the interests of justice?

**Krueger:** Would denying it? No, I don't believe it would serve the interest of justice.

**Johnson:** No justice would be the applicant be allowed to use the maximum density.

**Knight:** Okay. Your swing set, ah, all those in favor say aye, those opposed same sign. Your request was approved on the swing set and you know the conditions on the question to building.

**Bond:** Thank you very much.

**Knight:** Is there any other business we need to do before the meeting?

**Buitenwerf:** Nope.

**Knight:** Is there a motion to adjourn?

**Krueger:** I will move.

**Knight:** So moved. The motion carried.

**Johnson:** Seconded.

**Knight:** I don't have to have a second on adjournment.

**Bond:** Thank you gentlemen.

**Knight:** Thank you.

Meeting adjourned at 11:49 a.m.

Minutes generated by Recording Secretary Maria Shepherd

**Board of Adjustment Meeting**  
**March 19, 2012**  
**9:00 a.m.**

**Krueger:** I would like welcome you all to this meeting. We ask that if someone from the audience has a comment to make you sign in over on the back there and then you speak at the podium here, give your name and address and limit your comments to three minutes. Let me introduce the Board, starting with Tim Johnson, Oakley Williams, I am Tom Krueger, Ken Grob, Terry Clairmont is absent. He hasn't arrived yet. Eric Buitenwerf is the Environmental Services Officer and then Maria Shepherd is the secretary. First we will start off with the approval of the minutes of the last meeting. Any changes?

**Grob:** I will make a motion to approve.

**Krueger:** Second?

**Johnson:** I will second it.

**Krueger:** All in favor say aye. Any disagreement same sign. Motion to approve the minutes is done. Any old business Eric?

**Buitenwerf:** No there is none.

**Krueger:** Okay. We have got two items for new business. The first one is **Variance Application 6-V-12 by David Martin:** Part of Government Lot 3, Section 19, Township 140, Range 33, Nevis Township on Lake Belletaine. Parcel #s: 21.19.02200 and 21.19.02520. Applicant is requesting that the condition placed on Variance 95-2 that prohibits additional structures on the lot be removed. Lake Belletaine is a recreational development lake. Is someone here to represent the Martins?

**David Martin:** David Martin Mr. Krueger.

**Krueger:** You are David. Okay. Take a seat right there and tell us why you would like this variance application approved.

**Martin:** My wife and I have a strong emotional tie to the community. We actually got married in Nevis about thirty some years ago; it is a good thing that she is not here because I can't remember exactly how many years. When our best friends got a cabin on Lake Belletaine and the property next to it came on the market we grabbed it. It was a very modest property, affordable at the time. We got a great amount of pleasure out of that but when our neighbors offered to sell us an additional 100 feet of lakeshore, we jumped at that opportunity. That was about four or five years ago because it brought it into a conforming size and we are

hoping that now that we have a conforming lot that we would be allowed to build a better cabin on our lands.

**Krueger:** Any questions from the Board?

**Grob:** The question I would have you indicate that the current that if you build a new residence that you intend to convert the current residents to a storage unit. When you say storage unit, what's your intent?

**Martin:** Well eventually I would like to convert it to a garage. Initially, just gut it and maybe have it be a workspace storage area. I probably would hope to catch my breath financially after building the new cabin, but within a couple of years, perhaps put a garage door on the end of it and turn it into a garage.

**Krueger:** Are you aware that if this is approved today that you would not be able to use that as a guest cabin?

**Martin:** Yes I am.

**Krueger:** You don't have a lot sized large enough for it. Okay.

**Martin:** I understand that Sir.

**Krueger:** Okay. Any other questions?

**Johnson:** We are just acting on his application which is to remove the old variance condition right? So what you were talking about, I understand what you were talking about Tom, but would he be able to add onto, add onto the one that is existing there then or are we just acting on the application today? So understanding exactly that he doesn't, he needs to change that, does he have to? If he puts a breezeway in between his addition?

**Buitenwerf:** I guess I am not following you. You mean in addition to the existing structure Tim or?

**Johnson:** Well, I am just saying that you brought that up, that he would have to change that to a storage shed, would he have to if he wanted to do a new house attached to that?

**Grob:** If he, this is Ken Grob, if he did he would only be allowed to expand it's area by 50% because he is within 100 feet of the shoreline. So that probably wouldn't be practical.

**Johnson:** Okay.

**Grob:** I also have another question Eric. Is it appropriate for us to put a condition on removing this variance something to the effect that if a new residential structure is built that the current structure would have to be converted into storage and could not be used for a guest or residential living. I know that he has indicated that in his variance but unless it is officially in the record. There is nothing that says he can't and I don't know if there's a process when he builds the new residence, is there a process by which that would be prevented other than us, making it clear in the record that we are approving this with the idea that he is building a new residential unit and when he does that that, once that's done this unit must be converted to storage or at least not used any longer for residential. Is that appropriate to put a condition on that or does that get controlled when he comes in for a permit and/or variance for the new structure? How is that best handled?

**Buitenwerf:** That would be handled if and when he were to apply for the building permit for a new residence, the permit would have a condition placed on it stating that, that residents would be allowed to be constructed on the condition that the existing dwelling unit, be discontinued and converted into a nether use . If the board wanted to stipulate in a motion on this request something to that effect that there can only be one dwelling unit on the property you know I don't see that that's going to hurt .

**Grob:** I just want to make that it is controlled in the long haul and if the best way is for you to do through the permit process that makes it easier, if not to make sure I would like to see us put a condition on this that effect. I don't know how the rest of the Board feels.

**Krueger:** Sounds appropriate. I would like to open up for public comments. If anyone would like to speak to this? Nobody came forward. So we will close for public comment and how would the board to make a motion on this?

**Grob:** I will make a motion that we approve the request with the condition that if an additional residential unit is constructed on the property that the current unit will be converted to storage or a garage facility and will not be used as a guest or living quarters.

**Johnson:** I will second that.

**Krueger:** Okay. I believe we have the findings of fact to go through. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Any response?

**Johnson:** Yes.

**Krueger:** Why or why not?

**Johnson:** The property will comply with the lot size to allow the condition to be removed.

**Krueger:** I don't have one in the packets that where I can write on or just?

**Maria Shepherd:** You can take it out and write on it.

**Krueger:** I can take it out? Okay. So that was a yes? And what was the why or why not?

**Johnson:** The property will comply with the minimum lot size, so it would be allowed to remove the old condition and build this new structure.

**Krueger:** I would like to add that by purchasing the property you brought it back into compliance again which is, is a good thing. Without the variance, is the owner deprived of a reasonable use of the property?

**Williams:** I would say yes.

Krueger: Why or why not?

**Willilams:** Well because with his 50 foot lot. He could not build a new house on the property, and now with 157 feet. He will be in compliance so he should be allowed to build a residential structure to use this property.

**Krueger:** Is that stated practical difficulty due to circumstances unique to this property?

**Grob:** I would say yes because the difficulty is a condition that existed prior to purchasing the additional lot.

**Krueger:** And the condition of the previous variance.

**Grob:** Yeah.

**Krueger:** Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Johnson:** Yes. The variance condition was placed on the property by the Board of Adjustment years ago.

**Krueger:** Will the issuance of the variance maintain the essential character of the locality?

**Williams:** I would say yes.

**Krueger:** Why or why not?

**Williams:** Because this will make it a conforming lot, and it will fit in nicely on Lake Belletaine.

**Krueger:** Does the stated practical difficulty involve more than economic considerations?

**Grob:** Yes. In fact, I don't think that economic considerations were stated as a situation or difficulty.

**Krueger:** Okay, everything was a yes. So can I have a vote? All in favor say aye. Anyone against same sign. Looks like the variance is approved. I believe you have to go and get a permit whenever you are ready to build from the County.

**Martin:** I am assuming that my contractor will take care of that.

**Krueger:** Oh okay. Well then you are all set.

**Martin:** I would like to thank the counsel. I know that it is difficult to bring order out of chaos.

**Grob:** It was a little more chaotic with this one.

**Krueger:** All right, next item on the agenda is **Variance Application 7-V-12 by Gregg and Charlotte Appel:** Lot 11, Plat of Hayes Beach, Section 17, Township 139, Range 34, Hubbard Township on Long Lake. Parcel #: 14.40.01200. Part 1: Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance (SMO) for less than the required 10 foot side lot line setback for a proposed new residential structure and attached decks as well as a proposed new drainfield. Part 2: Applicants are requesting a variance from Subdivision 2.10 of the Individual Sewage System Standards Ordinance for less than the required 20 foot setback to a building for a proposed septic drainfield. Part 3: Applicants are requesting a variance from Section 502.2 of the SMO for less than the required 10 foot rear lot line setback and less than the required 10 foot side lot line setback for a proposed new drainfield. Long Lake is a recreational development lake.

And your name?

**John Mason:** Good morning. My name is John Mason. My address is 18610 109<sup>th</sup> Avenue Park Rapids.

**Krueger:** Okay. Would you state your reasons for the variance request?

**Mason:** The reasons for the variance request, well first let's back up a little bit. I would like to amend that Part 1, it says also that the attached decks will be encroaching on the ten foot setback, that has been changed earlier on and it didn't make it on the Board of Adjustment's app here I see so just the overhang only is hanging onto the ten foot setback on the South side of the property.

**Krueger:** Do you, Eric do you have a record of that change in the request?

**Buitenwerf:** Yes. The application was amended after the public notice went out so that is the reason for the change, but we do have

**Mason:** Sorry about that.

**Buitenwerf:** That documentation and the application. I corrected it to simply be the eve overhang that would not comply with the side lot line setback.

**Krueger:** Okay.

**Grob:** And that is what is on the drawing that we got?

**Mason:** Correct. I apologize for getting that in late. I just amended it late. Sorry. Back to point being reason for a variance is the skewed lot, the narrow-ish lot, long and narrow and the positioning of the homes on this lot and the neighboring lots. They are all turned slightly to look at the lake to a degree, not to the full extent but. My size of the home would fit on there if it was parallel to the lot lines but if it was parallel to the lot lines, it would be looking right at the neighbors home. That is the reason for the home to be twisted slightly an encroach onto the south lot line by two foot on the wide side of the gable or on the overhang excuse me, and going to zero and three foot and thirteen foot so it would be approximately thirteen square feet of overhang over the line. As far as the drainfield goes that's basically the same thing, with the home stretching back towards the road, the drainfield, the only feasible place for me to say would be to put the drainfield back to the South side of the garage and that just does not allow enough room to get the drainfield in there without the variance. It will function properly. It has wonderful drainage. It just needs to be encroached on the south lot line by a little bit and it also needs to encroach onto the 20 foot setback of the garage. The code or the law say to a structure dwelling but seeing as the garage is attached to the home it is falls under that policy so but it is a non-living structure that we are encroaching onto. The homeowner was here and he wants to abide by the rules as much as he can. He was unable to make it this morning. He has to go back to his hometown but that is all I have. Thank you.

**Krueger:** Any questions from the Board? I would like to open this up to public comment. Anyone like to speak to this item? Okay can you go up to the microphone there and give your name and address. Right over there.

**Buitenwerf:** Right over there Sir.

**Jerry Johnson:** Oh there. Okay. My name is Jerry Johnson. I live at 13211 Breezy Pines Drive. I am just North of where Appels are building their house. My question is just is this going to be a one-story house or two? A rambler style?

**Mason:** It is a one story with seven foot side wall loft so basically one and a half encroaching on two stories. Correct.

**Jerry Johnson:** I really don't have any objection to building a house is long as it's not going to be a three or four story job. We like the Appel's. They are good neighbors and I would have no objection to this. Thank you.

**Grob:** Could you identify, are you a neighbor next door?

**Jerry Johnson:** I am a neighbor yeah. I live, not right next door, I am about three or four lots north of the Appel's.

**Grob:** Okay.

**Mason:** Here's some pictures you can look at if you want. They are my plans. I need them back but just thumb through them as we wait. That's fine.

**Jerry Johnson:** Oh. Okay. Will do.

**Krueger:** Any other comments? Is

**Selmar Erickson:** My name is Selmar Erickson, I am an adjacent landowner just down the road. I was wondered how many times they make a variance on new construction for side line setbacks? I mean is that fairly common to provide your answers when you are constructing new construction. Can you make your size such that you don't need to get a variance for the side line setbacks?

**Krueger:** He has a little different situation in my opinion because the ltos are kind of put in, not parallel or perpendicular off the lake at right angles, they are kind of skewed like this and in order to stay within the Ordinance he would have to put his house skewed like that so what he is applying for is just simply to be able to turn it a little bit and we are only talking about what thirteen, fifteen square feet closer to the side lot?

**Mason:** That is correct.

**Erickson:** When the Board did site inspections could you visualize that that was necessary or?

**Krueger:** He has it very well marked out. He had the entire property line marked out in paint, yellow spray paint and then also where the house would be and you could see brake there on the ground where that thirteen or fifteen square foot area was.

**Mason:** I believe it is near a 35 degree angle the lot lines are so it is quite a skewed. That is a unique situation.

**Erickson:** That was my only questions. Thank you.

**Krueger:** Any other comments from the audience?

**Johnson:** Just one other. It did meet the setback on the one side and you held it from the closest neighbor away so that the eve is just over the side. It would fit in there better the way the construction company designed it.

**Mason:** Yes. We took into consideration going north or south and this would be the most practical and the less obtrusive way to do it.

**Krueger:** I would like to close the public comments part. Any more comments from the Board or discussion?

**Grob:** This is Ken Grob. I would just like to make an observation before we vote. Typically, it is our intent not to allow a new construction to be a nonconforming structure and it would obviously be our desire of course to keep it out of the shore impact zone. But after the viewal and looking at how hard the architects and the builder have worked at trying to fit it on the lot and meet the requirements and recognizing that all twelve square feet or thirteen square feet and just the overhang is very minor. To adjust for that, I think if we looked at trying to adjust for it. It is a significant change in the angle of that structure and you would be looking at the neighbors house which is not consistent with the other two neighbors who have done just that , cantered their houses to see the Lake and I think that is worth, considering how hard that they have worked to put it on the lot. I would say that I think that should be put taken into account when we decide what we're going to do .

**Krueger:** I agree with that myself. Any other comments?

**Williams:** The neighbor to the South came over and visited us when we were at the lot and she thought that this would be the best way to do it. So and her house is a considerable distance from this house so that encroachment on the sloth is minor.

**Krueger:** There are three parts to this do we do one at a time?

**Buitenwerf:** It all depends on what the motion might be, as to what would be the easiest way to proceed logistically through the motions.

**Krueger:** I would open up to entertain a motion.

**Grob:** Tim keeps looking at me. Ken Grob. I would make the motion that we accept the variance request for part one, I will talk to part one, and I realize that it does not meet the letter of the law, so to speak to the Ordinance, but the over, it is only overhang. It is minor and the alternative, I just don't think is reasonable so I would make a recommendation that we accept the variance for part one.

**Krueger:** Can I get a second?

**Clairmont:** I will second.

**Krueger:** Okay. Second by Terry. So we have to do findings of fact for each one since it was worded the way he did?

**Buitwenwerf:** Uh hmm.

**Krueger:** This is for Part one only. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

**Grob:** I am going to say yes, although as I said it does not meet the exact letter of the law or the ordinance. I think that the home is placed that it meets all of the other requirements; setback from the lake, setback from the other property lines, it is being placed as best possible. So therefore I think it meets the intent of protecting the Lake and the overall comprehensive plan.

**Krueger:** Okay. Without the variance, is the owner deprived of a reasonable use of the property?

**Johnson:** I would say yes because he should be allowed the size of house that he is asking for. I don't think it is unreasonable for the size of house that he is asking for to fit on that lot.

**Krueger:** Is the stated practical difficulty due to circumstances unique to this property?

**Williams:** I would say yes.

**Krueger:** And your reason?

**Williams:** Because when these lots were laid out working from the south they had nice square lots and they kept drawing the lines parallel. When the lake

angled off to the Northwest, this lot is oblique to the lake, therefore, that creates the difficulty.

**Krueger:** Okay. That leads to the next one. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Johnson:** Yes. The lines were there before this owner was there.

**Krueger:** Will the issuance of the variance maintain the essential character of the locality?

**Grob:** I would say yes. I think the home is being billed consistent with the neighbors and the orientation is consistent with the neighbors.

**Krueger:** Does the stated practical difficulty involve more than economic considerations?

**Grob:** Yes. I don't economic considerations were stated.

**Krueger:** All items, well all items don't have to be yes but can I, all those in favor say aye. Opposed same sign. Okay. Part one is approved. Part two is the request for a variance from Subdivision 2.10 of the Individual Sewage System Ordinance for less than twenty foot setback from to a building for a proposed septic drainfield. Any discussion from the Board on that?

**Variance Application 7-V-12 by Gregg and Charlotte Appel:** Lot 11, Plat of Hayes Beach, Section 17, Township 139, Range 34, Hubbard Township on Long Lake. Parcel #: 14.40.01200. Part 1: Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance (SMO) for less than the required 10 foot side lot line setback for a proposed new residential structure and attached decks as well as a proposed new drainfield. Part 2: Applicants are requesting a variance from Subdivision 2.10 of the Individual Sewage System Standards Ordinance for less than the required 20 foot setback to a building for a proposed septic drainfield. Part 3: Applicants are requesting a variance from Section 502.2 of the SMO for less than the required 10 foot rear lot line setback and less than the required 10 foot side lot line setback for a proposed new drainfield. Long Lake is a recreational development lake.

**Johnson:** I see no problem with that, the encroachment.

**Krueger:** Any others? Anyone from the audience like to address part two? No? Okay. Any further discussion? I would entertain a motion.

**Grob:** I would make the motion that we accept the ESO departments recommendation for approval of parts two and three.

**Krueger:** Okay. Save us some time there.

**Mason:** Thank you.

**Krueger:** All right. Can I get a second that motion?

**Johnson:** I will second that.

**Krueger:** Okay. Findings of fact for parts two and three. Is the variance in harmony with the intent of the conference the plan, zoning ordinance and State Shoreland Management Rules?

**Johnson:** Yes the septic drainfield will meet the 150 foot ordinary high water setback.

**Krueger:** Without the variance, is the owner deprived a reasonable use of the property?

**Johnson:** Yes. He should be able to have a drainfield on site, and that is the logical place for it.

**Krueger:** Is the stated practical difficulty due to circumstances unique to this property?

**Grob:** Yeah, I guess I would say yes. Trying to meet the 150 foot setback and the house site setup is such that this is the only possible alternative for a drainfield.

**Krueger:** Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Johnson:** Yeah, previous disruptions of the soil and use of the property was out of the current owners control.

**Krueger:** Will the issuance of the variance maintain the essential character of the locality?

**Johnson:** Yes. You won't see it. It is underground, that system.

**Krueger:** Okay. Does the stated practical difficulty involve more than economic considerations? Ah we are closed for public comment right now. Okay we are back to number six. Does the stated practical difficulty involve more than economic considerations?

**Williams:** Yes. Economics didn't have a factor in this decision.

**Krueger:** Okay. All in favor say aye. Not approved same sign. It looks like all three of your requests are approved.

**Mason:** Thank you.

**Krueger:** Yup. Do we have any other business to bring up?

**Buitenwerf:** The only other thing to mention, would be the, I think you'll received a copy of the land use training on April 12<sup>th</sup>? I would ask that you please RSVP to let me know if you will be attending are not so that we can get a headcount and registrations submitted. That is the only other additional item that I got for you.

**Krueger:** Can I save a phone call and let you know now that I will be able to go?

**Grob:** I am in. You can put me down Eric.

**Johnson:** Yup. I am in.

**Krueger:** Anyone else? Motion to adjourn?

**Grob:** So moved.

**Kruger:** Seconded?

**Clairmont:** Yup.

**Krueger:** I think we are done.

The meeting was adjourned at 9:31 a.m.

**Board of Adjustment Meeting**  
**April 16, 2012**  
**9:00 a.m.**

**Schwindt:** I would like to call to order the board of adjustment public hearing for Monday, April 16, 2012 and we just wanted take a second, there's not too many people here just two as a matter of fact, so what we have is some procedures that we follow normally if you haven't been here before. There is a sign-up sheet in the back. I think you signed it and if you want copy of the minutes then just indicate and they will get you a copy of the minutes. No cell phones. We only want one person speaking at a time. When the variance that you're here, if it is you variance, we will call your name and then you can come up to the microphone have a chair. We will ask you some questions. If there is anyone in the audience that wishes to speak at the time either for your variance or against your variance, we will ask them to step to the podium, state their full name and address and then we will allow them 5 min. to speak, either in favor or against whatever variance happens to be on the table at the time. We will try to limit it to the five-minute max. If a variance is granted, you will still need to go through the procedure of getting whatever permits were required or are required. You have got to give the office a couple of days to do the paperwork because upstairs where the office is will issue the permit really has no idea what we did down here so they can issue them right away. So it takes a couple of days for the paperwork to catch up. And like I say, you will still need to get whatever necessary permits are required. I don't think there is anything else that I need to mention at this time except we will go to the approval of the last meeting, the minutes. I happen to miss that meeting so I reviewed them. They looked okay to me but were there any changes or corrections that needed to be made on those minutes? If not we will have a motion to approve the minutes from the last meeting.

**Johnson:** I move to approve the minutes from the last meeting.

**Schwindt:** I have a motion to approve. Do I have a second?

**Christianson:** I'll second them.

**Schwindt:** Second by Arnie. All in favor aye. Okay. Next on the agenda we have election of officers for the coming year.

**Knight:** Mr. Chairman?

**Schwindt:** Jerry Cole was our Chairman last year and he is not with the Board this year. I want to thank him for doing a good job last year. We will open the floor now for nominations or volunteers for the Chairmanship for this year.

**Knight:** I nominate you Lou and move the nominations cease.

**Schwindt:** Okay. I have a nomination for Lou Schwindt as Chairman. Do I have any other nominations? Well they have already ceased according to Chick but we may get some other one volunteering.

**Benson:** I doubt it.

**Schwindt:** If not we will close and take a vote, all in favor say aye? We will open the floor back up for Vice Chairman. Any volunteers for Vice Chairman for next year? Any nominations for Vice Chairman for next year? If not I'll nominate Earl. Any other nominations?

**Knight:** Second that nomination for Earl.

**Schwindt:** So I have a first and a second for Earl as Vice Chairman, all in favor say aye. Next on the agenda we have old business. Is there any old business that we need to tend to at this time Eric?

**Buitenwerf:** No.

**Schwindt:** Alright. Under new business we will go to the first variance which is by David J. Notch. Did you hear anything? Is he going to be here or late?

**Knight:** He is here.

**Tom Notch:** I am actually David's brother. Tom.

**Schwindt:** Okay, so you are representing him?

**Notch:** Yes.

**Schwindt:** Alright so please come forward then. This is **Variance Application 8-V-12 by David J. Notch Etal:** Lot One, Potter's Hide-A-Way, Section 32, Township 139, Range 33, Crow Wing Lake Township on Palmer Lake. Parcel # 06.50.00100. Applicant is requesting an after-the-fact variance from Section 502.1 of the Shoreland Management Ordinance for a lakeside deck that does not meet the required 150 foot ordinary high water mark setback. Palmer Lake is a natural environment lake.

Can you tell us a little bit about what happened out there as to why this is an after-the-fact?

**Notch:** Sure. Yeah.

**Buitenwerf:** And if we may Sir, if we get your name and address for the record first please?

**Notch:** Sure. It is Thomas G. Notch. My address is 10760 102<sup>nd</sup> Street, Waconia, MN 55387.

**Schwindt:** Okay.

**Notch:** My dad originally built, originally bought the cabin back in the late 70s. It was just a trailer home within an addition on it and he constructed a new cabin on site in the 82 when us kids were all fairly small. So coming up on, it was coming up on 30 years or so the deck was deteriorating to the point where I actually put my foot through it a couple of times. It was rotting out. It was a cedar deck, so something had to be done as far as safety and just to rebuild it. I did some checking mistakenly thought that permits on decks, I obviously missed when I looked online, the need for that deck. I talked with a couple of friends who are in the building construction business and one thought might not be needed up in certain areas North. That was obviously my mistake. I took it upon myself and took down the old deck and rebuilt the one that

is existing currently. I did then receive a letter from the environmental services in regards to then need for a permit and or the variance. So that is basically where we sit at this in time. After some digging into old records we came upon the old construction permits, according to what I was told upstairs that there was actually an initial variance in the construction of the first deck. I noticed your comment earlier about no record of the deck but in speaking with the gentlemen upstairs, Mr. Woodford that supposedly there was a variance originally but there are a lot of conflicting things on the numbers, the distance from the lake. I have got numbers saying the original one was at 152 and that would make sense because the house on the original records say 160 and then the old deck was eight foot which would come out to 152 which would put the new deck now roughly at 148 but then after he went out and did some measuring supposedly that came up another six feet shorter which is confusing to me because the lakeshore did not from my remembering as a kid hasn't really changed as far as erosion. So I am not familiar exactly where they measure to. As far as the deck, I did the construction on it. I did the tear down of the old one. My brother Dave was not involved or anybody else in my family but we all own it; my two brothers, and my sister and I. It was passed down from my parents.

**Schwindt:** Well you say there was a variance on the existing deck what would have been the need for that variance if it was built at 152 feet?

**Notch:** Well that is the part that is confusing to me. I do see also that the original drainfield that is still there goes to 148 as well. It says drainfield from lake 148 feet so I am not sure if that needed something there. That is kind of where the confusion came in from my side because originally when I talked to them on the phone when I was going through the variance, he said while the original one was 152 and now when you added onto the deck you are at 148. Now when I came to visit to do the variance paperwork he had gone out and done a visit or something and said that it was now at 142.

**Schwindt:** Do you have anything in the file Eric that can shed some light on that? It looks like an old variance but

**Buitenwerf:** There was a variance in 1975 that was granted for 175 foot setback from the lake. That was because back then there was a classification on this lake of all natural environment lake's having to be 200 feet setback, so that variance was granted in 75. The Ordinance was then changed to allow 150 foot setback on natural environment lake's and the structure that is on the lot currently was constructed per that new 150 foot setback standard in 1982 an permit application from 1982 states and shows on the sketch 160 foot setback to the cabin. There is no deck shown on the cabin in that site plan sketch. The tax assessor's records show that the structure was recognized in 1982, along with the deck. That was eight feet lakeward on the structure. So those are the records that we have.

**Schwindt:** So the variance was issued to build at 175 because the, actually because the Ordinance said 200 at the time. When he built he didn't need that variance so is that variance null and void at this point?

**Buitenwerf:** Basically, yeah.

**Schwindt:** That has nothing to do with anything then.

**Knight:** Mr. Chairman, I was on the committee at that time on this particular project and I was also on the committee with the State when they re-organized the setbacks and what have you on the lakes. At that time why the setback on a natural, I mean a recreation lake was 100 feet and the width of the property was 150 foot. Now this is a natural environment lake and at that time they set the width to 200 feet and they set it, on a natural environment lake and they set the setback at 150 feet. I objected at that time asked the DNR particularly who suggested the change and why did make a setback at 150 feet when they could have set it at 100 feet like a recreation lakes. They did not give me an answer at that time and but I was voted down on it when I suggested they make it at 100 feet. Well at that particular time when we went out to this property the County, the County's ruling was that they had 15% to put a deck on the front of their cabin or house and up to 15%. Well then that didn't bother except that they, I asked them the reason why they made the requirement 200 feet rather than 150 on the lake. At that time they stated well then that would eliminate the homes around the lake so that the extra 50 feet would take up the homes so it wouldn't be polluted as much in that particular time. Anyhow at this time I believe that we operated under the 15% basis on the thing, however our rule states now that he must get a permit for this and he did not get the permit and so that is the only problem I have with this. I feel as though, well I will let the Board decide.

**Schwindt:** Does anyone have any questions?

**Christianson:** When was that law changed?

**Knight:** When was what?

**Christianson:** When was that DNR law changed?

**Knight:** Oh, 1991 was the official one. Actually it was passed in the 80's.

**Schwindt:** Was there any correspondence on this Eric?

**Buitenwerf:** No.

**Schwindt:** We will open the floor for some public comments. Does anyone wish to speak in favor of this variance?

**Dan Kittilson:** Dan Kittilson, President of Hubbard County COLA. My address is 22924 County 7. We would just like to point out several points. We agree with Eric's recommendation in the staffing report that this variance request be denied. Eric has done a good job with his analysis. We would also like to point out that this is that after-the-fact variance thing again where someone is asking for forgiveness because they didn't ask for permission in the first place. So we would encourage that this be denied unless this is a special circumstance or it would be the practical thing to so. Also on the finding of facts in this staff report, I believe if it fails on one point, it fails. Eric has spelled out a number of times where the response has been no so we would encourage you to especially the after-the-fact thing is really, I think we have been doing a better job at that recently and I would encourage you to take that into

consideration. I would like to thank the Board of Adjustment for giving us the opportunity to speak. Thank you.

**Schwindt:** Thank you. Anyone else wish to speak?

**Notch:** If I may, can I add

**Schwindt:** If not we will close the public input part and then go ahead. What was your question?

**Notch:** Just a couple other points on this the reason for the expansion on it was simply usability of the deck. The old one as far as the width, there was not enough width to simply set a table up or sit on there without causing traffic issues. Another point is there are numerous, and no excuses here, but there are numerous cabins on that lake that are much, much closer deck wise, stairs coming down to the lakes that are attached to the deck on the cabins and my biggest questions is what is the ruling if you have a deck on a cabin and then stairs leading from that deck all the way down to the lake with mini decks on those steps where you can sit table, chairs? I mean there are a lot of them there that are half of the distance of what mine is right now. I guess I would like a little knowledge behind that.

**Buitenwerf:** To answer that question the Ordinance allows a four foot wide stairway to be constructed from the structure to the lake for means of lake access and then where topographically necessary you are allowed a four foot by eight foot or a 32 square foot landing to facilitate switch backs etcetera in the course of constructing your stairway. Those are the only things that are permissible as far as stairs and landings when you are within the structure setback.

**Notch:** Do you have the history as far as I know a lot of the cabins there are a lot closer, at what point and time was that setback? I mean some of these are, I am guessing, 70 to 75 feet from the lake. Is there a certain time when that was just not an Ordinance or allowed to build that far back? Are those cabins just that old?

**Buitenwerf:** I would have to see the specifics, but any structure that predates the enactment of the Shoreland Ordinance which took place in 1971 are allowed to remain in there and are administered under slightly different criteria than that of new structures through the Ordinance language. So that would probably accommodate for the differences that you see on the properties.

**Schwindt:** Thank you. Well, we went out and looked at it but that deck wraps around the side a little ways.

**Notch:** Correct.

**Schwindt:** Could you expand anything beyond the 150 foot mark to get yourself a place to set a table rather than lakeward? In other words, you have everything on the Lake side of the cabin, this looks like just a small step down piece. Is there a doorway or something coming out from behind this jar?

**Notch:** There is a side door that leads to the shed area off to the East and that wrap around deck leads to the other door on the side.

**Schwindt:** Yeah, but you could expand that. There is no, it's not the property line or anything close to that side.

**Notch:** There is approximately 75 feet of our property and that side before the property line.

**Schwindt:** So you could go the other side with the deck.

**Notch:** We could but the view from the trees would be very limited.

**Schwindt:** Well I will tell you what my thoughts on it are and then we will see what anyone else on the Board would have to say. This house had a deck on it previously so I would not be opposed to, which you could have done by permit, I think, according to Environmental Services, got a permit and replaced that existing deck with a like kind, exactly the same.

**Notch:** Correct.

**Schwindt:** There is a photo in here that shows the deck did exist and it was there and all indications are it was eight feet so I would not be opposed to allowing an eight foot deck to replace what you had existing before because I don't believe in taking from somebody. But what you are asking to do is expand upon that is which I would be opposed to so I am saying you could replace the deck with exactly what you had before by permit so it is not up to me to take that right away from you. You should have done that you see what I am saying. But to allow you to go lakeward that extra four feet I am opposed to that. You could put the deck out to the other side and give yourself room to set a table or something. That's the way I view it. I don't know. Does anybody else have any other opinions on it? Earl?

**Benson:** I agree with you that the eight foot deck should be allowed and cut back.

**Johnson:** I also agree with you Lou. It looks like it wouldn't be too hard to take off that front part to bring it back to the eight feet.

**Schwindt:** It looks like at one point it was actually behind those two trees that were existing. They have probably died since then because I know it is an old photo.

**Notch:** Yeah, they got too big and they were leaning towards the cabin. They actually grew into the old deck railing and I am, I am kind of surprised because the deck was built the same time that the cabin was and that's the confusing part about the fact that the deck was never originally on anything because it was built the same time the cabin was. Otherwise you wouldn't even be able to go out the front door of the cabin.

**Schwindt:** Well there is a photo that shows it's there so as far as I am concerned you could have replaced it by permit had you come into the office and got that permit so I don't know if there was confusion with the website or whatever excuse there is that is not up to me to decide that. I will take your word for it you know that you were confused on it. Anyone else?

**Knight:** All I am going to say is that before the deck, after all you come back 142 feet back from the lake. All recreational lakes are 100 feet so consequently I feel as though this is penalizing the particular guest and due to the fact that I remember the 15% rule on the earlier expansions I would have to say that I would like to do that but doing it without a permit I would have to be against it. So

**Schwindt:** Does anyone wish to make a motion on this? I will just say one other thing. It doesn't look like the deck's totally complete.

**Notch:** It is very close and it would be, going back to not getting a permit, I have done other work in Waconia on my own house and gotten permits in the past and everything. I did make a big mistake and I understand that I am paying for that already with the additional variance and permit costs and such. This deck would be extremely difficult to change the size on with the way the trusses run and this is, they all run from the cabin out to the rim joist. It is all 2"X10" construction. I mean to remove all of that and cut them back

**Schwindt:** They are running lakeward on the joists?

**Notch:** Towards the lake, yeah.

**Schwindt:** You could just cut them off; each one individually and reset the rim joist.

**Notch:** It would be basically the same as rebuilding a completely new deck by the time you do the posts and... I mean I have gotten support from the other neighbors I have had there with no objections. I mean I understand environmental. I am golf course superintendent and I don't see the factual impact environmentally or the bias between recreational and the type of lake this is. My neighbor's understand it and were very positive and have gave me their support, including Mr. Rezac, and my next door neighbor's.

**Knight:** One of the real cruxes of the thing is that, excuse me, talking again, is it going to be harmful to the lake? I mean we should, we are thinking about what would be harmful to the lake or the environment and would this be harmful to that? So anyhow I don't like to give permission when he should have gotten a permit but in the same token why I have to figure out what is harmful to the lake or to the area. So, yeah, I'll shut up.

**Benson:** I agree with what you said. This four feet means really nothing causing more, you know too close to the lake and all that but also you have to follow the Ordinances and he don't have proper setback and they don't have room for a twelve foot deck. I mean it's not really going to hurt anything but it isn't allowed.

**Johnson:** If you would have gone through the permit process you would have built it the eight foot.

**Notch:** I would have tried for a variance to make it what it is because the feasibility is that that size coming out the front door just wasn't large enough to have the deck usable for anything. People like to sit on their deck and enjoy the view and I would have at least gone and tried to get the variance for it whether it would have been approved or not. In no shape or form do I

want to argue. It just seemed to come down to a common sense when there is ten to fifteen other cabins that are half the distance to the lake as our little point of the deck is because actually the deck runs angular to the lake. The entire front of the deck would not be the setback issue. It is basically the one corner and that all depends on what the actual high water mark is and those seem to conflict.

**Schwindt:** Does Palmer Lake have an established ordinary high water mark or are we guessing by shoreline where the water sits?

**Notch:** He would probably be better to answer that.

**Buitenwerf:** I am pretty sure there is an established ordinary high. Yes there is an established ordinary high. So there is a definite point to measure from.

**Schwindt:** So at this point we don't know if it has been measured correctly.

**Notch:** Well according to, right here, this is the original it says 160 feet building setback from high water mark. In 94 when we had a septic certification it looks like it already says house setback to lake 152 feet. Now there is no way that it eroded eight feet because I have been playing on that beach my whole life which means, that obviously assumes the fact that the deck must be in there because it is exactly eight feet which would make the new deck, corner of the deck 148.

**Buitenwerf:** Mr. Chairman, looking at the notes in the file from staff during the field visit, it appears that they measured the setback and that is how the 142 foot distance was determined.

**Schwindt:** Okay. So we can assume that is accurate?

**Buitenwerf:** Yes.

**Schwindt:** Any other questions? If not, I will make a motion. I will make a motion that we deny the variance by David J. Notch as requested but then I would also make a motion that we allow him to rebuild an eight foot deck by permit.

**Benson:** I'll second that.

**Schwindt:** And I have a second on that motion. And the findings of fact in this case:

Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

**Schwindt:** I would have to say no. Even though it is a small amount where do you draw the line? The next person is going to want six feet encroachment and the next one eight feet encroachment so I think by allowing what you had before is a reasonable deck.

Without the variance, is the owner deprived of a reasonable use of the property?

**Schwindt:** Again I say no. It has been used that way since 1982 with the existing deck at eight feet.

Is the stated practical difficulty due to circumstances unique to this property?

**Schwindt:** Again I would say no it is not unique. Most properties have decks. Many of them are eight feet.

Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Schwindt:** I again would say no because the building of the new deck without the permit was actually the cause of this problem.

Will the issuance of the variance maintain the essential character of the locality?

**Schwindt:** I would say yes and no because we are not going to issue a variance as requested but we will issue one allowing the deck to be rebuilt as it was existing prior to the removal or the tear down of the old deck..

Does the stated practical difficulty involve more than economic considerations?

**Schwindt:** I would say no economic considerations were involved.

Why did the applicant fail to obtain a variance/or comply with the applicable requirements before commencing work? Did the applicant act in good faith?

**Schwindt:** I really don't know. I know there was no permit issued. I assume he acted in good faith. He said he went on the internet and looked to see whether he needed a permit or not.

Did the applicant attempt to comply with the law by obtaining the proper permits?

**Schwindt:** I would say no; he didn't get a permit.

Did the applicant obtain a permit from another entity that violated the law?

**Schwindt:** Not that I know of. There were no permits issued.

Did the applicant make a substantial investment in the property?

**Schwindt:** I would say not substantial. Decks are not too expensive to replace.

Did the applicant complete the repairs/construction before the applicant was informed of the impropriety?

**Schwindt:** I would say yeah, it is probably 80 or 90% complete now.

Are there other similar structures in the neighborhood?

**Schwindt:** I would have to say yes. Decks are allowed and decks are on most lakeshore cabins.

Would the minimum benefits to the county appear to be far outweighed by the detriment the applicant would suffer if forced to remove the structure?

**Schwindt:** We are not asking him to remove the deck; only four feet which was built, which was an addition to what the original deck was.

**Schwindt:** All in favor say aye. All opposed?

**Knight:** Aye.

**Buitenwerf:** Mr. Chairman, just for clarification maybe I missed it, did we do and answer to question fourteen?

**Schwindt:** Oh, I didn't see fourteen. In light of all of the above factors, would denying a variance serve the interests of justice?

**Schwindt:** I would say yes it would because we are allowing the deck to be built as it was originally at eight feet. So do you need another motion now to go ahead and permit an eight foot deck or are we sufficient with that?

**Buitenwerf:** Well I was thinking of that as you went through those findings and you answered the findings, factoring in both facts.

**Schwindt:** My original motion was to include an eight foot deck.

**Buitenwerf:** Right. So I think you are okay. You could also have done it where you did the findings with a motion to deny and then do the regular findings for a second motion to allow the eight foot deck so the fact that you addressed both items in this set of findings I think we are

**Schwindt:** So your office is okay with that?

**Buitenwerf:** Yes.

**Schwindt:** You understand what the motion was and what the variance was?

**Buitenwerf:** Yes.

**Notch:** Correct.

**Schwindt:** So you would be allowed an eight foot deck.

**Notch:** May I ask a question on that based on what you said before? You mentioned a possible seating area to the East which would be behind the setback mark, I don't know if you can answer this, but is something like that typically allowed in my situation?

**Buitenwerf:** Well if it met setback it would be able to be issued by permit but if this variance that is pending is granted then the structure falls under Section 704.7 of the Ordinance which states once there is a variance granted to a structure, any subsequent additions, alterations to the structure require further variance approval. So if this is granted you would then be required to obtain a variance to add on a deck to the side of the structure.

**Notch:** That is what I was curious about.

**Benson:** Well couldn't we, as part of this motion mention that without him coming back for another variance and another \$280 bucks or whatever it is. Couldn't we have that as part of the motion where he would, we would allow him to put a deck on the side as long as it meets proper setback?

**Buitenwerf:** Yeah. You can do that. I would

**Schwindt:** Do you want to see a size?

**Buitenwerf:** I was going to suggest that we would want to have at least some maximum dimension that you are okay with that you could incorporate into the wording of that allowance so that both the landowner and the department know what is and isn't acceptable. You have got 55 feet from the east edge of the deck as constructed to the property line, so there is 45 feet of area that you could build on.

**Knight:** Would he need a permit for that then? I mean since he is back to the original feet, he would need a permit to build it but not a

**Johnson:** A variance?

**Knight:** A variance for it.

**Buitenwerf:** Well as I just explained if this is granted 704.7 of the Ordinance says once you have a variance on a structure subsequent addition and alterations

**Knight:** All subsequent, that's correct.

**Buitenwerf:** Would require a variance so that is why it is being discussed now. If you want to incorporate language to allow some type of a deck

**Schwindt:** Do you have any size that you were thinking about as a possibility? Whatever you are losing off on the front square footage?

**Notch:** It wouldn't even be that much. It is just the way the traffic is on that deck because they come around the house there. You would probably need eight feet I am assuming for a table and chairs outside of that three foot traffic part of the deck, three to four foot so. At this point I am more so curious because I obviously would have to talk to my brothers and sister concerning this but I didn't want to get myself, my hands tied behind my back in getting the new variance and then having to come back again and then the money just on variances and permits starts to add up.

**Schwindt:** How about we just pick a number like 150 square feet or something?

**Notch:** Yeah, that would be plenty.

**Schwindt:** You could build it whatever size you want within that footprint. That way you won't be stuck with an eight by eight when you wanted an eight by nine or you know whatever.

**Notch:** Yeah and it would be off that right corner, it would be the North, the Northeast corner and it wouldn't be going towards the lake it would follow

**Schwindt:** Where the tarp is? Is that the East side?

**Notch:** That would be the West side.

**Schwindt:** That's the West side, okay.

**Notch:** That's the porch.

**Schwindt:** Yeah. So you have already got a small wrap around going around there already so you just want to extend that a little?

**Notch:** Right and that part of the deck on the East side actually angles away from the lake. So the original eight foot out, it would continue further away from the lake and then just jut out and then come right back in, probably at the cabin, at the front of the cabin. So it would be eight foot, the original eight foot plus probably that six feet additional and there is already four so additional six so it would go out a total of

**Schwindt:** That's the East side then right?

**Notch:** Yeah. Northeast.

**Schwindt:** Northeast. Can I amend my original motion to include a side deck, not to exceed 150 square feet? And then Earl had the original second. You want to second that?

**Benson:** I will second that.

**Schwindt:** That would save you a trip back.

**Notch:** Correct.

**Schwindt:** That will give you the seating area you were looking for so. Okay. Any other questions? We are finished with that one.

**Knight:** Do we need to vote?

**Schwindt:** We did. Oh we vote on this second part? Okay, all in favor of the amendment, now we are finished. Thanks for coming.

**Notch:** Thanks for your time.

**Schwindt:** Next we have **Variance Application 9-V-12 by Concordia Birkholz**. Anyone here representing that? Please come forward, state your name and address.

**Jeff Vigdal:** Good Morning. My name is Jeff Vigdal. I live at 50766 County Road 29 and we are here to request a variance so that we can buy some land.

**Schwindt:** Alright, let me read the variance request for the record.

It is the South half of Lot 2 and all of Lot 3, Pleasant View, Section 12, Township 145, Range 34, Rockwood Township on Lake Plantagenet. Parcel #s 22.37.00400, 22.37.00500 and

22.37.00600. Applicant is requesting a variance from Section 707.1, Item 4 of the Shoreland Management Ordinance to allow three contiguous substandard riparian lots to be sold separately with two of the lots being combined with adjacent lots and the third middle lot being left as a standalone undeveloped lot. Lake Plantagenet is a recreational development lake.

Any other questions from the Board?

**Benson:** I have no problem with this. It looks like a good deal to me. You're going to leave the middle lot unimproved and you're going to make the outside lots connected to the other lots so those would be conforming lots so I have no problem with it.

**Johnson:** I have a concern with the center lot of what would happen with that lot once it got separated from the other two as far as what would change with it.

**Vigdal:** Nothing. I mean we just, my young family, will they are gone right now but we have been living there for about eight years and we really enjoy using the lake. Our neighborhood, we are real close with all of our neighbors, you know, real friendly. It is kind of like a little camp out there. So we just the lake with them just as much you know so I guess we just kind of, we have lived there for eight years, plan on, we are pretty well established in our community and figure we are going to be there for a long time and just kind of want to have our own lake access. We have no, it's not, we have no plans of ever building anything over there. There is a nice little trail down it Tim. I don't know if you ever took a look at it.

**Johnson:** Yup. So you would have no problem with the condition no building?

**Vigdal:** Yeah.

**Johnson:** Because as it, if it were separated without that condition it would legally be able to be built on?

**Buitenwerf:** Well the potential would exist for that to be raised as the question on a proposal from someone in the future. So a condition would make it clear that that wasn't to be

**Johnson:** With that condition could we include any type of structure? Say it turned into three campers from friends or maybe it would become a storage place for everybody's fish house.

**Vigdal:** I understand the concern. I don't think the topography there would allow that. It is pretty

**Johnson:** But if any lot did it would be that center lot that would. I thought.

**Vigdal:** What do you mean?

**Johnson:** Would be as far as the topography of the center lot was more usable for coming off that road than the other two lots.

**Vigdal:** Oh. Sure. I can see your point.

**Knight:** Well too there is a boathouse down below on that lot on the lake.

**Vigdal:** Yeah. I understand that the boathouse is repairable with talking with Eric and I guess I am interested in keeping that if it is possible, you know. It needs an awful lot of work.

**Johnson:** I don't see anywhere in here the dimensions of that boathouse. Would we need that on record if this was to be approved?

**Vigdal:** Excuse me. I just measured it yesterday. It is 10'X18'.

**Buitenwerf:** I don't see that it necessary to site the dimensions. If he were to

**Johnson:** Oh so, not to interrupt you Eric, but also just looking at it is in really pretty bad shape. At what point would he need to repair it or would we just leave that open?

**Buitenwerf:** If they would wish to reconstruct the structure when we go out we would first do a pre permit site visit to measure up the structure and if the structure at that time is found to be already deteriorated beyond 50% of its value then a permit would not be allowed to be issued. So I didn't see it that close to be able to gauge whether, to where it is in terms of its degree of degradation. But that would be the criteria; if it is at or above 50% of its market value than he would be able to get a permit to reconstruct it.

**Johnson:** I had another question. Just, I wanted to know if the original owner across the road with the three lots wanted to sell the North lot and the South lot and keep the center lot for himself could he do that by Ordinance or would he need a variance also, that owner?

**Buitenwerf:** I would have to review the file for those lots because there are structures involved and we would ascertain if those lots were improved lots or unimproved lots because that determines how they could be sold.

**Johnson:** Oh, because his hardship seems to be the road between?

**Buitenwerf:** No. His, these three lots fall under Section 707.1 of the Ordinance which says if you have contiguous unimproved lots of record that do not meet the criteria of the Section for development into improved lots then none of those lots can be sold separate from the others without a variance hence the application.

**Johnson:** Oh okay.

**Schwindt:** Does that answer your question?

**Knight:** That road is a township road is it? And maintained by the township? Now are you there all year round?

**Vigdal:** Yes Sir. Yup we live there full time, all year round.

**Knight:** Okay.

**Vigdal:** We really, along with our other neighbors, the Sundquist's that want to buy the other lot, I mean we really just like our neighborhood how it is and I don't think anybody, all three of the parties involved in buying the property nobody is planning on doing any expansions or

building. It is just, we all just kind of like it how it is besides maintaining that trail down to the lake, you know would be the only thing. The other lots, you know the other guys involved, they don't seem to have any interest in expanding or anything either. We would like to absorb those into our properties so it doesn't get sold to a high roller and somebody builds a big mansion kind of like what we see on Lake Bemidji. We understand the Ordinance and why you have it in place to kind of preserve what we all have. That is about it I guess.

**Schwindt:** All right.

**Johnson:** I have got just a little hesitation. By allowing this we are creating an access for you to the lake from across and I read your recommendation there Eric, but where was I going there? Have the other two landowners, adjoining landowners, had an opportunity to purchase the land by separating it between the two? Then they wouldn't need a variance at all correct?

**Buitenwerf:** Correct

**Johnson:** Has it been put up with a realtor, this property?

**Vigdal:** No. It has not been put up with a realtor. Neither two of the other people involved want to buy the center lot. We have talked about all of that too. The doctor that lives to the South is from California, he spends maybe a week there, very nice gentleman, we would love to have him there more but he comes maybe a week a year and some other family members use his cabin once in a while. Larry Sundquist, lives to the north, he wants to buy the other lot and he is there all year round with us. Yeah, I am sure that you guys have heard of some of the problems with Larry's lot. His house is kind of sideways and I think he just wants to add a little more space to his property and then Dave Dubois is the doctor to the South, his garage is right on the property line and so that would make him more conforming to the Ordinance as well on that South lot.

**Johnson:** It actually looks like it was over a little bit.

**Vigdal:** That's possible. Like I said those lines out there change so much depending on who surveys it or who is paying for the survey. Anyway, so yeah those guys are interested in those lots as we are certainly interested in that center lot and so we just wish that you guys would grant that.

**Schwindt:** Okay thank you. Any correspondence Eric?

**Buitenwerf:** Nope.

**Schwindt:** We will open the floor for public comment. Anyone wish to speak in favor of this variance?

**Chuck Diessner:** My name is Chuck Diessner, 24328 Hazelwood Drive, I am speaking on behalf of COLA. We agree with Eric's recommendation and some of the other good comments that have been raised regarding restrictions. We think that this is critical to add a number of conditions to this approval: 1. any maybe that is what Eric intended is that the adjacent lots that are sold to the neighbors cannot be resold separately. They either need to be combined with

the adjacent lot neighbors but they are prohibited from in the future being sold as a separate lot. So I don't know Eric if you intended that they be combined, do they have to be combined with the adjacent owner?

**Buitenwerf:** Uh huh.

**Diessner:** They do? Okay so you don't need a condition then. As far as the variance request for the center lot we would suggest, as Eric did, no new structures, no living quarters, no improvements to the boat house be made to allow them to be used for living so it not become a shelter for down at the water; that the lot remains in its natural state. We don't want trees removed. We don't want driveways put in. That this lot only be used as an access for these property owners or their people buy their lot on the other side of the road. We don't want it to become a snowmobile trail or an access for everybody on the other side of the road and it becomes a party area for the neighborhood. Along with the natural state intent hopefully that would address comment that was made about no storage and I think that is all consistent with the applicant's statements that there is going to be any improvements or changes. Thank you.

**Schwindt:** Thank you. Any other comments? If not we will close the public input portion.

**Vigdal:** I would like to speak again, as far as no improvements how does that refer to dead trees and all that? We can't move anything? How does that work?

**Buitenwerf:** I don't think that would be the intent of a restriction on improvements. I think it is more having to do with the driveways, new structures, that sort of thing. I don't think anyone is looking to keep you from maintaining the property by removing dead trees.

**Vigdal:** Oh okay. It needs some serious maintaining. It hasn't been maintained in ten years at least probably. You guys saw that. Then as far as there is an old boardwalk down there that I am interested in replacing or maintaining. It is in pretty rough shape but it is really low area down there, as you saw, and there are some springs down there. It is real wet. I don't think in most years it would be practical to cross from the base of the hill to the lakeshore without getting your feet wet. So I guess I don't know if, I am asking that you don't put a contingent on replacing that, I mean that we can't do that. Obviously there would probably be a permit involved in that.

**Buitenwerf:** Actually you are allowed to construct a four foot walkway, boardwalk without permit.

**Vigdal:** Okay. That would be no problem then.

**Schwindt:** Is it wider than four feet?

**Vigdal:** No. It is probably narrower than four feet right now. Okay. That is kind of what we are looking to do.

**Schwindt:** The only thing that I can say is before you do anything make sure you get a hold of Eric's office to see what you can do and what you can't do on that lot if you become the owner of that lot.

**Vigdal:** Okay. Yeah I would certainly like to maintain the boathouse. I guess when I talked to you earlier I thought that was something that we could rebuild. You know with having young children and stuff it is nice to be able to store life jackets and stuff down there, especially if it is a walking trail. I am sure that if you have kids you know what it would be like to haul all of the gear for your kids and everything down every time you need to bring life jackets. It would be a

**Knight:** The only thing that I would add is that you remember that this is done by variance and that any other future items would still have to go through the variance committee.

**Vigdal:** Okay.

**Knight:** That is correct isn't it?

**Buitenwerf:** In this particular situation with what we are looking at as far as probable conditions that would be correct.

**Knight:** Okay.

**Schwindt:** Do I have a motion on this?

**Knight:** I move the approval.

**Benson:** I will second it.

**Schwindt:** I have a motion to approve and I have a second. Do you want to approve this, would you like to make that motion with some conditions on it Chick before we

**Knight:** What would you suggest?

**Schwindt:** Go ahead. You seconded it so.

**Benson:** I would suggest we make sure this remains an unimproved lot which allows no structures what so ever other than if the boathouse is capable of being rebuilt we would allow that but no structures, no roads other than a four foot boardwalk or whatever is allowed.

**Knight:** I would approve for my motion. Do we need a second?

**Benson:** Second.

**Schwindt:** I have a motion and then I have a second.

**Johnson:** I was just going to bring up from the I guess I don't feel the need for the condition of the living space for the boathouse because that is not allowed by permit. Correct?

**Buitenwerf:** Uh hmm.

**Johnson:** So if that was to be done it would be a violation. Okay.

**Schwindt:** I don't believe the boathouse is allowed to be rebuilt, just repaired under the definition right?

**Buitenwerf:** Actually you can take a non-conforming structure and reconstruct it entirely so long as what was there to start with is as I mentioned earlier at or beyond 50% of its market value in terms of its current condition. So if you get there and the structure is totally caved in and it is below half of its market value that structure would not be allowed to be rebuilt, but if you had a structure that was 50% or greater market value in condition it would be able to be torn down and reconstructed to those exact dimensions by permit.

**Schwindt:** Okay. Alright so we had a motion to approve and a second. The findings of the fact in this case:

Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

**Knight:** I would say yes because two nonconforming lots will be enlarged by this variance and the existing three lot property that could possibly be developed as a residential building site will be preserved as an unimproved lot and additions to two existing improved lots.

Without the variance, is the owner deprived of a reasonable use of the property?

**Knight:** Yes again, why or why not, making two adjacent nonconforming properties more conforming with the lot size requirements and preserving 1/3 of the space as an unimproved lot as requested by the applicant is a reasonable use particularly when compared to the other possibility of the three lots being developed into a residential dwelling unit building site that would have a greater impact on the lake.

Is the stated practical difficulty due to circumstances unique to this property?

**Knight:** I would say yes. The three lots were created prior to enactment of the Shoreland Ordinance and the Ordinance does not have a mechanism for allowing this proposal (that is more environmentally friendly than other possibly permissible options [e.g. residential dwelling unit development]) to occur except for by variance.

Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Knight:** The difficulty is the plats creation occurring before the enactment of the shoreland ordinance and the ordinance's not having language in it that addresses this unique proposal that is more environmentally advantageous than other options that could be pursued by permit.

Will the issuance of the variance maintain the essential character of the locality?

**Knight:** No additional structures of any kind will be placed on the center lot and the north and south lots will be combined with adjacent nonconforming lots – bringing them more into compliance with the ordinance lot size requirements. The look of the property will not change and thus not negatively affect the surrounding single family dwelling unit uses.

Does the stated practical difficulty involve more than economic considerations?

**Knight:** Economic considerations were not decided.

**Schwindt:** Okay, so we had a motion, all in favor to approve aye? Opposed. You have been approved.

**Vigdal:** Thanks guys. If I may, Maria was extremely helpful in this process for me. I just wanted to say that. Thanks a lot guys.

**Schwindt:** Thank you. Next we have **Variance Application 10-V-12 by James and Anne Dougherty**. Come forward; state your name and address for the record please.

**Anne Dougherty:** Good Morning. I am sorry. I am battling some laryngitis. I am Anne Dougherty. I am at; do you want my home address or the lake address here for the variance purpose?

**Buitenwerf:** Mailing address please.

**Dougherty:** 2118 James Avenue, St. Paul Minnesota 55105.

**Schwindt:** Okay. I will read the request. **Variance Application 10-V-12 by James and Anne Dougherty:** Part of Government Lot 5, Section 14, Township 141, Range 34, Lake Emma Township on Lower Bottle Lake. Parcel # 16.14.01500. Applicants are requesting a variance from Sections 502.7 and 503 of the Shoreland Management Ordinance for a proposed deck attached to an existing non-conforming residential structure located in the bluff impact zone. Lower Bottle Lake is a recreational development lake.

We all looked at it. Are there any questions from the Board?

**Benson:** Well she is allowed to replace the old deck with the new deck and the other addition is going to be around the side of the cabin away from the bluff impact zone.

**Knight:** One of the difficulties that I have with this is that the deck that is there is really too close to the bluff already and although I haven't seen any deterioration of the land underneath it why I feel like it is still a detriment to the place. I would like to see that part of the front deck that is existing deck cut down a little and moved back from the bluff area.

**Schwindt:** Any other questions?

**Dougherty:** Can you explain a little bit more what that means when you say, because we could, can rebuild that deck as it is if we wanted to correct if we scaled it back a little?

**Knight:** Yes you can. You can.

**Dougherty:** So what does that mean when you say you would like to see it come back a little bit? What does that mean, like a foot?

**Knight:** Get it away from the bluff is all. I walked around the front of it and almost fell on off down the bluff and I just feel like if we are wanting this to come off to the side, your living area

would be off on the side. I have to say too that sometimes the new deck becomes room too. In other words people move out and have this deck and they need to expand because the family needs it for family. But on the same token why I think the deck is a little too close to the edge and it is a hazard. That is my opinion.

**Johnson:** I see the deck as being more positive. People are going to be using that to walk around instead of making a trail on the edge of the bluff so I don't have a problem with that existing or the, what she is asking for. The house, the way it is angled and the distance away it is natural to be used on that side.

**Dougherty:** Right now we really pack onto that front deck and it would be nice if we could move the activity away from the bluff for practical purposes, privacy and also just safety. It is a little lower as we get away also; I mean just the elevation from the house to the ground. The topography is a little different there.

**Schwindt:** Any other questions? Any correspondence?

**Buitenwerf:** There was one email that was received and that was passed out to the Board.

**Schwindt:** Do we need to enter that into the record any other way because we already have it?

**Buitenwerf:** It is part of the record. Yup.

**Schwindt:** Okay. I will open the floor for public comment. Does anyone wish to speak in favor or against this particular request?

**Diessner:** I don't wish to speak but I would like to ask Eric for his recommendation on this. I don't believe it wasn't completed in the report. You wanted to review the site so I am just curious on his recommendation.

**Buitenwerf:** The bluff impact zone is not as deep on the structure, deep as being perpendicular to the lake as what it shows on the survey that was done and submitted in the survey, so probably a third of the proposed deck will be outside of the bluff impact zone. Seeing the site I don't really have as many objections, concerns with the proposal as what I had prior to seeing it in person.

**Diessner:** Okay. Thank you.

**Schwindt:** Okay we will close public input then. Any other questions from the Board? If not does anyone wish to make a motion?

**Benson:** I will make a motion to approve variance application 10-V-12 by James and Anne Dougherty.

**Schwindt:** I have a motion to approve by Earl. Do I have a second?

**Johnson:** I will second.

**Schwindt:** Second by Tim. The finding of the fact in this case:

Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

**Benson:** I would say yes. They are just replacing an old deck and adding an addition to the old deck away from the bluff impact zone.

Without the variance, is the owner deprived of a reasonable use of the property?

**Benson:** I would say yes. Most lake homes have decks.

**Schwindt:** Yeah we were on site. There was also a comment made by the landowner that they were going to put in a sliding door off that side of the house so they needed the addition of this piece of deck so that when they walk out of their house they have something to step onto.

**Schwindt:** Did I read the other one, without the variance?

**Buitenwerf:** No.

**Schwindt:** Without the variance, is the owner deprived of a reasonable use of the property?

**Benson:** Yeah we did that one.

**Buitenwerf:** Yup.

**Schwindt:** We did that one?

Is the stated practical difficulty due to circumstances unique to this property?

**Benson:** I would say yes. This cabin and deck were built before the new Ordinances.

Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Benson:** I would say yes. The previous owner built it in the bluff impact zone which was not a problem back in 1977 I guess.

Will the issuance of the variance maintain the essential character of the locality?

**Benson:** I would say yes. It will remain residential lakeshore.

Does the stated practical difficulty involve more than economic considerations?

**Benson:** I would say economic considerations are not a factor.

**Schwindt:** Okay. We have a motion to approve, all in favor say aye. All opposed? Your variance has been approved.

**Dougherty:** Thank you very much for your time today.

**Schwindt:** Thanks for coming. Next we have **Variance Application 11-V-12 by Michael and Kathleen Jay:** Name and address please.

**Michael Jay:** I am Mike Jay, 7436 Byron Place, St. Louis, 63105

**Schwindt:** Okay. The request is for all of the SW ¼ of the NE ¼, Government Lot Two and a portion of Government Lot One, Section 2, Township 145, Range 32, Farden Township on Wolf Lake. Parcel # 07.02.00100. Applicants are requesting an after-the-fact variance from Section 502.2 of the Shoreland Management Ordinance for less than the required 100 foot ordinary high water setback for three accessory structures that are located in the shore impact zone. Wolf Lake is a recreational development lake.

We all looked at it. Anything else we need to hear?

**Jay:** No.

**Schwindt:** Any questions from the Board?

**Knight:** I think these are needed buildings because of the activities that are involved. I realize that they were done without permits but on the same token why they have to have them. I think it must be an inconvenience if you didn't have them for the girls.

**Schwindt:** Okay. Any other questions or comments?

**Christianson:** These are safety buildings. For safety.

**Benson:** Well I don't have a problem with this because there is a steep slope right behind all of those buildings and there really isn't any other place to put it. And if you're going to have activities involving 125 to 150 girls, and you have a doctor there and three nurses all summer, I think that the medical supplies should be down where they are and close to where all of the activities are going to be.

**Johnson:** There was also evidence I seen of the existing structures there, without a doubt. It was there before and maybe you need to use it.

**Benson:** And they have been there since 1929, the old ones?

**Randy Nyberg:** To the best of our knowledge they have been there since 1929.

**Benson:** Okay.

**Nyberg:** From photos that we have and such.

**Maria Shepherd:** Mr. Chair, can I get the other gentleman's name?

**Nyberg:** I am Randy Nyberg, 30656 Quincy Drive Bemidji MN. I am the caregiver of Camp Kamaji.

**Shepherd:** Thank you.

**Schwindt:** Any correspondence on this Eric?

**Buitenwerf:** No, there is none that was submitted.

**Schwindt:** Okay. We will open the floor for public comment. Any public comment on this?

**Diessner:** Chuck Diessner, 24328 Hazelwood Drive, speaking on behalf of COLA. This is a very dangerous application and approval of it is a very serious situation. I understand the need or the request I should say, by the applicant, but how is why is his request any different than a resort? Different than a PUD? Everybody that has property on a lake has a need for first aid. That's not permitted under the State law for granting an Ordinance. The comment was that the buildings were all there. They weren't. He has got two outhouse type buildings that never existed. You are shaking your head no. The application said that there was one central building when I reviewed it and that is a picture of it.

**Nyberg:** I just didn't have pictures of the old other buildings.

**Diessner:** I can't hear.

**Nyberg:** I didn't have pictures of the other buildings.

**Diessner:** Well you need to have pictures. That is one of the things that you were supposed to submit with the application. Everything that preexisted. The other thing that is dangerous about this is after the fact variances. You gentlemen, the Board of Adjustments, the County is trying to get to the point where we discourage people from just going out and doing what they want to do and then come in and plead forgiveness. I would love my neighbors would love, we all would love to have something on the shoreline. The only way we can do it under the current Ordinance is if we have a medical condition. If the person that owns the property has a medical condition. That is not the situation here. I think that it is unfortunate they didn't know they had to get the permit. The previous, the first application that you had was that they rebuilt a deck, replacing a deck that was already there but they made it larger. They have done the same thing here. We think you shouldn't even allow some of this stuff to be rebuilt but this appears to be somewhat innocent so if you are going to allow something to be rebuilt, allow it to be rebuilt, the same as you did on the first case, and that is only to the size that was there before. Two outhouse structures, there is no evidence that they ever existed. The central building, that's much smaller than what was constructed by the applicant. We can't have people on our lakes that go around and construct something like this on the shoreline. You gentlemen are here to protect the lakes. This doesn't protect the lakes. Let's talk about what the Ordinance says and what the State law requires. The State law requires a practical difficulty that is unique to the land. What you have done is converted a slope into a need for buildings on the shoreline. Does that mean that everybody that has a slope can build something on the shoreline for convenience? This is for convenience. If you approve this variance it is contrary to the State law. There is no way you can justify this under State law other than the right to rebuild a pre-existing, nonconforming building to the standards that existed for that building by permit. We are talking about there's a statement in here about insurance and safety. It is rather interesting if you look through the application, each one of these buildings is for first aid, safety. Look at what they also submitted on the property. One of the outhouse buildings water ski storage first aid. We don't need an outhouse for first aid.

**Nyberg:** They are not outhouses.

**Diessner:** Well it looks like an outhouse. I am equating it so that I can talk about the size.

**Jay:** They are not outhouses.

**Diessner:** Okay. Outhouse like building is that okay?

**Nyberg:** They are first aid storage buildings.

**Diessner:** But we don't know I don't know what goes into a first aid facility but that building is not for first aid only. By their own admission it is for water ski storage. The other one is for the yacht club and then they also penned in after first aid. Another one is for water ski storage and first aid. You can't approve this. It is Pandora's box. You won't be in compliance with Minnesota law and it is unfortunate but it needs to be denied. Thank you for your time.

**Schwindt:** Thank you. Any other public comments? If not we will close the public comment section and move onto the Board members. Any other questions?

**Christianson:** Doesn't COLA have some common sense or what's the deal here anyhow. Every month they are here, raising something.

**Diessner:** We have common sense. The difference is

**Christianson:** We don't have it apparently.

**Diessner:** No I am not saying you don't have common sense. You would like to, and I have said this before before the Board, you would like to accommodate the property owners. That's fine. But your job as a member of the Board of Adjustments is to grant variances that are only consistent with State law and with the Shoreland Management Ordinance. And if you don't do that we ought to rip up both of those documents and we ought to get rid of variances because then you can do it for any purpose. Whether we like it, you like it, every single County is governed by the same standards. And the legislature last year, like it or not, amended the law and I believe you all have been instructed on that in terms of what the new law means and what the practical difficulty means. There is no practical difficulty here. There is not a denial of a reasonable use of the property and it is not unique to this property. So we are practical but what we are trying to do is to make sure that the variance granted are in accordance with the law and Ordinance. Thank you.

**Schwindt:** Thank you. Any other questions?

**Kittilson:** Lou?

**Schwindt:** Oh, go ahead.

**Kittilson:** Dan Kittilson

**Schwindt:** I called the public; I closed the public comments already.

**Kittilson:** You did?

**Diessner:** He is responding to Arnie's comment talking about COLA's common sense.

**Christianson:** You already closed it.

**Schwindt:** You want to hear it?

**Christianson:** I don't care. It doesn't matter.

**Schwindt:** He is responding to your comment. If you don't want to hear it then we won't hear it.

**Christianson:** No I don't want to hear it.

**Schwindt:** I closed public comment. I am sorry. Any other questions? I only have one question myself and that is the small structures, they appear to be outhouse looking but I know you said they were for other purposes, why can't those little structures come back to the 100 foot mark and be legal structures? Why do they have to be within the shore impact zone? Why do they have to be so close to the lake? Especially that one, it looked like there was plenty of room to move it back to the 100 foot line. I am not opposed to the little structures but why can't they come back off of the lakeshore?

**Nyberg:** Well I think the 100 foot line would be up the stairs. Up to the top of the bluff because I am pretty sure that it is maybe 50 feet to the bottom of the stairs to the lake.

**Schwindt:** I didn't measure it to see where the 100 foot line would be but

**Nyberg:** I know on my map I have, I think a building up there

**Schwindt:** I know there is a slight slope and some stairs and stuff to get to those things

**Nyberg:** I rebuilt it, actually probably a little farther away than the one that was there; different spot because I left the other building there until I had the new one built and then I moved the stuff over to the new one only because it had been there for

**Schwindt:** Well again under the Ordinance you could have rebuilt of like kind; the same size, same shape, same exact spot but you didn't do that see. Now what I would like to see is those two that we have no evidence that they were ever there except for it looked like there was a little spot in the ground where there could have been one sitting, those be moved back to the 100 foot line and the other one, I could see where it replaced an existing structure so I don't have a problem as long as it is replacing the existing structure. But you made it bigger.

**Nyberg:** It is eight feet bigger in the back, yes, and two feet higher.

**Schwindt:** So I have a problem with that too. I mean I agree with Chuck on that point because if you can replace it by permit then I don't have a problem with you replacing it even if it is after-the-fact because I am not here, I don't think we are here to take something that you could have done had you just followed the procedures. So I would like to see that one scaled back to whatever size the old one was.

**Jay:** That's fine. That's not a problem.

**Nyberg:** It can be done. I know he is not the builder thing and I take kind of pride in these things and I have learned lot from this process. Never again will I ever do this. I have only been the caretaker for five years; never again will I do it without going through Eric of doing anything.

**Schwindt:** Well we run into that all of the time.

**Nyberg:** I know you do.

**Schwindt:** People just are totally oblivious that we have rules and regulations in this County.

**Nyberg:** Totally naive. I haven't even lived in Minnesota except for until I got here so I didn't know all the rules or on a lake. I lived in North Dakota; very few lakes, very few trees. So I have learned a lot.

**Schwindt:** It is not my job to sit here and lecture anybody

**Nyberg:** I understand.

**Schwindt:** But what I am saying is can we agree that there are certain things that you can do and you can't do. I myself am willing to say okay you didn't get a permit but that structure was there before. The other two, I don't know, so can we get them back to the 100 foot line? I think so.

**Nyberg:** I think I would almost have to tear them down to get them up there because there is not another way to get them up there.

**Jay:** I am not sure. On one of them, I don't think it would be a problem. On the one that's down by the, did you guys look at the one at the bottom of the stairs there?

**Schwindt:** Yes.

**Jay:** That's the one I am not sure if there's enough room to move it back 100 feet. The other one there is. That's okay.

**Schwindt:** Well this one can get back at least 75 feet I think.

**Nyberg:** I could probably move them.

**Jay:** Go back to where the stairs are?

**Schwindt:** Back to where the slope starts on that hill.

**Jay:** Yeah.

**Schwindt:** At least you are out of shore impact zone and it's not visible from the lake you know, because you could get it back into those trees a little bit.

**Jay:** Yeah. I just don't know the footage.

**Benson:** Well I think that where those stairs start that has to be 100 foot setback to get from the water.

**Nyberg:** I don't think it is quite 100 feet but it might be

**Benson:** Oh. Okay.

**Nyberg:** It is a lot closer to 100 than it is 50.

**Benson:** It seemed to me that there was acceptable.

**Jay:** If it is then yeah it can go back there.

**Nyberg:** There was no reason why I chose where they were at other than it was really close to where the other buildings were, right pretty adjacent or wherever I could put them.

**Schwindt:** Anyone want to see this location again to see where the building could be set or

**Knight:** I have already got pictures in my mind. I think it should be moved back.

**Schwindt:** Or do we just want to say set it at 100 feet? Eric would you like to go out and see this again or measure or see how far back they could really get with that building or are you just opposed to having it within the 100 foot?

**Buitenwerf:** We will do whatever the Board would like the department to do as far as scheduling lot viewals or measuring possible alternative locations.

**Schwindt:** Well we could just leave it that you move it back to 100 feet and if that becomes impossible you can come back to the Board with another request. How's that?

**Nyberg:** By way of permit or just contacting the office?

**Schwindt:** I think you can, can they permit them back at 100 feet?

**Buitenwerf:** Uh hmm.

**Schwindt:** They have got enough space there to put more than one building if they prefer. Do you want to try that?

**Nyberg:** I am just thinking that if they are there for safety and the kids are right down there at the dock if you put them up in the bluff than that's not going to be right where the stuff is needed. It is going to be up the hill. If there was a hurt leg or something like that, that is the reason why they are that close, they are that close for the ten kids that are on each dock and over at the yacht club there could be 100 kids down there at a time.

**Schwindt:** The yacht club is not a problem. You just have to make that a little smaller. Mt is the other two buildings.

**Nyberg:** I am just thinking that the closeness is for the safety reason. It is right there, right where the dock is where the kids are waterskiing and if you move it up, we might as well just put it in a cabin, the storage and safety equipment that's right there.

**Schwindt:** If you have to go that far, but if you only have to come back 100 feet then.

**Nyberg:** Well I am pretty sure that 100 feet is up the stairs and the other one is up by the cabin, real close to the cabin, cabin 5.

**Jay:** I would have to be out there with a measuring tape

**Nyberg:** If you look at my map the 100 foot mark is marked on there away

**Schwindt:** That stair going down had several landings on it?

**Nyberg:** Nope. Well yeah it did.

**Schwindt:** It didn't? So couldn't you, you are allowed an expansion of that landing so couldn't you just put like a little expansion on the side of one of those landings and set it right there on the stairs going up and down?

**Knight:** Again I am going to say this, for the health, safety and welfare of the people that are there the minutes, half minutes, seconds of convenience to the proper equipment can mean the safety, welfare and the life of the person involved. Due to the fact that the business and you have how many girls stay there at a time during the summer?

**Jay:** About 140-150.

**Knight:** About 140 or 50 girls stay there and I am sorry but I have worked with some girls and sometimes they are a little scatter-brained and maybe I shouldn't say that but you need it.

**Jay:** The practical use of this, I mean for storing the skis it doesn't, you know that at 100 feet that's fine. The problem, we belong to an organization called the American Camp Association, they have rules and standards book like this, and a lot of it do with first aid and accessible and all of that stuff. So we are required to have certain equipment wherever we have groups of children participating in the thing and there is you know where the stables are we are required to have certain things there because there is horses and this and that and when you have waterfront activities you are required to have certain whatever you are supposed to have right there. And so if you were down there I don't know if you would have even noticed but by the area where those old stone steps are, that is where our swim area is and we have this little tiny thing there because we are required to have whistles and you know, in other words that activity requires these things. So the reason that the original buildings, which I know you didn't see, but the original buildings were there, the first aid kit and safety communication stuff is right there so if someone gets hurt it is there. If they need, we keep an air horn in there so if there is an emergency they can blow the air horn, you know and all of those things are a part of like I said, part of this American Camp Association accreditation program. I don't know if they were 100 feet away I don't know if that would meet the standards or not but from a practical standpoint like I said if you are blowing the emergency horn you know the staff member who is supervising

the children on the dock, I would rather have her right there supervising the kids on the dock particularly if there is something wrong then to say well run back and get this and then come back. I mean would it potentially is it a disaster, I doubt it but I think having that safety equipment there and the first aid stuff and the emergency notification right where the activity is taking place seems like a good idea to me.

**Schwindt:** We are talking storage here so what I am saying is move that building back to 100 feet, if you need to set it next to the stairway or if you need to add to the stairway a small landing, we are talking about a 4'X5' size building here.

**Jay:** Right. That's what was there.

**Schwindt:** So attach it to the stairway somehow at 100 feet setback; use it for storage and if you are going to go to the beach take the safety equipment with you. I mean if you are taking small first aid kits, small air horn. That doesn't need to be in the storage building when you are having the activities. It just needs to be in the storage building at night so you can it away for the day. I don't have a problem putting that at 100 feet.

**Jay:** Could we put a little tiny mailbox size thing down there? Because if we lay it on the ground it's going to get, if we just lay it out there, you know we have so many kids back and forth that's not going to work to well. I mean even if we just had a little, like I said, even a mailbox size thing.

**Schwindt:** You pick it up at night and put it in the storage building.

**Jay:** A mailbox?

**Nyberg:** We would probably attach it to a post or something.

**Schwindt:** A small or box or whatever you are going to put it in for the day use. You see what I am saying? Could you have a day use box and then put it in the storage building at night?

**Nyberg:** We are talking like a little building that we would attach to a post that we could stick stuff in to so that we can secure it so that it is always there.

**Jay:** Or just hang it on a tree or something so we can have it, have the first aid and emergency equipment accessible to where the kids are and then put the skis and the life vests at the end of the day back in the thing 100 feet away.

**Schwindt:** I don't know. What size, they are talking mailbox here, I mean.

**Buitenwerf:** If you are looking at, yeah, something along the lines of a mailbox we aren't going to require that to meet setback. That would be reasonable for

**Nyberg:** It would probably be a little bigger than a mailbox.

**Schwindt:** Is that considered a structure?

**Jay:** Yeah. The thing that is there, the thing that is by the swim area is what maybe a foot?

**Nyberg:** I think we called it a birdhouse or something.

**Jay:** Yeah. It is about, probably about eight inches.

**Nyberg:** A foot deep and a couple feet high.

**Jay:** It is like this big by this big by this tall. We put the first aid kit and stuff in there. If that is okay that would help with the safety stuff. It would be, like I said, this big. We could leave the safety

**Schwindt:** We aren't trying to unreasonable. We don't want you to have an unreasonable way of doing business.

**Jay:** No. That would allow us to keep the emergency equipment right there where it is needed but the storage shed for the skis and the life vests which isn't emergency equipment, well I guess the life vest maybe, but that we could move those back 100 feet.

**Schwindt:** Right. I think you should.

**Jay:** If that is okay? That seems to me from a safety standpoint we are okay dokey.

**Schwindt:** That would satisfy the variance or the Ordinance that you are complying with the rules by moving those buildings back to the 100 foot line.

**Jay:** Right.

**Schwindt:** But still we don't want you to lose out on any safety stuff but I am saying most safety stuff is fairly small. You just take that to the beach and at night just take it back to the shed.

**Jay:** Well and all I am saying is we would like to put a little something there so that it is off the ground. Like I said, it literally would be a medium sized, mailbox sized thing. We would just put it on a post or stick it, nail it to a tree.

**Johnson:** Nobody has any pictures of those existing or other two existing buildings out of 150 kids there in a summer?

**Nyberg:** I looked through everything.

**Jay:** I could probably, I could sure look.

**Nyberg:** I could look through my stuff.

**Jay:** They were pretty unassuming little 4'X5', kind of lean to sort of thing.

**Johnson:** I understand the need for these for a girl's camp.

**Nyberg:** They were like two feet deep and six feet wide.

**Jay:** Yeah.

**Nyberg:** More of a cabinet than a building.

**Jay:** I have no idea of when they were first constructed but

**Nyberg:** There would have been no reason to take a picture of them

**Jay:** Yeah because all of the pictures that I have of that area are looking out towards the lake because they ski there. Well I could look, I mean I don't know. To answer your question I just don't know. I could look for them. I could ask the kids to send me a picture if they had one.

**Johnson:** I believe that there were structures there. I don't disagree with that.

**Nyberg:** They were more of a wardrobe looking thing.

**Johnson:** I believe that it is a comfort to parents if they knew they were there when they sent their kids there.

**Diessner:** Excuse me, I know you closed public comment but could I say a couple of things?

**Schwindt:** Are they related to this? Or are they just general?

**Diessner:** Yeah and your suggestion.

**Schwindt:** Okay.

**Diessner:** I want to show Arnie that we are practical. What you are doing here is you are separating the safety issues from the variance issues. The safety issue is really simply solved by the applicant's suggestion of a mailbox. Put it on the dock. It doesn't even have to be, it doesn't have to be in the ground so now you are dealing with a structure, put it on the dock. You can put a box on your dock. You can attach something to the side of your dock that's got all of the equipment. It's right there. It's on the dock. Nobody has to do a thing.

**Schwindt:** Is there a size limit when it goes on the dock?

**Diessner:** The DNR controls what goes on the dock and right now the dock rules for the DNR are kind of up in the air. I don't think they have anything to worry about and particularly if you are talking about a mailbox size accessory part to the dock. The second part, your suggestion of taking the two outhouse type structures and putting them back at the 100 foot mark, hallelujah, that solves the problem because that is where the ski storage is and the non safety storage. Then if you look at the preexisting yacht club, I agree. Technically, there should be some type of penalty for people that just go ahead and build and don't follow the Ordinances. So what I would suggest is this, do what you suggested, and that's have the structure that replaced the old yacht club structure down sized to the old yacht club structure size, and require that they put some type of a buffer zone around it for runoff. One of the concerns about buildings in the shore impact zone is runoff that gets into the lake. So there is a little bit of a penalty, not much, but it helps protect the lakes. That is something that they can do. It could be a project for the campers. They can learn some ecology and I think this matter should be resolved quite easily. Thank you.

**Schwindt:** Thank you. There you go. That's a good idea. See it didn't flash on me that you could attach something to that dock because there is a dock going out there.

**Jay:** Yeah and that is fine.

**Schwindt:** And that will solve the first aid issue problem.

**Jay:** Sounds like a plan to me.

**Schwindt:** Okay. Good. Any other questions? If not we will entertain a motion. Alright, I will make a motion. I will make a motion that we deny variance, let me make sure I have got my paperwork here, 11-V-12 by Michael and Kathleen Jay. We will deny it as it was requested. I think what I will do is rather than speaking to the yacht club issue now we will just deny the whole variance and then we will come back and approve that building at the original size. Would you rather see us do it that way?

**Buitenwerf:** Uh hmm.

**Schwindt:** Rather than trying to make a motion and including all of that? Okay. So I have made a motion to deny it as it was requested. Do I have a second?

**Benson:** I will second it.

**Schwindt:** Okay I have a motion to deny and a second.

Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

**Schwindt:** I would say no. We have no evidence that these two little structures were there before. They are in the shore impact zone and I don't believe that was what the shore management rules intended.

Without the variance, is the owner deprived of a reasonable use of the property?

**Schwindt:** I would say no. He will continue using it. These were there for storage of skis and jackets and stuff like that. They will still be able to do that but we want those back at the 100 foot setback.

Is the stated practical difficulty due to circumstances unique to this property?

**Schwindt:** I would say not necessarily unique to this property because there is room to put those back at the 100 foot set line.

Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Schwindt:** They were created because the landowner built these two small structures without a permit.

Will the issuance of the variance maintain the essential character of the locality?

**Schwindt:** I would say that we are not going to issue the variance but the character of the locality will remain the same.

Does the stated practical difficulty involve more than economic considerations?

**Schwindt:** I would say that no economic considerations were involved.

Why did the applicant fail to obtain a variance/or comply with the applicable requirements before commencing work?

**Schwindt:** I would say no.

Did the applicant act in good faith?

**Schwindt:** I would say yes. He just didn't realize he needed a permit.

Did the applicant attempt to comply with the law by obtaining the proper permits?

**Schwindt:** I said no. He didn't get any permits.

Did the applicant obtain a permit from another entity that violated the law?

**Schwindt:** I would say no other permits were issued.

Did the applicant make a substantial investment in the property?

**Schwindt:** I would say no. These small buildings were not really a substantial investment.

Did the applicant complete the repairs/construction before the applicant was informed of the impropriety?

**Schwindt:** Yes. These little structures are there now and they are going to be moved.

Are there other similar structures in the neighborhood?

**Schwindt:** I didn't really look in the neighborhood but if they were they were probably grandfathered.

Would the minimum benefits to the county appear to be far outweighed by the detriment the applicant would suffer if forced to remove the structure?

**Schwindt:** Again I would say no. I don't see any detriment to the County.

In light of all of the above factors, would denying a variance serve the interests of justice?

**Schwindt:** I would say yes. The implementation of the Ordinance requires that these buildings be back at the 100 foot line.

**Schwindt:** So we are going to deny the variance. All in favor say aye? All opposed? Now what we want to it amendment to that variance request and allow them to have replaced one structure, which they are referring to as the yacht club to its original size which I don't have the

measurements of in front of me I don't think but somewhere there must be on the file. We have photos which show it. And then allow it to be reconstructed at its location which could have been done by permit prior to tearing the old one down. So whatever the size was, that's what the size of the new on will have to be. Okay?

**Jay:** Can it be a little bit taller because we would; I mean it was built in 29. You would walk into it and hit your head.

**Schwindt:** The rules say exact size I believe Eric, but I myself don't have a problem with the extra foot or whatever it is taller.

**Nyberg:** It is about two feet higher.

**Jay:** Yeah.

**Schwindt:** As far as size wise the height is okay.

**Jay:** Okay.

**Nyberg:** It would be the back eight feet removed.

**Jay:** Yeah, that would have to be removed.

**Nyberg:** Which was not there before.

**Schwindt:** Okay.

**Jay:** Do you want us, when this stuff is completed, what do we, I mean should we go ahead and do this, you know, I mean he isn't going to be able to move them by himself so the ones that have to be moved back we will have to wait until we have a few more people there but for the, can he go ahead and do the alteration to the yacht club and then should we call you and say come check it or do we have to apply for another variance or?

**Schwindt:** My question to Eric was going to be a timeframe that he would like to see because it keeps his books open. He can't close them until everything is complete. If there is a timeframe that he would prefer that fits into your schedule then we could put that as part of the motion that this needs to be done by a certain date so let's see if we can get a date on that about. Ninety days, can you live with 90 days?

**Jay:** Oh sure.

**Nyberg:** Isn't that going to put us in the middle of camp?

**Schwindt:** Does that keep you open too long?

**Buitenwerf:** I would say 60.

**Schwindt:** How about 60 days.

**Nyberg:** I am trying to think, that's going to be right at the beginning of camp.

**Jay:** We can sure get the sheds moved easily within 60 days. I don't know that we want to be doing the construction work while the kids are there but we could sure get the things moved.

**Nyberg:** I think I can move the two little buildings up.

**Jay:** Yeah that is for sure within 60 days.

**Nyberg:** As far as tearing off the back of it

**Jay:** Yeah we can probably, 60 days is, yeah, we can get it done. We will.

**Schwindt:** Do you want to see a photo then when it is complete?

**Jay:** Or do you want to come out?

**Schwindt:** Or are you going to make an inspection?

**Buitenwerf:** You can contact us when the work is done and we will send Jeff or Scott out to verify.

**Jay:** Okay dokey.

**Schwindt:** Is that agreeable?

**Jay:** Sure.

**Schwindt:** So we will make part of the motion that this be completed within 60 days.

**Jay:** Gotcha.

**Schwindt:** Do I have a second?

**Knight:** Didn't Earl second?

**Schwindt:** Anything else that you would like to see as part of the motion?

**Buitenwerf:** We will just need a second now.

**Schwindt:** Ah Chick.

**Buitenwerf:** Okay.

**Schwindt:** And the findings of the fact let's see if I can find my book again. I have to get a little bit more organized. This is my first meeting. Where'd I put it Arnie?

**Jay:** I am impressed.

**Christianson:** I don't know.

**Schwindt:** Here we go. The finding of the facts:

Is the variance in harmony with the intent of the comprehensive plan?

**Schwindt:** I would say yes on this yacht club construction. It is already finished and we are going to allow it to stay but made to the size of the original which could have been done by permit.

Without the variance, is the owner deprived of a reasonable use of the property?

**Schwindt:** I would say yes. Replacing a structure with a like kind structure is a reasonable use of the property.

Is the stated practical difficulty due to circumstances unique to this property?

**Schwindt:** I would say yes it is unique because there was a structure there once before. It was torn down and replaced by a new structure without a permit.

Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Schwindt:** I would say that the difficulty here is the fact that the old structure has been removed but there is evidence that it was there by photos so we will allow it to be reconstructed to its original size.

Will the issuance of the variance maintain the essential character of the locality?

**Schwindt:** Yes this is a girl camp. It will remain a girl camp and be used as a girl camp.

Does the stated practical difficulty involve more than economic considerations?

**Schwindt:** I would say no economic considerations were involved.

**Schwindt:** Okay. All in favor of the motion to approve that structure aye? Opposed? So you will just need to shorten it up to make it comply with the old structure.

**Jay:** We will get it done. Okay dokey.

**Schwindt:** Okay. Anything else on the agenda?

**Knight:** I move we adjourn.

**Benson:** I have got something. Mr. Chairman, I do not know if I am going to be here next winter so I don't know, you are going to be gone for what, four months?

**Schwindt:** Ah yes.

**Benson:** Well I might be gone for four months too. So who, so it probably isn't a good idea to out me as Vice-Chairman.

**Schwindt:** Well when I am gone they usually appoint a temporary chairman and if you are gone they can appoint a temporary vice chairman if they need one. So I don't think that is a problem.

**Benson:** Okay.

**Schwindt:** Okay. I had a motion to adjourn.

**Christianson:** Second it.

**Schwindt:** A second by Arnie. We are adjourned.

Meeting was adjourned at 10:58.

Respectfully submitted by:

Maria Shepherd  
Recording Secretary

**Board of Adjustment  
May 21, 2012 Meeting**

**Schwindt:** We will call to order the Board of Adjustment public meeting for Monday, May 21, 2012. We would like to welcome everybody to the meeting. I also would like to remind everyone that if they intend to address the Board that there is a signup sheet in the back. You need to sign the sheet. I will introduce the members of the Board. I have Chick Knight, Earl Benson, myself Lou Schwindt, Arnie Christianson, Ken Grob, Eric Buitenwerf from the office of Environmental Services and Maria Shepherd recording. All of the meeting is recorded and what we will do is we take everything in the order that it appears on our worksheet. When your name is called for your particular variance request, we need you to come forward. We need you to state your name and address. If there is anyone in the audience that wishes to speak either in favor or in opposition to your request we ask them during the public input section to go to the podium and speak whatever they need to say. Cell phones, if anyone has a cell phone, we ask that you turn it off during the meeting. If you want a copy of the minutes just make a note as you are signing up that you would like a copy and they will get you one. If your variance is approved you also keep in mind that you still need to then continue getting the permit processes and permit that you need. That will generally take a couple of days and then you can go upstairs to the office and pick them up. We ask that if you are making any public comments that you try to hold it to five minutes or less so that everyone one that wishes to speak has a chance to do so. We have, on the agenda, a couple of changes; well first we will do the minutes. Let's do the minutes. We all had a chance to review them. Any changes or corrections to the minutes from our previous meeting in April?

**Knight:** I move we approve the minutes from the meeting.

**Schwindt:** I have a motion to approve. Do I have a second?

**Christianson:** Second.

**Schwindt:** Second Arnie. All in favor aye? Then we have a request or a change in the variance application 16-V-12 by Wayne Luksik and James Canada. They have requested, is there anyone here for that particular variance? So what they are asking is to move that to the July meeting. So if there was anyone here they wouldn't be waiting around for us to get to it because it is down the agenda a little ways. We will make a motion or would anyone wish to make a motion to table that until the July meeting?

**Knight:** Do we need to?

**You Buitenwerf:** Actually we are not in need or

**Schwindt:** We don't need that?

**Buitenwerf:** A motion on that Lou.

**Schwindt:** We have a written signed request already to do that?

**Buitenwerf:** Yes.

**Schwindt:** Okay.

**Buitenwerf:** We just needed to note that for anybody in the audience who would be here for that item.

**Schwindt:** So it is just moved to July. Thank you very much. Also for everyone else's information we have right after this meeting, the Board of Adjustment is going to go into a closed session via Minnesota statute 13d.05

subdivision 3b. So there will be no public in that session and that will happen right after this public meeting is over. First on the agenda, then we will hear **Variance Application 12-V-12 by Harry Michelson:** Lot One, Block D, First Addition to Pine Haven Beach, Section 17, Township 139, Range 34, Hubbard Township on Long Lake. Parcel # 14.38.42100. Applicant is requesting a variance from Sections 501.2 and 506 of the Shoreland Management Ordinance for a proposed guest cottage in an existing structure on a lot that does not meet any of the required minimum lot dimension standards. Long Lake is a recreational development lake.

Would Mr. or Mrs. Or both Michelson's come and present their case to the Board for us.

**Harry Michelson:** You have two Harry Michelson's here. I am a junior.

**Schwindt:** State your name and address for the records please.

**Harry G. Michelson:** my name is Harry G. Mickelson and our address is 13998 Chippewa Loop Park Rapids MN.

**Schwindt: Okay.** Thank you. We all looked at it on Thursday. Is there anything that you would like to explain to the Board, or anything that you would like to address to the Board?

**Michelson:** I don't know other than the story of how this all happened. We originally thought that we would like, we had to get some storage and we thought that making a little bit bigger upstairs would make a nice storage place and when I put in for a permit, I am a mason so I dug it into the ground and did the block foundation. That was in August that I apply for the permit, it went through, all we did basically that year was prep the area, taking down a couple of trees and then next year it went around a year and ran out and in that interim I had talked to our carpenter contractor and we have several neighbors that have lofts above their garages with sleeping and we felt that that would be a nice thing to add on. Originally we had and thought that. It was going to be a garage and storage and then we changed our minds to having it be a nice place for the kids to sleep. So Larry went ahead and did that, at the time, I did not realize that I had to have a deck permit for that. It went beyond me and also at that time I didn't know that I needed a variance for the kids to sleep in there. So when I applied for the second permit this young lady here filled me in that oh you need a variance so we did that. Sent it in. And it was denied because it was not enough explanation, so I came in and March, this year, and did it again, applied for the variance and we set up, you guys came out and this is why and how we are here now. So basically what we are looking for is just a place for the kids, our grandchildren to sleep when they come up because we are overcrowded in the little cabin that we have. There will be no plumbing; no water; no nothing in it. Just a bunkhouse for the children. That is what we are asking for is a variance to allow us to have the kid sleep upstairs.

**Schwindt:** Okay. Any members have any questions?

**Grob:** The original permit states, no living quarters approved without a variance and yet you say that you were not aware of a variance be needed or a deck?

**Michelson:** Well, no. I was asked when I applied for the original permit, if we intended to have anybody sleep up there we said no not really but then after a year had gone by and after meeting with our neighbors and talking to the carpenter contractor. He said it would be a beautiful place to have the kids. So now we have a place that we will probably have a lot of storage of lawn furniture and boat and toys and what we needed to make the property be convenient.

**Grob:** I guess I was still coming back to the point that it says no living quarters without approved variance on the building permit. I don't know how you could've missed that and not come back before you literally made it into living quarters at this point, and a bedroom already up there. It seems to me that you have already done what you are asking for is a variance at this point. It is complete.

**Michelson:** Well it depends on the time on it. I guess because we originally applied for the permit in August and it ran out. I had to go to the next August and in that interim we decided that it would be, well naturally we had a thought that it might be a place for the kids to camp out like an overnight thing but we decided to make it nicer.

**Grob:** I guess the point you are missing, I don't mean to lecture, but the point you are missing is that in fact this was to be a storage area, not a living quarters and it is currently finished off. In my mind it is a better looking bedroom than mine.

**Michelson:** Mine too.

**Grob:** Yeah. So it seems to me that you are asking for a variance for something that you have already done as to oppose to what would you do to make

**Michelson:** Well yes it is done.

**Grob:** What would you do to make it living quarters or a bedroom that you have not already done?

**Michelson:** Beds.

**Grob:** Beds. So you are basically asking for permission to put beds up there?

**Michelson:** I guess so. Otherwise it is just storage. I think I explained that in my second, the second time I, well when I applied for the variance, the second time. The first one you denied me because I didn't have enough words or the explanation wasn't clear enough and it was sent back.

**Grob:** Is there electrical service up there?

**Michelson:** Yes.

**Grob:** Okay. But not any water or septic?

**Michelson:** No.

**Benson:** Eric, a guest cabin in would be allowed to have water and a bathroom and all of that. As a building or a place for just people to sleep and is that considered a guest cabin?

**Buitenwerf:** The Ordinance has a definition of a guest cottage that I would suggest you reference and I can read that for you. A guest cottage is defined as a structure used as a dwelling unit that may contain sleeping spaces and kitchen and bathroom facilities in addition to those provided in the primary dwelling unit on a lot.

**Benson:** So as it is right now it would be considered a guest cabin? Even if it doesn't have water?

**Michelson:** There is no water.

**Buitenwerf:** Yes.

**Benson:** Okay. Well I can't go along with this. In Eric's report it says you got 7,405 square feet on the lot and you are supposed to have 80,000 square feet. You are supposed to have 225 foot of frontage and you have got 50 so there is no way that I can go along with this.

**Michelson:** Well that was divided in 1926.

**Benson:** It doesn't make any difference.

**Michelson:** That uh

**Benson:** If we did this for you we would have twenty five applicants next month asking for the same thing.

**Michelson:** So what you are telling me is that we can't have people sleep in it?

**Benson:** Not according to what Eric said. That is all I have.

**Schwindt:** Any other questions from the Board?

**Grob:** My only question is, and maybe for Eric is, given the finishing off that has been done, is this a candidate that your office would have to consider for an after-the-fact variance if we denied this one? Because in my mind it is already a bedroom, whether he threw sleeping bags on the floor or put beds in there or not. Would this be a candidate for an after-the-fact variance at this point? If you were to do a compliance check or is that not something we deal with here?

**Buitenwerf:** It would depend on how the building is being used so we would need to see evidence of it being used in a manner that fits the guest cottage definition. Just because an interior space is finished a particular way doesn't mean that any particular use is occurring that is or is not permissible.

**Grob:** Okay.

**Schwindt:** So as it sits right now we have a garage with a finished loft or basically a finished loft? No bedrooms and no beds are going to be put up there? So the kids can still go up there and play cards or play pool if you put in a pool table or whatever

**Michelson:** They can't have an air mattress and but go for the night?

**Schwindt:** Well I think that is splitting hairs because if you blow it up in the morning and take it down in the evening or blow it up in the evening and take it down in the morning on an air mattress it is going to be pretty hard to detect right? I mean is that considered a bed? Like no beds? Then it is like well what if they just sleep in a sleeping bag. Is that considered a bed? I mean where do we take this? I don't know.

**Michelson:** I don't either. I have a, as far as Earl's comment about the square footage, I don't understand what you are referring to, the square footage is?

**Benson:** Of the lot.

**Michelson:** The lot is minute.

**Benson:** Yes.

**Michelson:** Yeah. And we did all of the outback and outlays and did all of the distance from the lake has all been documented. And you are saying, I never knew or realized that you had to have so many square feet of the lot in order to put so many square feet of building on it? I never read that or seen it anywhere.

**Grob:** Section 501 of the Ordinance.

**Michelson:** I am sorry that I have never read 501.

**Grob:** Should we just vote on the variance as being requested and so on? I think that both Lou and Earl bring up the point of creeping elegance of what already has been done. It is really now a bedroom. He has done what he is asking for and that bothers me that if we just deny the variance. He still has what he wants as living quarters. You can put a couch up there, a fold out couch and it is a bedroom. There is all kinds of things. By leaving what's there has enabled a bed finished bedroom to exist and that is a concern to me. So I don't know how the Board wants to deal with it.

**Michelson:** I applied for the variance prior to it being a finished product. It was denied, I was denied as a result of wording. Then I applied again. And now you are saying. As a result of not getting the first variance, I applied but you denied me as not having enough explanation in the explanation area and then as soon as we came, we live in Wisconsin, so as soon as we came up here in March, we came up special in March to apply for another variance.

**Grob:** A variance should be approved before you do the work.

**Schwindt:** Any other questions?

**Knight:** Well I have a question on this. I mean you are aware that, to have a guest cottage, to have a guest cottage on your property that you would have to have 225 feet of shoreline and that, and yes we gave you permission to put the garage back there and but I don't remember the balcony in the original complaint, or request.

**Michelson:** Well I guess all I can say is that I apologize because between the year, the first year and then the permit ran out and then that happened, things just, that's all I can say. We weren't trying to hurt Hubbard County.

**Schwindt:** Eric, do we have any correspondence on this?

**Michelson:** Pardon me?

**Schwindt:** I was asking Eric if we had any correspondence?

**Buitenwerf:** No. No correspondence was received by the deadline given for such.

**Schwindt:** You touched on a subject that I have a question on. Is the entrance to this loft, there is a staircase going up to it, is there a deck or anything attached to that and when you look at that from your standpoint, is there any violations there or are there any violations there, as far as the entrance to the loft is concerned?

**Grob:** To the loft? Yeah.

**Buitenwerf:** No. The deck has been permitted.

**Schwindt:** Okay. So there is no problem there, as far as getting to and from the loft? Okay. We will open the floor for public comment. Anyone in the audience wish to speak in favor or against this particular request?

**Chuck Diessner:** Chuck Diessner, speaking on behalf of COLA. I my address is 24328 Hazelwood Drive. I think a couple of very good comments were made. Earl's comment is right on. This will open up Pandora's Box. The permit that this family received said that you can build a garage and the loft without anything else and they went ahead and built it contrary to what the permit was. I agree with Ken. This is an after-the-fact variance. This is not a variance to do something in the future. It is a variance to approve what has already been done; that's after-the-fact. So I would encourage you to deny this variance. This is in violation of the Ordinance and require the family to come back for consideration of an after-the-fact variance. This is also in line with what Earl's comment was, if on an after-the-fact

variance you are going to allow people, which I know you don't want to do, to do this you are going to have everybody in the County building quarters above their garage, finishing them off and then asking for a variance. I don't think there's a person in this room that believes that if you deny this and don't make them change that room. It is going to be used for exactly what it shouldn't be used for. So, just like any after-the-fact variance that you gentlemen consider something needs to be done to change that room so that it can be used for what it legally can't be used for. Thank you for your time.

**Schwindt:** Thank you. Does anyone else wish to speak? If not we will close the public input section. Does anybody wish to make a motion on this on this variance request?

**Benson:** I just don't, like Chuck said, this is wrong but that area can be used for storage and all that and if he finishes it off that's fine. It's the way he wants it but I don't think there is any way that we can as a Board make him go back to studs or whatever you know, make it not as nice as he wants to make it. I mean deny the variance, yes, but I don't know if we can do anything about what is already done. Is there anything that we can do or I mean we should do?

**Schwindt:** Well I think Eric answered that earlier didn't you, and your comments? He said there is nothing in the Ordinance that says a loft can or can't be a certain way.

**Benson:** Okay.

**Schwindt:** So I don't believe we can do anything about that. And if Eric, could find it in the Ordinance where he can then that is up to his office to do whatever they need to do. Unless we are wrong but that is the way I read into that. Our basic question is can we allow living quarters?

**Benson:** No.

**Grob:** I think it is pretty well consensused here that we should make a recommendation that we deny the application for this guest cabin to be used as living quarters. At least we know that pretty clearly so I will make that recommendation.

**Schwindt:** Okay so we have a motion.

**Buitenwerf:** Made a motion Ken?

**Grob:** Yeah. I don't know if I said, I make a motion that we deny the application for this loft being used as living quarters.

**Schwindt:** Okay I have a motion to deny.

**Benson:** I will second it.

**Schwindt:** And I have a second by Earl. The findings of the fact in this particular case:

**Grob:** Should I say sleeping or living? Is living to general? No okay, living quarters.

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

**Grob:** I think that Earl said it. The lot is only about a third of the required width and about a fourth of the required lot area for a single family dwelling, let alone for a guest cabin so it is not in consistent, it is not consistent or in harmony with the overall plan.

2. Without the variance, is the owner deprived of a reasonable use of the property?

**Grob:** No the current lot has a single family dwelling, a storage buildings, the garage, all of that provide him with reasonable use of the property and is consistent, I think with other lots in that area.

3. Is the stated practical difficulty due to circumstances unique to this property?

**Benson:** I think that the only practical difficulty here is the fact that he wants to make a guest house out of the garage.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Grob:** No. It was created by the landowner.

5. Will the issuance of the variance maintain the essential character of the locality?

**Grob:** No because I don't know what exists in the other area but it shouldn't be essential character for there to be finished guest cabins on top of garages for nonconforming lots.

6. Does the stated practical difficulty involve more than economic considerations?

**Grob:** Economics were not sited as a difficulty in this case. I would say yes.

**Schwindt:** Okay. So we had a motion to deny variance application 12-V-12 by Harry Michelson. All in favor say aye? All opposed? Your variance request has been denied.

**Grob:** Should we have any further discussion about whether there is a need for an after-the-fact variance or anything? What you think? You can stay as it is? Because in essence leaving it as it is enables it to be used exactly in a way that we don't want it to be used and that is problematic as far as I'm concerned.

**Knight:** We have already given permission to build the garage back there. We have already, and this we denied and so I don't see that there is anything else that needs to be done.

**Benson:** I think that there are things that need to be done but we just can't do them.

**Knight:** That is true.

**Schwindt:** Well I think what he will have to do is get together with Eric and see if there is anything in the office, through the procedures that needs to be done to comply with the Ordinance, other than what we have done so far? I don't know if there is anything else that you would like to do? The suggestion to come back for an after-the-fact variance, to me, would be a waste of money and time because that is basically what we have now and we have already denied that. Nothing?

**Buitenwerf:** The structure just can't be used as a guest cottage. That is it in a nutshell. So that is all that needs to occur is for it to not be used that way. It needs to be used for storage as it was permitted.

**Schwindt:** Right.

**Grob:** I think in the future the permits need to be more explicit about at what level something can be finished off and enabled to be used as a guest sentence. That may be something that we have to do better in the future. Okay.

**Schwindt:** Well, they revise the Ordinance every once in a while and I am sure there'll be notes taken that says the next time they revise it. They will get in there and change the language on it so that a loft is a loft; it means unfinished, timbers must be showing they will figure out how to do that but right now I think we are finished with this one.

**Michelson:** That's it?

**Schwindt:** That's it.

**Michelson:** Thank you.

**Schwindt:** Next we have **Variance Application 13-V-12 by Scott Rech:** Part of Government Lot 9, Section 18, Township 141, Range 33, Mantrap Township on Ojibway Lake and Dead Lake. Parcel # 20.18.00320. Applicant is requesting a variance from Section 903.3 of the Shoreland Management Ordinance for a proposed access road that will not fully comply with the 100 foot ordinary high water mark setback. Dead Lake and Ojibway Lake are recreational development lakes.

Would you state your names and addresses for the record please?

**Scott Rech:** Scott Rech, 307 North Holcombe Avenue, Litchfield, Minnesota

**Jeremiah Levinski:** Jeremiah Levinski, 28180 655<sup>th</sup> Avenue, Litchfield, Minnesota.

**Schwindt:** Okay. Well, we all looked at it. Is there anything else you would like to have us know or address the Board?

**Rech:** Just simply it is kind of a unique piece of property, as you have seen, and we were going to apply for two variances, one for getting on to the actual parcel which was going to be a little bit more of an encroachment onto the wetlands and so forth. We decided not to, we are going to try and leave all of that just exactly the way it is in this variance is only for once we get onto what's kind of the island then to make that road less up and down and quick around the corners so we can get a camper on there.

**Schwindt:** Any questions from the Board?

**Grob:** I was going to ask, the layout that is shown on the, I don't know if I should call it an island or a peninsula or whatever it may be on the property shows what I think is the drawings for an eleven unit planned unit development. When was that design done?

**Rech:** We have been working on it for about fifteen years now.

**Grob:** Oh okay.

**Rech:** And we have kind of that idea for the last three or four years. I have been talking to, even back in zoning when Gary was there for years about this piece of property and what has kind of prompted us to go forward with it is we sold our cabin on Gilmore, which was in the family for 40 years and kind of the same as the last applicant it was a 50 foot lot. It was overcrowded in the summertime and we decided we had to do something else. So we are really excited about developing this piece a little further than what it has been. We are not going to go further with any building or anything at this point in time. That is going to be another whole application process and if there are variances needed, variances and so forth. This one we are really just trying to get the road usable so that a. we can get power in, because the road kind of has to be completed to grade so the power company can put power in underneath the road. So after we get to the road,

we can't really go back and re-grade anymore. Then so we can use our camper trailers on it this summer is our goal. We would definitely love to get a permanent year-round structure on there eventually, whether that be this fall or next year, again, that will be a whole mother set of permitting and whatnot. Our goal would be, that would be our maximum that we can get on there is eleven, but it is going to be more of a family recreation area where my daughter's can have her own cabin, because she already has her own daughter. My son will have his own cabin. Then I have two other little boys that when they grow up they will have their cabins. My mom wants a cabin. She used to live up here; you may remember her, Carolyn Rech and then a quest cabin. So we are already going to fill up a majority of those just with family.

**Grob:** If you build according to that plan have you gone through the analysis that establishes that it would meet all of the requirements of a PUD? In other words setbacks, the 50% for the area, septic systems, all that kind of stuff. If it were made like this it would meet the requirements of a PUD.

**Rech:** I believe so. I believe so because that is what we have kind of, we have went through that a couple times. I think we have spent about six thousand on surveying twice now.

**Grob:** And so enabling the road as you want to do it is consistent with and enabling what would be a conforming PUD to the best of your knowledge?

**Rech:** Right. Yup. Also when I purchased this property from Earl Hemrich back in the mid to late 90s, he had permission to put a twenty four foot road top on there. He had the wetland credits; he had everything. Hindsight, I should have just let him do it. He had the dozer out there and he was dozing in and I was like stop, stop. I want to keep this more, you know, unique and woodsy like. If I had let him do it it would have been grown in real nice by now. We would have had no problems. We just need to get that road a little nicer to go to the next step.

**Knight:** Mr. Chairman, I feel as though this is premature. I think that this should have gone to the Planning Commission, I through us. I mean and then if there is an objection or, I can see his problem and I can see that yes, I don't have a real particular problem with it but I do feel as though this should, in all essence this is a PUD, and it should be in front of the planning commission and not us, at this time. Now maybe I am mistaken here.

**Rech:** Yeah. This is not for doing any of the eleven lots or the building. This is only for the road, and after we get the road. That's another whole set of variances or whatever else we need.

**Grob:** It sounds more like a family camp rather than a PUD.

**Rech:** Yeah. It is definitely not permission to give us to start building. That is another whole, there are so many variances needed to do that whole thing that we decided to tackle them one at a time for simplicity.

**Grob:** You are in essence wanting to enable access for your trailer or camper trailers, power companies, etc. which is not with the steep grade and the low area and so on you basically can do it at this time.

**Rech:** Exactly.

**Schwindt:** Any other questions? If not we will open it for public input.

**Diessner:** Chuck Diessner on behalf of COLA, 24328 Hazelwood Drive. One of the concerns we have on this is what Chick raised and the comment by the applicants that there are so many variances needed on this project that they are going to treat them one at a time. COLA doesn't have any problem with the road but we think that the Board should put a restriction on this that the road is approved, provided no more variances are needed and if they need additional variances consider them all at once and then look at the road because if you do them one at a time. You may not have granted a previous variance based on a subsequent variance. So I know they need the access and they need to know that they can get in there but give it to them with the requirement that they have to lay out their lot on the rest of it with no variances.

If they need a variance that opens up the whole issue again about the propriety of the road based on what they want to do. Thank you very much.

**Schwindt:** Thank you. Any other comments?

**Grob:** I might add, I maybe want to add something to it. I did talk to the area hydrologist and with the Environmental Services or SWCD people and they were supportive, I think, as they state. The two more serious parts of this and that is the first grading, E was it, the first one? Or the first one up the hill? I have to look at my thing, D, and so on and the cross over point, and I would only, if we approve the roads I want to come back to the cross over point. It states in there that you met with them and they approved it. The feedback I got is they do not want that changed; the size of it at all because of the wetlands and the other thing which, if we approve this. I would like to see on is a condition, you talk about putting class V or gravel down, they do not want that class V gravel, they wanted only to fill in the ruts, roots, ruts, my Minnesota English, I don't know, with class five and not to raise the grade level at all because concern of all the binders and stuff in class V that would run off so if we approve this. I would like to add the condition that the crossover point be limited to only maintenance that maintains the current grade level because there is significant concern about not putting a whole foot of class V gravel and having the potential run off. I just want to add that to whatever recommendation, people might make otherwise I would be supportive of the request.

Schwindt: Okay. We will close the public input portion? Was there any correspondence on this?

**Buitenwerf:** No.

**Schwindt:** No, okay. Any other questions? If not a motion?

**Benson:** I will make a motion to approve variance application 13-V-12 by Scott Rech.

**Schwindt:** I have a motion to approve. Do I have a second?

**Christianson:** Second it.

**Schwindt:** Second by Arnie.

**Grob:** Could I add the condition that the cross over point grade not be altered to that recommendation, to that recommendation?

**Benson:** Exactly what you mean?

**Grob:** Well it is vegetation now with ruts in it that kind of get soft and mushy. They can fill in those ruts where the tire tracks are but htye can't raise the grade of it because that's what, with the feedback I got from the area hydrologist and SWCD people that when they said they are okay with them doing what they want to do but they don't want that grade raised for, because of the potential run off of any gravel and stuff. Currently the vegetation will maintain, will prevent that from happening.

**Benson:** I am just wondering if you can put in a decent road?

**Rech:** I think they are requesting that we keep it to six inches? Is that what he said?

**Levinski:** Well basically what is there we can just leave and, I mean it is pumped up on the sides high enough where we are probably going to get are four to six inches.

**Rech:** So the sides will remain the same and then we will kind of crown it a little bit.

**Grob:** Yeah the burms on the side they want to not be raised.

**Rech:** Stay the same

**Grob:** You know if that means six inches okay, fine, they don't want those burms to be raised because as soon as you do that you're going to get run off from the gravel into those wetlands. I don't know how to put those in words but

**Rech:** That was a sensitive area.

**Benson:** Okay I agree with you. Maria, did you get that?

**Maria Shepherd:** I think so.

**Benson:** Okay. We will make that part of the motion then.

**Schwindt:** Also when we were out there we were discussing the road and the other two sections where there's going to be cuts and earth movement, when that road is finished could it be tapered so that any run off runs away from the lake?

**Levinski:** Back towards the property?

**Schwindt:** Back towards the property.

**Grob:** Yeah.

**Levinski:** That shouldn't be a problem.

**Grob:** I think that would be a good condition to add.

**Schwindt:** Do you want to include that also?

**Benson:** Include that also Maria.

**Schwindt:** Okay. We had a motion and we had a second. And the findings of fact for this variance

**Buitenwerf:** Is Arnie, I just needed to check if Arnie is okay with those two conditions?

**Christianson:** What would hapapen? Would they ge

**Rech:**

**Christianson:** Well I was just wondering if a fire truck came in there or an ambulance or something and the ground is soft, what would happen? Would they get stuck in there?

**Rech:** Yeah a fire truck wouldn't make it out there right now.

**Christianson:** Huh?

**Rech:** A fire truck would not be able to go out there right now.

**Christianson:** That was what I was wondering about.

**Grob:** There are a lot more difficulties getting in with a fire truck than just that cross over point. That whole easement you have to get into it would have to be altered for all of that to him happen.

**Christianson:** Well it is going to happen after a while. They are going to have those lots all open. That is the only thing I was, I meant what's going to happen if they can't get in there because of the ruts?

**Rech:** I think some of that beginning of the trail, some of that we can do with a permit and not a variance the way it is as long as we are keeping that 100 foot from the lake and I think that is where we can improve some of that beginning without the variance.

**Grob:** Is that where you go up the hill after crossing the thing or coming down?

**Rech:** When you first come off the road it kind of winds a little tight and it gets real skinny there? We are going to have to widen that just a touch and kind of mellow it out just a little bit. That first hill, if we can shave off just a little bit off the top of that hill it will make that hill change quite a bit.

**Grob:** As you come down to the cross over point?

**Rech:** Yes. Then there is that chunk, that sensitive area where the cross over is and a little bit before that, that we think we can keep it exactly the way it is now and as natural as possible.

**Grob:** I think you know that if you widen that cross over point at all or do anything to that, you are into all kinds of wetland permits and DNR permits and the whole bit which is why they recommend that you maintain that and not raise the grade and therefore as an alternative cut the slot out up here for so that instead of raising that they are suggesting that it is a better deal to slope up that grade going to it and so that's what you are doing.

**Rech:** Right. To get on top. Yup. Cut that top. Yes and we may need to put, like I was saying, a couple of inches of height on it but where the shoulders of that, that causeway are they would stay grass.

**Grob:** Do you know the intent?

**Rech:** We will put up a little fence right there so that there is no overspill and whatnot.

**Grob:** Key thing is not to raise the grade on the side of it. Okay.

**Schwindt:** So we are still looking for Arnie's approval on this?

**Buitenwerf:** Still waiting to see if Arnie is okay? Right.

**Christianson:** Yeah.

**Buitenwerf:** It's okay Arnie?

**Christianson:** Yeah it's okay.

**Buitenwerf:** Okay.

**Schwindt:** Now the findings.

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

**Benson:** I would say yes. He is just improving the road; enabling to get the vehicle and motorhomes and stuff back in there.

2. Without the variance, is the owner deprived of a reasonable use of the property?

**Benson:** I would say yes he has to have vehicle access if they are going to build homes and stuff back there.

3. Is the stated practical difficulty due to circumstances unique to this property?

**Benson:** I would say yes. The narrow access to the island has to be improved.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Benson:** Again I would say it is a narrow access, narrow road and it needs to be improved.

5. Will the issuance of the variance maintain the essential character of the locality?

**Benson:** I would say yes. It will remain residential lakeshore property.

6. Does the stated practical difficulty involve more than economic considerations?

**Benson:** I would say that economic considerations are not a factor in this case.

**Schwindt:** We have a motion to approve. All in favor say aye? Opposed?

**Knight:** Aye.

**Schwindt:** It has been approved.

**Rech:** Thank you gentlemen.

**Schwindt:** Next we have **Variance Application 14-V-12 by Andrea Dutcher and Jo Ellen Bailey:** Lots 10 and 11, Belletaine Beach, Section 17, Township 140, Range 33, Nevis Township on Lake Belletaine. Parcel # 21.46.00800. Applicants are requesting a variance from Sections 510 and 704 of the Shoreland Management Ordinance to alter and increase the roof height on a dwelling unit located in the shore impact zone. Lake Belletaine is a recreational development lake.

State your name and address.

**Roger Bailey:** I am Roger Bailey, 19440 Eidelweiss Drive. I am Jo Ellen's father.

**Schwindt:** We were all out there Thursday, looked at it. Anything else you would like to add to what we saw?

**Bailey:** Nothing else. I have nothing.

**Schwindt:** Any questions that the Board members have?

**Benson:** I have no problem with this. They are just putting on a new roof actually.

**Knight:** I move the approval of that request.

**Buitenwerf:** We need to allow for public comment first Chick.

**Knight:** Okay.

**Schwindt:** Alright. We will open it for public comment. Anyone wish to speak in favor or in opposition to this request? I don't see any so, any correspondence?

**Buitenwerf:** No. We have not received any.

**Schwindt:** No correspondence so we will close the public input and we will look for a motion.

**Knight:** I move the approval of this project, request.

**Schwindt:** I have a motion to approve by Chick. Do I have a second?

**Grob:** Second it.

**Benson:** I will second it.

**Grob:** Oh. Go ahead.

**Schwindt:** Second by Earl. The findings of the fact in this case:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

**Knight:** The Ordinance already provides that non-conforming structures can be maintained and restricted under certain conditions and so therefore the extra roof height is approved.

2. Without the variance, is the owner deprived of a reasonable use of the property?

**Knight:** The roof requires that it needs to be redone and the additional foot height is needs to provide adequate slope for the water, from rain and the horizontal distance must be spanned. Denying the variance would cause difficulty in being able to maintain the structure which is an existing legal nonconformity.

3. Is the stated practical difficulty due to circumstances unique to this property?

**Knight:** The structure is a legal nonconformity that predates the Ordinance.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Benson:** The practical difficulty is that someone in the past built a cabin in the shoreline impact zone.

5. Will the issuance of the variance maintain the essential character of the locality?

**Schwindt:** It basically won't change anything. This is residential lakeshore and all he is doing is putting a new roof on it.

6. Does the stated practical difficulty involve more than economic considerations?

**Schwindt:** No economic considerations were involved that I know of.

**Schwindt:** All in favor? All opposed? The variance request has been approved. Thanks for coming.

**Bailey:** Thank you gentlemen.

**Schwindt: Variance Application 15-V-12 by Shirley Garcia:** North ½ of the Northwest ¼ of the Southeast ¼, Section 27, Township 143, Range 32, Lakeport Township on Oak Lake. Parcel # 19.27.03010. Applicant is requesting a variance from Sections 501.1 and 506 of the Shoreland Management Ordinance for a guest cottage that will exceed the allowed 700 square feet footprint on a lot that does not meet the required 300 foot lot width at the ordinary high water mark. Oak Lake is natural environment lake.

We all looked at it, anything else that you would like to add to that?

**Shirley Garcia:** I think that says pretty much everything just looking to put a room on the end of my house.

**Schwindt:** Were there any questions from the board members?

**Grob:** The professional survey that you had done, when was that that established that the cabin was on your property, when did you have that survey done?

**Garcia:** I don't have that with me do I?

**Grob:** I mean a year ago, two years ago three?

**Garcia:** I am going to say three years ago.

**Grob:** Three years ago, and why did you have it done then verses say in the past not having it done?

**Garcia:** We had the survey done so that we knew exactly where our lot lines lay because of the fact that there is four girls in our family and it was all in our family name and just because we wanted to know exactly where our lot lines were and my sister was putting, they just use this space down on the river and we wanted to know where our lot lines were, to our neighbors and everything.

**Grob:** When were these lots plotted?

**Garcia:** The five acre plots you mean?

**Grob:** Yeah.

**Garcia:** Well they were legally done when we had the survey done. We registered with the County, my father died in 1976 but I don't think we, we did not divide the land until maybe twenty years ago, twenty five when we put it in , the sections in each of our names, the sister's.

**Grob:** So in the early 90s these lots were created then and your five acre lot was created back that far long ago?

**Garcia:** Problaby.

**Grob:** Do you have record of that at all Eric?

**Buitenwerf:** Not with me, no. I would have to research that.

**Grob:** No. Okay. And the cabin when it was built in 2004 was that done by permit or by variance?

**Garcia:** That's the living structure that I have?

**Grob:** Yeah.

**Garcia:** I can't tell you that because I don't know. It was a contractor that went in and we did it.

**Grob:** The reason I am asking that question is that in essence the building of that cabin on a natural environment lake with less than the 200 feet of shoreline would have required a variance originally if I recall. You need on a natural environment lake, if you build a cabin on less than a hundred, two hundred feet of frontage it would require a variance. Unless it predated 1971. What I am trying to get at is that, history is important to me on this in terms of how this all evolved, but if you built the cabin in 2004 and you built it your know thirty some feet from you're your one property line on the north, it would seem to me that it would have been, if there would have been any permitting done for you to build that it would have been pretty clear that that cabin was less than 325 feet which was your property width back when you built that cabin, whoever issued you the permit or the variance to build and I don't know what the history is on it but it isn't hard to stand by your cabin and that you are thirty some feet from the property line on the North and look and say, that's closer than 325 feet. That is why I am asking was your house built by a permit or with a variance originally?

**Buitenwerf:** It was built in 2004 by a permit.

**Garcia:** Permit, I was going to say a permit.

**Grob:** A permit. Okay. When that permit was issued no one would have investigated that guest cabin being within the established boundaries, which is was done twenty some years ago or the fact that it is in nonconformance with the 200 feet of frontage? So there is some history of nonconformance here that plays into this in my mind.

**Buitenwerf:** As the staff report indicates the survey was done a few years ago that identified the fact that that second old cabin is on her lot rather than on the lot to the South. That information was not known at the time that the permit was issued in 2004 for the structure that she is residing in as that was also included in the report.

**Grob:** But that would mean that nobody went out there and looked to check that because it is pretty obvious that it is less than 300 feet from the North property line is what I am trying to get at.

**Buitenwerf:** I would be guessing as to what

**Grob:** Transpired

**Buitenwerf:** Occurred at the time that permit was issued. I know at that time the County did not have the GIS technology that it has now so they may very well have not been able to look at that information as we are able to do so now.

**Grob:** The reason that I bring that up, other than the couple 300 square feet extra on five acres which isn't a big deal but the fact is that the big, the big Ordinance variation here is the required 300 feet of shoreline for a guest cabin on a non-environment lake and she only has 185. I would have thought that would have been detected beforehand that's all.

**Garcia:** I can't tell you what you are asking or saying.

**Grob:** Okay.

**Knight:** Well we were out there. We looked at the situation over and the particular layout and everything looks, looked good to me. It looked like, as far as the distances involved we are within reason and so I don't have a problem with this.

**Schwindt:** Okay. Any questions Earl?

**Benson:** No. It is an old cabin that has been there for years and it wasn't something that happened overnight and I think it should be approved.

**Schwindt:** We will open the floor for public comment. Anyone wish to speak?

**Diessner:** Chuck Diessner, on behalf of COLA, 24328 Hazelwood Drive. We don't have any problem with maintaining the two buildings. The concern we have is what this is going to look like to the public is granting, and what they are going to hear is they are granting a variance for a property with 185 feet for a guest cabin. They are going to hear that that was allowed when it was 115 feet short and that is not what you gentlemen are intending or what Eric's recommendation is. You are saying well it's okay because there's five acres and it could be subdivided. I think there is a big difference here. I don't think that there is a need for a variance and I think that in terms of future matters asking for variances on guest cabins you had best hold to the 300 feet that is required and grant this family, Eric can do an administrative subdivision on this with no variance and they can get exactly what they want and you can preserve intact the 300 feet. It will also give them greater flexibility in the future of expanding the old cabin because each building now will be on a separate lot and they can still have the same access to the lake and they can sell them separately if they want. They don't have to sell them together so it gives the family a lot more flexibility than they have it is one lot. Thank you.

**Schwindt:** Thank you. Any other comment?

**Grob:** Maybe responding to what Chuck is saying you know subdividing all that is an option. Maybe we are better off if we put some conditions that the current cabin, which does not have any plumbing or septic in it, that that condition be maintained; that no expansion in the cabin or no future subdivision or changes in the property size. If you put those conditions on it and then we could just leave it as it is. That' seems simpler than maybe trying to subdivide or do some weird things just to make it conforming when in fact we could get what we want by just putting those conditions on it. That would be the input I would give.

**Schwindt:** Okay. I am going to close the public comment portion on this. Was there any correspondence on this Eric?

**Buitenwerf:** No.

**Schwindt:** Okay. Does anyone wish to make a motion?

**Grob:** I will make a motion that we approve the variance with conditions that no future subdivisions or changes in the property size, no addition of water or sewer to the existing old cabin and no expansion of the old cabin in the future.

**Benson:** I will second that.

**Schwindt:** I have a second. Do you understand what he just said the motion was going to be? What the requirements were?

**Garcia:** Making no improvements on the old cabin, yes.

**Schwindt:** Right. You are okay with that?

**Garcia:** Yes. Yeah.

**Schwindt:** Now the findings of facts in this case

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

**Grob:** I think in general all of the setbacks and all those things are validated. Actually the kind of unique shape of the lake gets problematic with the 185 feet with the size of the property and I believe leaves it and with the conditions placed on the variance that it does in fact meet the intent.

2. Without the variance, is the owner deprived of a reasonable use of the property?

**Schwindt:** I would say increasing the size of their living quarters is a reasonable request especially considering that a guest cottage has no indoor plumbing or water or anything else and they need more living space.

3. Is the stated practical difficulty due to circumstances unique to this property?

**Schwindt:** Yeah I would say it is unique because all this time you didn't even know that guest cottage was on your property. You thought it was on your sister's property until the survey was done all she had was one dwelling on that piece of property.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Kinght:** The old cabin is now being located on the applicant instead of the adjacent to the south was historically thought to be the case. The old cabin predates the Ordinance and the lot was laid out by a party other than the landowner.

5. Will the issuance of the variance maintain the essential character of the locality?

**Schwindt:** It is residential lakeshore by putting the addition to her structure will not change the

6. Does the stated practical difficulty involve more than economic considerations?

**Schwindt:** No economic considerations were involved.

**Schwindt:** Okay we had a motion to approve, all in favor say aye? All opposed? It has been approved. You just need to get your permits from the office.

**Garcia:** Upstairs?

**Schwindt:** In a couple of days you can go up and get them?

**Shepherd:** Mr. Chair, can I get her name and address for the record?

**Schwindt:** Oh, I missed that.

**Garcia:** Shirley Garcia, do you want the proper address?

**Shepherd:** Yeah, that is fine.

**Garcia:** 35304 Merganser Drive Laporte. So, excuse me, I can't apply for the building permit today? I have to come back and do that?

**Buitenwerf:** Yeah because they don't upstairs know the outcome of the decision plus we have got the file here so they wouldn't be able to.

**Garcia:** I see. Okay. So in a couple days I can come back and apply?

**Buitenwerf:** Yes.

**Garcia:** Thank you.

**Schwindt:** Next we have **Variance Application 17-V-12 by James and Kelly Peterson:** Lot 4, Broughton's Horseshoe, Section 23, Township 143, Range 32, Lakeport Township on Horseshoe Lake. Parcel # 19.43.00400. Applicants are requesting a variance from Section 707.1 of the Shoreland Management Ordinance to allow an unimproved lot to be developed into an improved lot containing a residential dwelling unit and septic system. The lot does not comply with the 150 foot minimum lot width requirement in Section 707.1, item 2.G.1. Horseshoe Lake is a natural environment lake.

Okay we all looked it, anything else we need to know?

**Kelly Peterson:** Do I need to say my name? Kelly Peterson, 282 Quant Avenue N, Lakeland MN. No I guess I would just say that we had intended to apply for a variance back when the Woodlands did, which is adjacent to our property and we just couldn't afford it at the time and so we are finally able to apply for a variance for future building or selling to make it a sellable lot, either way.

**Schwindt:** Any questions from the Board?

**Benson:** Yeah, we were up there and I walked around that lot quite a bit and as far as I can tell there is room for a building site and a septic system. There is a little bit of wetland down toward the lake but then it goes back up again, but there is room behind the wetlands area for a home to be built. So, I think it is a buildable lot.

**Schwindt:** Okay.

**Christianson:** I agree with Earl.

**Knight:** I think it is a buildable lot.

**Grob:** Yeah if you look at Section 702 of the Ordinance it basically says existing nonconforming lots of the age of this as long as it meets septic requirements and setbacks and all of those kinds of things it can be approved with variance and I think the drawing and stuff that lays out shows that all of the setbacks are maintained. They are out of the wetland. There are two septic areas and what looks like a reasonable amount of space, the 2800 square feet to build a reasonable cabin and garage so I think it meets pretty much all of the intent of Section 702.

**Schwindt:** Okay. We will open this for public input. Anyone wish to speak in favor or in opposition to this request?

**Paul Hanes:** I have some questions please?

**Schwindt:** Okay.

**Hanes:** My name is Paul B. Hanes, I am lot number 5. My question is, there are two sets of flags down there for property lines, one set that they have the new wire going down and that, that goes over my drainfield. It goes over my mound and the other set when I had that mound put in a couple years ago, Twin Pines, Trevor said that I had ten feet from my mound to the line. Now the wire, the new rope, I don't know if the guys put that in measured it or if they just stepped it off or what. That is all I wanted to know, otherwise I have to try and get somebody to take care of my mound again.

**Knight:** I didn't see any mound out there.

**Benson:** Yeah.

**Peterson:** There is.

**Christianson:** There is a mound out there.

**Hanes:** I would like to hold off of this a little bit if necessary to find out from Trevor what I have got to do.

**Schwindt:** Yeah, have you had a chance to talk to Mrs. Peterson about it? I mean what does she know about it?

**Hanes:** I have never met these people.

**Schwindt:** Oh, okay. But you are right next door?

**Hanes:** I am lot 5, yes.

**Peterson:** Yes.

**Schwindt:** Do you have any idea about his question?

**Peterson:** Can I address that? Well what we did so that you guys could look, we did measure off from the points, because we do have posts, original posts down by the lake and we did the best we could at measuring off. The road did take a chunk of our property because it is pie shaped that is adjacent to his and so we did the best we could at measuring right there. It could be off a few feet. We were told we didn't have to get a survey done to get the variance and I know that the Woodland's didn't have to get one done to get the variance so it was more showing you, pretty much, where it was.

**Grob:** This has not been surveyed?

**Peterson:** Yeah it has not been surveyed. So we were just going off of the best we could with measuring. We didn't step it off. We did measure from what our deed says and stuff.

**Grob:** Are you to the North or to the South of their property?

**Peterson:** As far as we are concerned, if it is on our property it is barely. We are not worried about that.

**Hanes:** I am to the South.

**Peterson:** It was more for you guys and for Ed Aletto to come in and be able to give...

**Hanes:** Bill Ohmstead is to the North.

**Peterson:** Uh huh. Well Bill doesn't own it anymore.

**Grob:** Where on your property is your mound?

**Hanes:** Pardon?

**Grob:** Where on your property is the mound?

**Peterson:** It is right next to. It is right on, close to the property line and it is kind of towards the middle probably of coming back from the lake

**Grob:** If I were to look at this drawing

**Peterson:** Okay.

**Grob:** Where on this drawing would it be? Here is the 100 foot setback or the 150 foot setback line.

**Peterson:** Okay, so he is, where is the lake? On the bottom?

**Grob:** Lake is here.

**Peterson:** Oh, okay, so he is probably close to that hundred, where your line was, you were just saying.

**Grob:** Right here?

**Peterson:** He is probably right around in there. But if we are off by a few feet on what you saw for a line that shouldn't make a difference on if it is still a buildable lot or not does it?

**Grob:** Yeah. If he doesn't have adequate setback for his mound

**Hanes:** Well when I put this new home in I had to move my property line, my home back 100 about 40 more feet to comply with the frontage from the lake to the house. I had to move it back 40 feet so there I had to out a whole new mound in, a whole new septic system so that septic system is only about two or three years old.

**Peterson:** Unfortunately there hasn't been a survey done on any of that property for any of it along there for some time. And we were trying to look because we thought that when the road was put in if there would have been a survey done but we could, we didn't find anything when we were looking quick.

**Schwindt:** These are lots of record though. These are platted lots from way back so it doesn't matter where that lot sits it is exactly the size that it should be.

**Peterson:** Yes.

**Schwindt:** Okay. I don't think it affects the mound one way or the other in our decision today because it doesn't change the dimensions of your lot. If your mound is too close to the property line then you will probably need to get a variance for your mound see. Isn't that right Eric?

**Peterson:** But then wouldn't we have to

**Schwindt:** If we

**Grob:** Yeah except that the mound, this never showed up, the mound is right next to the building site. They have to have a reasonable setback

**Peterson:** Oh no I don't think it is right next to our building site is it?

Grob: Well it is the building site that you show and you told me to draw right there that is the mound.

**Peterson:** Can I come and look at it closer or no?

**Grob:** Okay. If the mound is too close to the building site

**Peterson:** I am looking at it from a distance.

**Grob:** If it is too close to where they would have wells or anything like that or it encroaches on their property that should be sorted out before, before we approve, approve them to

Knight: But that is the alternate plan; what you are talking about is the, according to this, is alternate plan here

Grob: Yeah but his, but his, his mound is right next to the 2800 square feet, right at the property line where they would build.

Peterson: He is saying is too close. Well how far back is he because it is next to his house?

Knight: I didn't see that, I didn't see that mound out there.

Peterson: Well it is probably not

Schwidnt: Well once they determine where their property line is they are going to build twelve feet off of that property line.

Grob: Yeah. Well, what is a setback from a mound, from a drainfield that you have to be for a building and or a well? 150 feet isn't it? Or 100 feet from a well to a mound?

Buitenwerf: Twenty foot setback from a drainfield to a habitable structure and it is 50 feet from the drainfield to a deep well which is 50 feet or greater in depth.

**Grob:** Okay,

Peterson: So

Grob: Do you have a place, well you identified where a well might go on there? It would have to be down towards the lake.

Peterson: Yeah, I had Ed Aletto do it. I don't know if he, does that matter?

Grob: What?

Peterson: I mean did I have to have that figured out ahead of time? I am trying to remember if that's what Ed did or not.

Grob: Well if you have alternate, two septic system sites, you have to be, he says 50 feet away from a drainfield for a well

Peterson: Okay

Knight: Well we do have a, on the back side we do have a state inspector for the septic systems approval on this particular request.

Grob: That is for them but I am more concerned about if we approve this with the idea that they have a buildable area

Peterson: Next to him

Grob: Yeah and it is too close to his drainfield, something needs to be sorted out. I mean we could approve it as a buildable lot.

Peterson: Yeah, that's what I am requesting so at the time that we would build we would have to get permits and make sure that we were meeting all setbacks and I think I put that in the variance.

Grob: But what if in order to build you have a conflict with his mound? Who's going to be responsible for a new drainfield for him?

Peterson: Well I guess my question would be would it just mean that we would have to move the, we wouldn't have as many feet, 2800 square feet to build because we would have to come into the setback, because you said it was 50 feet? Is that what you, you have to be how far?

Grob: Yeah

Buitenwerf: From the drainfield it is twenty feet.

Peterson: So we would only have to be twenty feet? So if he is saying he is ten feet and we would go in twelve we would still be

Grob: Yeah but he doesn't know that.

Peterson: Yeah. That 's the problem.

Grob: That is the point. He does not know where your lot line is.

Peterson: Yeah. None of are, none of us are for sure exactly exactly where it is.

Schwindt: When this sketch was done for the septic to see if there was room on that lot for a septic and two alternate sites or a site and an alternate I am not sure where those measurements were made from either so maybe we should just table this thing until we get the exact lines on that piece of property.

Peterson: That would mean then that we would have to get a survey done? Which I know the Woodland's didn't have to get one done. I am pretty sure that Ed went from the flag when he did.

Grob: When you say the flag what do you mean?

Peterson: Well did you see where we had the line up? When you went out?

Grob: Yeah but did he have some posts or prior

Peterson: Well he had the posts that the posts that are down here. He had those posts.

Grob: Okay. You have my drawing I can't see.

Peterson: I am sorry. I need to bring one.

Diessner: Mr. Chairman?

Grob: Yeah maybe comments should be taken?

Schwindt: Yeah. Well if there is going to be a conflict, and it would change our opinions one way or the other then I think we need to get those resolved. So if that requires a survey then

Peterson: Then I have to pay for the survey?

Schwindt: Then you are going to need to get a survey, yes. What's your thoughts on that Eric? Would you recommend that we wait until we get a survey?

Buitenwerf: Yes based on what the gentleman said, uncertainty as to where that drainfield is and if it is on the south adjacent property line or possibly encroaching on that setback and that is adjacent to the buildable site on the applicant's lot then having that information to know to what degree if any that affects things would be definitely germane to your decision.

Grob: And you will have to get a survey before you ever do anything there anyway to make sure you have proper setbacks, you are going to have to do that survey eventually anyways.

Peterson: Okay. The Woodland's would have to do that too? That is my mother-in-law.

Grob: They what?

Peterson: The Woodland's, that are right next door, would they have to do the same thing? You granted them a variance for a building they had and they never had it.

Grob: I don't know about history but if we have to deal, we are making our decision based on the fact that you have adequate, two adequate drainfield areas, adequate building sites and adequate setbacks and if there is an issue with the exact property lines, I personally would like to know exactly what the situation is. You are going to, and even if we approved it and you came back for a building permit

Peterson: You would want it.

Grob: You would want to establish those and that's you know a few hundred dollars it isn't all that ugly to have a survey.

Peterson: Oh yes it is. It is \$900. We already, because there hasn't been a survey, I already got a quote on one and because it has been so long since the survey has been done it is going to be anywhere from twelve upto possibly up 1900.

Grob: That means that they don't have a section marker close and they are going to have to come from a long distance. There isn't an established iron post that has history to it on your property then?

Peterson: My understanding there is. I just know I called the surveyor company and they gave me a bid but I don't know that they physically walked the property that much or if they were just looking at, they were looking at what paths had been done. So they gave me a wide range of what it could cost but the cheapest was, I believe 1200 or 1300 dollars.

Schwindt: But I think it is something I think you would want to know, exactly where your property lines are.

Grob: Before you start building

Schwindt: Because if he is saying that your little flags go right over his mound that's a problem.

Peterson: So from here then we get the survey, then what do we do? Do I have to reapply for the variance?

Schwindt: We could table this so that we could just push it off

Peterson: A month?

Schwindt: A month?

Buitenwerf: Well there is a couple options available. We could, the unknown is how long it would take for the surveyor to get the work done so

Peterson: I think a couple weeks when I asked them before

Buitenwerf: We could table it for a month. The other alternative is we have a form that you can sign that grants the County as much time as needed to review and act on your request so then if more time is needed then what would be available for the next meeting we would have that and not need to take action on it at the next meeting regardless of whether you have the survey because there is a statute that requires that we act on your request within 60 days of its submittal so that is what we are facing but if you, like I said, we have a form that I can give you that would grant us as much time as need be for that survey to be received.

Peterson: Okay.

Buitenwerf: And then for it to be placed on the next available Board agenda and then for the Board to act on it.

Peterson: Okay. Is that the one that you suggest?

Buitenwerf: Yes.

Schwindt: Because in case they can't get it done then it will appear on the next meeting.

Peterson: Get out incase they can't...okay. So then I would just come to the next meeting and we will know at that time what the survey says. Is there anything else that I will have to do, any new drawings or anything?

Grob: The survey will be the drawing.

Peterson: And then, I would, that will get sent to you before the meeting?

Grob: I would ask that on that drawing that the surveyor identify his mound.

Peterson: Okay. I will let him know that.

Grob: I think that would be critical information. Or at least indicate what the setback would be from his mound.

Schwindt: I mean depending on where it is situated it may change some of these numbers a little bit too so you may, once you have got the survey you may want to get back to the septic evaluator and have him take a another look at the survey so that he can change anything on this drawing that he needs to.

Peterson: To Ed. Then he can change anything that he needs to.

Knight: Mr. Chairman, I just, I was wondering, the gentleman that was talking about this survey said he had a survey done. Didn't you say you had a survey done?

Haynes: Trevor, when I hired Trevor he said that he had the survey done and I had ten more feet beyond my mound that was still my property and that was where flags are inside the woods there.

Peterson: I guess my question is when did he have the survey?

Knight: So therefore I would suggest that they might go from the old survey

Grob: Yeah, if there is a formal survey they should be able to come out and very simply flag that for you.

Peterson: Yeah but I guess that is where they had checked and they said there hadn't been a survey done. I am not sure if I can ask him when the survey was done if that helps me tell the survey people? Do you know when the survey was done?

Knight: You would have to ask what company he had do it.

Peterson: When was the survey done?

Mrs. Hanes: We moved in 2006, we had it built in 2006.

Peterson: Wow. That is not that long ago. So...

Grob: Do you have an official copy of the survey? If someone did the survey

Peterson: That would help us a lot.

Hanes: I don't have a copy.

Grob: Trevor is?

Hanes: Pardon?

Grob: Who is Trevor?

Benson: He is South of that.

Hanes: Twin Pines Construction.

Grob: Oh. You ought to talk to them and find whether he has got an official survey.

Hanes: I will give him a call today.

Peterson: I just know that when I called a survey company they checked some records and that's why they said it could be so expensive because there had not been one done so I guess if he did have one done that would be great because then it would be cheaper for me.

Grob: It sounds like he stepped it off instead of an official one. You will need to work that out.

Knight: By doing what Eric is suggested to you why that could a possibility I mean.

Peterson: Yup. We will get a survey done.

Schwindt: Did you have any more questions?

Hanes: No that's mine.

Schwindt: No then we will take some more public comments.

Diessner: I just have a suggestion. Everybody is talking about a survey, you can save a lot of money, I don't think she needs a survey, I don't think you need a survey, she simply needs a lot line located. You just need to hire somebody to go out and whatever lot line that is where his septic is, just have them locate that line. You don't care where the other line is. You know it is a platted lot as you already mentioned so the issue only deals with one lot line. So it is a heck of a lot easier and lot less expensive so as you said before we should start with whatever his contractor survey looks like. That doesn't necessarily mean that that survey is correct, but if she is going to get a survey that is way beyond what I think she needs to pay for. She could just locate the line relative as Ken said and have them outline where the mound is relative to that lot line and then they need to talk about their rights.

Grob: And if they agree on it then you are okay.

Peterson: Then we are okay? And who do I get to do that?

Diessner: A surveyor.

Peterson: So a surveyor just tell them I want a lot line.

Diessner: You just want one lot line located. You want it flagged and relative to where the mound is. You may not even need, and it is up to this Board obviously, you may not even need them to do a drawing for you. They can flag it relative to where it is and whoever did your hand written drawing can do it so it is real simple and a heck of a lot less expensive.

Peterson: I like that.

Schwindt: Okay. Thank you very much.

Diessner: Thank you.

Hanes: Thank you.

Schwindt: So is everybody okay with that?

Hanes: Yeah.

Peterson: You are okay with that? Okay so I don't need to sign this or I should still sign this because we are doing stuff?

Buitenwerf: It would still be advisable to have that completed yes.

Knight: So are we just going to table this?

Schwindt: But if it is much quick and much simpler than it should appear at next month's meeting I would assume if the surveyor can get it done quick enough.

Knight:

Schwindt:

Buitenwerf:

Schwindt:

Buitenwerf: then let me know

Peterson:

Benson:

Buitenwerf:

Grob:

Schwindt:

Meeting was recessed at 10:35.

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?
2. Without the variance, is the owner deprived of a reasonable use of the property?
3. Is the stated practical difficulty due to circumstances unique to this property?
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?
5. Will the issuance of the variance maintain the essential character of the locality?
6. Does the stated practical difficulty involve more than economic considerations?

**Board of Adjustment Meeting  
June 18, 2012**

**Schwindt:** I would like to call to order the Board of Adjustment meeting for Monday, June 18<sup>th</sup>, 2012. I would like to welcome everybody to the meeting. I will introduce the Board members to you. On my left I have Chick Knight, Earl Benson, myself Lou Schwindt, Arnie Christianson, Ken Grob, Eric Buitenwerf from the Environmental Services Office and Maria Shepherd recording the meeting. Just to remind everybody there is a sign-up sheet in the back that if you wish to speak you need to sign that sheet. When we open it to public input, where the public can comment, what we want you to do is to go over to the microphone, state your name and address and then you are allowed to speak. We will hold that to about three minutes and only on the topic that is front of us at the time or on the variance that we have open. Then we will close the public input and move on from there. I would also like to ask that if you have a cell phone you turn it off so that the meeting doesn't get disrupted. If your variance is approved you will still need to complete a permit or whatever else to complete that variance regardless of what we decide on it. You will still need to get completion of it if it is approved. Copies of the applications are available at the back. If you want a copy of the minutes you can also request that. If there is any written material that applies to a variance the Environmental Service Office requires that it be in the Wednesday prior to the meeting. I don't believe there is anything else to discuss so we will move right onto the minutes from the previous meeting. I need approval. I need a motion.

**Benson:** So moved.

**Schwindt:** I have a motion to approve.

**Knight:** Second it.

**Schwindt:** I have a second by Chick. All in favor say aye. Under old business we have one variance for James and Kelly Peterson, my understanding is that this is to be tabled again. Is that correct Eric?

**Buitenwerf:** Yes. The applicants are in the process of completing a survey of the south property line and have found that that the neighbor has a drainfield and possibly part of a structure that the survey has shown to be located on their property, so they are identifying their options to resolve that matter and will bring that to us at a future date once they have selected an option that will work for them and the neighbor and that would then allow them to know if the variance application can proceed as originally presented or if it needs to be amended.

**Schwindt:** The recommendation by your office is to table it until the next meeting or to table it indefinitely and tell we hear? I am not sure how

**Buitenwerf:** You would just say that the matter is tabled until it is again brought onto the agenda. We don't know at what time that will occur. We do have a letter signed by the applicant giving us an extension of time as needed.

**Schwindt:** As needed? Okay.

**Buitenwerf:** For the 60 day rule so we are compliant with that.

**Schwindt:** Okay. So, do I have a motion to table this?

**Grob:** So moved.

**Benson:** Second it.

**Schwindt:** So variance application 17-V-12 by James and Kelly Peterson motion to table, all in favor say aye? All opposed? Next under new business we have **Variance Application # 3-V-10 by Daniel J. and Donna M. Rehkamp:** Gov't Lot Five (5), Section Thirty (30), Township One Hundred Forty (140), Range Thirty-three (33), Nevis Township on Fifth Crow Wing Lake, Parcel ID # 21.85.01200. Proceeding relating to the March 15, 2010 variance granted to Daniel J. and Donna M. Rehkamp allowing a total of 11 boat slips on the identified property. On April 30, 2012 the Minnesota Court of Appeals remanded the variance back to the Board of Adjustment for further consideration. Pursuant to that decision, the Board of Adjustment will consider and decide whether or not to reopen the record for additional information before taking further action on the variance. Action on the variance itself will not take place at this meeting.

Is there anything that you can add to that Eric that will help us shed some light on why this is back before the Board of Adjustment again?

**Buitenwerf:** I can. I think Ken has a statement that he wants to make prior to my doing that.

**Grob:** Yes okay. On advice of legal counsel and with the Board of Adjustments approval I will abstain from discussion and voting on the Rehkamp matter on today's agenda.

**Schwindt:** Okay.

**Buitenwerf:** And in lieu of Ken's statement we do have our alternate member, Tim Johnson, who will be able to join us for discussion and action on this item. So at this time I will ask Tim to join us at the table and then Ken if you want to yeah just it be noted that Ken has now recused himself from action on this matter and Tim Johnson is filling in for him as alternate on this item of action.

**Grob:** Isn't that inconsistent with the Ordinance? It says that if I recuse myself it is up to the remaining people.

**Buitenwerf:** Mr. Johnson is here at the advice of legal counsel.

**Grob:** Okay.

**Buitenwerf:** With that said, yes, Mr. Chair I can

**Chuck Diessner:** Excuse me a minute can I bring up a point of order regarding the seating of Tim Johnson as an alternate.

**Schwindt:** No.

**Diessner:** No?

**Schwindt:** No.

**Diessner:** The Court of Appeals, the County, Scott can confirm this, you argued and so did the Rehkamps, that the plaintiffs in that case did not have grounds to bring objections because they did not object at the meeting. So you can't, in my opinion, you can't deny my comments. We object to this. There is no authority under the Shoreland Ordinance to do this. The only authority under the Shoreland Ordinance says that if a member of the Board of Adjustments is not present for a meeting, Mr. Grob is present for the meeting; there is no authority to appoint a person for an individual item on the agenda. We therefore register an objection to have Tim Johnson participate. Thank you.

**Schwindt:** I will ask our legal counsel Scott Anderson for an answer.

**Scott Anderson:** Well I am not, since you didn't recognize the gentleman who didn't identify himself I am not going to respond to that since he is not, it is actually not part of it.

**Schwindt:** Okay.

**Anderson:** However, I think having Mr. Johnson here we will just have him sit here and listen to the discussion without actually taking part. I think we can proceed with four people and if we have a tie then we can have Mr. Johnson, Mr. Johnson is all ready to break the tie. I think that is appropriate given that the Court of Appeals has remanded it back to the Board to take two actions; one is to decide whether to reopen the record or not and that is what is being done today, and I will just stop at that one. We have to take that action and therefore if there is a 2-2 tie, having to take that action whether or not we have a procedure in place now as to whether or not alternates sit you have to get someone in to do that or you could keep voting until it breaks. We could decide to do that if we have a 2-2 tie but I think that, safe, and a conservative way of proceeding now would be just to have Mr. Johnson set and actually not take part in the discussion but just sitting here listening and if it is a 2-2 tie , then we can deal with that then.

**Schwindt:** Okay. Thank you. We will move on then with our discussion then. Any Board members have any comments?

**Benson:** Well I have read the minutes a couple of times of that meeting and I feel that I have enough information so there is no need, as far as I am concerned, to reopen it.

**Schwindt:** Anyone else have a comment?

**Christianson:** I agree with Earl. I don't see the sense in it.

**Schwindt:** Would anyone like to make a motion?

**Benson:** I will make a motion not to reopen.

**Schwindt:** I have a motion not to reopen. Do I have a second?

**Christianson:** Second.

**Schwindt:** Second by Arnie. The findings in this case

**Benson:** Do we have to read the findings in this?

**Schwindt:** I have some findings that we could read into the record unless we can just adopt these findings based on the information that we had from Environmental Services Staff Report. Or would you like us to read these?

**Buitenwerf:** You can adopt them by reference stating that you are adopting the findings in the June 2012 Board of Adjustment Staff Report.

**Schwindt:** I have the staff report in front of me and there is a listing of, under the June staff report, there are twelve findings listed by the staff report and we could adopt them as our findings.

**Benson:** Do I have to make that part of my motion then Eric?

**Buitenwerf:** You can or the Board can decide to select those findings as well.

**Benson:** Well I will make my motion to accept the findings of the staff report.

**Knight:** Second it.

**Schwindt:** Okay.

**Don Dearsteyne:** And that would be items one through twelve of the staff report.

**Schwindt:** Items one through twelve as presented by the staff report

**Buitenwerf:** Arnie, do you, are you in agreement with that since you made the second to the motion?

**Christianson:** I am.

**Buitenwerf:** Okay.

**Findings of Fact:**

1. The March 2010 Board of Adjustment meeting was properly noticed in the Official County legal notice newspaper and to landowners within the legally required notification radius of the subject property.
2. During the March 2010 Board of Adjustment meeting, the applicants were given the opportunity to present their request.
3. During the March 2010 Board of Adjustment meeting, parties in the audience were given the opportunity to comment on the variance application. All parties desiring to speak to the application had opportunity

to do so.

4. None of the Board of Adjustment members making a decision on the variance application in March 2010 made any statement that there was inadequate information presented to them such that they could make a fully informed decision on the application.

5. No one in the audience at the March 2010 Board of Adjustment meeting expressed any concern(s) that the Board of Adjustment lacked sufficient information from the record in order to be able to make a fully informed decision on the application.

6. Parties with personal experience/expertise in the area of large dock systems and their impact (or lack thereof) on a lake – DNR Area Fisheries Supervisor Doug Kingsley, Board of Adjustment member Tom Krueger (former resort owner), Environmental Services Officer Eric Buitenwerf, and applicant Dan Rehkamp – all provided personal testimony on the effect of large dock systems on a lake environment. Thus, the Board of Adjustment did have good information from multiple perspectives on the technical aspects of the application when it made its decision.

7. An audio recording of the March 2010 Board of Adjustment was made and retained along with a verbatim written transcript. All the original documents presented to the Board of Adjustment in March 2010 are on record in the Environmental Services Department and are before the Board of Adjustment now when making this decision. These documents include, but are not limited to, the variance application, Environmental Services Officer staff report, March 2010 Board of Adjustment transcript, and the one letter of correspondence received in March 2010 from Daniel and Nancy Carlson.

8. The Court of Appeals specifically indicated that the County could decide the matter on the existing record, thereby opining that the existing record was sufficient to address the additional factors the Court indicated the Board of Adjustment should address.

9. There is adequate information in the existing record to decide the factors set forth in Section 1104 of the Shoreland Management Ordinance that this body is to make findings on.

10. The record created in the March 2010 variance proceeding is adequate to determine the issues.

11. Deciding the matter on the existing record insures that only the issues raised in the earlier proceedings will be considered and thus prevents any possible unfairness.

12. Deciding the matter on the existing record limits the scope of the issues that may be raised in any further litigation that may occur concerning this variance application.

**Schwindt:** All right then we will vote on the motion. We had a motion to not reopen all in favor say aye. All opposed? So we will not reopen. That concludes I guess our discussion on the Rehkamp variance.

**Diessner:** Mr. Chairman, will you accept any comments?

**Schwindt:** No. I have not opened the floor for any public comment yet and when I do it will only be on the variance that is before us okay?

**Diessner:** Maybe we should all get out of the room. I hear a train whistle.

**Schwindt:** And that would be variance application 18-V-12 by Steve and Mary Kusske. Is there anyone here for the Steve and Mary Kusske variance? Yeah, we will want you to come up here and state your names and addresses as soon as these gentlemen get on. Okay. Now we can proceed. Name and address please?

**Steve Kusske:** Steve and Mary Kusske, 13701 137<sup>th</sup> Street, Rosemount, Minnesota.

**Schwindt:** Okay. Thank you. I will read the application request. **Variance Application # 18-V-12 by Steve and Mary Kusske:** Government Lot 4, Section 5, Township 145, Range 33 and Part of Government Lot 1, Section 6, Township 145, Range 33, Helga Township on Lake Plantagenet. Parcel #s 11.05.00300, 11.06.00100 and 11.06.00110. Applicants are requesting a variance from Section 506 of the Shoreland Management Ordinance for two proposed guest cottages on two proposed lots that would exceed the 15 foot maximum allowed guest cottage height; one guest cottage per lot. Lake Plantagenet is a recreational development lake.

Any other questions that you have on this or anything else that you would like to add?

**Kusske:** No.

**Schwindt:** Eric, again can you briefly tell us because we ruled on this once before, again why this is before the Board of Adjustments just for the record?

**Buitenwerf:** Sure. This is a new variance application. It is part of a settlement agreement that was reached between the applicants and Hubbard County as a result of a variance appeal of the decision made last year regarding variance application 29-V-11. As part of the settlement agreement they are going to propose the creation of two new riparian lots, each that would comply with the duplex lot sizing requirements which is the same lot size requirement for having a guest cottage on a riparian lot and on each of the two new riparian lots they are proposing to have a primary dwelling unit and a secondary dwelling unit which would also be known as a guest cottage. The guest cottage exists on both proposed parcels A and B. They also have a variance from 2002, to allow them to build a primary residence on parcel A. there is an existing primary residence on parcel B. Everything will comply with the Ordinance in terms of lots size as well as setbacks of all the structures involved, the dwelling units that is. The septic systems are compliant on that serve all of the systems and the only item that is before the Board of Adjustment today is a variance request from the fifteen foot maximum height allowance for a guest cabin on to structures. One structure is three feet greater than the fifteen foot maximum allowance and the other structures two foot higher than the fifteen foot allowance. Those are the two things that are being requested in this variance. If the variance is

granted and the applicants would then proceed with a subdivision application to our office to seek approval for the new property line boundaries as shown on the sketch plan that is a part of the variance application.

**Schwindt:** Okay. Any Board members have any questions?

**Grob:** A couple. Eric, one of the cabins meets the 700 square feet requirements. The other one has a variance on the small amount that exceeds the 700 on a guest cabin. Is that true?

**Buitenwerf:** Yes that is correct.

**Grob:** Okay. Do we, do we, Do we need to, if we make a motion do we need to put a condition on this relative to a plat being administered, a plat being done or is that a given? Do we have to put that in the record at all as a condition? It states it.

**Buitenwerf:** You can if you want, but that is covered in the settlement agreement so if that doesn't happen than the settlement agreement isn't satisfied.

**Grob:** So we don't have to put that condition on it?

**Buitenwerf:** It is not necessary but if you wanted to you, I don't see any harm in stipulating the variance is valid if that additional step is completed.

**Grob:** I have some questions. I noticed the one cabin, when I looked at it, or old cabin which is now storage has some sleeping quarters in it, sleeping, what's your intent with that once you fulfill this plat and things.

**Kusske:** It will just be for the same thing. I mean storage. I mean I will take all of the stuff out of there.

**Grob:** Okay. I would like to see us at least put a condition on the fact that if they have a guest cabin approved with this that the storage building that is now used for some sleeping quarters, that a condition be put that that no longer be used for sleeping quarters.

**Mary Kusske:** Just let me comment, it is not used for sleeping quarters. It is an old resort that was there since the 1950s. We have never removed the beds so if it is raining out and someone in a tent wants to sleep in there on the fourth of July, that's what it is used for. But it is not a guest cabin. It is not used every single day.

**Grob:** Okay. Okay. I just noticed there were two beds in there.

**Mary Kusske:** Yeah and they have been there forever so no one really sleeps in there unless it is raining outside and they don't want to be in their tent over the fourth of July.

**Grob:** Okay. I don't have any other questions.

**Schwindt:** Any questions? Would anyone like to make a motion?

**Knight:** I so move that we accept this as outlined by our illustrious leader.

**Schwindt:** I have a motion to approve. Do I have a second?

**Benson:** I will second it.

**Buitenwerf:** Mr. Chairman, we should see if there is any public comment before we proceed with findings on the motion.

**Schwindt:** Oh. Okay. Was there any correspondence on this?

**Buitenwerf:** No.

**Schwindt:** We will open the floor to public comment. Does anyone wish to speak in favor or against this request? Seeing none we will close public comment again and proceed with the findings.

Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

**Benson:** I would say yes. It is just two guest cabins that have been there forever and they exceed the height requirement by two and three feet and the gentleman is going to subdivide the lot to make sure they are the right size to have a guest cabin, to have guest cabins on them.

Without the variance, is the owner deprived of a reasonable use of the property?

**Schwindt:** I would say yes. The guest cottages are already there allowing them to stay there even though they are a couple of feet too tall is a reasonable use of the property.

Is the stated practical difficulty due to circumstances unique to this property?

**Benson:** Yeah, I would say yes. The cabins were built before the new Ordinance came into effect.

Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Benson:** I would say yes again it was a change in the Ordinance that makes this variance necessary.

Will the issuance of the variance maintain the essential character of the locality?

**Benson:** I would say yes. It will remain residential lakeshore; no changes.

Does the stated practical difficulty involve more than economic considerations?

**Benson:** I would say economic considerations are not a factor.

**Schwindt:** Okay. All in favor say aye. All opposed? Motion carries. You can proceed with whatever else you need to do to that now. So just keep in touch with the office and you will be all set.

**Kusske:** Okay.

**Mary Kusske:** Can I just make a clarification? He said our address is 13701 137<sup>th</sup> Street, it is Danube Lane. They changed it. So I don't know if that makes a difference.

**Schwindt:** Thank you. Next we have **Variance Application # 19-V-12 by Kurt and Mary Vento:** Lots 4 and 5, Block 1 and Lots 21 and 22, Block 2, Sunny Point Addition, Section 21, Township 139, Range 33, Crow Wing Lake Township on Second Crow Wing Lake. Parcel # 06.37.00500. Applicants are requesting an after-the-fact variance from Sections 502.2, 503 and 704.7 of the Shoreland Management Ordinance for a lakeside addition/alteration to a nonconforming structure located in the bluff impact zone and originally allowed to be constructed per a variance. Second Crow Wing Lake is a recreational development lake.

State your name and address please.

**Kurt Vento:** Kurt Vento, 19718 183<sup>rd</sup> Avenue, Big Lake, Minnesota.

**Mary Vento:** Mary Vento at the same address.

**Schwindt:** All right. Anything else that we need to add?

**Kurt Vento:** Well I am not sure what you would like me to add. Would you like me to go over what has transpired? I sent a letter and filled out the form. There were gentlemen out looking at our property.

**Schwindt:** Okay. Any questions from the Board?

**Knight:** No. I think this is a reasonable request. The deck was already there and previously approved by this Board. I think this is a natural thing to approve and to keep it going.

**Schwindt:** Okay. Any other questions?

**Grob:** Yeah. I want to confirm that in fact Mr. Vento did come to Environmental Services and did get verbal approval for remodeling that deck and existing three season porch. That is true?

**Mary Vento:** Yes.

**Kurt Vento:** Yes we did request, when we did the original deck was part of the original construction when they put on the, there was an addition put on in I believe 1983, but I am not positive on that when that part of the house was built but in 2002 a previous owner had put on added just windows and added a three season porch. We purchased this in 2005 without that knowledge of course that that had never been a permitted or applied for permits so in 2009 we wanted, we needed to actually do the repair on the deck. It was in pretty bad shape and at the same time decided that we would replace windows and you know fix up the three season porch. So I came to the department and asked for a permit and the question was asked of me was it an existing structure. I said yes. Are you going to go outside of the current structure? I said no, we are going to

maintain exactly what is there and we did to the letter. So at that point I was told that I didn't need a permit to do that because it was already in place so we proceeded in 2009 to upgrade it, fix it up. We put new windows, screens, carpeting, and paneling. We actually put knotty pine inside.

**Grob:** We are voting on an after-the-fact variance to approve what was done in 2001 2001 prior to the Vento's purchasing the property. Is that correct?

**Buitenwerf:** You are asking me Ken?

**Grob:** Yeah.

**Buitenwerf:** That is partly the issue. The other part is there have been improvements that the Vento's made as well. It seems as though it boils down to a miscommunication, a misunderstanding. When they called in asking if they could do the work that they did

**Kurt Vento:** I actually came into the department.

**Buitenwerf:** Okay. When they asked if they could do that it was answered on the basis that the work, the structure that they were doing the work to was assumed to have been a legal structure and the answers given that they could do that work were based on that structure being created legally. It was later identified that the structure had not been legally constructed. The previous owner had constructed that three season porch without a permit and so that is what changed things and caused them to go through this after the fact variance request to bring the property into compliance.

**Grob:** Okay.

**Schwindt:** Any other questions? Is there any correspondence on this?

**Buitenwerf:** No we have not received any.

**Schwindt:** Okay. We will open the floor for public comment. Anyone here wish to speak in favor or in opposition to this request? Seeing none we will close the public comment section and we will move onto a motion. Does anyone wish to make a motion?

**Grob:** I would like to make a motion that we approve the variance request.

**Schwindt:** I have a motion by Ken. Do I have a second?

**Benson:** I'll second it.

Schwindt: Second by Earl to approve. The findings in this case. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

**Schwindt:** I would say yes.

**Grob:** Can I make a motion that we accept the findings of fact from the Environmental Services staff as recorded in their report to support this decision without going through

all thirteen points? Having read them they all seem to make sense and consistent with what we are planning on doing and it would save us the time. Is that appropriate to do?

**Buitenwerf:** Yes. We just need Earl to agree to that since he made the second.

**Benson:** I will agree to that.

**Findings of Fact:**

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes (X) No ( )

Why or why not? The porch is not any closer waterward than the existing deck that has been on the home for many years. The Board of Adjustment in 1976 determined the best location for a residential structure on this lot given its uniqueness with a bluff on the lot. Therefore, this current request is in harmony with the ordinance intent as it fits within the setback determined in 1976 to be what can best be obtained given the lot's unique constraints.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X) No ( )

Why or why not? A four season porch addition to a home is a reasonable use of a property. Many residential structures in shoreland have such porch additions.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X) No ( )

Why or why not? The structure was originally constructed by variance in 1976. There is a bluff on the property. The slope of the property and the layout of the house along with the lakeside deck make a porch beneath the deck a logical location.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No (X)

Why or why not? Yes – the landowner did undertake construction activities stated in the application that modified the primary construction of a three season porch under the lakeside deck that the previous landowner constructed without permit. No – the previous landowner constructed the three season porch initially that the current landowner then modified.

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X) No ( )

Why or why not? The area's character consists of single family seasonal and year-round residential structures, many of which have decks and/or three season porch additions. Allowing this three season porch to stay would thus not harm, alter, or diminish the locality's character.

6. Does the stated practical difficulty involve more than economic considerations?  
Yes (X) No ( )

Why or why not? While economics are cited as a difficulty in the application, they are not the sole practical difficulty. The porch would be difficult to remove without significant structure alteration to the balance of the structure in order to make it weather tight.

7. Why did the applicant fail to obtain a variance/or comply with the applicable requirements before commencing work? Did the applicant act in good faith?

Why or Why not? The applicant did not know that the previous owner's construction of the three season porch was done illegally. He did check with the Environmental Services Department as to whether or not the particular window installation and deck board/rail maintenance he intended to do would require a permit.

8. Did the applicant attempt to comply with the law by obtaining the proper permits?

Why or Why not? Yes. As stated in answer to question 7, the landowner did contact the Environmental Services and inquire about the zoning regulations and how they apply to this project. He just did not know that the previous landowner's construction of the porch was done without zoning approval.

9. Did the applicant obtain a permit from another entity that violated the law? Provide explanation below.

No, not that I am aware of.

10. Did the applicant make a substantial investment in the property? Provide details below.

Yes, the application states that \$19,321.00 was spent on materials in addition to 250-300 hours of labor being invested in the project by the landowner.

11. Did the applicant complete the repairs/construction before the applicant was informed of the impropriety? Please provide details below.

Yes – the construction was complete at the time the Environmental Services Department visited the site and identified the violation on February 23 and March 26, 2012.

12. Are there other similar structures in the neighborhood? Please provide details below.

Yes. Lakeside decks and three season porches are common additions to riparian residential structures in the area.

13. Would the minimum benefits to the county appear to be far outweighed by the detriment the applicant would suffer if forced to remove the structure? Why or why not?

Yes. Given the cost of the construction and the landowner's trying to follow the rules and the infraction having been created by a previous landowner – along with the significant work involved to weather tight the structure if the porch were removed, it does not make sense for the County to require the structure's removal. Additionally, the deck above the porch has been in place for decades so the waterward impact of the porch (which is beneath the deck) is no greater than what has been present for many years.

14. In light of all of the above factors, would denying a variance serve the interests of justice? Why or why not?

No. The landowner did not create the porch and sincerely inquired as to the necessary zoning approvals needed for his project. A previous landowner created the violation. The cost of the project and additional cost of removing it would be significant. The porch does not encroach closer to the lake than the lakeside deck above it. The landowner has cooperated in trying to make the matter right. Denying the variance would thus be the wrong thing to do in this situation.

**Schwindt:** Okay so we have a motion to approve and we want to adopt the findings as presented to us by Environmental Services staff. All in favor say aye. All opposed? It has been approved.

**Mary Vento:** Thank you.

**Kurt Vento:** Thank you. You are making my wife have a very nice happy birthday here. Thank you folks.

**Schwindt:** Do they need to get any more permits or anything else now Eric before they leave? Are you up to date on everything you need from them?

**Buitenwerf:** We will have to get a after the fact permit on file for the porch. Yes.

**Schwindt:** So you will still need to get a permit but you will need to wait two or three days before all this paperwork flows back up.

**Kurt Vento:** Oh okay. I will get back up next time I am up. We will come in. Thank you very much.

**Schwindt:** Thank you. Next we have **Variance Application # 20-V-12 by Gerald and LaDonna Erickson:** Part of the NW ¼ of the NW ¼, Section 9, Township 139, Range 32, Badoura Township on Mow Lake. Parcel # 03.09.00400. Applicants are requesting an after-the-fact variance from Sections 501.2, 502.2, and 506 of the Shoreland Management Ordinance for the following: Part 1. a platform located in the shore impact zone at less than the required 100 foot ordinary high water mark (OHW) setback, and Part 2. a travel trailer in the shore impact zone at less than the required 100 foot OHW setback that is being requested to be allowed to serve as a guest cottage on a lot that does not meet the required minimum lot size or residential lot suitable area. Mow Lake is a recreational development lake.

Anything else you would like to add?

**Gerald Erickson:** No except you know I guess when a guy buys a lake home like this you know we bought that back in 2003. It really would be kind of nice if the realtor would say that before we go start adding a few things to what we originally bought would have been nice. I guess I have been real ignorant on variance laws and done a few things I guess that Eric had to send me a letter on that said that I shouldn't have been doing and that is why we are here.

**Schwindt:** Can you state your name and address

**Erickson:** Oh sure. My name is Gerald Erickson, 29318 County Road 18, Comfrey Minnesota.

**Schwindt:** Thank you. Any questions from the Board?

**Benson:** Well that lot is way too small for a guest trailer, or whatever you want to call it and it is in the shore impact zone and I feel as if you wanted to spend a couple bucks cutting down some trees and leveling off the land back there you could get it back to the 100 foot setback so I cannot go along with a variance for you on this.

**Knight:** It is a movable unit and so you can move it back and so I see no difficulty, real difficulty except that you would have to dig out a little spot for it or something like that but both the deck and the mobile home is closer than necessary.

**Schwindt:** Any other questions?

**Grob:** He has a nice lot in terms of shoreline for one to have a guest cabin but clearly far short of the area. My biggest objection would be the fact that it is in the shore impact zone, which is pretty much the area we would like not to disturb as such so I don't think I can support retaining that guest cabin in the shore impact zone.

**Schwindt:** Okay. We will open it to public comment. Any correspondence on this one Eric?

**Buitenwerf:** There was one item of correspondence that was received and that was included in the packets that the Board members received.

**Schwindt:** Okay. So it is already part of the record. Anyone wish to speak in favor or in opposition to this request? Seeing none we will close the public comment portion. Does anyone wish to make a motion on this?

**Knight:** I move we deny the request.

**Schwindt:** I have a motion to deny by Chick. Do I have a second?

**Benson:** I will second it.

**Schwindt:** Second by Earl. The findings of fact in this case.

**Knight:** Once again I, would I, to my motion that we accept the comments made by the department on the request.

**Schwindt:** Along with the motion we have an adoption of the findings from the Environmental staff report. Will you second that also Earl?

**Benson:** Yes I will.

**Findings of Fact:**

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes ( ) No (X)

Why or why not? The trailer and platform are located in the shore impact zone and the lot is roughly ½ the required minimum lot size for a guest cottage and less than a ¼ of the required RLSA for a guest cottage.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes ( ) No (X)

Why or why not? There is an existing residential structure on the lot that provides dwelling unit space. The trailer could be moved to a conforming OHW setback location and be used for occasional and intermittent visitors per Section 512 of the Shoreland Management Ordinance.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes ( ) No (X)

Why or why not? The lot's difficulty is its small size and lack of depth – which is a difficulty on many riparian lots in shoreland areas so it is not unique to this property.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes ( ) No (X)

Why or why not? The landowner created the practical difficulty by placing the trailer and constructing the platform in this location.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes ( ) No (X)

Why or why not? The locality consists of single family residential structures that do not appear to have guest cottages as well. Most of the lots are not sized large enough to have a guest cottage on them. Allowing a guest cottage on a lot of this size would disrupt the locality's character by increasing its dwelling unit density rather intensely given the lot's size.

6. Does the stated practical difficulty involve more than economic considerations?

Yes (X) No ( )

Why or why not? The application claims that a slope on the property determined the location on which the trailer/platform was placed.

7. Why did the applicant fail to obtain a variance/or comply with the applicable requirements before commencing work? Did the applicant act in good faith?

Why or Why not? I don't know. You'll need to ask him this question during the meeting.

8. Did the applicant attempt to comply with the law by obtaining the proper permits?

Why or Why not? No. The applicant will need to be asked "why" during the meeting.

9. Did the applicant obtain a permit from another entity that violated the law? Provide explanation below.

No, not that I am aware of.

10. Did the applicant make a substantial investment in the property? Provide details below.

No. The trailer can still be owned and just needs to be moved. The platform is not very substantial and could also be moved to a conforming location without much difficulty.

11. Did the applicant complete the repairs/construction before the applicant was informed of the impropriety? Please provide details below.

Yes – the trailer and platform were in place when the Environmental Services Department conducted a site inspection on April 3, 2012.

12. Are there other similar structures in the neighborhood? Please provide details below.

No. This will require field verification during the lot viewal, but I am not aware of other lots in the neighborhood also having a guest cottage travel trailer on them.

13. Would the minimum benefits to the county appear to be far outweighed by the detriment the applicant would suffer if forced to remove the structure? Why or why not?

No. The trailer and platform can easily be relocated to a conforming location and continue to be used without any loss of value.

14. In light of all of the above factors, would denying a variance serve the interests of justice? Why or why not?

Yes. The lot does not even come close to meeting the minimum lot size requirements for a guest cottage. The trailer and platform are also located in the

shore impact zone. The two items are easily movable. Therefore, justice is served by requiring their relocation to a conforming spot and not allowing this lot to have a guest cottage on it.

**Schwindt:** All in favor of denial say aye. All opposed? The request has been denied.

**Erickson:** Is there, does it have to be gone all together. I mean there is no moving it in just for like a weekend or anything and then pulling it back out again?

**Buitenwerf:** You would be allowed to have the trailer there for occasional and intermittent use according to Section 512 of the Shoreland Management but the trailer would have to meet the 100 foot setback when used in that way so you would have to clear an area meeting the setback and then if you have such an area then you could use it for that occasional and intermittent visitor use.

**Erickson:** Okay. So in other words it is more or less has to be out asap?

**Buitenwerf:** You will be notified by our office as to a timeline that we would ask that the trailer be brought into compliance by.

**Erickson:** All right. Well thanks a lot gentlemen.

**Schwindt:** Yup. Thanks for coming.

Next we have **Variance Application 21-V-12 by Deane and Colleen Stinar:** Part of Government Lot 4, Section 3, Township 145, Range 32, Farden Township on Grace Lake. Parcel # 07.03.02700. Applicants are requesting a variance from Sections 901 and 902 of the Shoreland Management Ordinance to remove part of a permanent ice ridge and leave the area non-vegetated. The proposed project would expand an existing adjacent non-vegetated shoreline recreation use area beyond the allowed 20 foot maximum width. Grace Lake is a recreational development lake.

**Colleen Stinar:** Hi.

**Deane Stinar:** Good morning.

**Schwindt:** Name and address please.

**Colleen Stinar:** Colleen Stinar, 929 9<sup>th</sup> Avenue SE, East Grand Forks but it is the home, the lake home that we are requesting a variance for obviously, 30084 Viny Trail Bemidji.

**Stinar:** My name is Deane Stinar.

**Schwindt:** We all looked at it. Any questions from the Board?

**Grob:** When we were there on the visit you indicated that one of the problematic parts was having beach area because your dock and boat lift and so on was kind of in the way and you didn't have enough room. It seems to me, you could move that more to the

South I think and the right direction and it would give you more than adequate space for a beach and a recreational area, the 20X15 that is allowed by the Ordinance. In fact I think when we measured it; it was 24, at least 24 feet wide verses the 20 so that would give you adequate. Why is that not a possibility?

**Colleen Stinar:** Well that would move the dock on the lake side of the ice ridge and so the only way to access the dock then would be to walk over the ice ridge because most of the time the water is, like all last summer the waterline was right up to the ice ridge. So there usually isn't beach there that is usually water right up to there.

**Grob:** Okay, well that probably was a unique situation for a while last year that there wasn't room to exit on the beach. You already have four feet of beach as I noticed to date

**Deane Stinar:** It was all year like that. It was to the ice ridge all last year. The measurement that we are using from is from a report that Hubbard County employee Scott Navratil and his sketch that he did in 2010 as far as the beach. We were relying on his information as far as that distance.

**Grob:** I checked the records and it shows that last year is the only year that you had that kind of a high level of water for the last ten years. It has been at least a foot lower than the maximum last year and that would seem to me that it is a once in a ten year or maybe going in cycles, it would seem to me it would be more than reasonable to move your dock.

**Deane Stinar:** We have only had the property since July of 2010 so we are not familiar with the last ten years.

**Grob:** It was like a foot higher than normal. It exceeded the ordinary high water mark so I can see that was a unique situation and therefore moving your dock would be more than reasonable. That is my only comment on it.

**Schwindt:** Okay. Arnie, have any questions?

**Christianson:** No I don't.

**Schwindt:** Earl?

**Benson:** No. I just can't go along with this because it, you just are not allowed to remove ice ridges and you already have sixteen feet of a nice looking beach so that's not a problem.

**Colleen Stinar:** The problem we have is where the beach is placed. If the original owners had put the beach in the middle of the lot, you know in the first place we wouldn't be having a problem but since they put it right next to the neighbor's, the northern most part of the shore I think we put a picture in there too that when we have the kids and family swimming in our area and our neighbors are coming in and out with their jet skis and their pontoons we are kind of all pretty close to the same area. That is what we are running into.

**Stinar:** Mr. Benson, I think it does say in one of the statutes or rules that ice ridge can be changed by a variance so that is why we are here.

**Colleen Stinar:** For different reasons.

**Benson:** They can be what?

**Colleen Stinar:** They can be removed by variance.

**Grob:** Only sections of it possibly.

**Stinar:** We are only talking about a section. Right now we have over 80 feet of ice ridge.

**Colleen Stinar:** We would just like to remove fifteen feet of it.

**Grob:** The intent though is to prevent runoff and your cabin is in the shore impact zone and virtually no vegetation so any water runoff whatsoever from your property if that ice ridge were fully removed would all be running right into the lake and it is probably one of the major contaminants or things that you don't want a lake to do. And you already have 24 feet verses the twenty, you have more than adequate. Just a visual comment, your neighbor seemed to have their dock right on their property line, I think you might want to address that issue with them. That might get you a little more safety issue but that is separate from this discussion.

**Colleen Stinar:** I think theirs is within ten feet. I don't think it is right on the property line. They have a sidewalk coming down from their house where they

**Schwindt:** I was just saying it looked pretty close. I was just asking. Yeah ten feet is what it is.

**Stinar:** We did install gutters on the house to remove the water so the water from the roof would go where the ice ridge is.

**Grob:** Yeah but if you remove that whole ice ridge that probably would run into the lake. I don't think that we need to debate that. The point is that the purpose for ice ridges is to protect the lake. The way your house sits, the way the vegetation is to increase that risk of runoff when you already have very reasonable use of your property and a nice beach area, even beach area in front of the ice ridge. It doesn't just seem reasonable to add that extra load to the lake.

**Stinar:** There is, you were saying there is no vegetation, there is, from the prior owner, there is grass on the ice ridge as a filter.

**Grob:** Grass isn't considered vegetation in terms of water runoff though.

**Stinar:** It is indicated in one of the DNR brochures?

**Colleen Stinar:** No it was the vegetation alteration. Yeah.

**Stinar:** A ground layer of predominately perennial vegetation such as grass, Section 901 Vegetative Alterations number two c.

**Colleen Stinar:** In the Shoreland Management Ordinance.

**Grob:** Yeah. It is intended to be much higher grass to prevent runoff. You virtually have none. I don't think it is a debate we have to have here.

**Knight:** I have a problem with this. In the middle of the ice ridge you have got a stump tree which is many years old. You have ground the tree so obviously the ridge has been there for some time and what I was appalled at was there was poison ivy, there was dandelion there, stickly dandelion, there were other offensive plants and should your guests or your children or people get into that they are going to have a problem without being managed and I think you should manage that ice ridge and the type of plants that are on it. I realize that you put on it 2-4-D or something a year ago but that, that's killing everything and that doesn't mean a management situation and care. I think that is part of the reason for an ice ridge is to develop and that is part of the area that you need to develop and cultivate. It is just something that is not a danger.

**Colleen Stinar:** But right now we are not allowed to do anything with that.

**Knight:** Eric, they are allowed to do something with that aren't they? They could plant it.

**Buitenwerf:** There is a vegetative restoration that was issued last year to require that that are be restored to native vegetation after it had been treated with herbicide and possibly mechanical methods of vegetative removal as well. The poison ivy that is present as well as any other noxious weeds are always able to be treated individually to ensure their removal as long as the surrounding native vegetation is not harmed in the process.

**Knight:** Thank you. I have no other comments except that the ice ridge has been there for some time and we did get twenty feet or better, a little better than twenty feet there. It is a lovely shore. It is lovely and a nice sand beach. I don't have any other comments.

**Schwindt:** Okay. We will open that up for public comment. Any correspondence on it?

**Buitenwerf:** No we did not receive anything in writing.

**Schwindt:** Anyone in the audience wish to speak in favor or in opposition to this request? I don't see nay so we will close the public comment portion. Anyone wish to make a motion?

**Grob:** I will make a motion that we deny the application for the variance.

**Schwindt:** I have a motion to deny. Do I have a second?

**Benson:** I will second it.

**Schwindt:** Second by Earl. The findings in this case.

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

**Grob:** I would say no. The Ordinance basically doesn't allow additional are to be created. They already have 24 feet of ice ridge removed or missing and in keeping with the intent of the Ordinance to allow the variance.

2. Without the variance, is the owner deprived of a reasonable use of the property?

**Benson:** I would say no. He already has sixteen to twenty feet of beautiful beach.

3. Is the stated practical difficulty due to circumstances unique to this property?

**Grob:** I would say no. Permanent ice ridges are pretty common on lots and so I just say it is not unique.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Knight:** I would have to say yes to that because the ice ridge is created by nature.

5. Will the issuance of the variance maintain the essential character of the locality?

**Benson:** I would say yes. It will remain essential character of the lake but removing an ice ridge is not allowed by Ordinance.

6. Does the stated practical difficulty involve more than economic considerations?

**Knight:** Yes. No economic considerations involved.

**Schwindt:** Okay. We have a motion to deny all in favor say aye. All opposed? It has been denied.

**Colleen Stinar:** Thank you.

**Schwindt:** Thanks for coming.

**Grob:** Thank you.

**Schwindt:** That concludes everything that we had on the agenda. Is there anything else Eric?

**Buitenwerf:** No, there is no additional business.

**Schwindt:** Well we will have a motion to adjourn.

**Benson:** So moved.

**Schwindt:** Second?

**Christianson:** Second it.

**Knight:** Second it.

**Grob:** Second.

**Schwindt:** We are adjourned.

The meeting was adjourned at 9:52 a.m.

Respectfully submitted:

Maria Shepherd  
Recording Secretary

**Board of Adjustment  
July 16, 2012**

**Schwindt:** I'll call the meeting to order.

**Unidentified Speaker:** Can't hear.

**Unidentified Speaker:** Can't hear.

**Schwindt:** Okay. Can you hear me now?

**Unidentified Speaker:** No.

**Unidentified Speaker:** Closer.

**Unidentified Speaker:** Move closer

**Schwindt:** Is this on?

**Unidentified Speaker:** It is on but you have to get closer.

**Grob:** I think you will have to move closer in order for people to hear you.

**Schwindt:** Okay. All right. This is the Board of Adjustment public meeting / hearing for Monday, July the 16<sup>th</sup>, 2012. Let me introduce the Board members to you. I have Chick Knight, Earl Benson, myself Lou Schwindt, Arnie Christianson, Ken Grob.

**Grob:** Grob.

**Schwindt:** Grob. Eric Buitenwerf and Maria Shepherd. I just want to remind everybody that there is a staff report that was put together by the staff that was left in the back for everyone to review and to see and someone must have picked that up because it is gone. So if someone has it or is reading the staff report it should remain on the back table. Also I want to remind everybody we are going to limit, when we call for public input, we are going to limit the speaking time to no more than three minutes. We ask that you turn off any cell phones if you have any with you so that we won't get any interruptions. I also want to point out the fact that if your variance is approved you will still need to go to the Environmental Services Office to get any necessary permits and abide by all the septic system upgrades and things of that nature. I don't believe there is anything else that I should say at this time except for the approval of the minutes from the previous meeting. Do I have a motion to approve those minutes?

**Benson:** So moved.

**Schwindt:** I have a motion to approve, do I have a second?

**Christianson:** Second it.

**Schwindt:** I have a second. All in favor say aye. Okay.

**Grob:** I abstain having not seen them.

**Schwindt:** Old business, we have nothing under old business. Under new business we have **Variance Application # 3-V-10 by Daniel J. and Donna M. Rehkamp:** Common Elements of Rice Bay Plat # 26, Gov't Lot Five (5), Section Thirty (30), Township One Hundred Forty (140), before I get to much further on this thing if we are going to have any Board discussion on this I think Ken wanted to say something before I get to far.

**Grob:** Oh yeah if you are to that agenda item, yeah, on the advice of personal legal counsel and with the Board of Adjustment's approval I will abstain from discussion and voting on the Rehkamp variance 3-V-10 that is on the agenda today.

**Schwindt:** All right this application was originally heard back in March of 2010 and the applicants requested on March 15, 2010 and received a variance from Section 1104, Item 6.C of the Hubbard County Shoreland Management Ordinance (SMO) regarding the number of spaces provided for continuous beaching, mooring, or docking of watercraft exceeding the number of such spaces allowed by the SMO for a residential planned unit development. The SMO allowed for three (3) spaces for tier 1 use only, and one dock for use by all other tiers. The application requested and received a total of eleven (11) spaces for use by units located in tiers 1-4. Fifth Crow Wing Lake is a recreational development lake. Litigation was initiated challenging the grant of the variance, and no action has been taken on it since that case began. On April 30, 2012, the Minnesota Court of Appeals remanded the variance back to the Board of Adjustment for further consideration. The Court of Appeals, after reviewing the record, specifically stated that the Board of Adjustment, "shall have discretion to reopen the record or not." Pursuant to that decision, on June 18, 2012, the Board of Adjustment decided not to reopen the record for additional information before taking further action on the variance. In remanding the matter back to the Board of Adjustment, the Court of Appeals held that all of the factors looked at and decided by the County in its March 15, 2010, decision granting the variance were legally sufficient and supported by the record. However, the Court of Appeals held that there were additional factors set forth in Section 1104 of the Shoreland Management Ordinance for which there were no specific findings, and that were not completely the same as the factors used in the March 15, 2010 hearing. Therefore the Court of Appeals remanded the matter back to the Board of Adjustment for further consideration of the variance application and these additional factors. The meeting of July 16, which is today, will take action consistent with the instructions of the Court of Appeals, and make findings as required by that decision. Because the record is not being reopened, this item will be decided without any further public comment.

Now is there any questions that you have Earl?

**Benson:** No. I just think that people are kind of confused on this issue because it is not eleven new docks going in there. It is eleven slips going in on one or two docks so actually the amount of docks on the property will be reduced from what it was before.

**Unidentified Speaker:** Excuse us, could you please speak up. We can't hear back here.

**Benson:** Yeah I just said I think some people are confused on this issue because it isn't allowing eleven new docks. It is eleven boat slips that will be on one or two docks which is less than what is on the property right now as a resort. That is all I have to say.

**Schwindt:** Chick

**Knight:** I think that what we have done before should be reconsidered.

**Unidentified Speaker:** What?

**Unidentified Speaker:** Can't hear

**Unidentified Speaker:** Speak up and into the microphone.

**Knight:** I believe what we have done before with this should stay

**Unidentified Speaker:** Can't hear.

**Unidentified Speaker:** Still can't hear you.

**Unidentified Speaker:** Move the microphone.

**Knight:** That's tough.

**Unidentified Speaker:** We cannot hear. Turn up the microphone

**Unidentified Speaker:** the microphone is not turned on

**Unidentified Speaker:** Speak into the microphone

**Buitenwerf:** Folks please bear with us. We ask that you be as quiet as possible so that you can hear. I apologize. Our PA system is the best that it is; it is what we have to work with. If you can't hear, those of you that are having difficulty hearing please move forward in the audience area so that you are closer to the Board members and thus able to hear what they have to say. Thank you.

**Unidentified Speaker:** Jesus Christ

**Unidentified Speaker:** All they have to do is speak into the mike. They can pick it up and put it right to their mouth and it will work just fine.

**Unidentified Speaker:** Put it right to their mouth.

**Schwindt:** Arnie?

**Christianson:** I don't have nothing. I don't have anything to say.

**Schwindt:** Okay. We are asked to, I guess, reaffirm, and you can correct me if I am wrong on this, the findings from the March 2010, I will move this over here so they can hear me, so the Board of Adjustment was asked to reaffirm the findings from the March 10, March 15<sup>th</sup> I think it was 2010 meeting. So I would make a motion that we affirm the findings from the March 15, 2010 meeting as that Board found them. Do I have a second?

**Benson:** I will second it.

**Schwindt:** I have a second by Earl. The findings of the fact, I would say that the staff report, you could use the findings of the facts of the staff report which were, I guess duplications of what were the original findings that the Court of Appeals has already acted on. So all in favor of reaffirming say aye? Opposed?

Findings of Fact:

1. Is the request a substantial variation from the requirements of the zoning ordinance? Why or why not?

Yes. I believe it is a substantial variation from the requirements of the zoning ordinance because the zoning ordinance would allow three boat slips and his request is for eleven and that is more than three times what the requirement of the ordinance states.

*The finding by Cole carried 3 to 2 with Krueger and Christianson casting the opposing votes.*

**In its decision on Ed Mutsch, et al. vs. The County of Hubbard, et al., and Daniel J. Rehkamp, et al., the Minnesota Court of Appeals stated in regard to this finding:**

**Here, as to the first *Stadsvold* factor, the BOA found that the request was a substantial variation from the requirements of the zoning ordinance because the variance would more than triple the number of boat slips permitted on the Rehkamps' property. This finding is clearly supported by the record because, at the public hearing before the BOA, Daniel Rehkamp acknowledged that the "request was for an additional eight dock spaces to accommodate the 11 total in the association."**

2. Will the request have an adverse effect on government services? Why or why not?

No. It will have no impact on governmental services.

**In its decision on Ed Mutsch, et al. vs. The County of Hubbard, et al., and Daniel J. Rehkamp, et al., the Minnesota Court of Appeals stated in regard to this finding:**

**As to the second *Stadsvold* factor, the BOA found that the variance would have no impact on governmental services. The record contains no evidence that the variance may impact such services, and we conclude that this finding is, on this record, reasonable.**

3. Will the requested variance effect a substantial change in the character of the neighborhood or will it result in a substantial detriment to neighboring properties? Why or why not?

No. Converting to a residential PUD has a decrease to the impact. Allowing for eleven spaces is making it possible for it to be a workable PUD. It will look exactly

like the one next door. He has eleven boat slips.

**In its decision on Ed Mutsch, et al. vs. The County of Hubbard, et al., and Daniel J. Rehkamp, et al., the Minnesota Court of Appeals stated in regard to this finding:**

**Addressing the third *Stadsvold* factor, the BOA found that if the Rehkamps' resort were converted to a PUD, the property's impact on neighboring properties would decrease and the variance would not cause a substantial change in the character of the neighborhood. The record contains evidence that lake residents have less of an impact on the lake than do periodic renters of lakeshore properties. The record also shows that the Rehkamps currently have 11 boat slips on the property and the neighboring property has 11 boat slips as well. Therefore, the BOA's findings regarding the proposed variance's effect on the neighborhood are supported by substantial evidence.**

4. Is there another feasible method to alleviate the need for a variance? (Economic considerations play a role in the analysis under this factor) Why or why not?

No. I see no other than to deny it. I see no other way to go around it but to reduce the number from eleven.

**In its decision on Ed Mutsch, et al. vs. The County of Hubbard, et al., and Daniel J. Rehkamp, et al., the Minnesota Court of Appeals stated in regard to this finding:**

**As to the fourth *Stadsvold* factor, the BOA found no feasible method to alleviate the need for a variance. The record shows that the BOA questioned the use of floating docks, as an alternative, but evidence of safety concerns and negative impact on the shoreline was presented. We conclude that the BOA's finding is supported by the record.**

5. How did the need for a variance arise? Did the landowner create the need for the variance? Explain.

No. It was required by the State to have only one dock per unit in the first tier.

**In its decision on Ed Mutsch, et al. vs. The County of Hubbard, et al., and Daniel J. Rehkamp, et al., the Minnesota Court of Appeals stated in regard to this finding:**

**Regarding the fifth *Stadsvold* factor, the BOA found that the Rehkamps did not create the need for the variance; rather, state law limited the Rehkamps "to have only one dock per unit in the first tier." The record contains evidence that more than half of the Rehkamps' lakefront is wetlands and, but for the wetlands, the Rehkamps' PUD could include "a lot more" units in the first tier; if this were the case, the Rehkamps would be allowed more boat slips. In light of the property's geography, the BOA's finding is supported by substantial evidence.**

6. In light of all of the above factors, would denying a variance serve the interests of justice? Why or why not?

No. I don't believe denying it will serve the interests of justice because of the reason I (Krueger) gave on the very first question. Each one of those owners is going to want to have an equal use of that lake. That's why they buy into a PUD. That's the whole concept of a planned unit development.

*The finding by Krueger carried 3 to 2 with Novak and Cole casting the opposing votes.*

**In its decision on Ed Mutsch, et al. vs. The County of Hubbard, et al., and Daniel J. Rehkamp, et al., the Minnesota Court of Appeals stated in regard to this finding:**

**Finally, as to the sixth *Stadsvold* factor, the BOA found that denying the variance would not serve the interests of justice, as granting the variance would allow equal access to the lake for each owner within the PUD. Again, the BOA's finding is supported by substantial evidence.**

**Because we conclude that the BOA's findings on each of the six *Stadsvold* factors are supported by substantial evidence, we reverse the district court's conclusion to the contrary.**

**Schwindt:** The second part of the variance was to answer some of the questions under Section 1104 that the Court thought we hadn't answered under the first meeting. Again I would make a motion that we accept the staff report as to the findings in that case.

**Benson:** I will second it.

**Schwindt:** So all in favor of accepting the staff report findings on those factors say aye. All opposed? So it has been reaffirmed and approved.

Findings of Fact:

- A. Is the condition causing the demonstrated hardship unique to the property and not caused by the actions of the applicant(s)?

YES (\_\_\_) NO (X)

WHY OR WHY NOT:

To the extent this factor asks about hardship itself, and consistent with the Court of Appeals decision of April 30<sup>th</sup>, the Board of Adjustment is looking at practical difficulties, and not hardship. As to the specific focus of this factor, it parallels that of question 5 of the *Stadsvold* factor, which asks: How did the need for a variance arise? Did the landowner create the need for the variance? The Court of Appeals upheld the Board of Adjustment's March 15, 2010 finding that found that State law created the need. The Court also examined the record and noted that this finding was justified by the geography of the land.

The record reflects that the Shoreland Management Ordinance (SMO) uniquely regulates permanent boat slips for planned unit developments. No other type of riparian properties are regulated in terms of the number of permanent boat slips they are allowed. The applicants are legally allowed to provide day use lake access to the eight tiers 2-4 dwelling units via the existing boat launch per Section 1014.6.C of the SMO. The SMO does not limit the number of watercraft that can use the lake in this manner.

The applicants did not create the hardship/practical difficulty. The hardship was partly created by the State of Minnesota when it created the dock/lake access regulations found in Section 1014 of the SMO that were mandated for the County to administer. The State only applies these regulations to commercial and residential planned unit development properties.

This property also is unique in terms of the shape and composition of the Tier 1 area. Of approximately 490 feet of shoreline, 290 feet thereof consist of near shore wetland that are being protected and left in a natural state. Of 210,805 square feet of tier 1 area (per the application survey), 120,125 square feet are wetland and thus cannot be used in calculating the tier 1 suitable area that is then used per Section 1013 of the SMO to determine the number of allowable dwelling units and accompanying permanent watercraft slips allowed for tier 1. This significant wetland area greatly affects the number of tier 1 dwelling units and accompanying permanent watercraft slips the landowners are allowed. The protection and preservation of the wetland area penalizes the landowners in terms of the number of tier 1 dwelling units and accompanying permanent watercraft slips they are allowed.

- B. Is the variance necessary in order to secure for the applicant those rights enjoyed by other property owners in the same area or district?

YES (  x  ) NO (  )

WHY OR WHY NOT:

The record reflects that the SMO uniquely applies dock/mooring space regulations to only commercial and residential planned unit development properties. All other riparian lot uses are not regulated by the SMO in regard to any aspect of docks/watercraft slips. Therefore any other residential property could have as many docks and boat slips as they want. And the record reflects that many have more than 1 dock or mooring, or more than one boat.

In that regard the request merely seeks to allow one mooring space for each property owner within the PUD. In commenting on the 6<sup>th</sup> Stadsvold factor, which was phrased on the finding sheet used by the Board as whether denial of the variance would serve the interests of justice, the Court of Appeals found that giving each owner in the PUD access to the lake, like other owners, supported granting the variance and the answer to the 6<sup>th</sup> question.

In light of all this, the Rehkamps are only attempting to secure for future owners the rights enjoyed by other property owners in the same area.

The property immediately north of this property is a commercial PUD, but the majority of properties on the lake are residential riparian lots that do not have their dockage rights regulated by the SMO.

- C. Will granting the variance be contrary to the public interest or damaging to the rights of other persons or to the property values in the vicinity?

YES (  ) NO (  )

WHY OR WHY NOT:

As to the specific focus of this factor, it parallels in part that of question 3 of the Stads vold factor, which asks: Will the requested variance effect a substantial change in the character of the neighborhood or will it result in a substantial detriment to neighboring properties? The Court of Appeals decision noted the record had substantial evidence that the variance would not be a detriment to the neighboring properties.

There is no evidence anywhere in the record that allowing 11 boat slips will be damaging to the property values in the vicinity. There are no more dock slips being proposed than have historically been on this property due to its operation as a resort. And the property to the north has the same number. One central docking system will be installed versus the multiple dock systems used for the resort. Day use of the lake at the landing will greatly be reduced – thereby bringing the property all the more into compliance with the character of the neighborhood and making it a benefit to neighboring properties. The record has substantial evidence that the use of permanent mooring facilities and the development of the PUD will lessen the impact on the lake than what has been at the resort. Thus, providing the applicants with a specific number of permanent watercraft slips and one dock is not contrary to the public interest as expressed through the Department of Natural Resource's dock regulations nor is it damaging to the rights of other persons or to property values in the vicinity.

Additionally, as mentioned above in Item B, the majority of the properties on Fifth Crow Wing Lake are single family residential uses that are not restricted as to the number of docks and permanent watercraft slips they can have along their shorelines.

- D. Would granting the variance be contrary to management policies of the area or management district?

YES (  ) NO (  )

WHY OR WHY NOT:

Evidence in the record supports a conclusion that the variance will protect the lake from the damage caused by a potential eight watercraft being taken out of and retrieved from the lake on a daily basis. Evidence supports a conclusion that the legally allowed unregulated daily lake use for tier 2-4 units is not in the lake's best interest and thus is not as in keeping with the SMO intent as is providing a permanent watercraft slip for each dwelling unit in tiers 2-4. Daily watercraft

launching damages the shoreline, lake bottom, and near-shore emergent and floating vegetation more than permanent boat slips because in the latter case, watercraft will generally be put into the lake once in the spring and taken out once in the fall and otherwise be moored in secure boat slips whose use results in much less damage to the lake environment than day use of a boat launch by an unregulated number of watercraft. The record reflects, as noted by the Court of Appeals decision, that lake residents have less of an impact on the lake than periodic renters.

This lake is a recreational development lake. Therefore the majority of the riparian properties on this lake are used as single family seasonal and year-round residences that do not have any regulations on them as to the number of docks and watercraft slips they may have. Thus, allowing this property specifically one dock with eleven watercraft slips on it when the majority of riparian landowners on the lake can have as many docks and slips as they want will not be contrary to the area's management policies, but rather complementary.

- E. Is it the case that the property owner or owners would not have reasonable use of the land without the variance?

YES () NO ()

WHY OR WHY NOT:

This factor is not one that requires an answer to. The Court of Appeals indicated that insofar as Section 1104 includes factors that Stads vold stated were applicable to use variances and situations of particular hardship that those factors are not to be applied here. Reasonable use was a factor looked at for hardship, which was applied only to a use variance. It is therefore inconsistent with the Stads vold factors and with a practical difficulties determination, which is what is being made in this case.

But, in the event that the Board was to look at this factor, it would conclude that the answer to this would be yes. The law at the time this application was originally approved interpreted this factor to mean: is the use proposed a reasonable one? The record supports an answer of yes. The use proposed here, that each owner in the PUD be allowed a permanent mooring space on the dock, is a reasonable use for the type of property, in the District, and in this locality. Denying the variance would thus deprive those owners of a reasonable use. Allowing the owners of this property to have one dock and a set number of watercraft slips – one per dwelling unit – is very reasonable when taken in the full context of what the majority of other riparian lot owners on the lake are legally allowed to do with docks and watercraft slips.

**The remaining items under Section 1104 of the SMO are not strictly yes or no questions to answer. They are therefore dealt with in a format other than question and answer.**

- F. Under Section 1104, the existing sewage treatment system, if applicable, is upgraded to current standards before any additional development is approved. The variance, if issued, must require reconstruction of a nonconforming sewage treatment system;

The public records that show the regulation and character of this property (which court cases state are always part of the record even if not physically present at the hearing) indicate that there is no nonconforming sewage treatment system. Conditional use permit 5-CU-09 that was issued to this property on January 12, 2010 to allow the creation of this residential planned unit development placed a condition on the permit that the septic systems for all existing structures must be upgraded to comply with current ordinance requirements before the operating permit to commence the use would be issued. Said upgrades were made and the operating permit 1-CUP-10 was issued on May 20, 2010

However, in conformance with Section 1104E, the Board of Adjustment hereby adds as a condition to the variance the requirement that the applicants upgrade any non-conforming sewage treatment system on the property to current standards.

- G. No variance shall be granted solely on economic considerations.

This variance is not being granted solely on economic consideration. As stated in the answers to Items A through E above, the variance is being granted because of the unique near shore wetland on the property in tier 1 and its impact on the number of first tier dwelling units and accompanying watercraft slips allowed by the SMO for this property. Also, it is being granted because the requested dock and watercraft slips is a reasonable use of the property that still falls short of the unregulated nature of the majority of the properties on the lake that are not restricted on the number of docks and watercraft slips they can have in front of their properties. Lastly, the variance is being granted because permanent watercraft slips will result in significantly less damage to the shoreline, near shore lake bottom, and emergent and aquatic vegetation than would requiring the property owners to instead utilize the day use boat launch that is unregulated as to the number of watercraft that could use it.

- H. No variance shall be granted simply because there are no objections; or because those who do not object outnumber those who do, nor for any reason other than a proven hardship.

The answers provided to items A-E above, in addition to the findings of fact on the six Stadsfold findings of fact, all document that this variance is not being granted simply because there are no objections or because those who do not object outnumber those who do or for any reason other than the legally appropriate findings of fact criteria.

- I. No variance may be granted that would allow any use that is prohibited in the zoning district in which the subject property is located.

The use is not a prohibited use in the District. Fifth Crow Wing Lake is a recreational development lake. Single family residences and accessory uses are permitted uses in the district. Resorts and PUDs are conditional uses in the District. Docks and watercraft slips are accessory uses to all permitted and conditional uses allowed on Fifth Crow Wing Lake. They in fact are permitted uses allowed under all circumstances in all Districts. They are commonplace on Hubbard County lakes classified as recreational development such as this lake, as well as other water bodies classified differently under the SMO. This variance deals only with a performance standard applicable to a permitted use in the District that regulates the density (or number of permanent mooring facilities) of this permitted use on one particular type of property. As such, this is a use that is regulated under the SMO, not prohibited by it. To prohibit is not synonymous with to regulate.

**Unidentified Speaker:** I know I am out of order but I cannot go without saying something. I would like everybody in this audience that totally disagrees with what happened right here, please stand up and raise your hand. It is about time that our members of the Board of Adjustments understand. Mr. Benson, you are the one that doesn't understand what is going on. It has nothing to do with docks, it is all about slips.

**Schwandt:** I am going to call a five minute recess so that anyone who wishes to just leave the room they can. We will be back in five minutes.

Meeting was recessed at 9:12 a.m.

Meeting was reconvened at 9:20 a.m.

**Schwandt:** We are going to call back to order. Next on the agenda, public hearing, **Variance Application 16-V-12 by Wayne Luksik and James Canada:** Lots 2 and 3, Luksik Estates, Section 16, Township 140, Range 33, Nevis Township on Lake Belletaine. Parcel #s: 21.64.00200 and 21.64.00300. Part 1: Applicants are requesting an after-the-fact variance from Section 502.2 of the Shoreland Management Ordinance (SMO) to allow a storage shed at less than a 100 foot ordinary high water (OHW) setback. Part 2: Applicants are requesting an after-the-fact variance from Sections 502.2 and 903.3 of the SMO to allow a paved driveway to be located at less than the required 100 foot OHW setback. Part 3: Applicants are requesting a variance from Sections 1001, 1003 and 1006 of the SMO and Section 4, Subd. A.1.a.1.b of the Subdivision Ordinance to adjust a property line between two lots. The line adjustment will make a nonconforming lot more nonconforming in lot size and residential lot suitable area. Lake Belletaine is a recreational development lake.

Would those people step up to the...have a chair. I forgot to mention that when we call your variance, we ask that you come forward to the microphone, have a chair, state your name and address for the records.

**Grob:** Speak into the microphone.

**Wayne Luksik:** I am Wayne Luksik.

**Schwindt:** Okay. Well we were all out there and looked at your situation. Well we will ask the Board members if there's any questions that they would like to ask of Mr. and Mrs. Luksik?

**Dawn Canada:** No, I am Dawn Canada.

**Schwindt:** Oh, Canada. Okay.

**Canada:** 19899 El Dorado Drive.

**Schwindt:** Sorry about that. Any questions?

**Grob:** I don't have any. The only comment that I would make is that the nonconformance change is very minor with the lot line changes, the way it zigzags, although it's technically a very minor change in terms of conformance and the second thing I would point, an observation I would make is that both the shed and driveway are very minor encroachments into the 100 foot setback and the land slopes uphill from there. So there is absolutely no impact to the lake from these two minor variations.

**Schwindt:** Arnie, any questions that you saw when you were out there?

**Christianson:** No, I agree with Ken.

**Schwindt:** I didn't see anything too drastic myself so I have no problem with the request.

**Benson:** I don't have any problem.

**Knight:** I don't have a problem. I think Ken explained it real good.

**Schwindt:** Was there any correspondence on this Eric that we received?

**Buitenwerf:** No.

**Schwindt:** Okay, well we will open the meeting, the hearing for public comment. Is there anyone that wishes to speak in favor or against this particular request? Seeing none we will close public comment. Does anyone on the Board wish to make a motion?

**Grob:** I make a motion that we approve the variance request, all three elements of it.

**Schwindt:** I have a motion to approve. Do I have a second?

**Knight:** Second.

**Schwindt:** Second by Chick. The findings of the facts in this case, I was looking for them and now I can't find them.

Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

**Grob:** I would say yes. One is they are trying to make lot line setbacks conforming and in no way does it have any impact to the lake.

Without the variance, is the owner deprived of a reasonable use of the property?

**Grob:** I would say no. I mean the still have reasonable use but it is reasonable for them to ask for the variance under the situation.

Is the stated practical difficulty due to circumstances unique to this property?

**Benson:** I would say yes because the survey was done wrong according to the new survey.

Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Benson:** I would say yes. The new survey showed that the lines weren't where they thought they were supposed to be.

Will the issuance of the variance maintain the essential character of the locality?

**Schwindt:** I would say yeah, these are lakeside residential homes and this little jog in the property line is not going to change that any.

Does the stated practical difficulty involve more than economic considerations?

**Schwindt:** Again, I don't believe there were any economic considerations involved. It was a give and take on this property line redrawing I would assume.

Why did the applicant fail to obtain a variance/or comply with the applicable requirements before commencing work? Did the applicants act in good faith?

**Benson:** I don't even think that question even relates to this situation.

Did the applicant obtain a permit from another entity that violated the law?

**Benson:** I would say the same for that one.

**Schwindt:** I think that they were told at the time no permits were necessary because of the way it was shaped in there like that walk out, ground level.

**Luksik:** There were permits but that wasn't looked on as a deck evidently with the pavers.

**Schwindt:** Just that there are some pavers too close to the line now.

**Luksik:** Yes.

Did the applicant obtain a permit from another entity that violated the law?

**Benson:** I think not.

Did the applicant make a substantial investment in the property?

**Schwindt:** I would say yeah, building that retaining wall was probably a substantial investment to do and would be difficult to remove.

Did the applicant complete the repairs/construction before the applicant was informed of the impropriety?

**Schwindt:** I am not sure how this came about but you have had that for a long time haven't you?

**Luksik:** Their property is what fifteen years and ours is seven or eight years.

Are there other similar structures in the neighborhood?

**Schwindt:** I would say yes. This is residential lakeshore.

Would the minimum benefits to the county appear to far outweighed by the determinant the applicant would suffer if forced to remove the structure?

**Schwindt:** I would say yes. There would be more detriment to remove those blocks and walls than it would be to leave them where they are.

In light of all of the above factors, would denying a variance serve the interests of justice?

**Schwindt:** Again I would say no it would not.

**Schwindt:** We have a motion to approve all in favor say aye. It has been approved. I am not sure, you will have to check with Eric's office to see what other permits or requirements you will need to do.

**Canada:** Thank you.

**Luksik:** Thank you.

**Schwindt:** Next we have variance application 22-V-12 by Charles and Gail Sheridan.

**Charles Sheridan:** Charles Sheridan, 23407 Great Pine Trail, Nevis.

**Schwindt:** Okay. **Variance Application 22-V-12 by Charles and Gail Sheridan:** Part of Government Lot 8, Section 27, Township 141, Range 33, Mantrap Township on Spider Lake. Parcel # 20.27.01900. Applicants are requesting an after-the-fact variance from Sections 502.2 and 704.7 of the Shoreland Management Ordinance for an expansion to a lakeside deck on a residential dwelling unit that does not meet the 100 foot ordinary high water setback and was previously modified by a variance.

We all looked at that. Any questions from the Board or anything else you would like to add to that?

**Sheridan:** No, just that when we had originally applied for the original variance we thought that was part of the variance agreement.

**Grob:** The variance for remodeling the outside of your house?

**Sheridan:** Yeah. Yes. We didn't realize that the sketch for the deck wasn't included in the original sketch.

**Grob:** When you rebuilt this to the original footprint except for the 60 square feet in that one little corner.

**Sheridan:** Exactly.

**Grob:** What's the setback from the lake on that?

**Unidentified Speaker:** Please use the mike.

**Grob:** I am sorry. And what was the setback from the, what is your setback from the lake?

**Sheridan:** I think it is 67 feet, I believe. The addition part of the deck that is in question, that is 68 feet from the lake.

**Grob:** Can you recall what the total deck area that you had there before that you replaced?

**Sheridan:** It would be the same that it is except for the additional 60 square feet.

**Grob:** But it was a fairly large deck that was originally there to begin with?

**Sheridan:** Yes. I think it is 500 and some odd square feet if I am not mistaken.

**Grob:** Okay.

**Schwindt:** Any other questions?

**Grob:** No that is it.

**Schwindt:** Arnie?

**Christianson:** I have no problem with this.

**Schwindt:** On the deck that was there previously, did you remove the entire deck or just the topping of the deck?

**Sheridan:** We ended up removing, because the bottom support was starting to rot so we removed that and put new in. We did not change the footings or anything like that.

**Schwindt:** Was there a permit pulled to do that? At the time, did you get a permit to do the deck? To replace it.

**Sheridan:** I don't believe so. We had a permit to do the cabin remodel. I guess we thought that was part of it.

**Schwindt:** Okay. Any questions Earl?

**Benson:** No. I have none.

**Grob:** I would make one other comment. He has an excellent buffer area, vegetation buffer area protecting the lake. With this minor little bit of area, its result and impact on the lake is probably minimum if any at all.

**Schwindt:** Were there any correspondence on this?

**Buitenwerf:** No.

**Schwindt:** We will open the floor for public comment. Anyone wish to speak on this variance? Seeing none we will close the public comment section and ask for a motion.

**Knight:** So moved that we accept this request.

**Schwindt:** I have a motion to approve by Chick. Do I have a second?

**Christianson:** Second it.

**Schwindt:** Second by Arnie. The findings of the facts.

**Knight:** Well he is just replacing the old deck and there is an addition to that deck so it is just within

**Schwindt:** Would you move to accept the findings of fact as presented by the staff?

**Knight:** I so move.

**Grob:** I will second that.

**Schwindt:** And a second. Then we will accept the findings as presented by the staff. All in favor say aye. All opposed?

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes ( X ) No ( )

Why or why not? The expansion made to the deck is only 6' x 10' in size and does not encroach closer to the lake than the existing deck.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes ( X ) No ( )

Why or why not? It is reasonable to have constructed the deck in the way that it was done because squaring off the deck with this small expansion was easier and less costly to construct than it would have been to reconstruct the deck as originally laid out.

3. Is the stated practical difficulty due to circumstances unique to this property?  
Yes ( ) No ( X )

Why or why not? The deck expansion was made because it was easier and cheaper to reconstruct the deck that way than per the original deck layout. No reasons were given in the application that relate to unique characteristics of the property. Based on the lot viewal both in 2009 and now, there are no topographic or physical lot constraints that warrant the deck being constructed with this expansion.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?  
Yes ( ) No ( X )

Why or why not? The applicants admit to having constructed the deck with the expansion area. No practical difficulty is cited in the application that is related to any unique feature on the property.

5. Will the issuance of the variance maintain the essential character of the locality?  
Yes ( X ) No ( )

Why or why not? The area consists of single family seasonal and year-round homes which will not be negatively affected by the granting of this variance. Many of these neighboring homes have lakeside decks on them just like this house does.

6. Does the stated practical difficulty involve more than economic considerations?  
Yes ( X ) No ( )

Why or why not? The application cites as a difficulty the work involved in removing the expansion area of the deck in addition to the economic impact of removing the expansion area.

7. Why did the applicant fail to obtain a variance/or comply with the applicable requirements before commencing work? Did the applicant act in good faith?

Why or Why not? The application states that the applicants thought the deck was included in the 2009 variance application. Based on this statement in the application, it appears the applicants acted in good faith.

8. Did the applicant attempt to comply with the law by obtaining the proper permits?

Why or Why not? No. The deck work was not included in the 2009 building permit that was issued for the house remodeling work approved in variance application 66-V-09.

9. Did the applicant obtain a permit from another entity that violated the law?  
Provide explanation below.

No, not that I am aware of.

10. Did the applicant make a substantial investment in the property? Provide details below.

No. While the application states that the entire deck project cost \$15,000, the expansion area in question did not constitute a substantial investment in the property if its value is determined by prorating the total project cost by percent of deck surface area comprising the expansion area.

11. Did the applicant complete the repairs/construction before the applicant was informed of the impropriety? Please provide details below.

Yes – The deck was completely finished at the time of the Department's post-construction inspection of the property.

12. Are there other similar structures in the neighborhood? Please provide details below.

Yes. As stated in a preceding findings of fact answer, most houses in the neighborhood have some form of a lakeside deck or platform similar to this one attached to them.

13. Would the minimum benefits to the county appear to be far outweighed by the detriment the applicant would suffer if forced to remove the structure? Why or why not?

Yes. The expansion area of the deck does not encroach closer to the lake than the rest of the deck and the area involved is so minor (6' x 10') that removing it would not benefit the county, its citizens, or the shoreland ordinance enough to offset or outweigh the detriment the applicants would suffer by having to remove it.

14. In light of all of the above factors, would denying a variance serve the interests of justice? Why or why not?

No. Just is served by being reasonable in this matter and recognizing that the expansion area is small relative to the rest of the deck and does not encroach closer to the lake or lot line than the original deck. The neighboring properties are not negatively affected by this additional deck area and it poses no greater aesthetic impact to parties recreating on the lake.

**Schwindt:** Next we have **Variance Application 23-V-12 by Greg and Jeanne Mehlhop:** North 150 feet of the South 600 feet Government Lot 3 East of Co Rd 39, Section 32, Township 144, Range 32, Hart Lake Township on Garfield Lake. Parcel # 10.32.02510. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance for less than the required 100 foot ordinary high water setbacks to construct a new residential structure on the lot that will replace the existing residence. Garfield Lake is a recreational development lake.

Anything that you would like to add to that?

**Greg Mehlhop:** No Sir.

**Schwindt:** Are there any questions from the Board as we reviewed?

**Christianson:** They need to speak their names and addresses.

**Schwindt:** Oh you need to state your name and address. I forgot.

**Greg Mehlhop:** Greg Mehlhop, 39336 County Road 39

**Jeanne Mehlhop:** Jeanne Mehlhop, same address.

**Brian Kerby:** Brian Kerby, Northwoods Log Homes

**Schwindt:** Any questions as we viewed it?

**Benson:** Are you going to put a basement under this?

**Greg Mehlhop:** Yes.

**Benson:** Okay.

**Grob:** I want to confirm some facts. If I understand the issue you have is between the road right of way and setback from the ordinary high water mark there is not sufficient area to have a structure and there is, can everybody hear? There is an existing variance on the property because when they redid the road you have an existing variance on the property that allows you a 90 foot setback from the lake. Is that factually correct?

**Kerby:** We didn't find out about the variance until the site viewal the other day. That is the first that we knew that there was actually a variance.

**Grob:** Okay. So then what you are proposing is replacing your existing structure with another one with the same footprint and the deck only encroaches into that 90 feet by 4 feet but the actual house is at 96 feet back?

**Kerby:** The size of the new structure is I think 163 feet bigger, which is primarily eave overhang, because the current building is a modular. The deck is within one or two square feet of the same size and it would be at the same existing setback that the house is currently. There is additional infringement on the road right of way as the preferred place to pick up that extra infringement.

**Grob:** But you are still, if I recall, at least, although you are supposed to be 50 or at least 20 feet back from the right of way from the road if I recall.

**Kerby:** I think the request here was for 36 or so feet instead of 50 from the right of way.

**Grob:** Yeah. A county road would typically be twenty but this is a, since it

**Kerby:** No a county road would be 50.

**Buitenwerf:** No 50.

**Grob:** A county road would be 50 but other roads, township roads and stuff would be twenty. And you do meet the twenty?

**Kerby:** Oh yeah.

**Grob:** Okay.

**Kerby:** There also has been a significant amount of change at the water front that there has already been a permit granted for some rip rap work to replace that and gain control of that erosion so that will help with the problem as well. I think part of the additional setback is that has been eroded since this original permit was even done, or original variance.

**Grob:** Okay. I have no additional comments.

**Schwindt:** Okay. So the staff report recommended that you do some shoreline stabilization and you say that is already being done or taken care of?

**Grob:** You have a permit for it?

**Kerby:** That permit has already been granted for, I think 100 feet of rip rap along that side of the lake, on that part of the frontage.

**Schwindt:** Okay.

**Grob:** I make a motion that we accept the variance request.

**Benson:** I'll second it.

**Buitenwerf:** We need to ask for public comment before you guys proceed.

**Grob:** Oh. Sorry.

**Schwindt:** Yeah, I was going to ask if there was any, before I ask for public comment let me go back to your statement. There is just one, when I was looking through the staff report there was one question that I disagreed with and that is without the variance is the owner deprived a reasonable use of the property. The staff report had said no but again I say this is a modular home that they have sitting there and in my opinion replacing that with a new log home is a reasonable request, especially since they want to put a basement in for their safety and protection where the old modular home sat on just a foundation without any place to go in case of a storm so I kind of disagree with their opinion on that one.

**Grob:** I agree with you. In fact I have a note here that said that I would have said yes that they would have been deprived of something reasonable especially since they are basically duplicating the same footprint.

**Schwindt:** Right. They are basically putting the house right back where it was but they are putting a basement under this and I can see that for safety reasons and for protection with these storms this last week.

**Grob:** I agree with you.

**Schwindt:** Now I will open it up. Was there any public information or correspondence on this?

**Buitenwerf:** No.

**Schwindt:** No? Okay. Public comments. Anyone wish to speak in favor or against this particular request? Seeing none we will close the public comment section. Anyone wish to make a motion on variance?

**Knight:** So moved to accept.

**Grob:** I make a motion that we accept it.

**Schwindt:** I have a motion to approve and I have a second by Chick?

**Knight:** Right.

**Schwindt:** The findings of the fact in this case. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance, and State Shoreland Management Rules?

**Grob:** Could I make a motion that we accept the staff report with change, with a change to number two, that check it as "X" and with the words that the replacement of the modular home with a more permanent structure is a reasonable use of the property.

**Schwindt:** Okay.

**Knight:** Second that.

**Schwindt:** So we have a motion to accept the staff report findings.

**Grob:** With that change.

**Schwindt:** I have a second.

**Knight:** Yup.

**Schwindt:** So all in favor say aye. All opposed. So that has been approved.

**Kerby:** Thank you.

Findings of Fact:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes ( X ) No ( )

Why or why not? The lot clearly lacks depth to meet both the 50' ROW setback and the 100' OHW setback as identified by the past issuance of a variance for the

residence and another for the detached garage. The application sites the new home in almost the exact same location as the present structure – which is a good compromise in the infringements on the ROW and OHW setbacks.

2. Without the variance, is the owner deprived of a reasonable use of the property?  
Yes (X) No ( )

Why or why not? The replacement of the modular home with a more permanent structure is a reasonable use of the property.

3. Is the stated practical difficulty due to circumstances unique to this property?  
Yes (X) No ( )

Why or why not? The difficulty is the lack of depth on the lot that has been increased over the years by continual shoreline erosion.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?  
Yes (X) No ( )

Why or why not? The difficulty is the lot depth which is caused by the location of the road and the size of the lot when originally created by a party other than the landowner along with the shoreline erosion that has been occurring.

5. Will the issuance of the variance maintain the essential character of the locality?  
Yes (X) No ( )

Why or why not? Granting the variance would not change the character of the locality as it would remain single family seasonal and year-round homes.

6. Does the stated practical difficulty involve more than economic considerations?  
Yes (X) No ( )

Why or why not? The application does not cite economics as a hardship. The difficulty is due to the lot depth which continues to shrink due to unchecked shoreline erosion.

**Schwindt:** Next we have variance application 24-V-12 by Christopher Roberts.

**Chris Roberts:** Chris Roberts, 21161 Hector Road, Park Rapids.

**Schwindt: Variance Application 24-V-12 by Christopher Roberts:** Part of Government Lot 3, Section 24, Township 141, Range 34, Lake Emma Township on Gilmore Lake. Parcel # 16.24.00500. Applicant is requesting an after-the-fact variance from Sections 502.2 and 706 of the Shoreland Management Ordinance (SMO) for two platforms that do not comply with the 100 foot ordinary high water (OHW) setback. The platform attached to the house also does not comply with the 30 foot OHW setback required by Section 706 of the SMO. Gilmore Lake is a recreational development lake.

**Roberts:** Yes.

**Schwindt:** Okay. Anything else that you would like address the Board with?

**Roberts:** Basically what we talked about on Friday. It was a platform. We just resurfaced it and one thing I really would like to make a comment about, that water, you were talking, I am thinking of actually getting one of them today, them, what do you call them?

**Grob:** Rain barrel?

**Roberts:** Rain barrel.

**Grob:** You might want to give us and the audience a little background to what you found when you bought the place and what you have done because it gives perspective on what's there.

**Roberts:** We bought this property in November of 2010 and the people that we bought it from, I think you guys are all aware of there's a lot of problems that he caused out in the area. When we did an extensive clean up, six seven loads of garbage and stuff we have taken from the place. They used to own Chateau Paulette and they used to have all of the bands come out there and the neighbors said they would party all night, throwing beer cans, beer glasses everywhere, so I tried to clean it up as good as we can. We have got two small kids, a six and four year old, and they had two different fire pits. One we just cleaned up, it was two foot from the lake, and then the other one had a big mound of glass in it and so we put flagstone that we bought in town here to make a platform to try and cover up and clean up as best we could with all the glass. It was bad. It was a lot. I didn't know how bad it was. We didn't look as probably as close as we should have but when spring came around and we started really digging into it, raking it got to be pretty bad but I think we got it cleaned up pretty good.

**Grob:** And the deck platform is same size?

**Roberts:** It is actually just a little smaller. We just put a step down. They had it.

**Grob:** So it was an existing deck and you replaced it and unfortunately you should have had a permit

**Roberts:** I didn't know at the time, I thought that, I didn't know that it wasn't a permitted deck that he put on so I just resurfaced it and that is when we found out that he didn't have a permit for the deck.

**Grob:** Ok. I make the observation that from the surface, you are what ten feet from the lake?

**Roberts:** Eleven feet

**Grob:** Eleven feet.

**Roberts:** It was one of those old grandfathered in.

**Grob:** Something that doesn't exist anymore. Typically having placed that flagstone that you have would not seem to be the right thing but after observing it, it would appear

that it is the lesser of several evils. Without that in a high traffic area I can see a lot of ground erosion. The water is still going to run off but that flagstone is going to prevent erosion and we did not the one place where your rain gutter comes down where it does, which is why it was suggested, a rain barrel.

**Roberts:** Yes. That's what we are going to do today.

**Grob:** I don't know how we will come out on this but clearly that would be a recommendation that we would make, I think, to make your property viable. The most important thing is to get as much water directed away from the lake as you can. You can't change the rest. So just an observation. I don't know about the rest of the members.

**Christianson:** I agree with you.

**Knight:** This does predate the, well the new laws, I mean in other words this is before the new laws came in so this is one of the reasons why this is there.

**Roberts:** Yeah, I think this was built in 52 or 54 I think, the cabin, the original. Yeah.

**Knight:** Before the rules. I think you have done a good job.

**Benson:** I think the deck is fine but I think that fire ring has to go, has to be moved back 100 feet. I mean there is room back there to have a fireplace but that fire ring is what twelve feet from the lake?

**Roberts:** No it is more than that. It is twenty some feet.

**Benson:** Well even so it is still in the shore impact zone. There is room back there to move it back.

**Roberts:** But see that's where it was originally and I just cleaned up stuff and there is still old platforms and old brick and stuff below that and glass and that's why I put that right there. If we take that out that's just going to keep on washing out. I really believe that. I would like to, you know, propose down below there is try and plant some more grass or even could you instead of planting grass could you put sod? Is that a permitted thing or is that something that we can do or not? Do you have to get a permit for sod? Can we do sod?

**Grob:** What you want is something that has deep roots for runoff. For experts you'd have to go to the Soil and Water Conservation District for recommendations.

**Roberts:** And I would be willing to do that.

**Grob:** Eric, help us out. Is a fire pit without any, without any structure around it, an allowed "structure" in the shore impact zone? Is there anything in the Ordinance that would say you shouldn't have just a fire pit by itself not without any things around it, that there's nothing that prevents that? It's not necessarily good shoreland practices but what does the Ordinance reflect on that matter?

**Buitenwerf:** The Ordinance doesn't address this issue of an individual fire ring.

**Grob:** Okay. It is only if you start building structures and platforms around it that it becomes an issue?

**Buitenwerf:** Correct.

**Benson:** So a fire ring in that shore impact zone is okay?

**Buitenwerf:** There is no regulation governing it.

**Schwindt:** Any other questions?

**Knight:** Open it up for

**Schwindt:** Any correspondence?

**Buitenwerf:** No.

**Schwindt:** We will open it up for public input. Anyone wish to speak in favor or in opposition to this request? Seeing none we will close public comment. I had a question. On the findings of fact the staff report indicated that they would approve the stone work that was done on the platform and around the cabin but were not in approval of the stone work where the fire pit sits. Is that correct Eric?

**Grob:** That is correct.

**Buitenwerf:** That is what the report states, yes. Staff has since amended its recommendation after the lot viewal. Seeing the platform now and the alternative being a lack thereof and the soil there being exposed there to runoff precipitation and the location being under those pine trees, my concern would be that if that platform were not there that that area would be exposed to erosion more so than it would be in its current condition with the platform present.

**Grob:** I would second that. That was my observation that if you remove flagstone you would create a worse runoff and erosion condition than what exists now.

**Benson:** I don't think you could even get sod to grow there.

**Grob:** No. I think he is right. It is under the trees. I think the approach here is to observe that he's done the best he can and that if we approve this we should put some conditions on one thing is the rain barrel because there is a little erosion in front of the cabin, and second of all rain gutters that can do their very best at diverting any runoff from your roof to your backyard.

**Roberts:** Sure.

**Grob:** What you have done with platforms if you can divert your water to the back you will have done the best you possibly can with the property as it exists and I would, if we make a recommendation to approval I would like to put those conditions: a rain barrel in the front, and rain gutters to divert the water to the back.

**Roberts:** Basically it would be, I think what you are talking about, rain gutter on that top part to go back?

**Grob:** The one facing the fire pit there that is sloped like this?

**Roberts:** Yup, that top one and then, yup you are right.

**Grob:** If you put a gutter and run your downspout to the back yard because the elevation is such that you can, and I don't remember what it is on the other side of your house

**Roberts:** It is going to be tricky. It is going to be tricky to do that but I will have to get it done.

**Grob:** Yeah. That is what I would say as a trade off to keeping that flagstone and the fire pit where it is getting the water to run to your backyard and a rain barrel is absolutely the right thing to do I think. So we would have to put that into a motion if we were going to, I don't what everybody else wants to do.

**Schwindt:** Is there any other discussion from the Board? Any other questions? If not we will have a motion.

**Grob:** I would make a motion that we approve the variance request with the condition that a rain barrel is used. The downspout on the front of the building, facing the lake and that a rain gutter that diverts the water to the backyard would be put upon the, what side is the house that faces

**Roberts:** It would be the North side.

**Grob:** North side? On the North side that faces the fire pit

**Roberts:** No, South side. I am sorry. South side, yeah.

**Grob:** South side that faces the fire pit.

**Schwindt:** You can do that?

**Roberts:** Time limits? I am actually going out there today. I will get a rain barrel in town. A time limit for the rain gutter? A month or so?

**Grob:** That is what you negotiate with Eric.

**Buitenwerf:** We will set that timeline. I imagine it would be 60 days or 90 days.

**Roberts:** Picture to you or do you need to come out or just a picture?

**Buitenwerf:** A picture would work.

**Roberts:** Okay. We will get it done.

**Schwindt:** Part of your motion: 60 days plus a picture for Eric's office?

**Grob:** Yes, that's fine.

**Schwindt:** Do I have a second?

**Christianson:** Second it.

**Schwindt:** Second by Arnie. The findings of the fact.

**Grob:** The findings of fact that were in here, well I guess we will have to go through these right because the findings of fact would have been altered by your new observation Eric, is that right?

**Buitenwerf:** Um hmm.

**Grob:** So we will have to plunder through these.

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

**Knight:** Yes. Yes the cabin predates the new regulations and the layout and the plans for controlling the erosion are good.

2. Without the variance, is the owner deprived of a reasonable use of the property?

**Schwindt:** I would say yes. A platform is a reasonable request. You have got to have some kind of an access point. The access encroaches a little bit lakeward but it is a reasonable dimensions and size.

3. Is the stated practical difficulty due to circumstances unique to this property?

**Schwindt:** Again I would say yes.

**Diessner:** Mr. Chairman, I am sorry to interrupt. There is two variance requests here. You can adopt the staff report recommendations without going all the way through them again and then just deal with the change on the second one. That is the way the staff report was written.

**Grob:** That's right. We have two.

**Roberts:** One for the deck and one for the

**Grob:** Yeah, okay.

**Diessner:** One for the platform and one for the fire pit. There is two different findings.

**Grob:** You are right.

**Schwindt:** The motion was made by Ken. I didn't hear him say he wanted to adopt it so I was going to read the findings as they appeared.

**Diessner:** Okay.

**Schwindt:** If he wants to go back and change his motion to adopt that's up to him.

**Grob:** I would make a motion that we except the staff report for the platform approval as stated in the staff report. Okay and then we can separately deal with the fire pit section.

**Schwindt:** Okay. So

**Benson:** I will second it.

**Schwindt:** We will have a second by Earl. All in favor of the staff report findings say aye. All opposed?

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes ( X ) No ( )

Why or why not? The structure to which this platform is attached predates the ordinance. It is extremely close to the OHW, but this is beyond the landowner's control. The layout of the cabin and exterior entrance door cause heavy foot traffic in this area. To prevent erosion, having a platform here to take that foot traffic makes sense. Thus, preventing erosion from foot traffic is more important to the ordinance than the fact that the platform is closer to the lake than 30'.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes ( X ) No ( )

Why or why not? It is reasonable to have a platform of some kind at the access point into a residence. The platform encroaches only a bit more lakeward than the cabin and is reasonable in its dimensions.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes ( X ) No ( )

Why or why not? The structure to which the platform is attached and for which it is needed in order to prevent erosion from foot traffic to and from the primary exterior entrance door on the structure predates the ordinance and is the practical difficulty in this situation.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes ( X ) No ( )

Why or why not? The difficulty is the cabin predating the ordinance and being located in the SIZ such that this platform cannot comply with the 30' OHW setback and provide the necessary erosion protection from foot traffic entering/exiting the primary entrance door on the cabin.

5. Will the issuance of the variance maintain the essential character of the locality? Yes ( X ) No ( )

Why or why not? The locality will remain single family seasonal and year-round residential structures (many of which have similar platforms) and this character will not be harmed by this platform.

6. Does the stated practical difficulty involve more than economic considerations?  
Yes ( X ) No ( )

Why or why not? Economic considerations were not cited by the applicant as a difficulty and the difficulty is the cabin's having been constructed prior to the ordinance and being so close to the OHW that the platform cannot comply with the maximum 30' OHW encroachment allowed by Section 706 of the ordinance.

7. Why did the applicant fail to obtain a variance/or comply with the applicable requirements before commencing work? Did the applicant act in good faith?

Why or Why not? The BOA will need to ask the applicant these questions at the meeting because the application lacks the information needed to be able to answer these questions.

8. Did the applicant attempt to comply with the law by obtaining the proper permits?

Why or Why not? No. No permit application was submitted for the platform.

9. Did the applicant obtain a permit from another entity that violated the law? Provide explanation below.

No, not that I am aware of.

10. Did the applicant make a substantial investment in the property? Provide details below.

No. The application makes it sound like the structural components of a platform built by a previous landowner without permit were reused and new surface boards were installed. This surfacing material does not constitute a substantial investment in materials.

11. Did the applicant complete the repairs/construction before the applicant was informed of the impropriety? Please provide details below.

Yes – The platform was completed before the department inspected the property and observed the platform.

12. Are there other similar structures in the neighborhood? Please provide details below.

Yes. There are similar lakeside platforms and decks located on other similar structures located in the neighborhood.

13. Would the minimum benefits to the county appear to be far outweighed by the detriment the applicant would suffer if forced to remove the structure? Why or why not?

No. The cabin's main entry point is the entry door located by this platform. The platform prevents erosion that would occur in the sandy soils if some durable surface such as this platform was not present. The erosion that would likely occur if the platform was removed would not be a benefit to the county. Protecting the site from erosion is in the county's and ordinance's interest.

14. In light of all of the above factors, would denying a variance serve the interests of justice? Why or why not?

No...for the same reasons as provided in answer to question 13 above.

**Schwindt:** The second part of it was for the fire pit and you made a motion

**Grob:** To approve it with the conditions.

**Schwindt:** To approve it. Okay. Now on this one we need to do the findings.

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

**Knight:** Can't we adopt this as did the other?

**Grob:** No. We can't because what's stated in here reflects a denial of the fire pit and we discussed keeping it there is good practice if he does do the mitigations that we have asked.

**Knight:** Okay.

**Grob:** I say yes. It is in harmony because if the mitigation activities are completed it will improve and prevent runoff to the lake.

2. Without the variance, is the owner deprived of a reasonable use of the property?

**Schwindt:** I would say yes. What he did there was to protect the lake from runoff by putting a platform and fire ring and there is no language in the Ordinance that says he can't have it there.

3. Is the stated practical difficulty due to circumstances unique to this property?

**Benson:** I would say yes because the cabin is only eleven feet from the lake and that platform is necessary there to keep the runoff from happening.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Knight:** I would have to go yes because this predates the new Ordinance and so we need this request.

5. Will the issuance of the variance maintain the essential character of the locality?

**Benson:** Yes. The locality will remain residential lakeshore.

6. Does the stated practical difficulty involve more than economic considerations?

**Benson:** I don't think economic considerations are involved in this.

7. Why did the applicant fail to obtain a variance/or comply with the applicable requirements before commencing work? Did the applicant act in good faith?

**Schwindt:** I would say yeah. He didn't really realize he needed a permit to put down that flagstone there.

8. Did the applicant attempt to comply with the law by obtaining the proper permits?

**Schwindt:** I say he really didn't realize he needed a permit.

9. Did the applicant obtain a permit from another entity that violated the law?

**Benson:** I would say no. I think he didn't.

10. Did the applicant make a substantial investment in the property?

**Knight:** The platform was completed before the department inspected the property and observed the platform.

11. Did the applicant complete the repairs/construction before the applicant was informed of the impropriety?

**Benson:** I would say yes.

**Schwindt:** I would say yes it was all done before somebody said hey you can't do that.

12. Are there similar structures in the neighborhood?

**Schwindt:** I say yeah. This is lakeshore residential property and he has done a good job of cleaning it up.

13. Would the minimum benefits to the county appear to be far outweighed by the detriment the applicant would suffer if forced to remove the structure?

**Schwindt:** I would say yes. This is very fragile lakeshore and that platform actually helps protect it.

14. In light of all of the above factors, would denying a variance serve the interests of justice?

**Schwandt:** I would say no. He has done the best he can with the situation that he inherited when he bought that piece of property.

**Schwandt:** So we had a motion to approve all in favor say aye? Opposed? So it has been approved.

**Roberts:** Thank you. Appreciate it guys.

**Schwandt:** Variance application 25-V-12 by David and Barbara Kocer.

**Russ Hensel:** Russ Hensel, 27500 174<sup>th</sup> Street, Nevis.

**Schwandt: Variance Application 25-V-12 by David and Barbara Kocer:** Part of Government Lot 1, Section 18, Township 140, Range 33, Nevis Township on Lake Belletaine, Parcel # 21.18.01000. Part 1: Applicants are requesting an after-the-fact variance from Sections 502.2 of the Shoreland Management Ordinance (SMO) for a lakeside deck addition to a structure constructed per variance that doesn't comply with the 100 foot ordinary high water (OHW) mark setback. Part 2: Applicants are requesting a variance from Sections 502.2 and 704.7 of the SMO for a proposed porch addition to a structure constructed per variance that doesn't comply with the 100 foot OHW setback. Lake Belletaine is a recreational development lake.

Anything else that we should know about that? Okay. Any questions from the Board?

**Grob:** Yeah, I am trying to, the deck has been constructed in two steps. It originally was, or two actions, there is one on what I will call the front of the house that now has the steps coming right down towards the lake and that was in existence before you came in and asked if you could build onto that deck.

**Hensel:** Right. Correct.

**Grob:** Okay. Is this variance for both of those actions or just for the second one that was constructed?

**Hensel:** I guess

**Grob:** I mean was there any permit or variance for the first stage that comes down off of the, I'll call the front?

**Hensel:** As far as my knowledge there was never a permit for the first deck.

**Grob:** But that was prior to you?

**Hensel:** Prior to Dave buying the property. Dave got a permit to build the second deck but did not go through a variance. He was just issued a building permit.

**Grob:** Yeah. Okay. So he came in get approval, he should have had a variance but he was given a permit for that piece.

**Hensel:** Right. So what we are trying to do is to get both decks into compliance and then get the variance to do a screened in porch underneath.

**Grob:** Okay.

**Schwindt:** Any other questions?

**Knight:** I have a little problem with this request because the Lake Belletaine did raise and the water was, well I don't know how close it was to the cabin but it had a variation to that particular situation, the road to it and what have you. I want to hear more about it.

**Grob:** The second part of this application is for under those decks

**Hensel:** Correct

**Grob:** To put in a three season porch is your plan?

**Hensel:** Two season porch

**Grob:** Two, well I don't know what

**Hensel:** It is just a screened in porch.

**Grob:** Just a screened in porch.

**Hensel:** It would have a wood deck floor.

**Grob:** And currently, if I read the drawings right, your current deck, which you would build under is somewhere between 50 and 60 some feet from the lake?

**Hensel:** Yup.

**Grob:** So you are right up to the shore impact zone?

**Hensel:** Right.

**Grob:** And I did observe that you do mow right to the lake. You leave no buffer whatsoever around your entire property and you are now very close to the lake.

**Hensel:** Correct.

**Benson:** You were going to put that screened in porch around, completely around where the deck is on the sides and out front?

**Hensel:** Correct.

**Grob:** On top or underneath it?

**Hensel:** Underneath.

**Benson:** Okay. I can, I would go along with a screened in porch on the end of the house but not the part that goes closer to the lake.

**Grob:** It all goes closer to the lake.

**Benson:** What's that?

**Grob:** They are all within 60 some feet of the lake.

**Benson:** Oh I guess that's on the side there too, this is yeah, a peninsula isn't it?

**Grob:** It's 66 feet on the side and is 52 feet in the front maybe even less than that with the steps.

**Benson:** Yeah. I forgot about that.

**Grob:** I paced it off in the front, where the steps come off; I think that might even be encroaching into the shore impact zone.

**Benson:** Well then I don't think that screened in porch should be allowed at all because it is just an addition closer to the lake.

**Hensel:** Well we aren't going any closer to the lake.

**Grob:** Yeah but you are already very, very close to it and no attempts to buffer it whatsoever. So I don't have any more questions. Ask for public comment maybe.

**Schwindt:** Okay. Well myself after viewing the piece of property and reading the staff report, I again would have to agree with the staff report. This is a two part request. They are saying basically that the deck is already there, one was built when the house was built I guess, and the other one was built by permit, should have had a variance but didn't get one so by granting a variance we will put that into compliance. But the other part, by screening in underneath the deck, they are opposed to that and so am I. So I guess I would agree with the staff report findings. Do we have any correspondence on this? We will open it up for public discussion.

**Buitenwerf:** No correspondence was received by the deadline.

**Schwindt:** Okay. Anyone wish to speak in favor or in opposition to this?

**Dan Kittilson:** Dan Kittilson, President of Hubbard County COLA, 22924 County 7. COLA supports Eric's staffing report. We thank Eric for that staffing report and I would just like to mention about the buffer strip. We got these pictures and there is a lot of green grass here. Lake Belletaine is one of our cleaner, clearer lakes. It needs to have a lot of protection and in a previous request, back a couple, I think it was Ken that talked about that there was a buffer strip and I also saw Arnie nod his head and agree with that and the importance of that. Buffer strips are what protect our lakes so I would encourage you to follow Eric's recommendation and also encourage the landowner to have some sort of buffer strip to protect the water quality of Lake Belletaine. Thank you.

**Schwindt:** Thank you. Anyone else? If not we will close the public input section. If there is no other questions a motion.

**Grob:** I make a motion that approve the after-the-fact variance request for the decks and deny the application for a screened in porch.

**Schwindt:** Okay. I have a motion.

**Benson:** I will second it.

**Schwindt:** I have a second by Earl. The findings of the facts, do you wish to adopt those set forth in the staff report?

**Grob:** I think they are consistent with the motion so I would say; I make a motion to accept the staff report's recommendations for the findings of fact.

**Schwindt:** Okay. We have a motion and a second?

**Benson:** I will second it.

Findings of Fact:

Part 1 - deck:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes ( X ) No ( )

Why or why not? The house is laid out in a way that there would be safety issues with the second story sliding doors if the deck was required to be removed. The County incorrectly issued the deck permit in 2006 so the landowner should not be penalized for having invested in the deck's construction based on the County's issuance of the permit.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes ( X ) No ( )

Why or why not? The layout of the home with the second story sliding door makes the deck a reasonable use that the owner would be deprived of if the variance was not granted. The owner would also be left with a safety hazard if the deck were denied given the presence of the second story sliding door.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes ( X ) No ( )

Why or why not? The difficulty is largely due to the county incorrectly issuing a permit for the deck back in 2006 when a variance ought to have been required for its construction then.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes ( X ) No ( )

Why or why not? As mentioned in previous answers, the difficulty was largely caused by the department incorrectly issuing the deck permit in 2006 when a

variance ought to have been required then. The applicants did construct the deck larger than what was represented in the 2006 deck permit application.

5. Will the issuance of the variance maintain the essential character of the locality?  
Yes ( X ) No ( )

Why or why not? The locality is single family seasonal and year-round homes and will remain such with the deck being allowed.

6. Does the stated practical difficulty involve more than economic considerations?  
Yes ( X ) No ( )

Why or why not? Economic considerations were not cited by the applicant as a difficulty and the difficulty, as already stated, is due to the county incorrectly issuing the deck permit in 2006 and the landowners having built a larger deck than what was shown in the 2006 permit application.

7. Why did the applicant fail to obtain a variance/or comply with the applicable requirements before commencing work? Did the applicant act in good faith?

Why or Why not? The applicant did obtain a permit for the deck in 2006. However, the deck was built larger than what was shown in the permit application. Part of the problem was the staff that processed the permit application did not properly identify that the proposed project required a variance.

8. Did the applicant attempt to comply with the law by obtaining the proper permits?

Why or Why not? Yes, the applicant obtained a permit for the deck in 2006. However, the applicant constructed a deck that was larger than what was shown in the permit application.

9. Did the applicant obtain a permit from another entity that violated the law?  
Provide explanation below.

No, not that I am aware of.

10. Did the applicant make a substantial investment in the property? Provide details below.

Yes. The deck is of a size and type of construction that it constitutes a substantial investment in the property.

11. Did the applicant complete the repairs/construction before the applicant was informed of the impropriety? Please provide details below.

Yes – the deck was completed before the violation was identified a few months ago in 2012 when the landowners inquired with the department about the proposed porch project.

12. Are there other similar structures in the neighborhood? Please provide details below.

Yes. There are lakeside decks on other single family residential structures in the neighborhood.

13. Would the minimum benefits to the county appear to be far outweighed by the detriment the applicant would suffer if forced to remove the structure? Why or why not?

No. The applicants would suffer significant detriment if forced to remove the deck due to the cost of the deck and the safety considerations of the second story sliding glass door. The benefits to the county of removing the deck do not outweigh these detriments.

14. In light of all of the above factors, would denying a variance serve the interests of justice? Why or why not?

No. Justice is served by allowing the deck to remain given the error made by department staff in issuing the permit in 2006 and due to the safety concern of the second story sliding glass door.

Part 2 – porch addition:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes ( ) No ( X )

Why or why not? The deck should have been built in compliance with the 80' OHW setback approved in the 1992 variance. Allowing the deck to encroach up to a 52' OHW setback and then have an enclosed porch addition constructed below it is not in keeping with the ordinance intent of maximizing setbacks and not allowing encroachment almost up to the shore impact zone.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes ( ) No ( X )

Why or why not? The existing residence is two stories and has a 1248 sq. ft. footprint that provides ample living space.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes ( ) No ( X )

Why or why not? The difficulty is due to the structure having been allowed to be built by variance in 1992. Many structures in the shoreland area have been constructed/modified by variance such that Section 704.7 of the ordinance applies to them and thus this difficulty is not unique to this property.

5. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes ( X ) No ( )

Why or why not? The difficulty was created by the structure originally being constructed per variance and the ordinance requirement that subsequent additions/alteration to the structure can only be allowed by variance.

5. Will the issuance of the variance maintain the essential character of the locality?  
Yes ( X ) No ( )

Why or why not? The locality is single family seasonal and year-round homes and will remain such if the porch addition was allowed.

6. Does the stated practical difficulty involve more than economic considerations?  
Yes ( X ) No ( )

Why or why not? Economic considerations were not cited by the applicant as a difficulty and the difficulty is the fact that the structure was previously granted a variance for an 80' OHW setback coupled with the ordinance's requirement in Section 704.7 for any subsequent modifications to a structure approved by variance to also be approved by variance.

**Schwindt:** All in favor say aye. All opposed? Part of it was approved and part of it was denied.

Next we have **Variance Application 26-V-12 by Wayne and Barbara Jordahl:** Part of Lots 5, 6 and 7, Mount Margaret Camp, Section 17, Township 140, Range 33, Nevis Township on Lake Belletaine. Parcel # 21.43.00400. Applicants are requesting a variance from Sections 502.2 and 704.7 of the Shoreland Management Ordinance for a proposed addition to a nonconforming structure that does not meet the 100 foot ordinary high water setback. The addition exceeds the 50% square footage addition allowed by permit. Lake Belletaine is a recreational development lake.

Any questions from the Board?

**Robert Lindow:** Robert Lindow, 20281 235<sup>th</sup> Avenue, Nevis. I am sitting in for Wayne.

**Grob:** Are you Mr. Jordahl?

**Lindow:** No. I am his builder.

**Grob:** Oh. Okay. One of the question I have is it appears that there is plenty of property, back to the setback on the road that in fact this garage could be built 100 feet from the lake and meet that setback requirement and also meet the right-of-way setback from the road which would then not, and then the size of it would be immaterial. It wouldn't need a variance.

**Lindow:** Okay. Well the reason he is requesting a variance is because his wife has an illness and they want an attached garage so she can get in and out of the home without going in the weather.

**Grob:** Is there any doctor's statement to that effect Eric? Anything like that in the record?

**Lindow:** That I don't know if there is.

**Grob:** Usually things, I don't know help me out here, usually things that are granted for medical reasons typically are temporary because if the needs goes away because if they were to sell it or if a person not have the difficulty typically those things are done temporarily for medical reasons. Isn't that true? I can't recall anything in the past but typically there would be a, typically people wants structures or small storage areas or something down by the lake so they don't have to do a lot of walking back and for but usually there is a condition that when that need goes away then that particular temporary structure or whatever it is goes away. Is that kind of

**Buitenwerf:** That would be in Article Six dealing with accessory structures. You are allowed a certain size accessory structure that does not meet the required lake setback in situations where you have a proven medical condition and that structure is allowed for the duration of that person with the medical conditions use of that property.

**Grob:** A garage like this wouldn't fit under that accessory structure section?

**Buitenwerf:** Right.

**Grob:** It would not?

**Buitenwerf:** Correct.

**Grob:** Yup. Okay.

**Schwindt:** Arnie, you got any questions?

**Christianson:** Is this place next door, where that guy drives in, or how does he, how is he going to get in there?

**Lindow:** Well he left room. That access is still there however that access is just kind of a gentleman's agreement. I mean it is Wayne's land and Wayne is letting him drive through there and that can be rescinded at any time but Wayne has no intention so rescinding it.

**Grob:** On the other hand you wouldn't prevent the neighbor because the neighbor could easily have a road off, or a driveway off of the back. It is only 100 and some feet long. So the neighbor could easily come in the other way. So if he were to build his garage back he would not be creating a situation that would prevent access for his neighbor.

**Lindow:** No. Neither way. He wouldn't be preventing that either way.

**Grob:** No. Oh, I was going to ask, what is the purpose for the small basement under this garage?

**Lindow:** He wants to put a bathroom and a laundry room and a new entry to, a new stairway to the basement because the one they have now is a head knocker. It is real narrow and real shallow. They were going to take that out and expand their kitchen.

**Grob:** So under the garage he would be putting in living facilities?

**Lindow:** Part of it. Yes. Twelve feet of it would be basement and they would have a basement and a stairway and storage I guess.

**Schwindt:** Earl did you see any questions or problems when you were out there?

**Benson:** No. He is just going to build a garage behind the house, away from the lake. He wants it attached because of it is a lot handier to have an attached garage than walk around in a snow bank.

**Grob:** Is this a permanent residence or is it just a summer residence?

**Lindow:** It is going to be permanent in another year. He is in the process of moving.

**Grob:** Okay.

**Knight:** I still believe that everybody deserves a garage or needs a garage in this area. Now the placement of the garage is a different story. Whether, the question to you Eric, if the garage were attached to the house does that alter the situation in any way? By square footage?

**Buitenwerf:** Well the proposal is for the garage to be added to the home which requires a variance because the structure doesn't meet the 100 foot setback and the garage space would be counted toward what square footage would be allowed to be added to the structure and the size of it exceeds the 50% that would be allowed hence the variance application.

**Knight:** Thank you.

**Schwindt:** Well the staff report found no objections to the request. I myself don't see any objections. Most of this construction is going to be 80 plus feet from the lake because it is on the rear side of the house and I agree with Chick. A garage is a necessary addition rather than a detached garage which would be fine but you still have to face the elements to get to your house so I myself wouldn't be opposed to this. Is there any correspondence on this?

**Buitenwerf:** No.

**Schwindt:** Any public comment? We will open the floor for public comments? Seeing none we will close the public comments. Anyone wish to make a motion?

**Grob:** I would, I don't want to, I do want to voice I think the fact that there is living quarters being put in under the garage, you're over 100% area expansion and the requirements is only 50 and there is plenty of room on the property, I personally would not be in favor of granting the variance. I believe the garage could be built, it could be built back to the 100 feet and still would only be twenty, thirty feet from the house. Not knowing the medical condition and creating a permanent situation I would not be in favor. I see no practical reason why it should be granted given the area, its location, and the size.

**Schwindt:** Okay. Any other questions from the Board? Anyone wish to make a motion?

**Knight:** Did we have public comment?

**Schwindt:** I had public comment and there was none.

**Benson:** He asked that.

**Knight:** Okay.

**Benson:** I will make a motion to approve variance application 26-V-12 by Wayne and Barbara Jordahl.

**Knight:** I will second it.

**Benson:** In that motion I would say that we accept the staff report on the finding of the facts.

**Schwindt:** Okay. I have a motion to approve, do I have a second?

**Knight:** Second.

**Schwindt:** Second by Chick. All in favor say aye. All opposed?

**Grob:** Aye.

#### Findings of the fact

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes ( X ) No ( )

Why or why not? The addition will be to the rear of the house away from the lake and will comply with side and rear lot line setbacks – which is in compliance with the ordinance intent of placing additions away from the lake whenever possible.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes ( X ) No ( )

Why or why not? The property currently does not have a garage on it and a garage, particularly an attached garage, is a reasonable use of a single family residential structure property.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes ( X ) No ( )

Why or why not? The structure predates the ordinance and does not meet the 100' OHW setback. Thus there is no way to add an attached garage to the structure without obtaining a variance.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes ( X ) No ( )

Why or why not? The structure predating the ordinance and not complying with the 100' OHW setback is the difficulty and it was not constructed by the landowner.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes ( X ) No ( )

Why or why not? Granting the variance would not change the character of the locality as it would remain single family seasonal and year-round homes.

6. Does the stated practical difficulty involve more than economic considerations?

Yes ( X ) No ( )

Why or why not? As previously stated, the difficulty is the fact that the residence does not meet the 100' OHW setback and it was constructed before the ordinance took effect. Economic considerations were not cited as a difficulty by the applicants.

**Schwindt:** The request has been approved. Does anyone wish to take a short break?

**Grob:** I could.

**Schwindt:** We are going to take a five minute break maybe six.

Meeting reconvened at 10:29 a.m.

**Schwindt:** Next we have **Variance Application 27-V-12 by Thomas Fox Etal:** Lot 7, Red Wing Plat, Section 4, Township 140, Range 33, Nevis Township on Shallow Lake. Parcel # 21.50.00500. Applicants are requesting an after-the-fact variance from Sections 502.2 and 704 of the Shoreland Management Ordinance for an addition to a nonconforming structure that does not meet the 100 foot ordinary high water setback and has previously been modified by a variance. Shallow Lake is a natural environment lake.

State your names and addresses please.

**Ron Freeberg:** Ron Freeberg 30741 Highway 19 Boulevard Cannon Falls, MN.

**Rick Knowlton:** Rick Knowlton, 31370 68<sup>th</sup> Avenue Way, Cannon Falls.

**Thomas Fox:** Tom Fox, 109 Grove, Cannon Falls, MN.

**Schwindt:** We all looked at it. Anything else that you would like to say?

**Knowlton:** Well I guess the only comment that we'd have is that we are willing to work with the Board and we would like to accomplish what you need in order to make this conforming or to be able to keep the porch on there.

**Schwindt:** Okay. Any questions from the Board members?

**Grob:** Part of your variance request is in fact the six items that you have outlined in this email? Does that become, is that officially part of variance thing or do we have to adopt it or how does that work?

**Buitenwerf:** That is part of the variance application.

**Grob:** That letter is?

**Buitenwerf:** Yes.

**Grob:** Okay.

**Freeburg:** Excuse me one second Mr. Grob, I think a couple of the comments that were made in there, of those six items may have been listed as optional if required by the Board.

**Grob:** I have some recommendations for item five and six when we get around to doing it but I just wanted to figure out how that fit in. Okay.

**Schwindt:** Any questions?

**Benson:** I fell that if these gentlemen do what they say they are going to do with rain gutters and stuff and down by the lake put natural grass back in where the driveway is that the trade off is probably a good deal.

**Grob:** Yeah I think that what they have offered as mitigation is a reasonable trade off for having built a small entry way that or a cover up the entry way that they did. I don't know where in the process where I would like to modify five and six, if I could. Maybe I will just say it now. I would be in favor of the variance by adopting items one, two, three and four of the variance request but I would like to combine five and six in the following way: that a buffer zone be constructed fifteen feet wide, at least half of that be a vegetation planting. The other half, well I'll say half, the other part would be grooming, no grooming as you proposed and that the width of that parallel to the shoreline, the width of that buffer be such that what remains is a fifteen foot opening on your left as you face the lake and a four foot opening on the right. I think that is kind of consistent with what we looked at. The fifteen feet is very consistent with the Shoreland Ordinance in terms of access points and I realize that over on the other side where you have that high ice ridge and stuff it is easier to access in there so fifteen feet on the left side, four feet, fifteen feet wide, half of it to be a vegetation planting and I think it is appropriate for me to say that the approval of what you plant and how you do that should come through the local soil and water conservation district office. They are knowledgeable about the right plantings; which I am not. They are knowledgeable about the best construction is. You live on a natural environment lake. You know it is a 150 foot setback normally and you are much closer but after viewing the property I think if you do that, that's more than an adequate mitigation for having done what you did. I don't know how you capture that in the minutes but if you are okay with that then I would be supportive.

**Knight:** I go along with Ken's request. I don't mind the, I approve those first three requests.

**Schwindt:** Do you guys have any objections or anything opposing his recommendations?

**Freeburg:** I don't believe so. We visited when we were down looking at it on Friday and I think I got a pretty clear idea of what he has got in mind and I understand the four foot opening and what he is looking for there so we have access down towards that one dock area so I am comfortable with. We don't mind doing that a bit, in fact it enhances the appearance really from the back side a little bit anyway I think so I think he probably has a good idea.

**Schwindt:** Well the staff report was supportive of your request, I believe. Is there anything now that would change your opinion on the staff report Eric?

**Buitenwerf:** No.

**Schwindt:** Okay. Any other questions from the Board?

**Knight:** We need to adopt Ken's suggestion if we do that

**Schwindt:** Yeah. We are going to open it up for public comment though first and see if there was any correspondence or anyone wish to speak on this matter.

**Buitenwerf:** No correspondence was received.

**Schwindt:** Okay.

**Diessner:** Chuck Diessner, 24328 Hazelwood Drive. So you gentleman understand what's happening, the staff report is incorrect. The staff report says the setback is 100 feet. This is a natural environmental lake. It requires 150 foot setback. So what you are doing is you are approving something, an addition in the shore impact zone. I think that you need to rethink and relook at what you are planning on doing in light of the facts.

**Schwindt:** Any other comment? If not we will close public comment. Any other questions from the Board?

**Grob:** I would ask quick the deck was already there before you enclosed that small entry way area. The deck was there as part of the original construction.

**Freeburg:** Correct. The deck was there. We added no footings, no structure, no nothing near the lake. In fact it is all back beyond the nearest point to the lake by a considerable margin. And if I might add the deck was part of the original permit at the time so there was no question or problem with that.

**Schwindt:** Okay. Anyone wish to make a motion?

**Grob:** I would make a motion that we accept the variance request while adopting items 1,2,3 and 4 from an email dated June 19, 2012 and the addition, an additional item as I outlined in my previous discussion.

**Schwindt:** Do we have a second?

**Christianson:** Second.

**Benson:** I'll second it.

**Schwindt:** Second by Earl. The findings of the fact. Do you wish to adopt the findings of the fact from the staff report.

**Grob:** Let me try and read them.

**Knight:** Are his additions

**Grob:** Just give me a second to read these again. I would make a recommendation we accept the staff report findings of fact.

**Buitenwerf:** Mr. Chairman

**Schwindt:** Do you want to correct the two, where it says 100 foot setback

**Grob:** Oh I am sorry.

**Schwindt:** On questions 3 and 4? To the corrected amount which is 150 feet.

**Grob:** Yes. That's right. I forgot that.

**Schwindt:** I think that was just a mistake or error. I don't believe it changes anything drastically on their report.

**Buitenwerf:** Mr. Chairman, if I may, also on, or the answer to question 12 I would ask Ken what his intentions would be there as there is the initial sentence in that answer that really doesn't fit with the final findings of fact.

**Schwindt:** Number 12. Are there any similar structures in the neighborhood? Is that the one that you were referring to?

**Buitenwerf:** Yes. The first sentence in the staff report answer is more of a comment to the Board than it is an answer to the question.

**Grob:** Well, what is your difficulty with that one?

**Buitenwerf:** The first sentence says, I will have to look during the lot viewal to see if neighboring structures have a similar entry way. I don't know that that needs to be on a final answer.

**Grob:** Oh. Okay. Can we just delete that because we didn't? Actually I think that the amount of that entry way is minor and I can't see it being in conflict with what you might find on other structures but we didn't look. I don't know if it is relevant in this case.

**Buitenwerf:** Is there a second to adopt staff findings with those changes?

**Benson:** I will second it.

**Schwindt:** We have a motion and now we have a second for the corrections. All in favor of approval say aye. All opposed? It has been approved.

**Fox:** Thank you.

**Freeberg:** Thank you very much for your time.

**Grob:** Do you know where the SWCD office is.

**Freeberg:** No I don't.

**Grob:** Where the soil and water conservation district is. I guess Eric's office can point you there.

Finding of Facts:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes ( X ) No ( )

Why or why not? The applicants have offered several trade-offs to make up for the impervious surface area of the entryway and its aesthetic impact to parties recreating on the lake. Thus, the applicants have taken the ordinance's intent and regulations into consideration and are offering to compensate for the entryway's impact by removing other structures and impervious surface from the lot and creating a vegetative buffer along the shoreline.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes ( X ) No ( )

Why or why not? An enclosed entryway/mudroom is a reasonable use on a single family residential structure and due to the structure having been modified by variance in the past, such an entryway cannot be constructed without a variance because of Section 704.7 of the ordinance.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes ( X ) No ( )

Why or why not? The structure has been modified in the past by variance and it does not meet the required 150' OHW setback.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes ( X ) No ( )

Why or why not? The difficulty is the cabin's having been modified by variance in the past and the original cabin having been built before the ordinance was enacted at a setback that did not comply with the 150' OHW setback.

5. Will the issuance of the variance maintain the essential character of the locality? Yes ( X ) No ( )

Why or why not? The locality consists of single family seasonal and year-round residences and its character will not change by the granting of this variance. The offered trade-off measures will actually improve the locality's character by removing an outbuilding and increasing the vegetation on the lot and reducing and redirecting runoff from the remaining impervious surfaces on the lot.

6. Does the stated practical difficulty involve more than economic considerations?  
Yes ( X ) No ( )

Why or why not? Economic considerations were not cited by the applicant as a difficulty and the difficulty is the fact that the structure has been previously modified by variance and Section 704.7 of the ordinance requires a variance for any subsequent alterations to the structure.

7. Why did the applicant fail to obtain a variance/or comply with the applicable requirements before commencing work? Did the applicant act in good faith?

Why or Why not? The Board will need to ask the applicants these questions during the meeting.

8. Did the applicant attempt to comply with the law by obtaining the proper permits?

Why or Why not? No. The entryway was constructed without any permits.

9. Did the applicant obtain a permit from another entity that violated the law? Provide explanation below.

No, not that I am aware of.

10. Did the applicant make a substantial investment in the property? Provide details below.

No figures are provided in the application as to the entryway's cost of construction. The entryway was not inexpensive, but I would not consider it substantial as it could have been constructed for under \$5000.

11. Did the applicant complete the repairs/construction before the applicant was informed of the impropriety? Please provide details below.

Yes – The entryway was completely finished before the county observed it and informed the applicants of its being in violation with the ordinance.

12. Are there other similar structures in the neighborhood? Please provide details below.

Actually I think that the amount of that entry way is minor and I can't see it being in conflict with what you might find on other structures but we didn't look. I don't know if it is relevant in this case.

13. Would the minimum benefits to the county appear to be far outweighed by the detriment the applicant would suffer if forced to remove the structure? Why or why not?

Yes. The applicants are offering many tradeoffs to being allowed to keep the entryway that will be of benefit to the county, the lake, citizens, and the ordinance by reducing impervious surface, controlling runoff from said surfaces, and improving the vegetation quantity and screening on the lot. Allowing the entryway to remain in exchange for these trade-off items is a win-win for both parties.

14. In light of all of the above factors, would denying a variance serve the interests of justice? Why or why not?

No. The applicants have offered a very reasonable compromise that makes the lot more compliant with the ordinance and more protective of the environment. Denying the variance would not allow these trade-off items and their environmental benefits to be realized – which go more toward serving the interests of justice than would denying the variance.

**Schwindt:** Next we have variance application 28-V-12 by Dan and Melanie Leger.

**Melanie Leger:** I am Melanie Leger, 30860 County Road 37.

**Schwindt: Variance Application 28-V-12 by Dan and Melanie Leger:** Part of Government Lot 3, Section 34, Township 143, Range 32 and Outlot 1, Paul Bunyan Springs, Lakeport Township on Kabekona Lake. Parcel #: 19.34.00140 and 19.38.00800. Applicants are requesting a variance from Sections 501.2 and 506 of the Shoreland Management Ordinance for a proposed guest cottage that exceeds the maximum allowed 700 square feet footprint on a lot that does not comply with the guest cottage minimum lot size criteria. Kabekona Lake is a recreational development lake.

Anything else that we need to know about the property?

**Leger:** Is there a chance, would you mind if I recorded this for my husband's sake? Is that okay?

**Schwindt:** It is okay as far as I am concerned. Eric do you have any problems with that? No. Go ahead.

**Grob:** Is he going to check up on you?

**Leger:** Yeah, to make sure, you know, you said that? I just wanted to clarify a little bit too it is kind of a two part thing as far as there is a request for the guest house variance but if that is unacceptable then the possibility of doing a walkway with just a covered roof, not the insulated walls because I believe that is two different sections and the reason behind that again was that it was approved verbally and in emails from Scott earlier and even just wanting to kind of say that one quote that he had "it was a lot easier to get your attention now and go through the educational process so that we are on the same page than wait until it is built and go in and now say you have to remove it and then it gets expensive for you and a lot more problematic on both sides". We were trying very hard to make sure that we were following the Ordinances at the time and kind of

wondering, I don't know if there is a possibility to do a like a kind of grandfather thing saying you know it was approved when we made the decisions that we did as far as design.

**Grob:** Can you, for the record, for the audience, for us, restate the history of what you communicated a couple of years ago, what transpired, and what you are doing now.

**Leger:** Sure. We are doing a self build so it is taking us a little bit longer. My husband and I are doing most of the work and we put in a garage with a loft above it, to live in the loft while we were building the house. At the time the interpretation of the Ordinance was that if we put a covered roof, kind of breezeway with no sides attached between the garage and the house then the loft was considered another bedroom, not necessarily a guest house. SO we put in the sewer system to accommodate the extra bedroom and then in the time that it took us to build and then put in the permit for the house the interpretation changed to say that it needed to be walls on the sides of that breezeway that are insulated. The problem being is that we placed the well in a spot that the eave overhang would, is too large, we need to be three feet away from the edge of the well so by putting in that attached wall we are too close.

**Grob:** What documentation is there relative to you being given the interpretation for a two year plan that would allow just a breezeway to be considered a connection sufficient for a structure?

**Leger:** There is, I believe there were some emails attached. We didn't have all of the emails that Scott had but the one that he sent to us after we put in the permit for the house that was denied he said there the change in policy that is in 2010 it was allowable to construct a covered walkway between the structures and it was considered attached. Today's interpretation requires that the walkway be enclosed by walls and part of the home. Does that kind of answer what you were saying?

**Grob:** Well, did when you originally went for the permission to build the garage was there a plan or a master plan that was provided to the Environmental Services Office that clearly declared your intention based on that interpretation?

**Leger:** There was not a visual plan submitted. It was just verbal conversations, verbal and emails.

**Grob:** So it is like I build this garage, which I build with the intent that this is bedroom, where are living now is going to be a bedroom and that could be considered a bedroom in the future with an attachment but you didn't show them a design plan for your new home at that point?

**Leger:** No. It was just talked through as far as dimensions and how far away and so forth. I don't have, the big conversation was a recorded conversation. I do have the recorded conversation but I don't have a transcript of it. And there were no visual, paper plans submitted.

**Grob:** You recorded a conversation with Scott over that at that time?

**Leger:** Yes. We did that mostly because you know how when you hear something you sometimes you don't, you know when you go to the doctor you don't always remember

everything. We were trying really hard to make sure we were complying so we recorded that to have for reference for going back doing the specifics.

**Grob:** You understand this gets very problematic because what you are asking for is very contrary to the Ordinance in things that are trying to be prevented and yet you, based on previous discussions had a master plan. You put in your sewer system. You put in a well and all that based on that assumption. This is very problematic for us.

**Leger:** Yeah, the concern for me though is that when you are talking about interpretations there is nothing documented to go back and look at. We are not, we weren't trying to not comply. That was not our intent ever but you know we made the plan based on the interpretation. The interpretation changed. What's to say that it is not going to change again? I don't, it is just, I have not been in this process. I am new to it; there is no doubt.

**Schwindt:** Any other questions?

**Leger:** I guess I have one more comment too. From a standpoint, in my mind it is very hard for me to understand how this would significantly change the impact on the environment at this point because of how far we are into the process. I would love some enlightenment on that. The sewer is already in. The materials that were used to build it are already into that loft area.

**Grob:** You do make a good point because the terrain of your land is such that it runs down. There is a fairly big dip and then a ridge across the lake and whether one left it as a breezeway cover or totally enclosed it would not change

**Leger:** Runoff

**Grob:** the impervious surface. You are pretty well protected from the lake based on the way your landscape and stuff is. So those are good points.

**Schwindt:** Was there any correspondence on this Eric?

**Buitenwerf:** No there was not any received.

**Schwindt:** Okay. We will open the floor for public comment? Would anyone wish to comment on this variance request? Okay. Seeing none we will close the public comment and just to clarify, we might ask Eric, the variance before us, is it a two part? I am a little, I guess confused as to what we are doing. Is the request strictly for an addition to the existing structure by building the house or is the variance for allowing a guest house?

**Grob:** To remain.

**Schwindt:** If it is an addition, it is not a guest house. So I guess what are we trying to answer with this variance request? It was a two part request?

**Grob:** No. They are basically saying that they want approval for a guest cabin, meaning they are not going to remove the living capability above the garage when they

build their house and by leaving that breezeway there they are asking for that to be considered part of the house and not a guest cabin.

**Schwindt:** It is no longer a guest cabin if it is a part of the house.

**Grob:** Yeah.

**Schwindt:** If the attachment is part of the house then the guest cabin just goes out the window because it is not a guest cabin. So we need not concern ourselves with the guest cabin language if we are adding this to the house as an addition. The only thing in question is the addition approved with a roof or a roof and walls. That's the way I look at it.

**Grob:** Yeah.

**Schwindt:** Am I looking at it wrong?

**Buitenwerf:** The variance request is for the living space above the garage to be allowed as a guest cottage. If they were to contest the interpretation that the two must be connected through an enclosed means in order for it to be viewed as a single structure that would be processed through an administrative decision appeal which has not been submitted.

**Grob:** If they leave it just a breezeway then we have to give them a variance for a guest cabin?

**Buitenwerf:** Correct.

**Grob:** Under the current interpretation.

**Schwindt:** Okay.

**Buitenwerf:** And that is what is being requested.

**Schwindt:** Okay. I got that clear now.

**Benson:** The only problem I have with this is if we were to allow that to be a guest cabin, the lot is only about half the size that is necessary to have a guest cabin, plus the garage square footage is something like 240 feet more than what is allowed for a guest cabin. What are we going to say to the person who comes in next month asking the same thing?

**Grob:** Because the new interpretation says you have to have an enclosed breezeway which if they did it could, if they enclosed the breezeway it would be considered part of the house and it wouldn't be an issue. It is just as we saw when we were out there that adds a lot of complication if they enclose that based on decisions that they made based on proper interpretation. It would not open it for; it would not open it for other things in the future because of the new interpretation.

**Benson:** Okay.

**Grob:** In other words if someone already has a garage and a house and they build some little breezeway twenty feet out to it and then right away say they can add on, they can't do that anymore under the new interpretation. That has to be a formal living type space where as in the past that was not the interpretation. So I don't think we open ourselves to issues in the future. I am looking to you for a nod.

**Buitenwerf:** Every application is case specific.

**Grob:** Yeah.

**Schwindt:** So this would be because of the prior communications they had? They were working under the old interpretation and they have documentation to prove that they were working under the old interpretation. Is that the way you are looking at it?

**Grob:** I think that is where it becomes problematic. On the surface we should deny this because it's just a breezeway, you can't do the guest cabin thing lot wise and so on. But based on the fact that they were led to believe it was going to be okay and invested, I see the investment in a well and septic system as a fairly major investment. You know if there was no other investment involved I can't see that we should approve it. I am not saying that very well I guess.

**Schwindt:** Yeah.

**Grob:** I think that is the decision that we got to make. On the surface this should be denied, area wise of the lot, size and all of that except for the fact that they did what they did and planned to do what they are going to do based on prior interpretation and therefore invested. Where is truth and reason in that trade off? I don't like the idea of approving a guest cabin, an oversized guest cabin anymore than anybody else but at the same time I would not be happy if I were them having invested that money, being told that you could but that is life sometimes.

**Schwindt:** Well the other alternative Eric was some kind of administrative application you were talking about. Would that be a much better way to go?

**Buitenwerf:** I don't know. They submitted the variance request so that's the direction they wanted to go. They can submit an administrative decision appeal if they want to go that route.

**Schwindt:** The end result will be the same?

**Buitenwerf:** No. The administrative decision appeal route, depending on the outcome there if they were to say that they disagree with the interpretation that has to be fully enclosed and that was appealed and then you agreed with their appeal then they would be allowed to build what's proposed in this application without it being considered a guest cottage, the portion that is in the garage. If they go the variance route then that would be potentially allowed if approved but it would be viewed as a guest cottage.

**Grob:** I don't think you should go down the path of administrative things.

**Buitenwerf:** I don't think, yeah.

**Grob:** I think that causes us more difficulty in the long run.

**Schwindt:** I guess that is what I am asking. Which would simplify it for everybody involved?

**Buitenwerf:** The County is pretty firm in its current interpretation of what constitutes as a single structure and we wouldn't want to see that changed.

**Grob:** I agree with that because you would have all kinds of people wanting to do breezeways and bedrooms over garages. I think, two factors, one is whether this is a closed or open breezeway has absolutely zero impact on the lake, based on the terrain and so on it has absolutely zero impact and I believe the County and we should honor what I think these people did in trying to comply and did the things that they did fully based on what they were led to believe is true. In no way were they trying to get around it. In no way were they trying to do it. So I think that on some level I feel that we need to honor that. If I were personally on that side of the table

**Diessner:** Mr. Chairman, can I speak?

**Grob:** I would sit there and say wait a minute I have invested a lot of money based on what you told me. That is my attitude about it. I don't like doing it but I think that we may have to honor it that is sort of my input on it.

**Schwindt:** Any other questions?

**Diessner:** Mr. Chairman could I just provide a suggestion to the Board? I know that this is out of order. I am concerned and you may remember and you don't. You are involved in litigation on this issue right now; where a guest house was built without approval. The lot wasn't the right size. Let me make a suggestion. The applicant change her variance request to a variance to not require the connecting unit be other than what she was originally told. Now if she builds that it has nothing to do with a guest cabin. It has nothing to do with lot size and you solve the problem and you don't get mixed up in what else is going on with regard to the County. The issue is what was she told, and does it comply with the current interpretation? Evidently it doesn't comply so the variance should be not to allow a guest cabin, the variance should be to give her a variance as to what she must build so it qualifies as part of the house. You don't even need to consider a guest cabin and that solves the problem. Eric is shaking his head no and I don't know why.

**Buitenwerf:** I would disagree with that statement because you can't grant a variance from an interpretation of the Ordinance; that would go through the administrative decision appeal process.

**Diessner:** Well then she can bring it back to the Board if you deny it at that level.

**Grob:** What they built and what exists was done by permit already. It wasn't a case that what was built over the garage was done out of compliance in any way. It already was permitted or approved. That might be a distinction Chuck from the other thing you are referring to. I don't know. Why do you bring us these tough ones?

**Leger:** Sorry.

**Schwindt:** Okay. Anyone wish to make a motion?

**Grob:** I think to honor our, the County's prior discussion that we should approve this request for a variance for a guest cabin.

**Schwindt:** Okay. I have a motion to approve by Ken. Do I have a second?

**Benson:** I will second it.

**Schwindt:** The findings of the facts in this case

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance, and State Shoreland Management Rules?

**Grob:** How to answer that

**Benson:** I would say yes. If this was in agreement with the County which they made years ago, interpretation, so I say yes for that.

**Grob:** Prior interpretation.

2. Without the variance, is the owner deprived of a reasonable use of the property?

**Grob:** Do all of these have to answered right to be approved?

**Buitenwerf:** Uh huh

**Schwindt:** Well I would say that building a house is a reasonable use of this piece of property. The fact that there is a garage with a guest house that was built there previously by permit under the assumption that they could attach the house to it is a reasonable use of this piece of property.

3. Is the stated practical difficulty due to circumstances unique to this property?

**Schwindt:** I would say yes it is unique because they were building it in sections and they build a garage with a guest house first and now they want to build their house and attach it to and there is an interpretation difference between how the attachment is to be made.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Schwindt:** Here again I would say the problem was the interpretation; what used to be considered an attachment has changed since they were first instructed how they could attach their house to this garage.

5. Will the issuance of the variance maintain the essential character of the locality?

**Schwindt:** I would say yes. This is residential lakeshore and this will not affect that in any way.

6. Does the practical difficulty involve more than economic considerations?

**Schwindt:** I would say there is really no economic considerations involved because the garage is already built and the house is, I saw the plans, and the house is going to be built so there is no economic considerations involved in this.

**Schwindt:** So we had a motion to approve all in favor say aye. All opposed? The motion carries. It has been approved. Next we have variance application 29-V-12 by Robert Wroblewski.

**Robert Wroblewski:** Good morning. Robert Wroblewski, 24968 Great Pine Drive.

**Schwindt: Variance Application 29-V-12 by Robert Wroblewski:** Parts of Government Lot 2 and 3, Section 27, Township 141, Range 33, Mantrap Township on Spider Lake. Parcel # 20.27.00330. Applicant is requesting a variance from Sections 502.2 and 903.3 of the Shoreland Management Ordinance for a portion of a proposed driveway that will not comply with the required 100' ordinary high water mark setback. Spider Lake is a recreational development lake.

Anything else that you would like to add?

**Wroblewski:** No Sir.

**Schwindt:** Okay. Any questions from the Board?

**Benson:** I have no problem with this. He is just trying to maintain or build up the road so he can have access to his property.

**Knight:** I don't think he has any other choice if he wants to develop it.

**Schwindt:** No questions from the Board?

**Grob:** I think that the fact that the SWCD was out there and said where he wants to put it and what he wants to do is the most reasonable thing to do. I think that some credibility to it.

**Schwindt:** We will open the floor for public comment. Anyone wish to speak? State your name and address please.

**Hillary Stolz:** Hillary Stolz, 22334 Glacial Ridge Trail, Nevis, MN. I would be curious perhaps concerned whether this is an intended driveway or a future roadway for a subdivision of a 34 acre parcel on our lake?

**Grob:** It doesn't matter.

**Wroblewski:** To answer the question, it is not relevant, but there is no intention for development.

**Stolz:** So the approval of this would be just for a driveway to a single family dwelling?

**Wroblewski:** At this time yes. I have no hidden agendas, no intentions of developing it at this time or in the future.

**Stolz:** Thank you.

**Schwindt:** Any other questions?

**Doug Kinglsey:** Doug Kingsley, I am with the Minnesota Department of Natural Resources Fisheries Office here in Park Rapids, 301 South Grove Avenue. When I became aware of this property I was interested in the possibility of acquiring a portion of it for the State of Minnesota, and at that time State Bank owned, controlled the property and my discussion with State Bank led them to subdivide the property and those resulting lot lines that you see on the application. We were, I was only interested in the western portion of the property, the portion that is primarily wetlands and shallow shoreline along that Northwest bay of Spider Lake. The rest of the property is what I would call very developable with minimum impacts on the lake if it were done properly according to the Ordinance so I wasn't interested in that. State Bank subsequent to those discussions, State Bank indicated that they had a single buyer that was interested in the whole property so that kind of fell through. I heard assurances that the property is only intended to be developed for single family residence and I think that is great. I think the application for the driveway is appropriate for that. However, sometimes assurances, things change and assurances are not always followed. I would request that a condition be made of the variance that the size of the, the width of the driveway be limited to the sixteen feet that is indicated in the application just in case there are intentions in the future to subdivide or plat that property. The variance for the road or driveway would have to be revisited and that would become part of that platting process.

**Schwindt:** Okay.

**Wroblewski:** I would just like to restate to the Board that I have no intentions and limiting, and again I cannot predict the future nor do I have any agenda to develop this other than single family usage. I also would like to point out that the original plan from the bank was to subdivide the eastern portion into 26 lots with a developer. I am not that developer. I am just a citizen. I live here and work here. I see the potential and I see the concern but I just want to state those facts and I don't understand how we can limit what possibly will be for the future. Again I have no agenda to develop this. That is the purpose of why I bought it was to not develop it.

**Schwindt:** Yeah go ahead Doug.

**Kingsley:** Yeah, just one more comment. We aren't talking about limiting what the possibilities are for the future. We are limiting what this variance is for the here and now. If things change in the future the variance can be revisited.

**Schwindt:** IN your opinion then, he is asking for a sixteen foot wide road with class 5 gravel on top, your interpretation of that would be that if you want to develop that in the future that road would never pass the County Ordinances and requirements?

**Kingsley:** The size and the location of the road are typically part of the platting process and they are situated as part of that process to minimize impacts.

**Grob:** What it does is if you expand it then you start encroaching more into the setback. I mean the variance here is the fact that where that road is optimally placed encroaches to about 86 feet of the lake. If you had to expand that road 33 feet or, I don't know how wide it might be if it were a subdivision you would encroach more and I think that Doug is making a valid point that in the future that all ought to come under consideration when it comes to platting something out if it were to be done.. I think it is a reasonable request that condition on this variance that the road be sixteen feet wide maximum. I think that is a good point.

**Schwindt:** I think that's what the request was for was sixteen feet.

**Wroblewski:** It is. I am not trying to fight this for the sake of fighting but my point is I could get hit by a car tomorrow. I don't know what the future holds but again.

**Knight:** I don't have a crystal ball.

**Grob:** And that would come up and would have to be replatted and platted to standard requirements.

**Wroblewski:** Wouldn't that be the normal practice though if someone wanted to go beyond sixteen feet they would have to come to the Board anyway?

**Grob:** Not if it isn't a condition.

**Wroblewski:** So what makes this property unique that requires this restriction apply to the variance other than the concern

**Grob:** It is the setback from the lake that you are encroaching. As you look on either side it falls off very quickly into wetland areas and it is erosion runoff and all of that kind of stuff we have to consider. I think it is a good point.

**Schwindt:** Is there anything that we need to do as far as a motion is concerned Eric to make sure that road stay at sixteen feet or is his application sufficient? It says sixteen feet right on it.

**Grob:** I think the motion should include it based on our previous discussion.

**Buitenwerf:** If the Board wants to limit the width of the driveway then you would want to specify that in a condition but I, you would only be able to apply that to the portion of the road that does not meet the setback. Those portions of the road that do meet the setback would not be able to be regulated in terms of their width.

**Grob:** The real point is not to put a condition that it never be expanded to encroach any closer than the 80 setback. That is really the issue in that limited set of it. Most of the road meets all of the setback requirements. It is that, how far? 50 yards? I don't know what the distance is between the signs.

**Knight:** I don't think we have a crystal ball at this time to tell what is going on in the future. I think each thing should stand on its own. The sixteen foot is what is being requested and I think that is what we should adopt.

**Grob:** But it should be in the motion that is what we adopt.

**Schwindt:** Any other questions? Earl?

**Benson:** I will make a motion to approve variance application 29-V-12 by Robert Wroblewski. Part of that motion I would like to add is that portion of the road that is going through the property where it is close to the water be maintained at sixteen feet width.

**Knight:** Good for you.

**Grob:** Second.

**Knight:** Second.

**Schwindt:** I have a motion to approve and I have a second. The findings of the fact. I lost my page.

**Knight:** Do you want to add that to your motion?

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

**Benson:** I would say yes. He is just adding gravel to an existing road to make it more.

2. Without the variance, is the owner deprived a reasonable use of the property?

**Benson:** Yes, he needs a good road to have access to his property.

3. Is the state practical difficulty due to circumstances unique to this property?

**Benson:** I would say that the practical difficulty in this case is because it is too close to the wetlands and the lake.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

**Benson:** I would say yes. This is the only place he can put the road and it is too close to the wetlands and lakeshore.

5. Will the issuance of the variance maintain the essential character of the locality?

**Benson:** The essential character of the locality will not change.

6. Does the stated practical difficulty involve more than just economic considerations?

**Benson:** Economic considerations were not involved.

**Schwindt:** Okay so we had a motion to approve, all in favor say aye. All opposed? It has been approved.

**Wroblewski:** Thank you gentlemen.

**Schwindt:** Is there any other business?

**Buitenwerf:** No.

**Schwindt:** No. Motion to adjourn?

**Benson:** So moved.

**Schwindt:** Second?

**Christianson:** Second it.

**Schwindt:** Arnie. All in favor aye. We are adjourned.

Meeting adjourned at 11:19 am

Respectfully Submitted by:  
Maria Shepherd, Recording Secretary

**Hubbard County**  
**Board of Adjustment Meeting**  
9:00 A.M. on Monday, August 20, 2012

Chairman Lou Schwindt opened the meeting with the following members present: Charles "Chick" Knight, Tim Johnson, Lou Schwindt, Arnie Christianson, and Ken Grob. Also present were Environmental Services Officer Eric Buitenwerf and Recording Secretary Maria Shepherd.

Schwindt welcomed everyone to the meeting and went through the meeting procedures.

**Approval of the July 16, 2012 Minutes:**

Knight moved to approve the July 16, 2012 minutes as presented. Grob seconded the motion. The motion carried unanimously.

**New Business:**

**Variance Application # 30-V-12 by Perry and Mary Champeau:** Part of Government Lot 4, Section 3, Township 145, Range 32, Farden Township on Grace Lake. Parcel # 07.03.02400. Applicants are requesting a variance from Sections 502.2 and 704.7 of the Shoreland Management Ordinance for proposed deck and platform additions to a structure previously modified by variance that does not comply with the 100 foot ordinary high water mark structure setback. Grace Lake is a recreational development lake.

Mary Champeau presented the application to the Board. She stated that basically the request is to put a deck out the front of the cabin and a stone patio so that it is wheelchair accessible.

Grob questioned if the need was existing or a thought when the cabin was originally constructed per variance in 2009.

Champeau said that the need wasn't present and they weren't thinking of anything like that.

Grob stated that the deck on top had nothing to do with a wheelchair.

Champeau said the deck was a planned thing and she thought that they had received a variance for that, but evidently they had not.

Knight questioned if the upper deck was shown in the original plan?

Buitenwerf stated that the plans from the variance in 2009 did not show a lakeside, second story sliding glass door or deck. The house as constructed does not have the same window and door layout that was depicted in the 2009 variance that was approved.

Knight thought that they should be allowed to have a patio out the front door, but was opposed to the second story deck.

Grob stated that the encroachment of the deck and the large patio is an encroachment into the shore impact zone that shouldn't be allowed, but agreed with Chick that some walkway in front of the house would be appropriate. He recommended that if the Board approved this request, the patio should be no larger than a five feet extension into the shore impact zone.

Johnson asked whether or not that deck-if it had been included in the original variance request-would have been approved.

Grob speculated that if it had been approved, the entire house probably would have had to be moved back so not to encroach any closer than the approved 50 foot setback.

Johnson said he doesn't see the harm in the deck. He then questioned whether or not the Environmental Services Office screen a design for a lakeward access.

Grob asked for clarification on any decks or patios that were on the old cabin since it stated that the applicants moved the new cabin back fifteen feet.

Champeau explained that the cabin was fifteen feet further out and then it came back to the three season porch so they just made it even with the three season porch and they couldn't put it any further back because of the septic system and back further across from the road is wetlands.

Buitenwerf clarified that the 2009 building permit application did not show anything that differed from the sketches submitted for the variance application which showed no deck plans or door for a deck.

Grob commented on the state of the shoreline, stating it is very vulnerable, sandy, and slopes towards the lake and has no buffer or retention from runoff whatsoever.

Champeau commented that they are planning on putting down black dirt and planting grass.

Schwindt recommended the planting of shrubs and hedges instead of grass to do a better job of holding back the water.

Johnson stated that he wasn't concerned with any runoff since the sand is the most permeable sand.

No correspondence was received and no public comment was given.

Schwindt commented that the staff report recommended the planting of native vegetation in the shore impact zone to help stabilize the shoreline and counter the impervious surface from the platform.

Grob stated that if they were to create a 25 foot buffer zone, it would come almost all the way up to the platform and with the extreme sandy soil and then bringing in black dirt, it just didn't sit well with him.

Grob moved to deny the deck and deny the patio as proposed, but allow for a walkway patio six feet wide in front of the house and 30 feet long. Knight seconded the motion.

Buitenwerf recommended that the Board do two findings: one for the motion to deny the original application and then do a separate findings to support the amended platform that was offered in the motion.

Schwindt read the findings of fact and the Board answered the findings questions as follows:

A variance may be granted only where the strict enforcement of county zoning controls will result in a practical difficulty. A determination that a "practical difficulty" exists is based upon consideration of the following criteria:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

No. The State says 50 foot back.

2. Without the variance, is the owner deprived of a reasonable use of the property?

No. It is not being denied the use of the property.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. It would be unique if it were allowed.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

No. It is being caused by the landowner because he is asking for something that is in conflict of the Ordinance.

5. Will the issuance of the variance maintain the essential character of the locality?

I believe it would be.

6. Does the stated practical difficulty involve more than economic considerations?

No economic considerations involved.

Facts supporting the answer to each question, above, are hereby certified to be the Findings of the Board of Adjustment. This is in accordance with Section 1104 of the Hubbard County Shoreland Management Ordinance.

Schwindt read the findings of fact to approve the modified request and the Board answered the findings questions as follows:.

A variance may be granted only where the strict enforcement of county zoning controls will result in a practical difficulty. A determination that a "practical difficulty" exists is based upon consideration of the following criteria:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes. The platform is needed on the front of the cabin.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes. He needs to be able to have a wheelchair out there and not have sand in their house when they come in.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. The original structure predated the Ordinance.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes. They did move it back previously.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. It will remain a single family residence.

6. Does the stated practical difficulty involve more than economic considerations?

No economic considerations involved in this decision.

Facts supporting the answer to each question, above, are hereby certified to be the Findings of the Board of Adjustment. This is in accordance with Section 1104 of the Hubbard County Shoreland Management Ordinance.

The motion carried unanimously.

**Variance Application # 31-V-12 by Paul and Lori Carter:** Part of Government Lot 3, Section 19, Township 140, Range 33, Nevis Township on Lake Belletaine. Parcel # 21.19.02400. Applicants are requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance for a proposed addition to a residential structure that does not meet the 100 foot ordinary high water mark setback. Lake Belletaine is a recreational development lake.

Daryl Halverson, representing Paul and Lori Carter, presented the application.

The Board had no questions for the applicant.

No correspondence was received and no public comments were given.

Knight moved to approve the variance request. Arnie seconded the motion.

Schwindt read the findings of fact to approve the request and the Board answered the findings questions as follows:

A variance may be granted only where the strict enforcement of county zoning controls will result in a practical difficulty. A determination that a "practical difficulty" exists is based upon consideration of the following criteria:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes. This is protection for zoning and it is no different. They are not changing the footprint of the cottage. They are just adding the roof from a flat top to a gable roof.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes. This is a preservation act. It should be done particularly in the position it is in.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. The structure actually predates the Ordinance so the porch legally exists and there is no other way to remedy the problem and make the roof as requested.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes. The cabin predates the Ordinance and is located in the shore impact zone.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. Granting the variance would not change the character of the locality. It would remain single family building.

6. Does the stated practical difficulty involve more than economic considerations?

Yes. No economic considerations.

Facts supporting the answer to each question, above, are hereby certified to be the Findings of the Board of Adjustment. This is in accordance with Section 1104 of the Hubbard County Shoreland Management Ordinance.

The motion was approved and carried unanimously.

**Variance Application # 32-V-12 by Erland and Joyce Alto:** Part of Government Lot 6, Section 14, Township 141, Range 33, Mantrap Township on East Crooked Lake. Parcel # 20.14.00900. Applicants are requesting a variance from Sections 502.1 and 704 of the Shoreland Management Ordinance for proposed additions to a residential structure that does not comply with the 150 foot ordinary high water mark setback. East Crooked Lake is a natural environment lake.

Erland and Joyce Alto presented their application.

No questions were asked by the Board.

No correspondence was received and no public comment was made.

Schwindt moved to approve and adopt the staff report findings. Knight seconded it.

Schwindt read the findings of fact to approve the request and the Board answered the findings questions as follows:

A variance may be granted only where the strict enforcement of county zoning controls will result in a practical difficulty. A determination that a "practical difficulty" exists is based upon consideration of the following criteria:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes. The proposed additions will be made to the rear of the structure (non-lakeward) and go up (vertical) – thereby keeping the structure's footprint in the shore impact zone still reasonably small. The size of the additions relative to the cabin's size are not large enough to warrant consideration of seeing if the structure can be moved back to a conforming setback.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes. The proposed additions to the structure are reasonably sized and make for a reasonable use of the property as the existing cabin is very modest in size. Even with the proposed additions, the cabin would still be modestly sized in relation to the average home size of today.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. The difficulty is the cabin predates the Ordinance and is located in the shore impact zone.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes. The difficulty is the cabin predates the Ordinance and is located in the shore impact zone.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. Granting the variance would not change the character of the locality as it would remain single family seasonal and year-round homes.

6. Does the stated practical difficulty involve more than economic considerations?

Yes. The application does not cite economics as a hardship. The difficulty is the structure predates the Ordinance and is located in the shore impact zone.

Facts supporting the answer to each question, above, are hereby certified to be the Findings of the Board of Adjustment. This is in accordance with Section 1104 of the Hubbard County Shoreland Management Ordinance.

The motion carried unanimously

**Variance Application 35-V-12 by Rosa Stolzenberg:** Lot 15, Block 1, Island View, Section 3, Township 139, Range 33, Crow Wing Lake Township on Island Lake South. Parcel # 06.51.01300. Applicant is requesting a variance from Sections 502.2 and 704.6 of the Shoreland Management Ordinance for a proposed deck addition to a residential structure that does not meet the 100 foot ordinary high water mark setback, but was legally constructed initially. Island Lake is a recreational development lake.

Rosa Stolzenberg represented her application.

Grob questioned why the applicant only was asking for a 90 square foot expansion, which was very reasonable, and asked if she had thought about making the deck wider towards the lake?

Rosa asked for an addition of one foot to the North and an additional three feet to the south end, lake side, of the proposed deck. Then she could have steps going up to the landing that exists there already.

No correspondence was received and no public comment was given.

Grob moved to approve the amended request for the deck. The motion was seconded by Knight.

Grob moved to approve the staff report findings of fact for questions two through six. Knight seconded the motion.

The Board answered the findings questions as follows:

A variance may be granted only where the strict enforcement of county zoning controls will result in a practical difficulty. A determination that a "practical difficulty" exists is based upon consideration of the following criteria:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes. The applicant is asking a total of about 104 square foot deck that is being added to the structure that was built per setback requirements in 1974 and it is very modest and a much safer situation. The other 95 feet to the lake is heavy vegetation to direct any type of runoff or impact to the lake.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes. A lakeside deck on a riparian lot is a reasonable request. The structure was built at a conforming setback, but shoreline erosion that is beyond the landowner's control caused the structure to become nonconforming in terms of it OHW setback. Because there are no exterior doors on either side of the house, requiring the deck to be placed on either side to gain a few feet of setback would not be reasonable.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. As stated previously, the structure was originally constructed at a conforming OHW setback by permit in 1974. Since then, shoreline erosion has caused the structure to no longer comply with the OHW setback.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes. The difficulty was caused by the shoreline erosion that has occurred over nearly four decades and said erosion is caused by many things such as wind/wave action, ice push, and watercraft using the lake – all of which are things that are other than the landowner and beyond the landowner's control.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. The locality will remain predominantly single family seasonal and year-round homes – many of which had as an accessory feature lakeside decks and/or platforms similar to the one proposed in this application.

6. Does the stated practical difficulty involve more than economic considerations?

Yes. Economic considerations were not cited by the applicant as a difficulty. As stated in previous answers to these findings questions, the difficulty is the shoreline erosion that has occurred over four decades since the structure was originally constructed by permit at a conforming 100' OHW setback.

Facts supporting the answer to each question, above, are hereby certified to be the Findings of the Board of Adjustment. This is in accordance with Section 1104 of the Hubbard County Shoreland Management Ordinance.

The motion carried unanimously.

**Variance Application 36-V-12 by N.E. Seaberg and B.L. Williams:** Part of Government Lot 3, Section 16, Township 140, Range 33, Nevis Township on Lake Belletaine. Parcel # 21.16.00810. Applicants are requesting a variance from Sections 801.2 of the Shoreland Management Ordinance and Subd. 2.10 of the Individual Sewage System Standards Ordinance for less than the required 10 foot septic tank setback and the 20 foot drainfield setback from a proposed residential structure addition. Lake Belletaine is a recreational development lake.

Bonnie Williams, Nancy Seaberg, and Bill Cowman presented the variance request.

Tim Johnson made the comment that the addition will still be user-friendly for maintenance for the septic.

No correspondence was received and no public comment was given.

Grob moved to approve the variance application and to adopt the findings of the fact from the staff report. Christianson seconded it.

The adopted findings of fact are as follows:

A variance may be granted only where the strict enforcement of county zoning controls will result in a practical difficulty. A determination that a "practical difficulty" exists is based upon consideration of the following criteria:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes. The proposed addition will comply with all setbacks except for the septic system and these setbacks will still be close enough to the required setbacks to be effective and in keeping with the intent and purpose of the setback requirements. Space on the lot is not abundant so requiring the septic system to be moved when the structure is slab on grade and there is still room to access the system would not make sense.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes. The proposed bedroom addition to provide a larger bedroom than the existing 10'X10' bedroom is a reasonable use of the property and it will comply with all structure setbacks except for the septic system setbacks – which will still be within reasonable/workable tolerances.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. The difficulty is the floorplan layout of the existing home and the orientation of the home on the lot. The logical place for the addition is where it is proposed in the application.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes. The original structure was constructed and the house floorplan was laid out by someone other than the landowner. The septic system on the property was installed by a party other than the landowner as well as was the septic system located on the neighboring property.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. Granting the variance would not change the character of the locality as it would remain single family seasonal and year-round homes.

6. Does the stated practical difficulty involve more than economic considerations?

Yes. The application does not cite economics as a hardship. The difficulty is the house floorplan and location of the existing septic system on this property and the neighbor's lot.

Facts supporting the answer to each question, above, are hereby certified to be the Findings of the Board of Adjustment. This is in accordance with Section 1104 of the Hubbard County Shoreland Management Ordinance.

The motion carried unanimously.

**Variance Application 37-V-12 by Malcolm Daryle and Jane McCannell:** Lot 4, Lakeview, Section 11, Township 145, Range 32, Farden Township on Midge Lake. Parcel # 07.41.00300. Applicants are requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residential structure that would exceed the 50% maximum square footage addition allowed. Midge Lake is a recreational development lake.

Daryle and Jane McCannell presented their application.

Ken questioned why the applicants amended their variance request to expand the entryway or porch?

Jane McCannell stated that they felt it was an easy way to create more storage while still keeping the steps inside of the garage.

No correspondence was received and no public comment was given.

Eric Buitenwerf reminded the Board that there is an amended design that was passed out to the Board and that is what is being given the Board's consideration.

Schwindt stated that the addition is to the rear of an existing house-basically they are attaching a garage to a structure that is already there.

Grob added that it is away from the lake and that there is no impact to the lake based on the slope of the land.

Knight moved to approve the amended variance request. Grob seconded it.

Schwindt read the findings of fact to approve the modified request and the Board answered the findings questions as follows:

A variance may be granted only where the strict enforcement of county zoning controls will result in a practical difficulty. A determination that a "practical difficulty" exists is based upon consideration of the following criteria:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes. A garage is needed in this country.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes. The garage proposed is to the rear of the property and is also needed in this country.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. It is definitely needed in this particular country.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes. They wanted to adopt a garage in the back and it is away from the lake.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. The rest of the locality is homes.

6. Does the stated practical difficulty involve more than economic considerations?

Yes. No economic considerations were involved.

Facts supporting the answer to each questions, above, are hereby certified to be the Findings of the Board of Adjustment. This is in accordance with Section 1104 of the Hubbard County Shoreland Management Ordinance.

The motion carried unanimously.

**Variance Application 38-V-12 by Stephen and Mae Tinguely:** Lot 19, First Addition Crystal Beach, Section 17, Township 139, Range 34, Hubbard Township on Long Lake. Parcel # 14.39.41200. Applicants are requesting a variance from Sections 502.2 and 704 of the

Shoreland Management Ordinance for a proposed greater than 50% addition to a residential structure originally constructed per variance that does not comply with the 100 foot ordinary high water mark setback. Long Lake is a recreational development lake.

Stephen and Mae Tinguely were present during the meeting.

Johnson asked if the original structure predated the Ordinance.

Buitenwerf answered that the home was built by variance in 1986.

Grob questioned if the screened-in porch they have now was part of the original home that was built in 1986.

Stephen Tinguely said he believed it was.

Buitenwerf stated for the audience and the Board how to calculate the 50% addition. The process is that the original footprint square footage is used to arrive at what the 50% addition allowance would be. The 50% square footage is calculated for each proposed level or story of the addition.

Grob asked if since the addition would only be sixteen feet from the property line, which is heavily vegetated, would that prevent the possibility of servicing their well if the need should arrive. The request is problematic for two reasons: servicing of the well due to the size of the addition and secondly they want to add another screened in porch lakeward.

Johnson stated that the deck does put it over the allowed 50%. The addition is right in line with the 50% if just looking at the footprint.

Grob asked what the need was for adding so much square footage to the existing home.

Tinguely answered that the need is for a third bedroom and they would like to have that third bedroom on the main level and they would like to do a kitchen expansion. They don't really care about the space below but there is no other way to build the addition without having space below it. As they get older they need to have more living space all on one level.

No correspondence was received.

Chuck Diessner commented on behalf of COLA. He stated that the last few items have been confusing and that the Board members are confused. He suggested that Eric layout in his recommendations how these calculations are done. It looks like this addition is two times what is allowed or two times the original structure rather than 50%. He also wanted Eric to give his recommendation to the public so that they were aware of it since he did not provide a recommendation in the staff report.

Buitenwerf restated for the audience and the audience how the 50% addition is calculated. As far as his recommendation to the Board after seeing the property, he felt that the addition could be aligned with the nonlakeward wall of the structure that faces the road to gain further setback from the lake and the size of the addition is borderline in size as far as a structure that would be appropriate for a lot of this size and with considerations. The primary one being if and when that drainfield fails there is going to be very limited

Grob questioned if they could tell the applicants to make their addition smaller so that if they needed well servicing or they needed a new drainfield it would not cause problems or does the Board leave it up to them to make that choice and deal with it in the future. His person thought was the Board should not allow any building lakeward of the current structure, main structure, not screened-in porch so whatever the Board decides the additional screened-in porch and deck should not be allowed.

Mr. Tinguely made sure that the Board knew that the proposed screened-in porch does not encroach any closer than the existing screened-in porch. Grob stated that the Board understands that but still that was built by variance and he feels that they shouldn't compound on top of that nonconformance. As he sees it the Board needs to decide if they are okay with having the proposed addition come only fifteen feet from the property line in case the well needed to be serviced. If they were not okay with that then they needed to ask the applicants to scale back the addition.

Johnson stated that if the well needed servicing, they would find a way. He questioned Grob about what he would approve for an addition.

Grob responded that he would not approve the screened- in porch but would be okay with the 20'X32' footprint fully enclosed living space addition. The slope is such that any runoff and impervious surface runoff is not an issue. It all slopes away from the lake. The entire front yard goes up.

Grob moved to approve the 20' X 32' fully enclosed living space addition as shown on the variance application drawing. The proposed lakeward screened-in porch addition is denied. Johnson seconded the motion.

Schwindt read the findings of fact to approve the modified request and the Board answered the findings questions as follows:

A variance may be granted only where the strict enforcement of county zoning controls will result in a practical difficulty. A determination that a "practical difficulty" exists is based upon consideration of the following criteria:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Managment Rules?

Yes. The proposed structure won't encroach on the well, septic or lake setback anymore than the original structure.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes. He needs an adequately sized home and this is an adequate addition.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. It is triggered by a variance because it was built by variance.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes, It was built by a variance and so it needs a variance to do anything to it.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. It will remain a single family residence, year round home.

6. Does the stated practical difficulty involve more than economic considerations?

Yes. Economics were not cited as a difficulty.

The motion carried unanimously.

The meeting was recessed for a ten minute break at 10:25 a.m.

Meeting was reconvened at 10:32 a.m.

**Variance Application 39-V-12 by Eric Boe:** Lot 8, Block 1, Friendship Springs, Section 33, Township 143, Range 32, Lakeport Township on Kabekona Lake. Parcel # 19.41.00900. Applicant is requesting a variance from Sections 502.2, 503, and 704 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residential structure that does not meet the 100 foot ordinary high water mark setback and is located in the bluff impact zone. Kabekona Lake is a recreational development lake.

Judith Boe, Eric's aunt, presented the application on behalf of herself, Eric and her brother who are all three owners in the property.

Grob clarified that the only issue with this is that there is a seventeen foot setback instead of the thirty foot setback from the crest of the bluff. The addition that they want to do is away from the lake and is almost 90 feet back and off to the side so the only issue is that the current home is only seventeen verses thirty feet from the crest.

Johnson stated that the addition would be outside of the bluff impact zone. The original house was originally constructed too close to the crest of the bluff.

Knight didn't see a reason why not to approve. It is a small request. The cabin is in the bluff zone but it was built long before the Ordinance came into effect and the space is needed. No correspondence was received and no public comment was given.

Grob moved to approve the variance request and accept all six recommendations on the findings of fact from the Environmental Services Office. Knight seconded it.

The adopted findings of fact are as follows:

A variance may be granted only where the strict enforcement of county zoning controls will result in a practical difficulty. A determination that a "practical difficulty" exists is based upon consideration of the following criteria:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes. The proposed addition will itself be located outside the bluff impact zone and the lot slope around the proposed addition runs down away from the lake so any stormwater runoff resulting from this addition will not enter Kabekona. The addition complies with the other 50% addition criteria found in Section 704 of the Shoreland Ordinance.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes. The proposed bedroom addition consists of only 198 sq. ft. being added to a structure that is very modest to begin with at 816 sq. ft. This addition is very reasonable in size and the overall space of the cabin including the addition is reasonable.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. The structure predates the Ordinance and does not meet the 100' OHW setback or bluff setback. The proposed addition itself has been situated outside the bluff setback. The proposed addition itself has been situated outside the bluff impact zone and is on a slope that will drain stormwater away from the lake.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes. The cabin was constructed prior to enactment of the shoreland ordinance by a party other than the landowner. The bluff impact zone language was added to the shoreland ordinance in the statewide updates made in the early 1990s and this process was not undertaken or directed by the landowner.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. Granting the variance would not change the character of the locality as it would remain single family seasonal and year-round homes.

6. Does the stated practical difficulty involve more than economic considerations?

Yes. Economics are not cited by the applicant as a difficulty. Instead, the cabin's having been built prior to the ordinance enactment and the bluff impact zone regulations having been added to the ordinance in the early 90s are the difficulties affecting this structure.

Facts supporting the answer to each question, above, are hereby certified to be the Findings of the Board of Adjustment. This is in accordance with Section 1104 of the Hubbard County Shoreland Management Ordinance.

The motion carried unanimously.

**Variance Application 40-V-12 by Gary and Jacqueline Lane:** Lots 8 and 9, Moccasin Acres, Section 4, Township 141, Range 35, Arago Township on Island Lake. Parcel # 02.37.00800. Applicants are requesting a variance from Sections 502.2 and 503 of the Shoreland Management Ordinance to replace an existing residential structure located in the bluff impact zone with a new residential structure to be located in the bluff impact zone. Island Lake is a recreational development lake.

Jacquelyn Lane, Ben Ott, and Mary Best presented the application.

Lane stated that they always believed that the cabin was built in 1961 but after speaking with the neighbors the cabin was existing when they moved onto the property in 1959 and it was just resided in 1961 so they have no idea when the cabin was originally built but it is not structurally sound.

Grob stated that the new home would be 160 feet from lake. The issue is that the only reasonable place to put the new home on the property encroaches into the thirty foot setback from the crest of the bluff.

Johnson stated that pretty much the entire lot was a bluff and it was difficult to tell where it started and stopped.

Ott stated that technically right now it is considered two separate lots and the applicants are willing to combine them and it is basically all a bluff.

Johnson liked the erosion control plan that was submitted with the application and approved the plan.

Grob stated that his calculations show they would encroach about thirteen feet into the thirty foot setback.

Knight suggested that while the work is being done on the property, that erosion control measures be used since it is such a steep hill.

Ott reminded the Board that it is in the plans of where silt fences and erosion control measures will be used while construction is taking place.

Johnson stated that another positive is the change of roof slope. The existing structure has the slope facing right down the bluff.

Grob stated that since the existing setback is 160 feet back and there is a lot of vegetation on that bluff and down below makes this a pretty non issue.

John Pasnau made public comment. There is a building that separates their property from the Lane's. They encouraged the Board to approve this variance. He stated that he has been on the property and has seen what they are going to do. I view the property from the lake everyday when he fishes there and what they are going to build there will fit very nicely into that large piece of property. It is a long way back from the lake and if this property is ever going to be built on this is what it will take.

Grob moved to approve the variance request. Christianson seconded it.

Schwindt read the findings of fact to approve the modified request and the Board answered the findings questions as follows:

A variance may be granted only where the strict enforcement of county zoning controls will result in a practical difficulty. A determination that a "practical difficulty" exists is based upon consideration of the following criteria:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes. It meets setback requirements, water runoff requirements and it is the absolute best location on the property.

2. Without the variance, is the owner deprived a reasonable use of the property?

Yes. The existing home is a summer cabin. This will give them year round use.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. The topography. There isn't really any other place they can build on this lot.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes. The topography again. There is no where else on this lot that you could put it.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. It has the support of the neighbors.

6. Does the stated practical difficulty involve more than economic considerations?

Yes. Economics are not a factor.

Facts supporting the answer to each question, above, are hereby certified to be the Findings of the Board of Adjustment. This is in accordance with Section 1104 of the Hubbard County Shoreland Management Ordinance.

The motion carried unanimously.

**Variance Application 41-V-12 by Lawrence and Denyse Kramer:** Part of Government Lot 2, Section 6, Township 141, Range 33, Mantrap Township on Big Mantrap Lake. Parcel # 20.06.01410. Applicants are requesting a variance from Sections 502.2 and 704.7 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residential structure that doesn't meet the required 100 foot ordinary high water mark setback and was previously modified per a variance. Big Mantrap Lake is a recreational development lake.

Lawrence and Denyse Kramer, Nancy Colinski and Helen Kramer presented the application.

Grob asked if the area that they wanted to enclose was already an existing deck that has access from that second level.

Lawrence Kramer stated that was correct and that the addition is designed to be a three season porch and not for year round use.

Schwindt stated that according to the staff report there was a variance request in November 1997 to do basically the same thing, to add a deck and at that time the Board of Adjustment granted portions of the variance but denied this request to put a cover over the deck and instead approved an addition to the side where a deck could be added.

Grob stated that the Board tries very hard not to encroach living space into setbacks, especially in the shore impact zone. Our actions in the past have typically been along that line. He stated that personally he could not support converting the existing deck into a three season living area because of how close they are to the lake.

Schwindt commented that the previous Board of Adjustment allowed that deck to be built but specifically said no roof to go over it. He stated that it wouldn't be wise for this Board to over rule that at this point when it has already been ruled on and decided upon. He agreed with Ken especially since they prohibited someone from even building a deck rather than just enclosing one in the shore impact zone.

Johnson agreed that a previous Board has very specifically stated not to put a roof on this deck. He recommended a temporary cover for the summer that would be removed during the winter.

Lawrence Kramer commented that a temporary structure could perhaps be tied down, and perhaps it will blow off and if it does perhaps it will hit his mom and perhaps he wouldn't do it.

Schwindt asked if there was anything in State Statute that allowed any discretionary action on the Environmental Services Office when there is a medical issue involved.

Buitenwerf stated that no there was not and that the office would affirm its position offered in the staff report especially since a permit has been pulled for a enclosed porch on the non-lakeside portion of the second story of the structure that affords them the space that they are seeking on the lakeside. It is not as though the landowners are denied the ability to have that type of space on the second floor.

No correspondence was received and no public comment was given.

Grob moved to deny the variance request and accept the six finding of facts as presented by the staff report. Knight seconded it.

The adopted findings of fact are as follows:

A variance may be granted only where the strict enforcement of county zoning controls will result in a practical difficulty. A determination that a "practical difficulty" exists is based upon consideration of the following criteria:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

No. The structure is located in the shore impact zone and there already is an approved variance allowing the requested porch to be constructed on the side of the house. Allowing an 8' waterward expansion of the house further into the shore impact zone would not be in keeping with the ordinance intent.

2. Without the variance, is the owner deprived of a reasonable use of the property?

No. Variance 97-94 already allows the landowner to construct the proposed porch on the side of the house.

3. Is the stated practical difficulty due to circumstances unique to this property?

No. The application does not provide a good reason for there being a difficulty in constructing the requested porch per the terms of variance 97-94. There is room on one side of the property to construct the porch per the variance and meet the side lot line setback.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

No. There is room on the side of the house to construct the requested porch per the condition placed on variance 97-94. The alleged difficulty is that the landowner doesn't want a porch on the side of the house, but instead wants a porch on the lakeside wall of the house.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. Granting the variance would not change the character of the locality as it would remain single family seasonal and year-round homes.

6. Does the stated practical difficulty involve more than economic considerations?

Yes. The landowner wants the porch on the lakeside exterior wall of the house instead of the side of the house as allowed by variance 97-94.

Facts supporting the answer to each question, above, are hereby certified to be the Findings of the Board of Adjustment. This is in accordance with Section 1104 of the Hubbard County Shoreland Management Ordinance.

The motion carried unanimously.

**Variance Application 42-V-12 by Jeff and Deb Armstrong:** Lots 1 and 2, First Addition Crystal Beach, Section 17, Township 139, Range 34, Hubbard Township on Long Lake. Parcel # 14.39.40100. Part 1: Applicants are requesting a variance from Sections 502.2 and 704.7 of the Shoreland Management Ordinance (SMO) for a proposed platform addition to a residential structure originally constructed per variance. Part 2: Applicants are requesting a variance from Section 502.2 of the SMO for a proposed shed that will not comply with the 100 foot ordinary high water mark setback or the 20 foot road right of way setback. Part 3: Applicants are requesting a

variance from Section 801.2 of the SMO and Subd. 2.10 of the Individual Sewage System Standards Ordinance for less than the required 20 foot setback between a proposed shed and the septic drainfield. Long Lake is a recreational development lake.

Jeff and Deb Armstrong presented their application.

Grob stated that there were three parts to this and questioned Mr. Buitenwerf how best to handle this.

Buitenwerf stated that it depends on how the motion would be made.

Grob commented that at the viewing there was an issue with where the shed was staked out and what the actual road right-of-way setback truly was and wondered if that had been cleared up.

Buitenwerf stated that the road right-of-way for this road is interesting. It ranges from 35 – 38.5 across to at the very North end of the plat 34.8 feet and it would be almost impossible to determine what the width would be at any given point along that road or where the road runs along the property involved in the application. It would have to be surveyed out to determine where the exact road right-of-way boundary is to get the twenty foot setback from that.

Johnson stated that based on visual observation of the neighborhood it looks like it is about the same setback location.

Jeff Armstrong stated that they could move the shed closer to the driveway and gain a couple of feet in road right of way setback but it would be closer to the lake.

Grob stated that he doesn't have a problem with the shed but questioned if they approved this request could it be conditional that the shed not be built at less than the 20 feet road right-of-way and they would have adjust the size or location of the shed. Not knowing what the setback would be seems problematic to approve it and asked what Mr. Buitenwerf what his recommendation would be.

Buitenwerf stated that he didn't have a problem with the location of the shed relative to the road. The only way to know for sure what the setback is and where the right-of-way boundary is to have a survey of that area.

Grob questioned how best to state the setback so that it doesn't raise an issue in the future on trying to figure out where the location of the proposed storage shed was approved at.

Buitenwerf stated that the ordinary high water mark should be used since that is a known elevation that can be easily located and the measurements shown can easily be determined for compliance with any construction.

Schwindt stated that if the applicants moved the storage shed closer to their existing driveway it would actually move it closer to the ordinary high water setback which he would not be in favor of.

Grob stated that the drawing submitted with the application that states the appropriate setbacks becomes part of the record so it doesn't need to be stated what the setbacks need to be. No correspondence was received and no public comment was given.

Grob moved to approve all three parts of the request and adopt the findings as presented in the staff report. Christianson seconded it.  
The adopted findings of fact are as follows:

A variance may be granted only where the strict enforcement of county zoning controls will result in a practical difficulty. A determination that a "practical difficulty" exists is based upon consideration of the following criteria:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes. The platform will not be located any closer to the lake than the 75' OHW setback approved for the house in the 1977 variance. The lot clearly has depth issues that require a variance in order to build any structure and the application has done a good job of balancing the setback from the road and lake.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes. A platform to accommodate a high pedestrian traffic area alongside the house is a reasonable request as is the proposed storage shed which is modestly sized.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. The difficulty is the lack of depth on the lot. There isn't enough room anywhere on the lot to comply with both the OHW and road ROW setbacks.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes. The difficulty is the lot depth that was created when the lot was created by plat in 1960.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. Granting the variance would not change the character of the locality as it would remain single family seasonal and year-round homes.

6. Does the stated practical difficulty involve more than economic considerations?

Yes. The application does not cite economics as a hardship. The difficulty is due to the lot depth which was set when the lot was created by plat in 1960.

Facts supporting the answer to each question, above, are hereby certified to be the Findings of the Board of Adjustment . This is in accordance with Section 1104 of the Hubbard County Shoreland Management Ordinance.

The motion carried unanimously.

**Variance Application # 33-V-12 by Richard and Karri Stebbins:** Lot 4, Block 2, Belletaine Shores, Section 7, Township 140, Range 33, Nevis Township on Lake Belletaine. Parcel # 21.60.01400. Applicants are requesting a variance from Sections 502.2 and 704.6 of the Shoreland Management Ordinance for a proposed deck expansion on a nonconforming residential structure located at less than the 100 foot ordinary high water mark setback. Lake Belletaine is a recreational development lake.

Eric Munson represented the applicants and presented the variance request.

Grob commented that his first reaction to this request is that the deck size seems to be quite a bit larger than what is needed and does encroach closer to the lake and the counterbalance to that is that the whole ordinary high water mark dropped forty feet and what is in between is a wetland so it is only the ordinary high water mark and erosion that has caused this into question. If the Board

were to approve the deck expansion, he would like to suggest that they put in a buffer along the edge where it could run off into the marshy area. A ten to twelve foot buffer would be more than sufficient since there is cattails and other stuff in the lake.

Johnson agreed with Grob regarding adding a buffer zone and thought that the deck size was fine.

Munson stated that the applicants aren't going to have any problem with creating a buffer zone between the deck and water. They need some help on what they can and should plant.

No correspondence was received and no public comment was given.

Grob moved to approve the variance request with the following condition: 1. In the currently mowed grass area along the shoreline, the first twelve feet of this area measured perpendicular from the shoreline is to be made into a vegetative buffer zone. This zone shall be planted with vegetation that consists of more than just grass per a vegetation buffer planting plan that will be developed by Hubbard County Environmental Services Department. Johnson seconded it.

Schwindt read the findings of fact to approve the modified request and the Board answered the findings questions as follows:

A variance may be granted only where the strict enforcement of county zoning controls will result in a practical difficulty. A determination that a "practical difficulty" exists is based upon consideration of the following criteria:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes. With the addition of the buffer zone it meets the intent of the Shoreland Management Ordinance.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes. What he is requesting is reasonable and the only reason for the variance is in fact the change in the ordinary high water mark.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. The uniqueness comes from the change in the ordinary high water mark that now makes the building nonconforming.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes. The structure was constructed by someone other than the current owner and the ordinary high water mark was raised by the State of Minnesota.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. It will not alter the current character.

6. Does the stated practical difficulty involve more than economic considerations?

Yes. Economics were not a factor.

Facts supporting the answer to each questions, above, are hereby certified to be the Findings of the Board of Adjustment. This is in accordance with Section 1104 of the Hubbard County Shoreland Management Ordinance.  
The motion carried unanimously.

**Miscellaneous:**

Buitenwerf stated that the office was going to be modifying the format for the Board minutes for future months, not going with a verbatim record anymore, and asked the Board to what level of detail would they like to see the minutes. The spectrum would be from just capturing what the actionable items were for the meeting to obviously verbatim records on the other end of the spectrum.

It was decided to leave it up to the department's judgment. All actionable items will be listed and any pertinent information given by the applicant or any Board member.

**Adjournment:**

With no further business, Schwindt moved to adjourn the meeting. Grob seconded it. The motion carried unanimously. Schwindt adjourned the meeting at 11:41 a.m.

Respectfully submitted by,

Maria Shepherd  
Recording Secretary

**Board of Adjustment  
Monday, September 17, 2012  
9:00 a.m.**

Chairman Lou Schwindt opened the meeting with the following members present: Charles "Chick" Knight, Earl Benson, Lou Schwindt, Arnie Christianson, and Ken Grob. Also present were Environmental Services Officer Eric Buitenwerf and Recording Secretary Maria Shepherd.

Schwindt welcomed everyone to the public meeting and explained the meeting procedures.

**Approval of the August 20, 2012 Minutes:**

Knight moved to approve the August 20, 2012 minutes as presented. Grob seconded the motion. The motion carried unanimously.

**New Business:**

**Variance Application 43-V-12 by Paul and Linda Reimer:** Part of Government Lot 8, Section 10, Township 145, Range 32, Farden Township on Midge Lake. Parcel # 07.10.00200. Applicants are requesting an after-the-fact variance from Sections 501.2 and 506 of the Shoreland Management Ordinance for a guest cottage that exceeds the 700 square feet footprint threshold on a lot that does not meet the required 225 feet minimum lot width at the shoreline or the 100 foot ordinary high water mark structure setback.

Paul and Linda Reimer presented their application.

Grob made the comment for the record that the application indicated that the guest cabin was 1300 square feet, which he believed was calculated off of a drawing. When the Board was on the property for lot viewal, the square footage of the guest cottage was between 700 and 750 square feet. It is a very minor deviation from the 700 square footprint that is allowed.

Benson stated that he doesn't have a problem with this request. The lot is big enough to have a guest cabin with the only problem being it isn't wide enough at the shoreline. It is supposed to be 225 feet and the applicants only have 150. The lot is big enough to be subdivided which would make the cabin legal.

**Correspondence:**

- Letter dated 9/4/2012 by Richard W. Williams was received. See Exhibit "A" on file with the Environmental Services Office.

No public comment was made.

Mr. Reimer stated that he had been in contact with Jeff Mellema from Cass Lake Sewer Service and he is aware of what needs to be done to bring the septic system into compliance.

Grob moved to approve the variance request with the following conditions: 1. the septic system must be brought into compliance, and 2. the lot is not allowed to be subdivided or its boundaries changed in the future. Benson seconded the motion.

Grob moved to adopt the findings as presented in the September 2012 BOA Staff Report with a change to finding number two, changing the wording to state, "having a guest cottage that is less than 100 square feet over the maximum footprint." Benson seconded it.

The adopted findings of fact are as follows:

A variance may be granted only where the strict enforcement of county zoning controls will result in a practical difficulty. A determination that a “practical difficulty” exists is based upon consideration of the following criteria:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance, and State Shoreland Management Rules?

The lot exceeds the minimum guest cottage lot size by 100% and the RLSA by 200%. The lot is large enough to legally create a riparian lot and a non-riparian lot that would each be capable of having a residential structure on it. What is being requested is no different in terms of environmental impact so it is therefore in keeping with the ordinance intent – especially since conditions are being placed on the approval that: 1. the outstanding ordinance violations be corrected within 6 months of the approval or the variance becomes void, and 2. the lot can never be subdivided or its boundaries altered.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Having a guest cottage that is less than the 100 square feet over the maximum footprint is reasonable on a lot that is two times larger than the required minimum lot size and three times larger than the required RLSA and could be legally subdivided into a riparian lot and a non-riparian lot that would each be allowed to have a residential structure on it that would not be limited in terms of footprint.

3. Is the stated practical difficulty due to circumstances unique to this property?

The lot is 150’ wide for the first ~ 140 feet or so back from the ordinary high water mark at which point it widens to ~360 feet wide for the rest of the property. The difficulty is the narrow lot frontage on the lake that is not representative of the bulk of the lot dimensions.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

The lot was not created by the landowner and the difficulty is ordinance regulations that are not congruent with one another – referring to the ability to subdivide this lot into a riparian and non-riparian lot and thereby legally have two residential structures on this acreage that are not limited in terms of footprint size, but not being able to have a house and guest cottage (two residences) because the lot lacks 75’ of lot width at the OHW and 100’ OHW structure setback.

5. Will the issuance of the variance maintain the essential character of the locality?

Granting the variance would not change the character of the locality as it would remain single family seasonal and year-round homes. The density and size of dwelling units existing on the property could legally be allowed by legally subdividing this lot into a riparian and non-riparian lot. Since this is a permissible option for the lot, the authors of the state shoreland rules and county ordinance found that it would maintain the locality’s essential character.

6. Does the stated practical difficulty involve more than economic considerations?

No economic considerations are cited by the applicants as being a practical difficulty. The difficulty is a uniquely shaped lot that lacks the required width for the first ~150’ back from the shoreline and then widens to significantly greater width than the 225’ required. Also, the ordinance allows a riparian lot and non-riparian lot to be made from the current lot and thus for two residential structures to be on this property without constraint as to size so the second difficulty is the ordinance which allows the proposed dwelling unit density to occur if the lot is subdivided into two lots, but not if it is kept as one lot.

7. Why did the applicant fail to obtain a variance/or comply with the applicable requirement before commencing work? Did the applicant act in good faith?

The application states that the applicants thought they did not need a permit because of the guest cottage's distance from the shoreline.

8. Did the applicant attempt to comply with the law by obtaining the proper permits?

No. The application states the landowners did not think a permit was needed because of the guest cottage's distance from the shoreline.

9. Did the applicant attempt to comply with the law by obtaining the proper permits?

No, not that I am aware of.

10. Did the applicant make a substantial investment in the property? Provide details below.

Yes. The guest cottage structure is significant enough in size that it constitutes a substantial investment in the property.

11. Did the applicant complete the repairs/construction before the applicant was informed of the impropriety? Please provide details below.

Yes – the guest cottage was completed at the time of the department's site visit on May 17, 2012.

12. Are there other similar structures in the neighborhood? Please provide details below.

No. There do not appear to be guest cottages on other lots in the neighborhood. The neighborhood consists of low density single residential structures on lots with a number of lots in a nearby development being vacant and undeveloped.

13. Would the minimum benefits to the county appear to be far outweighed by the detriment the applicant would suffer if forced to remove the structure? Why or why not?

Yes. The property could legally be subdivided into two lots as previously stated in these findings of fact such that the two residential structures could be placed on the two lots and stay their current sizes. Therefore, it does not make sense to penalize the landowner for having two residential structures on the property, but keeping it as one lot instead of two.

14. In light of all of the above factors, would denying a variance serve the interests of justice? Why or why not?

No. As stated in answers to the other findings of fact questions, justice is served by allowing the guest cottage to stay on this lot instead of having the lot subdivided and the structure moved elsewhere onto the property so that it would fall within the boundaries of a newly created non-riparian lot.

Facts supporting the answer to each question, above, are hereby certified to be the Findings of the Board of Adjustment. This is in accordance with Section 1104 of the Hubbard County Shoreland Management Ordinance.

The motions carried unanimously

**Variance Application 44-V-12 by Scott Rech:** Part of Government Lot 9, and Lots 24 and 25, Block 1, Ojibway Estates, Section 18, Township 141, Range 33, Mantrap Township on Dead and Ojibway Lakes. Parcel #s: 20.18.00320, 20.48.02400, and 20.48.02500. Applicant is requesting a variance from Sections 902 and 903.3 of the Shoreland Management Ordinance for a proposed access road that will not meet the required 100 foot ordinary high water mark setback and will exceed the permissible levels for grading/filling within the 100 foot ordinary high water mark setback and a steep slope.

Scott Rech presented the application.

Knight asked how much material would have to be removed.

Rech responded that he already had taken out a permit for the majority of it and would be getting a permit for this section of his project. He didn't know the exact amount of material needing to be removed, but did note that the dirt would be used elsewhere and not removed.

Schwindt asked the applicant what the approximate width of the driveway would be when completed.

Rech said that it would not be larger than 12 feet probably smaller in some spots and maybe a little wider in one particular spot where someone can pass.

Grob was concerned with removing and cutting back the slope by 25 feet off of Exhibit "D".

Rech stated that the intention was to make the corner more gradual and less sharp and that what was originally drawn up was overstated instead of understated. He didn't think that there was anyplace there more than twelve feet was getting cut.

Grob said that he felt even twelve feet was excessive because there is a hill there and it would allow more run down. He stated that this was his only problem area with the request.

No correspondence was received and no public comment was made.

Benson moved to approve variance application 44-V-12 by Scott Rech. Knight seconded the motion.

Schwindt read the following findings of fact to approve the variance request and the Board answered the findings questions as follows:

A variance may be granted only where the strict enforcement of county zoning controls will result in a practical difficulty. A determination that a "practical difficulty" exists is based upon consideration of the following criteria:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes. He is just moving dirt that is already a part of the road from the higher part to the lower part and he has a couple corners he is going to widen out.

2. Without the variance, is the owner deprived a reasonable use of the property?

Yes. He doesn't have good access to the island.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. Part of that road is within 100 feet setback of the lake.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes. The access to the island is too close to the lake which means he needs a variance.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. All he is doing is trying to improve the road and have a better access to the island.

6. Does the stated practical difficulty involve more than economic considerations?

Economic considerations were not a factor.

Facts supporting the answer to each question, above, are hereby certified to be the Findings of the Board of Adjustment. This is in accordance with Section 1104 of the Hubbard County Shoreland Management Ordinance.

The motion carried unanimously.

**Variance Application 45-V-12 by Lee and Debra Behr Helgen:** Lot 5, Block 1, Twin Shores Addition, Section 35, Township 141, Range 34, Lake Emma Township on Lake Ida. Parcel # 16.93.00500. Applicants are requesting a variance from Sections 502.1 and 503 of the Shoreland Management Ordinance for a proposed structure to be located in the bluff impact zone.

Lee Helgen presented the application. He stated for the Board that he had spoken with the builder and whether there was a need for excavating into the hill. It has been determined that no excavating would be needed. He also noted that the pitch on it is a 4/12 pitch and the height would be closer to fifteen feet instead of the stated fourteen feet.

No correspondence was received or public comment was given.

Grob moved to approve the application with the amended fifteen foot structure height and accept the findings of fact as presented in the Environmental Services Staff Report. Benson seconded it.

The adopted findings of fact are as follows:

A variance may be granted only where the strict enforcement of county zoning controls will result in a practical difficulty. A determination that a "practical difficulty" exists is based upon a consideration of the following criteria:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

The carport is going to cover an existing legal nonconformity and not occupy much, if any, additional footprint space. The alternative would be to find a location outside of the bluff impact zone which would involve significant excavation of steep slopes. Allowing the carport over the existing trailer on the already leveled area makes the most sense and is most in keeping with the ordinance intent.

2. Without the variance, is the owner deprived of a reasonable use of the property?

The proposed site for the carport used to be outside the bluff impact zone (BIZ) when the trailer was permitted in 2002. An ordinance change in 2008 to the "top of bluff" definition caused the proposed site to fall within the BIZ. This site is the only level place on the lot.

3. Is the stated practical difficulty due to circumstances unique to this property?

The proposed site for the carport used to be outside the BIZ when the trailer was permitted in 2002. An ordinance change in 2008 to the "top of bluff" definition caused the proposed site to fall within the BIZ. This site is the only level place on the lot.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

The difficulty was created by the ordinance "top of bluff" definition change in 2008 and the fact that the lot is almost entirely all bluff.

5. Will the issuance of the variance maintain the essential character of the locality?

The area will remain single family seasonal and year-round residential structures. The proposed carport will simply provide a roof over the existing trailer.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite economics as a hardship. The difficulty is related to the trailer being placed on the lot when the ordinance "top of bluff" definition was different than the current definition.

Facts supporting the answer to each question, above, are hereby certified to be the Findings of the Board of Adjustment. This is accordance with Section 1104 of the Hubbard County Shoreland Management Ordinance.

The motion carried unanimously.

**Variance Application 47-V-12 by Jack and Cynthia Slovick:** Part of Lot 34, Pine Beach, Section 9, Township 140, Range 33, Nevis Township on Lake Belletaine. Parcel # 21.37.03000. Applicants are requesting a variance from Sections 502.2 and 706 of the Shoreland Management Ordinance for proposed deck expansion on a nonconforming residential structure that would not comply with the required 30 foot ordinary high water mark minimum setback or the 15% of the existing structure setback lakeward encroachment regulation.

James Dahlmeier, authorized agent for the applicants, presented the application.

Grob questioned what the need for the deck was.

Dahlmeier stated that they are completely remodeling the current structure and current garage and turning that into living space and the deck is needed as an exit since a new sliding patio door is going to be installed on the opposite side of the house than where the deck is currently located.

Knight asked if the existing screened-in porch was going to be removed.

Dahlmeier stated that the screened-in porch and other storage shed would be removed from the property.

Grob asked if the intent was to remove the existing deck and a completely new deck.

Dahlmeier stated that this would simply be an addition onto the current existing deck.

Grob stated that he isn't comfortable with expanding the existing deck. He would be in favor of rebuilding the deck with no increase in total area, but be allowed to move it to the right since that is where the new exit is going to be.

Knight stated that he felt it was a good exchange to getting rid of the unattached screened-in porch and the storage shed. It would be a good trade off.

No correspondence was received and no public comment was given.

Grob moved to approve the variance request with the following conditions: 1. the total deck area cannot exceed the existing deck square footage, but the deck can be moved to the right side of the building ("right" when facing the lake.) and 2. the screened-in porch and shed must be removed before a permit can be issued for the deck. Benson seconded the motion.

Schwindt read the following findings of fact to approve the variance request and the Board answered the findings questions as follows:

A variance may be granted only where the strict enforcement of county zoning controls will result in a practical difficulty. A determination that a "practical difficulty" exists is based upon consideration of the following criteria:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes. The two accessory structures in the shore impact zone being removed and with no increase in the deck area, it is keeping with the intent of the Ordinance.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Having a deck on the lakeside wall of the home is a reasonable use that many similar residence lots have.

3. Is the stated practical difficulty due to circumstances unique to this property?

The difficulty is due to the original structure predating the ordinance and being located in the shore impact zone.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

The home predates the ordinance and it was not constructed by the landowner.

5. Will the issuance of the variance maintain the essential character of the locality?

Granting the variance would not change the character of the locality.

6. Does the stated practical difficulty involve more than economic considerations?

Economics were not identified as a hardship.

Facts supporting the answer to each question, above, are hereby certified to be the Findings of the Board of Adjustment. This is in accordance with Section 1104 of the Hubbard County Shoreland Management Ordinance.

The motion carried unanimously.

**Variance Application 48-V-12 by Michael and Julie Marino:** Lots 13, 14, 15 and 16, Bethany Beach, Section 4, Township 145, Range 32, Farden Township on Grace Lake. Parcel # 07.40.00500. Part 1: Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance (SMO) for a proposed new residential structure that will not meet the 100 ordinary high water mark (OHW) setback. Part 2: Applicants are requesting a variance from Section 601 of the SMO for a proposed accessory storage structure that will not comply with the 100 foot OHW setback. Part 3: Applicants are requesting a variance from Section 502.2 of the SMO for a proposed platform that will not comply with the 100 foot OHW setback.

Michael and Julie Marino, and John Schrader, authorized agent, presented the application.

Michael Marino stated that they were before the Board two years prior with the same request and it was approved, but due to the economy, they never acted upon it. The size of the structure was just too much for them to take on. This plan is more affordable, smaller in size and a more compact footprint. All of the other concerns that were presented two years ago are still existing and true.

Schwindt questioned if the variance that was approved two years ago was approved at the exact same location, saving of the basement with that variance request too.

Marino stated that they had planned on saving the basement back then as well. In order to fill in the existing basement only to turn around and dig another basement, there was quite a bit of added expense to do that.

Schwindt asked what the big difference between the house design that was granted and what you are asking for now. He wondered if the applicants were still coming off of the same front wall or were the walls set back with the wall of the old house.

Marino stated that the design two years ago followed the wall of the old house. The new design also puts limitations on accessing the house so this new design is moved forward.

Julie Marino stated that the living room and dining room are still on the existing foundation. The width of the existing porch is where this floor plan comes out onto a little landing. The only part that is closer in order to make it work with the design of the house is the bedroom portion that comes even with the existing stoop.

Schwindt questioned why if it was approved and the new design is smaller why is it needing to be readdressed.

Buitenwerf stated that the footprint and the proposed location of this variance request is different than what was previously applied for and approved. It is a smaller design, but it covers different ground.

Grob questioned why a variance was granted two years ago to build a brand new cabin, sixty feet from the lake when there is room to build it at the 100 foot setback.

Benson feels that the cabin should be moved back to the 100 foot setback.

Knight stated the reasons why the previous variance was approved in the first place. The original plan was to rebuild on the original foundation which per State Statute would have been allowed. The new plan is asking to go closer to the lake and have more space than what the original foundation was.

Julie Marino stated that building a new home would be a huge financial burden for them. The original intent when the home was purchased was to remodel the existing cabin, but was told that there wasn't a lot there to work with.

No correspondence was received and no public comment given.

Schwindt commented that he would be in favor of tabling the variance application to give the applicants a chance to revise their floor plan so it does not encroach lakeward from the existing structure as well as medical documentation showing a need for an accessory structure in the shore impact zone that meets all of the criteria found in Section 601 of the Shoreland Management Ordinance.

Knight moved to table variance application 48-V-12 by Michael and Julie Marino. Christianson seconded it. The motion carried unanimously.

**Variance Application 49-V-12 by Michael and Charmaine Munt:** Lot 10, Duck lake Addition, Section 31, Township 139, Range 33, Crow Wing Lake Township on Duck Lake. Parcel # 06.38.01000. Applicants are requesting a variance from Sections 502.2 and 704.7 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residential structure that does not meet the 100 foot ordinary high water mark setback and that was previously modified per a variance.

Michael and Charmaine Munt presented their application. The applicants wanted to make sure that the Board received the amended request for three foot soffit overhang on all four sides.

Schwindt confirmed that the Board did receive the amended request.

Grob stated that basically the applicants are going to be tearing down the existing structure and rebuilding new. He questioned what the limitations were to not building further back.

Munt stated that the house was eight feet from the sauna. So a total of about 37 feet to an existing shed.

Charmaine Munt stated that facing the lake, we have property limitations where John and Rose Lundquist, our neighbors to the left facing the lake, so we are restricted from a property line standpoint.

Munt said that the house was approximately eighteen feet looking at the water to the neighbor on the left and about 58 feet to the property line to the right. The lot has a total of 100 feet of width at the shoreline.

Grob stated that it would be desirable to move it back, but said that he did see definite limitations on this lot. He would like to see a vegetative buffer zone created as a counter balance to help protect the lake.

Both applicants stated that they would be in agreement of creating a fifteen foot wide vegetative buffer zone.

No correspondence was received and no public was given.

Grob moved to approve the amended variance request with the follow condition: 1. a vegetative buffer zone must be installed along the entire shoreline of the property that is fifteen feet deep (measured perpendicular to the shoreline), allowing for a fifteen foot wide access path to bisect the zone for access to the lake. The design of the buffer zone planting must be approved by the Environmental Services Office. Benson seconded the motion that carried unanimously.

Schwindt read the findings of fact and the Board answered the findings questions as follows:

A variance may be granted only where the strict enforcement of county zoning controls will result in a practical difficulty. A determination that a "practical difficulty" exists is based upon consideration of the following criteria:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes. It would be desirable to have it set back, other buildings, septic system and lot line setbacks make sense for the cabin to stay where it is.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes. The size of the current structure along with the age of the current structure would indicate that it is a candidate for being reconstructed in its current location and not granting that would deprive them of a reasonable use of the property.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. The deign and location of the current septic system and other structures make it unique.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes. It is a result of an existing cabin that was built prior to the Ordinance and all the other installation of structures make it that way.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes, absolutely.

6. Does the stated practical difficulty involve more than economic considerations?

Economics were not a factor.

Facts supporting the answer to each question, above, are hereby certified to be the Findings of the Board of Adjustment. This is in accordance with Section 1104 of the Hubbard County Shoreland Management Ordinance.

The motion carried unanimously.

**Variance Application 50-V-12 by Edward and Marcia Marthaler:** Part of Government Lot 3, Section 3, Township 145, Range 32, Farden Township on Grace Lake. Parcel # 07.03.00200. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance to replace a nonconforming residential structure with a proposed new residential structure that would not comply with the 100 foot ordinary high water mark setback or the 10 foot side lot line setback.

Ed Marthaler presented the application. He stated that the structure will meet the ten foot side lot line requirement including the eave overhang.

Schwindt didn't like that the proposed structure exceeded the 35 foot height restriction.

Marthaler stated that they would make it come in under the 35 foot height restriction.

Discussion ensued regarding the proposed setback and concerns of having such a large home in the shore impact zone. The applicant was unaware that the proposed setback was only 21 feet.

Correspondence:

- Email dated 9/6/2012 was received by Vincent Thoma. See Exhibit "B" on file with the Environmental Services Office.

Bill Cowman gave public comment on behalf of COLA. If there is room to move this house back to the 100 foot ordinary high water setback, it should be moved back to a conforming setback to keep this decision consistent with other ones made.

Vince Thoma, a neighbor to the North, gave public comment. He spoke out loud his concerns that he expressed in writing.

Benson moved to table variance application 50-V-12 by Edward and Marcia Marthaler. Knight seconded it. The Board tabled the application until the October 15, 2012 meeting with the directive that an amended site plan showing the new proposed height of the structure along with a new proposed ordinary high water mark setback be submitted.

**Variance Application 51-V-12 by Eunice Rothermel Trust:** Part of Government Lot 6, Section 36, Township 141, Range 35, Arago Township on Potato Lake. Parcel # 02.36.00200. Applicant is requesting a variance from Sections 502.2 and 503 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residential structure located in the bluff impact zone.

Eunice and Rothermel presented their application.

Grob stated that due to lot size and the vegetative bluff, he didn't have any problems with the request either.

No correspondence was received and no public comment was given.

Grob moved to approve the variance request and adopt the staff findings of fact. Benson seconded it.

The adopted findings of fact are as follows:

A variance may be granted only where the strict enforcement of county zoning controls will result in a practical difficulty. A determination that a "practical difficulty" exists is based upon consideration of the following criteria:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance, and State Shoreland Management Rules?

The proposed addition will itself be located outside of the bluff impact zone (BIZ) and it is being placed on the side and rear of the existing residence that was legally constructed in 1992 when the bluff impact zone comprised a smaller area than it does today. The addition will be very difficult to see when viewed from the lake and it does not appear that the topography of the lot will cause the addition to contribute any new runoff to the lake.

2. Without the variance, is the owner deprived of a reasonable use of the property?

The proposed addition is reasonable in size relative to the existing structure and is made up of features (e.g. three-season porch) that are usually seen in a typical home.

3. Is the stated practical difficulty due to circumstances unique to this property?

The difficulty is the structure is in the BIZ, but was built in compliance with the bluff regulations that were in place in 1992 when the structure was permitted and constructed. The ordinance BIZ area has changed since 1992 such that it now encompasses 30' landward of the bluff crest when the BIZ stopped at the crest in 1992.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

As mentioned in answers to previous findings questions, the difficulty was caused by the ordinance language change concerning the BIZ. In 1992, the BIZ stopped at the crest. Later, the ordinance BIZ changed to include a 30' setback from the crest. This change caused the structure to become nonconforming and thus require the variance. Thus, the difficulty was not created by the landowner.

5. Will the issuance of the variance maintain the essential character of the locality?

Granting the variance would not change the character of the locality as it would remain single family seasonal and year-round homes. The vegetation on the property surrounding the structure and its distance from neighboring properties and structures will prevent the addition from being able to be seen on neighboring properties.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite economics as a hardship. The difficulty is the fact that the structure was legally constructed in 1992 when the bluff language in the ordinance was different than it is today. The addition of a 30' setback from the bluff crest in the ordinance regulations is the difficulty that caused the need for the variance for this proposed addition.

Facts supporting the answer to each question, above, are hereby certified to be the Findings of the Board of Adjustment. This is in accordance with Section 1104 of the Hubbard County Shoreland Management Ordinance.

The motion carried unanimously.

**Variance Application 46-V-12 by George and Gudrun Peterson:** Lot 12, Block E, First Addition to Pine Haven Beach, Section 17, Township 139, Range 34, Hubbard Township on Long Lake. Parcel # 14.38.43700. Applicants are requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residential structure located in the shore impact zone.

No one was present to present the application.

No correspondence received and no public comment was given.

Benson moved to approve variance application 46-V-12 by George and Gudrun Peterson and adopt the findings of fact as presented in the Environmental Services September 2012 BOA Staff Report. Knight seconded it.

The adopted findings of fact are as follows:

A variance may be granted only where the strict enforcement of county zoning controls will result in a practical difficulty. A determination that a "practical difficulty" exists is based upon consideration of the following criteria:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance, and State Shoreland Management Rules?

The two additions are going on the non-lakeside corners of the structure and will themselves be located outside the shore impact zone. At 8' x 8' and 6' x 9', the additions are very reasonable in size relative to the existing cabin that is roughly 22' x 34'.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Increasing an existing bedroom from 90 to 152 square feet is a reasonable use as is placing a 6' x 9' roof over an existing entryway to protect the doorway and people entering/exiting the cabin from the elements.

3. Is the stated practical difficulty due to circumstances unique to this property?

The difficulty is due to the original structure predating the ordinance and being located in the shore impact zone which requires a variance per the ordinance for any additions made to the structure.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

The difficulty is the structure's predating the enactment of the shoreland ordinance and its being located in the shore impact zone. The landowners did not construct the cabin nor were they involved in writing the ordinance.

5. Will the issuance of the variance maintain the essential character of the locality?

Granting the variance would not change the character of the locality as it would remain single family seasonal and year-round homes. Many of the residential structures in this area do not meet the 100' OHW setback.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite economics as a hardship. The difficulty is related to the original structure predating the ordinance and being located in the shore impact zone.

Facts supporting the answer to each question, above, are hereby certified to be the Findings of the Board of Adjustment. This is in accordance with Section 1104 of the Hubbard County Shoreland Management Ordinance.

The motion carried unanimously.

**Adjournment:**

With no further business, Grob moved to adjourn the meeting. . Benson seconded it. The motion carried unanimously. The meeting was adjourned at 11:30 a.m.

Respectfully Submitted by,

Maria Shepherd  
Recording Secretary

**Hubbard County  
Board of Adjustment**  
October 15, 2012

Chairman Schwindt called to order the Board of Adjustment meeting with the following members present: Chick Knight, Lou Schwindt, Arnie Christianson, Ken Grob. Also present were Environmental Services Officer Eric Buitenwerf, and Recording Secretary Maria Shepherd.

**Approval of the September 17, 2012 Minutes:**

Christianson moved to approve the minutes as presented. Knight seconded it. The motion carried unanimously.

**Old Business:**

**Variance Application # 53-V-09 Michael and Lisa Reinhart:** Part of Government Lot 1, Section 25, Township 142, Range 34, Clay Township on Mantrap Lake. Parcel # 04.25.00600. Applicants are requesting a variance from Section 4, Subd. A.1.a.3.c of the Hubbard County Subdivision Ordinance to be allowed to subdivide a property into two tracts without being required to meet the Subdivision Ordinance requirement that any new parcel being created must either front a public road or have a 33' minimum width ingress and egress contiguous easement connecting any new parcel to a public road. The two proposed tracts have no legal easement access to a public.

No representative was present. The applicants are requesting a one year extension of the application to pursue a cartway access to the property from the township instead of an easement.

Buitenwerf stated that the department was in favor of granting their request for additional time. The Board initially directed him to obtain a cartway.

No correspondence was received and no public comment was given.

Grob moved to approve the request to table variance application 53-V-09 for a year.

Christianson seconded it.

The motion carried unanimously.

**Variance Application 48-V-12 by Michael and Julie Marino:** Lots 13, 14, 15, and 16, Bethany Beach, Section 4, Township 145, Range 32, Farden Township on Grace Lake. Parcel # 07.40.00500. Part 1: Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance (SMO) for a proposed new residential structure that will not meet the 100 ordinary high water (OHW) mark setback. Part 2: Applicants are requesting a variance from Section 601 of the SMO for a proposed accessory storage structure that will not comply with the 100 foot OHW setback. Part 3: Applicants are requesting a variance from Section 502.2 of the SMO for a proposed platform that will not comply with the 100 foot OHW setback.

Michael Marino and John Schraeder, authorized agent, presented the application.

Grob asked what the applicants are planning on storing in the storage shed. It appears to be a fairly sizable shed.

Marino stated the size of the shed the applicant's wanted to stay within what is allowed under the Ordinance. They were planning on storing all of the water toys for the grandkids so that they don't need to run the toys back and forth and up and down. All of the yard tools, such as rakes and any things needed to keep the shoreline in order and lifejackets, skis, kneeboards. With his

wife's medical condition the going back and forth and up and down all the time would make it hard on her so the location of the shed will really make it easier on her.

No correspondence was received and no public comment was given.

Buitenwerf stated that the only new information that was received regarding this application was an amended design per the Board's direction from the last meeting.

Grob asked of Eric if the doctor's letter that was received met the requirements under the Ordinance for a temporary structure.

Buitenwerf stated that it did not meet the requirements.

Grob commented that if the letter didn't meet the criteria then they wouldn't be able to get a temporary structure by permit. The Board would have to approve it.

Grob asked if the amended variance request if the entire building was at the 63 foot setback.

Marino stated that it is all set back at the current setback except for stairs to exit the house.

Grob stated that the conflict is that the house is only at 63 feet from the shoreline and the lot has more than adequate width and depth to meet the requirements of the 100 foot setback. His perception was that by moving the new structure to a conforming 100 foot setback it did not conflict with the entrance to the guest cabin which is over 500 square feet more than what is allowed and the lot is a nonconforming lot for a guest cabin. So allowing a new residential structure at less at less than the 100 foot setback because of nonconformity when there is adequate space to build makes it difficult to consider a variance relative to the 100 foot setback.

Christianson stated that he agreed with Ken.

Knight agreed with Ken as well but asked for clarification of what is needed for documentation for a storage shed per Section 601.

Buitenwerf restated that in order to have an accessory structure that is located at less than the 100 foot setback, the landowner would be able to apply for and received a disabled license plate or parking pass from the State and the letter that was given doesn't meet the criteria for a permit to be issued.

Marino stated he thought the purpose for the variance request was because a doctor doesn't find his wife to be medically disabled. If that were the case then we would have just applied for a permit. The doctor did say that his wife has a degenerative joint disease and due to the medical condition stair climbing and carrying stuff from the house to the dock is not advised. He stated that it isn't a disability. It is more of a medical difficulty.

Grob stated that a shed ten feet from the water, and usually in a temporary situation where a medical need exists. He asked Buitenwerf asked if they would be able to put a seasonal structure down by the water.

Marino clarified that the shed that is being requested is a temporary plastic shed that would be movable just to store things.

Grob wanted something in writing that stated the fact that it was movable. The only thing it states in the application is a six by eight shed.

Marino stated that he would be more than happy to provide something in writing stating that the shed but his greater interest is to respond to the discussion regarding the house variance.

Marino passed around a drawing that showed what it would like if the cabin was built back at the 100 foot setback. He also stated that nothing has changed since the variance was approved two years ago except the floor plan. All of the difficulties that existed then still exist today. The practical difficulty hasn't changed.

Schwindt stated that a variance was already approved and questioned why the applicants can't build according to the plans of that variance.

Marino stated that he answered that question pretty thoroughly at the last meeting. He understands that is n option but the direction of the variance committee was to make adjustments to the existing structure instead of reworking the approved variance plans.

Schwindt stated that he couldn't see that there was much difference in the plan that was approved verses the plan that was submitted.

Schraeder stated that his understanding was that in order to use the existing variance plan was that it had to fit into the mold that was approved tow years ago. There couldn't be any deviations with the height, or adding any dormers. There is not a whole of difference between the two plans. It is pretty much the roof lines that have changed and a little bit of the footprint.

Schwindt stated that he didn't see any reasons that would change his mind from the staff recommendation.

Grob moved to deny all three parts of variance application 48-V-12 by Michael and Julie Marino and adopt the findings of fact as presented in the October 2012 Board of Adjustment Staff Report.

Christianson seconded it.

The adopted findings of fact are as follows:

Parts 1 and 3

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

The scale of the proposal involves a complete tear down of the existing primary residence. There is room on the property to move the structure back to a conforming location. Thus, denying the requests is in harmony with the ordinance intent to bring items into compliance with the ordinance whenever possible.

2. Without the variance, is the owner deprived of a reasonable use of the property?

The existing primary residential structure is usable and in reasonable/repairable condition. There is also a 1224 sq. ft. guest cottage on the lot that provides very adequate additional residential dwelling space. A platform can be added onto the existing primary residence per Section 706 of the shoreland ordinance.

3. Is the stated practical difficulty due to circumstances unique to this property?

The cited difficulty is the landowners' desire to reuse the foundation and floor of the existing residence that does not meet the 100' OHW setback. No difficulty related to the lot dimensions or characteristics was cited in the application or observed during the lot viewal.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

The difficulty is the landowners' desire to reuse the foundation and floor of the existing primary residence that does not comply with the 100' OHW setback.

5. Will the issuance of the variance maintain the essential character of the locality?

Granting the variance would not change the character of the locality as it would remain single family seasonal and year-round homes. Most of the residential structures do not meet the 100' OHW setback and many have some form of lakeside deck and/or platform.

6. Does the stated practical difficulty involve more than economic considerations?

The application cites no difficulty factors other than economics. There is no physical constraint on the lot that prevents the structure from being constructed at a conforming setback.

## Part 2

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

One of the applicants has degenerative joint disease and a letter from a doctor stating that carrying items to and from the dock is not advised and that having a storage place for equipment by the dock would be beneficial to the applicant's condition. This condition is very close to the criteria listed in Section 601 of the shoreland ordinance that is used to determine if an accessory storage structure is permitted within the 100' OHW setback.

2. Without the variance, is the owner deprived of a reasonable use of the property?

A storage structure near the shore to house water-related items and save the applicant with the medical condition from having to carry them to and from the house is a reasonable use of the property.

3. Is the stated practical difficulty due to circumstances unique to this property?

The cited difficulty is the landowners' medical condition which is not related to or considered a circumstance unique to the property.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

The difficulty is the landowners' medical condition as shown in the application. The landowner did not create the medical condition. The condition is beyond the applicant's control.

5. Will the issuance of the variance maintain the essential character of the locality?

Granting the variance would not change the character of the locality as it would remain single family seasonal and year-round homes. A small 48 sq. ft. storage shed near the shoreline will not alter or harm the locality's character.

6. Does the stated practical difficulty involve more than economic considerations?

The medical condition of one of the landowners is the practical difficulty behind the requested variance. Economics were not cited as a practical difficulty by the applicants.

The motion carried unanimously.

**Variance Application 50-V-12 by Edward and Marcia Marthaler:** Part of Government Lot 3, Section 3, Township 145, Range 32, Farden Township on Grace Lake. Parcel # 07.03.00200. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance to replace a nonconforming residential structure with a proposed new residential structure that would not comply with the 100 foot ordinary high water mark setback or the 10 foot side lot line setback.

No one was present for the meeting.

Correspondence

No public comment was given.

Grob commented that after viewing the property a second time there is adequate space behind the 100 foot to build what they are asking for. The line of sight was more than adequate especially since the height of the new structure. The topography is such that there is no practical difficulty that would merit the building of this new home at less than the required 100 foot setback.

Schwindt stated that it was his opinion that there is room to build this home at a conforming setback.

Schwindt moved to deny variance request 50-V-12 by Edward and Marcia Marthaler and to adopt the staff recommendation as presented in the October BOA staff report.

Christianson seconded it.

The adopted findings of fact were as follows:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

The lot is 313.5' deed per the site plan and the topography of the lot is not such that a house placed at a 100' OHW setback would have a difficult time being provided a view of the lake. While the amended 75' OHW eave overhang setback is better than the original 21' proposed setback, there is still room to move further back and fully comply with the ordinance. The ordinance intent is that structures comply with the ordinance when possible so since space exists on the lot for such, the variance should be denied.

2. Without the variance, is the owner deprived of a reasonable use of the property?

There is an existing residential structure on the lot that can be rebuilt per Minnesota Statute 394.36 subd. 4 and there is also room on the lot to construct a new house on a location that meets all setback requirements. These are two reasonable alternatives that can be acted upon by permit so the owner is not deprived of a reasonable use if this variance request is denied.

3. Is the stated practical difficulty due to circumstances unique to this property?

As mentioned previously, the lot is 313.5' deep and there are no wetlands or other topographic reasons why a structure cannot be constructed at a conforming setback. There also are no improvements on the lot that would conflict with a structure being placed at the 100' OHW setback.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

As stated previously, there are no characteristics of the lot that would prevent a new home from being built at a conforming setback.

5. Will the issuance of the variance maintain the essential character of the locality?

The locality would remain single family seasonal and year-round homes. Many of the houses do not meet the 100' OHW setback. This structure would be much larger than the surrounding homes, but it would be at a greater OHW setback so that would be a rough equivalent tradeoff.

6. Does the stated practical difficulty involve more than economic considerations?

Economics have not been cited by the applicant as a sole reason for requesting the variance. Other reasons such as an ability to see the lake from the structure have been cited.

The motion carried unanimously.

**Variance Application 52-V-12 by Alan Grimm:** Lots 1 and 2, Block A, South Addition to Pine Haven Beach, Section 17, Township 139, Range 34, Hubbard Township on Long Lake. Parcel # 14.38.60100. Applicant is requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residential structure located in the shore impact zone.

Alan Grimm was in attendance and presented his application.

Schwindt stated that the request is for a small addition to the back of the cabin to put in a tub enclosure to be able have a handicapped accessible bathroom. He didn't see any problems with it or have any objections to it.

Grob commented that 28 square feet being added onto an 800 square foot house is not a problem.

Knight stated that the addition is to the back and he would recommend approval.

Grimm stated that it will look like the existing walls that are there right now and would blend in with the house.

No correspondence was received and no public comment was given.

Knight moved to approve the request and adopt the findings as presented in the October 2012 Staff Report.

Grob seconded it.

The adopted findings of fact are as follows:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

The addition is to the side/rear of the cabin in an existing notch that screens it well from the lake. It will easily comply with the side lot line setback and the addition's height will be lower than and be in line with the existing roofline. The addition's scope is very small relative to the size of the existing cabin that was constructed prior to enactment of the shoreland rules.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Having a handicapped accessible bathtub in a bathroom is a reasonable request. The existing cabin is small enough (~890 sq. ft.) that it is understandable a small addition would be needed to enlarge the existing bathroom.

3. Is the stated practical difficulty due to circumstances unique to this property?

The cabin was constructed prior to enactment of the shoreland rules at a nonconforming 20' OHW setback. Given the scope of the addition, it does not make sense to require the cabin be moved back from the lake in order to construct the addition.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

The difficulty is caused by the fact the cabin was constructed before enactment of the shoreland rules in 1971. The landowner did not own the property when the cabin was constructed.

5. Will the issuance of the variance maintain the essential character of the locality?

The area will remain single family seasonal and year-round residential structures. The proposed bathroom will not alter this residential character.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite economics as a hardship. The difficulty is related to the cabin predating the ordinance and being located in the shore impact zone which requires a variance for any modification to the structure.

The motion carried unanimously.

**Variance Application 53-V-12 by Jacquelyn Lewis:** Lot 11, Sub-Lot 11, East Side Pine Cone Camp, Section 35, Township 141, Range 34, Lake Emma Township on Big Sand Lake. Parcel # 16.37.41200. Applicant is requesting an eighteen month extension to a building permit.

Tom Kimmer, a neighbor, and Dave Johnson, authorized agent, were in attendance and presented the application on behalf of the applicant.

Grob stated that the permit was allowed due to state law that states a person can rebuild a nonconforming structure within the exact same footprint. The lot is not large. The cabin is not large. There doesn't seem to be a lot of wiggle room on the lot with impervious surface.

No correspondence was received and no public comment was given.

Schwindt commented that the lot is fairly small lot and the permit was issued to rebuild a guest cabin. Staff recommendation is to not extend the permit.

Kimmer stated that a building permit was obtained under State statute. The first step was to make upgrade the septic system which was a big project. They took down the building and installed the septic system and ran it back up to the back of the cabin. When the house was being hooked up to the new system it was noticed that the existing house's foundation was in bad shape and crumbling. The unique circumstances of that lot are that in order to get the equipment in that is needed to fix the foundation the applicant wasn't able to rebuild the guest cabin until the foundation was fixed.

Schwindt questioned why a year wasn't enough time to complete what was needed.

Kimmer explained that the applicant is a seasonal resident. The septic system was replaced round October of last year which is when they found the foundation problem. The applicant spent the winter trying to figure out what to do under the believe that they would have a little breathing room with the building permit and that obtaining an extension would not be an issue to obtain. A

letter was written to Mr. Buitenwerf requesting an extension and at that time the applicant was informed that in order to get an extension long enough to get into summer would require a variance.

Grob stated that the difficulty in this request is that the Board looks at this as a new request as a new request the lot isn't big enough to accommodate a guest cabin. The applicant has a decent size home with three bedrooms. The dilemma we face is if we approve this it is not desirable from all over density standpoint. The timeframe of the permit has expired which makes this a new ball game. The answer is it reasonable to allow another structure or guest cabin on this lot. He would say no. It may be a technicality but it still comes down to what's the intent of the Ordinance.

Kimmer stated that he felt it was unfair to evaluate this as a request to put a new guest cabin on the lot. We had a right to have the guest cabin. We simply want to extend a building permit.

Schwindt questioned if the applicants were aware that the building permit was going to expire and wondered when the applicants contacted the Environmental Services regarding an extension.

Buitenwerf stated that the office received a letter on August 15, 2012 requesting a twelve month extension and a response was sent on August 24, 2012 stating that the extension would not be granted and advised the applicants that a variance would be needed to extend the building permit. The original permit was issued on the structure on September 2, 2011. The septic was installed on October 11, 2011 and the permit expired on September 2, 2012.

Schwindt asked if the office is allowed to grant permit extensions.

Buitenwerf stated that the office can grant extension but chose not to after discussing it with legal counsel. The reason being that this structure is nonconformity. The lot isn't large enough for a guest cottage. The structure also didn't comply with the ten foot side lot setback. So for those two reasons and the Ordinance's general intent of discontinuing nonconformities when possible, those were the rational behind the department's denial.

Kimmer stated that the reasons given by Buitenwerf were never stated to the applicants. The letter that was received from the Environmental Services stated that the permit could only be extended for six months.

Schwindt stated that if legal counsel was sought and the reasons given not to grant the extension of the permit than it would be difficult for him to override that. The reasons seem clear why not to issue the extension. He has a difficulty overriding their decision.

Kimmer once again stated that it is unfair because the applicant was never informed of the reasons that were just given.

Knight restated for clarification that the office is allowed to grant an extension for six months and because they wanted eighteen months they had to go for a variance.

Buitenwerf commented that there is nothing in the Shoreland Management Ordinance that says how long the department can grant an extension for. It has been the office's stand not to grant extensions for any longer than six months because a permit is good for a year.

Buitenwerf read the letter to the Board that was written in response to the applicant's written request for a twelve month extension of their building permit.

Knight stated that it is now up to the Board to find a practical difficulty. He finds it difficult to go against the office's recommendation since they have several reasons not to extend the permit but

also stated that he understands the applicant's side as well since they did apply for an extension before the building permit expired.

Kimmer stated that the landowners got caught in circumstances that were beyond their control.

Grob moved to deny the variance request for an extension on the permit and accept the findings of fact. Schwindt seconded it.

The adopted findings of fact are as follows:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

The applicant was given opportunity to reconstruct the nonconformity with a one year permit window – which is a very reasonable time period for the project scale. Granting additional time to rebuild a nonconforming guest cottage that is too close to the side lot line on a lot that does not meet the guest cottage minimum lot size requirements is not in harmony with the ordinance intent.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Having a guest cottage on a ½ acre lot that is only 100' wide is not a reasonable use of the property when the structure will be only 4' 2" from a structure on the neighboring lot (ext. wall to ext. wall.) The landowner was given a year by the issued permit to construct the guest cottage per statute-which is a reasonable time period in which such a project could be completed.

3. Is the stated practical difficulty due to circumstances unique to this property?

The applicant alleges that the unique layout of structures on the lot, the lot's size, and the timing of events related to the permit and finding out the primary residence's foundation needs repair is the practical difficulty in this matter. While timing of these events could be the difficulty, the landowner knew about the primary residence's foundation since October 2011-leaving 10+ months of the then valid building permit in which the repairs could have been made and the guest cottage built and shelled in.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

The landowner knew about the primary residence foundation issue in October 2011 and knew the building permit was valid for one year. There was ample time during the permit window in which the foundation repairs could have been made and the guest cottage could have been reconstructed.

5. Will the issuance of the variance maintain the essential character of the locality?

Allowing the structure to be rebuilt will create a fire hazard given its incredibly tight spacing to the structure on the neighboring lot and will place a guest cottage on a lot located in a neighborhood where the lots are 50-100' wide and thus not sized to accommodate guest cottages. A guest cottage on this lot would thus not be in keeping with the locality's character of lots sized solely for one single family residence per lot only.

6. Does the stated practical difficulty involve more than economic considerations?

The alleged difficulty is time – not enough of it.

The motion carried a 3 to 1 vote with Knight voting nay.

**Variance Application 54-V-12 by Call of the Wild Coop Association:** Part of Government Lot 4, Section 3, Township 145, Range 32, Farden Township on Grace Lake. Parcel # 07.03.02500. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed new dwelling unit that would not comply with the required 100 foot ordinary high water structure setback.

Lon and Jane Kratochvil were in attendance to present the application. To summarize, the applicants are going to remove the existing cabin and build a new cabin with more living space. Their cabin is a little small, one of the smaller cabins in the association. The cabin was built in 1946 and the foundation is crumbling. The applicants contracted with a couple different contractors and they both stated that in order to fix the problem and the excavating there was a concern that it could undermine the neighbor's cabin because of the close proximity. The neighboring cabin is 32 inches away from the sidewall or twelve inches with the overhangs. The footprint of the new cabin would only increase from the existing cabin by 192 square feet. The proposal is to move the cabin three feet which would give us a fire barrier from the neighbor. The new plan also gets the cabin two feet further back from the lake which puts the entire cabin out of the shore impact zone. They are taking a nonconformity and making it a less nonconformity.

Grob asked how close the new cabin would be from the neighbor.

Kratochvil said that it would be almost six feet away.

Grob asked if there were any footprint restrictions with this PUD.

Buitenwerf stated that there were not any footprint restrictions.

Grob asked if there were any covenants.

Kratochvil stated that there were covenant and that the association has to approve of all plans which they have their approval. A copy of that approval was submitted with the application.

Grob asked if there was any other practical location for this structure.

Kratochvil commented that due to the mound septic system and the low area back there that even in the spring of the year it is so wet that no one is allowed to drive back there. There would be a ton of fill that would be needed. There really isn't any other place to move it.

Grob asked if there was any possibility of moving the structure back far enough to get the deck out of the shore impact zone as well.

Kratochvil stated that it would be difficult given the road way the way it is and being only eleven feet from the right-of-way and that isn't including any steps.

Knight applauded the applicant effort in getting more space between the cabins for fire safety but wanted to know what the setback is to the other side lot line.

Kratochvil stated that it does meet the ten foot side lot line.

Grob commented that the applicants have tried their best to take advantage of what is reasonable. It is an old structure that is not in good shape. It is close to the other buildings. Short of eliminating the cabin all together what they are requesting is a reasonable request.

No correspondence was received and no public comment was given.

Grob moved to approve the variance request.

Knight seconded the motion.

The Board answered the finding of facts as follows:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes. They have done their best to move it back out of the shore impact zone. They have the right to rebuild an old decaying structure.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes. The building is old. It is small and very close to the neighbors. They would be very limited especially if you compare this house to the other structures on the property.

Knight remarked that the Board has a letter of approval from the association.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. The building was part of a resort since 1946 and was created by a previous owner.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes. The original construction on the resort.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. This unit is smaller even but is very similar in both location and looks of several of the other units.

6. Does the stated practical difficulty involve more than economic considerations?

No economics were not sighted as a reason.

The motion carried unanimously.

**Variance Application 55-V-12 by Michael and Kathleen Markman:** Lot 2, Part of Lot 3, Block 1, Birch Retreat Acres, Section 20, Township 141, Range 34, Lake Emma Township on Potato Lake. Parcel # 16.75.00400. Applicants are requesting a variance from Sections 502.2 and 704.7 of the Shoreland Management Ordinance for a proposed platform addition that will not meet the 100 foot ordinary high water mark setback and will be attached to a residence previously modified by variance.

Michael Markmann and Shannon Hendrickson, authorized agent, were in attendance to present the application.

Markman stated that they realized the steps were encroaching the ten foot side lot line setback after the Board came out. When the project was started they assumed that the steps were done correctly and so they would like to correct that issue. The neighbors directly to the East do not have a problem with them continuing to have the steps encroach into the ten foot setback. The applicants were looking for advice and comments on the proposed plan. If it is acceptable to the Board, the applicants wish to table the variance until the December meeting.

Hendrickson clarified that the existing site plan submitted went with the existing steps which are encroaching into the side lot setback.

Schwindt questioned what the timeframe of when the steps appeared.

Markman stated that the steps were not grandfathered in since they were installed in the 80s. The steps were not installed correctly way back then.

James Potratz made public comment stating that he was supportive of the request. It will be replacing an eye sore. The stairs are shot and are basically erosion agents. There will be several landings in the decent pattern to the frontage has already been fixed with rip rap. The erosion factor that was present with the current, they are removing toxic substances from the hillside by getting rid of the railroad ties. Mr. Nessel, the owner of the home neighboring the Markman property stated that he had no problem with the two foot encroachment into the ten foot side lot line setback.

Grob stated that both of the lots in question are conforming lots as far as the ordinance is concerned with 150 feet of shoreline.

Buitenwerf clarified a procedural item. The applicant's have asked that their application be tabled until the November meeting to allow time for the Board to consider the change in the proposal for the two foot encroachment into the side lot setback. The other reason to table is the side lot line encroachment was not part of the original request so the department would need to re-notice this request to include that setback issue.

Knight moved to table the entire variance request.

Grob seconded it.

The motion carried unanimously.

**Variance Application 56-V-12 by Gerald and Joyce Hoeschen:** Lot 4, Block 1, Block-Terre, Section 15, Township 141, Range 34, Lake Emma Township on Pickerel Lake. Parcel # 16.70.00400. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed platform that will not comply with the required 100 foot ordinary high water mark setback.

Gerald and Joyce Hoeschen were in attendance and presented the application.

Hoeschen stated that there were some confusion over where the dimensions of the platform came from, he clarified that the dimensions given in the application were from a site visit done by an environmental services technician. They are trying to right a wrong that was done by the previous owner who did not ask for permission and obtain a permit.

Knight asked if the platform could be built on the side of the house instead of where it is currently.

Hoeschen stated that there was currently a deck on their home. They would like to keep the platform where it currently is.

Grob stated that he felt this was a unique structure for the neighborhood.

Hoeschen stated that there are at least two different homes that have almost identical structures to what they are requesting. He also stated that on the advice of two landscapers in order to stop erosion, the platform should be moved back the three feet and the shoreline will be stabilized with rip-rap.

Schwindt stated that there was no record of this platform and asked for clarification on what if anything can be done to this platform as far as repair and maintaining.

Buitenwerf stated maintaining and repairing would be allowed if it were a legal nonconformity. The issue with the platform is that it doesn't appear to be a legal nonconforming structure since a permit can't be found or a date of construction determined.

Hoeschen stated that Scott, from Environmental Services stated that the applicants would be allowed to maintain it but not rebuilt without variance.

Schwindt stated that the front of this platform was built straight up and down and was built way to close to the water. He would like to see the back part repaired instead of being reconstructed and fix the front with rip rap. It would cause the overall size to shrink from twelve feet to nine feet.

Hoeschen stated that if three feet were to be taken off he wasn't sure how usable the platform would be at that size.

Schwindt stated that the Board would like to see that platform not to be there at all so nine feet is even more than what they would like to see there and since it was put there illegally, because no permit was ever issued that why it is difficult for him to give his vote of approval to this request.

Grob stated that he agrees with Lou. To start over from scratch doesn't make sense with what the Board is trying to accomplish. He stated that he would be okay with using rip rap on the shoreline to stabilize it and maintaining what is left of the existing platform once the rip rap is completed. He questioned if a variance was needed to remove the front three feet, rip rap the shoreline and keep the remaining platform in its current location.

Buitenwerf stated that is the fun question. It is difficult to determine the exact age of the structure. The way the variance was submitted it proposed an entirely new platform it alleviated the need from answering the question of when it was constructed. His best guess after looking at the platform and the style of construction it seems to match that of what was used on the access walkway to the lake and the base of the walk-out basement on the house. So a best guess on construction based on when the house was constructed would be mid 80s. If that is the case than it is an illegal platform and it should be entirely removed. It makes it difficult to say that it can remain but in a smaller capacity when it was built illegally.

Grob commented that the request of the variance application is to completely rebuild the platform and move it back three feet or so. That is the request that needs to be decided on because of the way the application was worded and submitted.

Buitenwerf stated that the applicants could amend their request for the platform to be kept except for the front portion that has fallen in and be allowed to rip rap that area. That is another option to consider in light of the situation where the current landowners did not construct the platform but trying to correct the matter and get it into compliance with the Ordinance which is appreciated.

Hoeschen stated that was what the initial plan and thoughts were but both landscapers told the them that the tile that were used are not good and it was suggested to replace them so that it doesn't wash away.

No correspondence was received and no public comment was given.

Schwindt once again asked if the platform has any grandfather rights to stay or be maintained.

Buitenwerf commented that to his knowledge it would appear that the platform was constructed after 1971 that there would not be any grandfather rights.

Schwindt asked if the applicant's would have to remove the platform if the variance is denied.

Buitenwerf stated that he would need to check with the county attorney because of the uncertainty of the structure's age and the fact that the landowners were not the party that constructed the platform.

Grob stated that the Board either approve or deny an illegal nonconforming structure. He stated that it is best to leave enforcement of this to the department.

Schwindt stated that the request is for a new platform to be constructed at the existing site.

Knight questioned if the application should be tabled so that the attorney's opinion can weigh in on this matter.

Grob stated that in order to table it the applicants would need to come back with a different design.

Grob moved to deny the variance request as submitted and adopt the findings as presented by the department in the November 2012 BOA Staff Report.

Knight seconded it.

The adopted findings of fact are as follows:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

The platform appears to have been constructed at a time when the ordinance was in effect and it therefore should have met setbacks and received a permit. Therefore, MS 394.36 subd. 4 is not applicable and the new proposed platform should be constructed at a nonconforming setback as there is room on the lot for such on either side of the house.

2. Without the variance, is the owner deprived of a reasonable use of the property?

There is room on either side of the house for a platform to be constructed by permit and meet all setbacks.

3. Is the stated practical difficulty due to circumstances unique to this property?

There is room on either side of the house at conforming locations where the proposed platform could be constructed by permit in conformance with the ordinance requirements. Therefore, there are no unique circumstances on the property that support allowing a platform to be located at a zero foot ordinary high water setback.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

There is room on the lot to place the platform in a conforming location – as state previously. Therefore, the landowner is creating the difficulty by the location desired/proposed.

5. Will the issuance of the variance maintain the essential character of the locality?

5. Will the issuance of the variance maintain the essential character of the locality?

While platforms are permissible accessory structures in shoreland and on this lake classification, they must meet all setbacks. When constructed accordingly, they maintain the locality's character. Placing a platform at a zero foot ordinary high water setback instead of a 100 foot

ordinary high water setback would be significantly outside of intended realm for a platform and thus would not maintain the locality's character.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite economics as a hardship. The alleged difficulty is the existing platform's unknown age so it is unclear if the nonconformity rebuild allowance of MS 394.36 subd. 4 can be used to reconstruct the platform.

**Variance Application 57-V-12 by Dean and Beth Watkins:** Lot 12, Block 1, Run Away Bay, Section 17, Township 140, Range 33, Nevis Township on Lake Belletaine. Parcel # 21.71.01200. Applicants are requesting a variance from Sections 502.2 and 704.7 and 1015.3.C of the Shoreland Management Ordinance for a proposed addition to a nonconforming dwelling unit located in the shore impact zone.

Dean Watkins and Ron McClaen were in attendance and presented the application.

Grob stated that during the lot viewal it was stated that the applicants wanted to expand the cabin that would go outside of the legal footprint of the lot. That is a problem. There was discussion on site as to whether the applicants could modify their plans to keep the structure within the legal footprint.

McClaen stated that there are several of the units have been rebuilt outside of the lot footprint and were approved per variance. Each addition that was approved was for over a 50% addition. The applicants are requesting to move two feet closer to the road or two feet further back from the lake.

Grob asked what covenants there are regarding expanding outside of the lot footprint and into the common elements.

McClaen stated that there isn't anything that specifically talks about expanding outside of the footprint. The lots were platted out with the size of the cabins that were there and then each cabin, with the exception of unit 5, would be allowed a 50% addition.

Knight asked if the corporation own it or do the individual owners.

McClaen stated that when individuals bought they purchased their cabins. They own the size of their cabin. They own 1/25<sup>th</sup> of the unit grounds. He spoke with the assessor about if it creates problems if the cabin comes out of the footprint and she said it is not a problem.

Grob asked if the original planned unit development defined the size of each footprint.

Buitenwerf stated that the units are all platted out and have set locations and dimensions.

Grob stated that this unit is in the shore impact zone. Usually with a planned unit development conversion a structure that is in the shore impact zone can't be expanded unless it goes to an alternate location. He couldn't speak to the other units that were mentioned that had obtained variance approval to build outside of their allotted footprint.

McClaen stated that the other ones all had variance approval for building additions.

Watkins commented that they were told when they purchased the property that the expectation was that the cabin could be expanded up to 50% with variance approval.

Grob asked if all of the other units that were mentioned earlier all have variances on record.

McClaen affirmed that they do indeed have approved variances.

Buitenwerf stated that there may be variances on file but those are not germane to the application that is before you. It would be strongly recommended for the association to re-plot and reassign lot footprints so that all of the additions and cabins are inside of the lot footprints. If there are units that have gone outside of their footprint there could be legal issues potentially there for those unit owners and the association.

McClaen commented that the other option would be to just add twelve feet and go back the twenty six feet which would be a 50% addition and would keep the structure in the footprint.

Grob stated that the 50% only applies if the cabin is outside of the shore impact zone. There is much more restrictions on the first fifty feet than there is if the cabin were in the 50-100 foot setback.

Grob stated that this is a tough one. There seems to be a lot of precedence but the fact that the building is outside of the platted footprint is the biggest issue with Environmental Services Officer.

McClaen again stated that the tax assessor has no problem with this.

Buitenwerf stated that he personally spoke with the County Assessor regarding the issue of a unit being outside of the footprint and he indicated that would be something that they were greatly opposed to because of the complications it would create in terms of assessing and valuing that addition.

McClaen questioned what the assessor thinks about the other three units that are outside of the unit footprint.

Buitenwerf stated that he can't answer that since he was unaware of it.

McClaen stated that they were simply following with what had been done before.

Buitenwerf commented that things may have occurred in the past that may not have been the best thing to do and now the board is dealing with what is presently in front of them and per the proposed sketch the addition would fall outside the unit footprint. The assessor's office has indicated that is not advisable from their stand point as well as legal issues potentially should a mortgage be needed for the building and other things related to the legalities of who owns what. Those are the main concerns that the department has.

McClaen asked if they stayed within the building envelope would that be agreeable. The applicants were trying to bring the house back further from the lake.

Buitenwerf stated that in general he agreed with Mr. McClaen but in this case it is the footprint for the structure is where the legal aspects come into play.

McClaen stated that they would like to amend their request to be for a twelve by twenty six addition that would stay within the footprint.

Buitenwerf stated that doing so would alleviate the legal aspects concerned and it would certainly be advised and recommended by the department.

Schwindt asked if the public notice letters would have to be resent stating the amended design.

Buitenwerf stated that the public notice is such that the Board is able to act on the amendment without having to send out new notices.

Knight asked if the building would be in the footprint whether they needed to ask for a variance.

Buitenwerf stated that they would still need a variance. He then clarified that the request had been modified for a proposed addition that would fully align with the north south walls of the exterior walls of the existing cabin and now it would be a twelve foot addition to the west and a twenty six feet north south, essentially adding a rectangle.

Grob asked about the deck expansion that is proposed.

McClaen stated that the deck would move over four feet over so that there is an exit from the addition.

Buitenwerf commented that the department would recommend an amended drawing be provided to match what was verbally discussed.

No correspondence was received and no public comment was given.

Buitenwerf commented that the cabin would be in the footprint but the deck would be outside of the footprint but the declarations allow decks to be extended into the common elements as an easement. The deck does not create the issues for the assessor's office that the addition to the structure would.

Knight once again questioned why they need a variance if the request is for 50% which is allowed by law.

Buitenwerf clarified that the 50% addition is not allowed by law because the cabin is located in the shore impact zone and the other reasons cited in the public notice the Ordinance doesn't allow any cabins located in the shore impact zone to be enlarged when it is part of a conversion to a residential planned unit development as this one was.

Knight moved to approve the amended request for a 12' X 26' home addition and a 4' X 8' deck addition to the immediate West of the building – all to be built within the unit footprint.

Christianson seconded the motion.

The Board answered the findings of fact as follows:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes. It is part of a planned unit development that has been on the books since late 1999. All other members of the planned unit development have done some upgrading of their cabins because of the size.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes. These are very small cabins that were part of a resort that was changed to a planned unit development and the addition of 50% was an assumed addition back in 1999.

3. Is the stated practical difficulty due to circumstances unique to this property?

It is unique because it is a planned unit development that was created way back in the early stages when planned unit developments were just starting.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

The difficulty is the size of the cabin which was part of the planned unit development.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. The planned unit development was created back in the 90s. They are all single family units and this will remain that way.

6. Does the stated practical difficulty involve more than economic considerations?

No economic considerations were involved in the Board discussion.

The motion carried unanimously.

**Variance Application 58-V-12 by Forest Estates Potato Lake:** Part of Government Lot 1, Section 26, Township 141, Range 35, Arago Township on Potato Lake. Parcel # 02.26.00631. Part 1: Applicants are requesting a variance from Section 507.3 of the Shoreland Management Ordinance (SMO) for proposed boardwalks that will exceed the four foot maximum width allowed. Part 2: Applicants are requesting a variance from Section 1005.2 of the SMO to allow less than the required 25 foot side yard area vegetative cover for a controlled access lot along a portion of the property boundary line. Part 3: Applicants are requesting a variance from Section 903.3 of the SMO for proposed parking areas that will not comply with the required 100 foot ordinary high water mark setback.

Larry Wing, President for Forest Estates, was in attendance to present the application.

Grob stated that he is a resident of Potato Lake and is very familiar with what the applicants are trying to do. He presented to the Board a list of suggestions for conditions and thoughts regarding this application.

The Board took them under consideration.

Buitenwerf clarified that the conditions proposed would be best considered when the application goes before the planning commission.

No correspondence was received and no public comment was given.

Schwindt moved to approve the variance application as presented and adopt the findings of fact as presented by the October 2012 Board of Adjustment Staff Report.

Christianson seconded it.

The adopted findings of fact are as follows:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

The boardwalks will not create any negative impact to the wetland. The vegetative buffer area is negligible and not even visible from the residence of the adjacent property. The parking areas are hidden from the lake on two of three sites and the third site can be mitigated. Providing such sites vs. requiring people to walk several hundred feet across the boardwalks is reasonable when one considers all the gear such as boat gas cans that must be carried to and from the car parking area and boat sites.

2. Without the variance, is the owner deprived of a reasonable use of the property?

A six foot wide boardwalk, parking areas near the docks, and waiver of the vegetative buffer requirement are reasonable uses given the unique makeup of the lot with its wetland and ice ridge and the developer's historic activities that already located the dock sites and access paths to them.

3. Is the stated practical difficulty due to circumstances unique to this property?

The large wetland causes the need for the variance on all parts of the application.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

The difficulty is the wetland size and location that was here long before the landowners and the access path location that was developed by the developer before the landowners owned the property.

5. Will the issuance of the variance maintain the essential character of the locality?

The area will remain single family seasonal and year-round residential structures. The lot has been and will continue to be natural and thickly vegetated. The variance items will either be unable to be seen from adjacent properties and the lake or very difficult to see.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite economics as a hardship. The difficulty is the large wetland and the access path location created by the developer.

The motion carried on a 3 to 1 vote with Grob voting nay.

**Variance Application 59-V-12 by Roy Hummel:** Lots 1, 2, 4, and 4, Block 1, Little Seno, and Government Lot 9, Section 15, Township 141, Range 33, Mantrap Township on Middle Crooked Lake. Parcel #s 20.60.00100, 20.60.00200, 20.60.00300, 20.60.00400 and 20.60.00500. Applicant is requesting a variance from Section 6, subd. D.10.a.2 of the Subdivision Ordinance for relief from the 66 foot plat access road right-of-way width requirement.

Steve Pelequin and Maria Prezter authorized agents, Roy Hummel were in attendance and presented the application.

Pelequin made comment on the findings of fact that were presented in the staff report, specifically the answer to question number two. He wanted the Board to understand that this is not a usual situation where an easement is completely on one piece of property. The Hummel's are very concerned that they conform the legal plat requirements to the practical situation that confronts them. There is a house sitting right in the middle of the other 33 foot easement. They are seeking to bring their plat into legal conformance so that they have legal reasonable use. They don't want to be forced to legally remove the house and drainfield that their neighbor's own. That is how this whole thing came about and in front of the Board.

Schwindt asked Buitenwerf if the department has an issue with changing the 66 foot right-of-way down to 33 feet.

Buitenwerf stated that from a practical standpoint the answer was no. The road is at the end of a dead end road that services a few lots. There is a township road that terminates at the south end of the plat granting public road access. The preference would be to only vacate the portion of the easement on the affected property that is occupied by the house be vacated and the remaining 33 feet be retained.

Pelequin stated that they looked at vacating only the portion that the house sits in and in one sense it does allow some of the easement be maintained but on the other hand the purpose of the 66 foot easement is to have the possibility of having the road dedicated into a township or county road is not being met by vacating a portion of the easement. In order to either fulfill completely the 66 foot requirement then one would think that the County would want that maintained fully or not at all. By vacating the entire 33 feet it allows the affected property owner complete use of their property and allows the home to stay where it is.

Hummel stated that as long as they don't lose anything they are fine with the smaller easement. It will still give them the access that is needed to their properties.

Knight stated that although the staff recommendation is to vacate only the portion of the easement where the home was built, he felt that it made more sense to vacate the entire 33 feet like the applicants are requesting.

No correspondence was received and no public comment was given.

Buitenwerf stated that if there is a motion to approve the variance, the department would recommend that it be conditioned on the accompanied plat amendment application being submitted and also approved by the county board.

Schwindt moved to approve variance application 59-V-12 with the following condition: 1. the accompanying plat amendment application (to amend the preliminary plat condition that the plat road right-of-way must be 66 feet wide) must be submitted to the County and approved by the County Board.

Knight seconded it.

The findings of fact are as follow:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

The road is a dead-end that will never service more than the existing six lots. It is only ~535 feet long. The topography of the area does not require a 66 foot right-of-way width to meet safe grades. A 33 foot right-of-way width is thus able to provide sage ingress/egress to the lots.

2. Without the variance, is the landowner deprived of a reasonable use of the property?

The application was submitted by the Hummel's but it affects the neighbors. The neighbor who is involved is deprived a reasonable use of the property. The house and septic are on in the easement. They are deprived a reasonable use of the property because otherwise they would be involved in serious litigation and/or have to move their house which would be unreasonable.

3. Is the stated practical difficulty due to circumstances unique to this property?

The alleged difficulty is the fact that a precious owner of the neighboring property constructed a house in the north end of the road right-of-way that services the plat.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

The difficulty was created by the neighboring landowner who constructed a house in the right-of-way.

5. Will the issuance of the variance maintain the essential character of the locality?

The area will remain residential single family seasonal and year-round residential structures. A reduced right-of-way width for this portion of the road will not harm the locality's character.

6. Does the stated practical difficulty involve more than economic considerations?

The difficulty involves working out an agreement with the new neighbors who own the residence located in the right-of-way. The difficulty is also for the neighbors in that their home is located in the right-of-way.

The motion carried unanimously.

**Variance Application 60-V-12 by Lowell and Beverly Grasdalen:** Part of the E ½ of SW ¼ and part of the NW ¼ of the SE ¼, Section 12, Township 140, Range 32, White Oak Township on Williams Lake. Parcel # 28.12.01720. Applicants are requesting that a condition placed on Variance 2-V-00 be removed so parcel 28.12.01720 can be made smaller than 3.8 acres.

Lowell Grasdalen was in attendance and presented the application.

Knight stated that it is a reasonable request.

No correspondence was received and no public comment was given.

Grob asked if approval needed to be conditioned on the application doing the proper subdivision process.

Buitenwerf stated that the applicant would need to go through the administrative subdivision process if the variance is approved. The surveys are done but a survey doesn't make the line changes legal and binding until the subdivision application is approved and the deeds are recorded. There is a sunset clause on all approved variances. If the applicant decided not to act on this approval in that time frame by not applying for and receiving approval of the subdivision then the variance is void. So there is a timeframe set by default so it isn't necessary to make it a condition.

Schwindt stated that once the applicant is made aware of what the procedure is to get this recorded; he will go ahead and do it.

Grob moved to approve the variance request and accept the findings of fact as presented in the staff report.

Knight seconded it.

The adopted findings of fact are as follows:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

The road is a dead-end that will never service more than the existing six lots. It is only ~535' long. The topography of the area does not require a 66' ROW width to meet safe grades. A 33' ROW width is thus able to provide safe ingress/egress to the lots.

2. Without the variance, is the owner deprived of a reasonable use of the property?

The landowner has a reasonable use of the property now with the 66' road ROW that is in place. If the variance is denied, the landowner's access to the property is more reasonable with the 66' ROW than it would be if the ROW is reduced to 33' in width.

3. Is the stated practical difficulty due to circumstances unique to this property?

The alleged difficulty is the fact that a previous owner of the neighboring property constructed a house in the north end of the road ROW that services the plat.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

The difficulty was created by the neighboring landowner who constructed a house in the ROW.

5. Will the issuance of the variance maintain the essential character of the locality?

The area will remain single family seasonal and year-round residential structures. A reduced ROW width for this portion of the road will not harm the locality's character.

6. Does the stated practical difficulty involve more than economic considerations?

The difficulty involves working out an agreement with the new neighbors who own the residence located in the ROW. The difficulty is also for the neighbors in that their home is located in the ROW.

The motion carried unanimously.

**Adjournment:**

Grob moved to adjourn. Knight seconded it.

The meeting was adjourned at 12:10 p.m.

Respectfully submitted by:

Maria Shepherd  
Recording Secretary

**Hubbard County**  
**Board of Adjustment Meeting**  
November 19, 2012

Tom Krueger called to order the Board of Adjustment meeting with the following members present: Chick Knight, Tim Johnson, Tom Krueger, and Arnie Christianson. Also present were Environmental Services Officer Eric Buitenwerf, and Recording Secretary Maria Shepherd

Krueger welcomed everyone to the public meeting and read the meeting procedures.

**Election of Officers:**

Knight nominated Krueger as Chairman. Christianson seconded the motion that carried unanimously.

Knight nominated Johnson as Vice Chairman. Krueger seconded the motion that carried unanimously.

**Approval of the October 15, 2012 Minutes:**

Christianson moved to approve as presented. Johnson seconded the motion that carried unanimously.

**Old Business:**

**Variance Application 55-V-12 by Michael and Kathleen Markman:** Lot 2, Part of Lot 3, Block 1, Birch Retreat Acres, Section 20, Township 141, Range 34, Lake Emma Township on Potato Lake. Parcel # 16.75.00210. Part 1: Applicants are requesting a variance from Sections 502.2 and 704.7 of the Shoreland Management Ordinance (SMO) for a proposed platform addition that will not meet the 100 foot ordinary high water mark setback or the 10 foot side lot line setback and will be attached to a residence previously modified by variance. Part 2: Applicants are requesting a variance from Section 502.2 of the SMO to allow a stairway to encroach on the 10 foot side lot line setback.

Michael Markman and Shannon Hendrickson, authorized agent, were in attendance and presented their application.

Hendrickson explained that the applicant is looking to take out all of the rotten railroad ties, retaining wall, and stairway down to the lake. There is a grading issue. Right now water goes down to the foundation of the house and the actions they are proposing will correct all three problems that exist.

Knight commented that it he would approve this request. The water does move towards the house and this would stop that.

Johnson agreed with Knight. It is an improvement removing the railroad ties and directing the water away from the house.

Novak, Krueger and Christianson agreed with the comments already made. No written correspondence or public comment was received.

Knight moved to approve the variance request as requested and adopt the findings of fact as presented by the November 2012 BOA Staff Report.

Johnson seconded it.

The adopted findings of fact are as follows:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

The platform is proposed for the side of the structure that was originally constructed before enactment of the shoreland regulations. The structure does not quite meet the required OHW setback and has received a previous variance that was acted upon so subsequent modifications to the structure require variance approval as a means of ensuring the projects are reasonable, needed, and appropriate for the lot. This project will replace railroad ties with inert materials that do not pose a pollutant leaching hazard to the lake. The platform will not encroach any closer to the lake than the existing deck. The side lot line location is known as the monuments are intact and the adjoining neighbor submitted a letter in support of the proposed side lot line setback encroachment. The side lot line setback's purpose is to provide an adequate buffer to ensure that items constructed on a property do not cross over onto another property. The proposed encroachment into the side lot line setback is only two feet. For these reasons, the side lot line setback request is in harmony with the ordinance and State Rules.

2. Without the variance, is the owner deprived of a reasonable use of the property?

A platform on the side of a house is a reasonable use of the property that is a feature found on many other lakeshore properties on this lake and other lakes in the county.

3. Is the stated practical difficulty due to circumstances unique to this property?

The structure was constructed before enactment of the shoreland regulation at a nonconforming OHW setback. The lot was created by a plat that was created/recorded in 1986. The topography of the lot requires that the project area be regarded to correct some drainage issues. The siting of the structure is unique to the property in that it occurred before the ordinance took effect.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

A previous landowner constructed the house at a nonconforming setback before the shoreland regulations were developed. The lot was then created by plat in 1986 which also predated the landowner's ownership of the property. The current landowner was not involved in the property at that time.

5. Will the issuance of the variance maintain the essential character of the locality?

The area will remain single family seasonal and year-round residential structures. The proposed platform is an accessory structure typically associated with and found along with residential structure on this lake and other lakes in the county.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite economics as a hardship. The difficulty is related to the house predating the ordinance and being located on a slope that presents some drainage issues along with not being located at a conforming ordinary high water mark setback.

The motion carried unanimously.

**New Business:**

**Variance Application 61-V-12 by Lawrence and Denyse Kramer:** Part of Government Lot 2, Section 6, Township 141, Range 33, Mantrap Township on Big Mantrap Lake. Parcel # 20.06.01410. Applicants are requesting a variance from Sections 502.2 and 903.3 of the Shoreland Management Ordinance for a proposed garage addition and driveway that will not comply with the required 10 foot side lot line setback.

Lawrence and Denyse Kramer were in attendance and presented their application.

Mr. Kramer stated that the reason for the request is that there is a need for more space. They are one of the few people on the lake that are year round residents. He spoke with both of the neighbors and explained what he wanted to do. The option being presented is the least costly and least obtrusive to put an additional stall on the garage. There are other options available but the applicant felt that they weren't feasible. The option being presented is the best.

Johnson commented that he thought there would be room for the addition to the garage going towards the house which would mean that the variance was not needed. He felt that a variance should be a last resort and not the first thought. The other options that were mentioned by the applicant need to be explored more before a variance is given.

Knight stated that space is a premium on this lot. He felt that putting the addition to the garage so close to the lot line and the trees on the property could be a fire hazard. He also felt that the addition should be placed towards the house.

Novak agreed with Johnson and Knight. He mentioned that the other option mentioned was to attach the garage to the house.

Kramer stated that there was thought of adding the garage stall to the house instead of it being attached to the current detached garage. At first they didn't want to do it there because of a large old oak tree but after more thought he thought maybe the tree is more of a hazard instead of an attribute. He expressed his concerns with adding the additional garage stall towards the house instead of where he is proposing. He stated that the neighbors didn't have any problem with what he was proposing.

Krueger stated that a letter in opposition was received by the neighbor who would be the most affected by the side lot line.

Christianson stated that he agreed with the comments made by the other Board members.

Kramer stated that he wanted to hear the letter since no opposition was expressed verbally to him.

Krueger read the correspondence received on this variance. See Exhibit "A" on file with the Environmental Services Office.

Kramer asked what of the concerns and objections shared were valid. He stated that he didn't understand their reasons. He said that he has an equal right to the driveway in the back as they do on the property. Both parties share an undivided fifty percent interest in the easement.

Krueger stated that the ordinance states a ten foot lot line setback and neighbors are entitled to having an expectation that buildings will not encroach into that setback.

Krueger read into the record another letter that was received. See Exhibit "B" on file with the Environmental Services Office.

No public comment was made.

Johnson asked Buitenwerf if a variance would be needed if the applicants wanted to add a garage stall onto the house.

Buitenwerf stated that a variance would still be needed because the house has been altered previously by variance.

Johnson asked if a variance would be needed if the addition were added to the North side of the garage.

Buitenwerf stated that an addition to the north side of the garage could be done with a permit.

Johnson moved to deny the variance request.

Christianson seconded it.

The Board answered the findings of facts as follows:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

A permissible alternative exists.

2. Without the variance, is the owner deprived of a reasonable use of the property?

A permissible alternate location is available for the proposed addition on the northeast side of the garage so the owner is not deprived of the ability to construct the desired additional space for the garage if this variance is denied.

3. Is the stated practical difficulty due to circumstances unique to this property?

No. There is not a practical difficulty.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

There is no practical difficulty adding onto the garage by permit.

5. Will the issuance of the variance maintain the essential character of the locality?

The area will remain single family seasonal and year-round residential structures.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite any economic considerations as being the practical difficulty in this matter.

The motion carried unanimously.

**Variance Application 62-V-12 by Michael Nepsund:** Part of the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$ , Section 22, Township 141, Range 35, Arago Township on Eagle Lake. Parcel # 02.22.00810. Applicant is requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed residential structure at less than the required 100 foot ordinary high water setback.

Michael and Janet Nepsund were in attendance and presented their application.

Nepsund stated that they are requesting a setback variance in order to construct a new home. There is a power line easement that runs through the property which creates the difficulty to build at a conforming setback. There were questions on where the actual easement was located on the property so the applicant spoke with Itasca Mantrap, the electrical company, and brought documentation from them to Environmental Services Office. There are two power lines that run through the property.

Krueger asked if it was correct then that the power line was in fact buried in front of the garage.

Nepsund stated that Gopher One was going to come back to the property and map out all of the power lines in question before starting the project.

Buitenwerf stated that he had more information regarding the power line easement for the Board.

Nepsund stated that the documentation that he received from Itasca Mantrap showed the power line going through a swamp, which he found very hard to believe but also stated that his abstract shows the easement running through his entire property and continues out to highway 71.

Buitenwerf passed out the drawing that the applicant had submitted showing where the power line was buried according to Itasca Mantrap GIS database.

On Friday, Buitenwerf met with Jared Echternacht, member services manager for Itasca Mantrap and discussed this issue with them. They stated that the drawing may or may not be accurate. The only way to know for sure where the location of any buried cables would be to have Gopher One locate it. If there is a line down there it is able to be moved at the cost to the home owner to accommodate the proposed structure.

Nepsund stated that he is not sure how or where the line would be moved to because of the location on the driveway and the swamp that is on the property.

Krueger asked for clarification on if there was already an approved variance for this property.

Nepsund answered that there are actually two variances that are approved for the property; one was to build two resort cabins right on the west part of the lot, and the other one was to build a new home exactly as the one presented with the only difference being a different floor plan for the house. He believed that he was asking for more of an amendment to the original variance that was granted previously but with the new floor plan.

Krueger asked what the difference between the two was.

Nepsund stated that the new proposed house plan was about 25% larger to accommodate the laundry room and master bedroom on the main level to accommodate his wife's health issues.

Novak asked if the 2300 square feet proposal include the garage or not.

Nepsund commented that the house was 1600 square feet on the foundation size plus the garage.

Novak mentioned that the original variance was for 1196 square feet.

Nepsund stated that was also just the house square footage and didn't include the garage.

Knight commented that there is area to allow for a larger home to be built. The power line issue is not something that the Board saw firsthand where it was located. It does make a difference that the line can be moved but again is it reasonable for the Board to make the applicant pay a significant amount of money to have that line moved.

Nepsund commented that a variance was already approved by the Board of Adjustment for the exact same setback and at the time the Board didn't feel it was reasonable to move the power line.

Christianson asked if the house would be able to be moved back at all.

Nepsund stated that the corner of the house is already hitting the driveway and in order to make the corner to be able to access the garage because of the pole barn that is there and the swamp the garage needs to be placed at an angle.

Johnson stated that it looked like there was an additional ten feet that the house could be moved back to before it hit the buried power line.

Nepsund commented that the stake was right on the edge of the driveway. They left a little bit of room there until they know for sure where exactly the lines run. The power line is there and it is in the way.

Novak stated that it would be advisable for Gopher One to come in and do an exact location of the power line because right now they are guessing as to the precise location.

Christianson asked what the drawing was that was passed around. It looks as though it tells where the power line is.

Johnson stated that the applicant is saying that it is incorrect because according to the picture the line goes through a swamp. He asked if there was a density issue with the size of house that the applicants are asking for or if the only issue was the setback.

Buitenwerf commented that there wasn't a density issue and the variance was strictly for a lesser setback.

Nepsund again stated that a variance for the requested variance had already been granted but because of the modification to the floor plan it required them to come back before the Board. A lot of things have happened in the since the other variance was granted that caused them not to be able to build. The timing is finally right to retire and build their retirement home. There were three conditions that were placed on the previous variance: 1. move the old cabin, 2. take the old storage shed out and 3. join the two lots together. All three conditions have been met and were taken care of within the first year. The neighbor's have no objections.

Buitenwerf read into the record a letter of correspondence that was received. See Exhibit "C" on file with the Environmental Services Office.

No public comment was made.

Johnson asked if the applicants would lose their original variance if this one were to be denied.

Buitenwerf answered that the original variance could still be acted upon.

Nepsund stated that he would be willing to give up the original two variances that are on this property if the current proposal could be approved. The new variance would only be good for five years where the original variances are good for life.

Novak stated that he didn't see any problems with the proposal as long as the absolute location of the power line is.

Nepsund stated the line would not be in the way at the 70 foot setback. It wasn't the last time the Board looked at granting the previous request. The power line was talked about a lot last time as well. Gopher One was out on the property last summer to mark the power lines when the applicant ran power to his pole barn.

Johnson moved to approve the variance request as presented with the condition that the applicants abandon all previous approved variances.

Knight seconded it.

The Board answered the findings of fact as follows:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes. This application is keeping in line with the previous variance that was approved.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes. A 2300 square foot house is reasonable.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. There is an abandoned road there as well as a major power line that runs through the property as well as the location of the other structures on the property.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes. There is a swamp on the property which is natural topography.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. It will remain a single family seasonal and year round residential structure.

6. Does the stated practical difficulty involve more than economic considerations?

Yes. Economic considerations were not a factor.

The motion carried unanimously.

**Variance Application 63-V-12 by Mary Kirchner:** Part of Government Lot 2, Section 29, Township 143, Range 32, Lakeport Township on Kabekona Lake. Parcel # 19.29.00920. Applicant is requesting a variance from Sections 501.2, 1001, 1003, and 1006 of the Shoreland Management Ordinance and Section 4, subd. A.1.a.3.b of the Subdivision Ordinance to create two riparian lots that will not comply with the 150 foot minimum lot width requirement at the ordinary high water mark.

Terry Freeman, authorized agent, was in attendance and presented the application for the applicant.

Freeman stated that there are currently two existing lake lots, both with 150 feet of shoreline. The definition of lot width has changed to the shortest distance between the lot lines. The applicant is wishing to create a non-riparian parcel. A subdivision application was submitted to Environmental Services in the early fall and it was found that one of the lots did not meet the 150 foot of width at the ordinary high water mark setback. The one tract with the house on it doesn't meet the width requirement by about an inch short and the other riparian lot is about one foot short. The lots widen as you go further back from the ordinary high water mark.

Knight stated the proposal was a good plan and that a few inches shouldn't make a difference. He would recommend approval.

Novak stated that because it is so close to being a conforming subdivision there shouldn't be a problem with the request.

Krueger and Christianson agree with Novak and Knight.

Johnson commented that there were two things that are important with this request. The lots widen as it leaves the lake and so it is just one spot that is short on the width requirement. Second of all of the lots meet all other requirements.

No correspondence was received and no public comment was made.

Knight moved to approve the request as presented and adopt the findings of fact as presented by the November 2012 BOA Staff Report.

Johnson seconded it.

The adopted findings of fact are as follows:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Management Rules?

The proposed riparian lots conform with all minimum lot size requirements (and exceed them) except for the lot width at the shoreline – which is no more than a few feet shy in each case. The lot width for both lots increases continually as the side lot lines run away from the lake. The ordinance and rule’s intent of setting these minimum lot size regulations to ensure there is adequate room on the lot for a residence, accessory structures, and a well and septic system is able to be met. Therefore, the request is in harmony with the ordinance and rule.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Creating two riparian lots that conform with and exceed ordinance requirements except for a few feet deviation from the shoreline lot width and a back lot that exceeds all ordinance requirements is a reasonable use of the property. It would be unreasonable to deny the request when the only part of the lots not complying is the first few feet lakeward of the ordinary high water mark and then the deviation in width is just a few feet.

3. Is the stated practical difficulty due to circumstances unique to this property?

The lots appear to have been created over a span of a few years in the 1980s. The lot width requirement at the shoreline was the same then as it is now and the side lot lines near the lake are not being changed on the two existing riparian lots so it is unclear as to why the two lots do not comply with the required lot width. It could be due to differences in surveyors and surveys of the area done over the years.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

As mentioned in the answer to question #3 above, the difficulty was caused by the layout of the lots when they were created in the 1980s prior to the landowner’s ownership of either lot.

5. Will the issuance of the variance maintain the essential character of the locality?

The area will remain single family seasonal and year-round residential structures. The few feet deviation in lot size at the shoreline for the two proposed riparian lots will have no noticeable negative effect on the locality’s character.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite any economic considerations as being the practical difficulty in this matter. The alleged difficulty concerns how these lots were laid out and surveyed originally versus what surveyors found for lot boundaries and monuments when developing this proposed subdivision. It is not uncommon for surveyors today to arrive at different results than in previous years due to advances in surveying equipment and technology.

The motion carried unanimously.

**Variance Application 64-V-12 by Bethany Bible Camp:** Lots 17, 18, 19, 20 and 21, Bethany Beach, Section 4, Township 145, Range 32, Farden Township on Grace Lake. Parcel # 07.40.00170. Applicants are requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance for a proposed greater than 50% addition to a nonconforming structure located in the shore impact zone.

No one was in attendance to present the application.

Knight stated that the cabin is on blocks and very easily could be moved and there is ample room to move it to a conforming setback. However the cabin was built in the 40s so certain grandfather rights should apply. It is only 44 feet from the water and the request is for a greater than 50% addition.

Johnson asked if the request was for less than a 50% addition would it be allowed because of the age of the building.

Buitenwerf stated that regardless of the request any alterations or additions to this cabin would require a variance because the property is located in the shore impact zone.

Christianson asked if they moved the cabin back to the 100 foot setback all they would need is a permit instead of a variance.

Buitenwerf confirmed that statement.

Novak stated that the building they want to add onto is a very old building. It isn't in good shape. There are other places to place this structure besides building it at its current location.

Christianson stated that he felt the cabin should be moved back to the 100 foot setback. There is plenty of room.

Johnson stated that without somebody here to represent the application, he would agree with Christianson that there is room to build it at a conforming setback.

Krueger agreed with that. The building is on blocks and would be easy to move back to the 100 foot setback and build what they want by permit.

No written correspondence was received and no public comment was given.

Johnson moved to deny the request and adopt the findings of fact as presented in the November 2012 BOA Staff Report.

Christianson seconded it.

The adopted findings of fact are as follows:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

There is sufficient space on the property to build a structure the size of the proposed addition at a conforming setback. The portion of the structure proposed to be retained is on a block pier foundation that makes it amendable to easy moving back to a conforming setback where

the addition could then be made by permit. Because these permissible alternatives exist, granting a variance where there is no practical difficulty in complying with the ordinance would not be in harmony with the ordinance and rule's intent. The motion carried unanimously.

2. Without the variance, is the owner deprived of a reasonable use of the property?

A permissible location is available for the proposed for the square footage of the new construction either by building a stand-alone structure of this size at a conforming location on the property or by moving the portion of the structure to be retained back to a conforming location that would then allow the proposed addition to be constructed by permit.

3. Is the stated practical difficulty due to circumstances unique to this property?

The application does not provide any stated difficulties why the amount of square footage requested cannot be built as a stand-alone structure at a conforming setback on the property or why the front portion of the structure could not be moved back to a conforming setback that would then allow the addition to be built by permit. The application also fails to show why the addition must be the size that is proposed and why it must be placed on this structure.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

The landowner prefers to construct this square footage as an addition to a nonconforming structure located in the shore impact zone instead of pursuing permissible options for the requested space. Therefore, the difficulty is being created by the landowner.

5. Will the issuance of the variance maintain the essential character of the locality?

The area would remain single family seasonal and year-round residential structures. However, most of the residential structures on surrounding properties meet the 100 foot ordinary high water mark setback. The addition would more than double the size of a commercial structure located in the shore impact zone and increase the scope of a commercial use that is surrounded by residential uses. For these reasons, the variance would tend toward negatively impacting the locality's character rather than being neutral and maintaining it.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite any economic considerations as being the practical difficulty in this matter. The alleged difficulty concerns a desire to add onto a nonconforming structure that predates the ordinance and is located in the shore impact zone.

The motion carried unanimously.

**Variance Application 65-V-12 by Barry and Lisa Royce:** Part of Government Lot 3, Section 4, Township 145, Range 32, Farden Township on Grace Lake. Parcel # 07.04.01000. Part 1: Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance (SMO) for a proposed residential structure and platform that would be located in the shore impact zone. Part 2: Applicants are requesting a variance from Section 507.1 of the SMO to place the lowest floor of the proposed residential structure at less than the required 3 foot vertical separation from the highest known water level. Part

3: Applicants are requesting a variance from Section 801.2 of the SMO and Subd. 2.10 of the Individual Sewage System Standards Ordinance to place a septic system drainfield at less than the required 20 foot setback from a building. Part 4: Applicants are requesting a variance from Section 904.6 of the SMO to exceed the 25% impervious surface lot area threshold.

Barry Royce was in attendance and presented the application.

Royce stated that the cabin was originally purchased with the intent of using it as a season cabin. The applicants now obtained fulltime employment in the Bemidji area and now the intent is to build a year round structure. A septic system would replace the current holding tanks that are on the property. There is a bunkhouse and storage shed on the property that would be removed if this variance were granted. A lot of the impervious surface is deck space.

Knight stated that Grace Lake should put in a public sewer system because this is a common problem that is brought before the Board where a variance is needed to be able to have a septic system due to lot sizes.

Novak questioned the size of the house and the basement. He would rather see the house built on a slab and a second story added instead of having less than the required three feet of separation for a basement. The size of the house should be downsized. The house size for the lot size is way too big.

Krueger stated that going from holding tanks to a rock bed septic system is an improvement but at the same time the house is just too large for the size of the lot.

Christianson asked what the square footage of the buildings that are being removed would be.

Royce stated that total square footage from the two buildings and the deck portion that would be removed totaled 582 square feet.

Johnson agreed that removing the shed and the bunkhouse is an improvement as well as the change from holding tanks to a septic system is also an improvement. It just seems like an awful lot on a small lot. He proposed possibly making a drive under garage instead of an attached garage that takes up so much room. It is hard for him to be in favor of the variance as it is proposed.

No correspondence was received.

Chuck Diessner made public comment on behalf of Hubbard County COLA. There is a critical aspect of this application that no one is addressing. This proposal for a new home is in the shore impact zone. The other thing is that under the new stated law there has to be a unique situation. This is being created by the landowner. He can't even fathom why the board is even considering this.

Knight asked what the setback for a drainfield is to a property line.

Buitenwerf stated that a septic drainfield is allowed to go up to the ten foot setback unless a lot line agreement is obtained. Mr. Royce did obtain such an agreement with his neighbor which allows him to go up to the property line.

Royce stated that there will still be an eight to nine foot setback for the tank itself and the rock bed will be much further from the property line.

Knight clarified that the first fifty feet from the lake is considered sacred ground. He asked how close the house would be to the lake.

Royce stated that currently one corner is 28 feet from the lake and the other is 30 feet. He would be fine with doing a slab with a second story instead of a basement which would alleviate the need for a variance from the three foot of separation. He proposed going down instead of up simply to minimize the height of the structure.

Johnson stated that he is not against the increase of size to a 30' by 50' house but there are portions that he is against. As presented he would have to be against it.

Krueger agreed with Johnson that as presented he would be against. He would go along with the house but then with the garage addition it is pushing the limits. It is nice to have an improvement on the septic system but it is pushing the impervious surface limit.

Johnson moved to deny it as presented.

Novak seconded the motion.

The Board answered the findings of fact as follows:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

No. The proposed house is too large for the proposed location.

2. Without the variance, is the owner deprived of a reasonable use of the property?

No. The only reason it is being denied is because the house and proposed garage is too large for the property.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. The lot is too small.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

No. The landowner is proposing too much with the size of the house and garage.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. It will remain single family season and year-round residential structure.

6. Does the stated practical difficulty involve more than economic considerations?

Yes. Economic considerations were not involved.

The motion carried unanimously.

Knight stated that he will be retiring after 20 years on the Board effective December 1, 2012. He wished to thank everyone for making it so great.

**Adjournment:**

Novak moved to adjourn.

Johnson seconded it.

Meeting adjourned at 10:28 am.

Respectfully Submitted by:

Maria Shepherd  
Recording Secretary.

**Hubbard County**  
**Board of Adjustment Meeting Minutes**  
December 17, 2012

Chairperson Krueger opened the meeting with the following members present: Tim Johnson, Charlene Christenson, Tom Krueger, Arnie Christianson, and Ken Grob. Also present were Environmental Services Officer Eric Buitenwerf and Recording Secretary Maria Shepherd.

Krueger welcomed everyone to the Board of Adjustment meeting and read the meeting protocol for all in attendance.

**Approval of the November 19, 2012 Minutes:**

Christianson moved to approve the minutes as submitted. Johnson seconded the motion that carried unanimously.

**New Business:**

**Variance Application 66-V-12 by Kenneth and Susan Jost:** Lots 27, Crow Wing Heights, Section 9, Township 139, Range 33, Crow Wing Lake Township on 3<sup>rd</sup> Crow Wing Lake. Parcel # 06.41.02600. Applicants are requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residential structure that does not meet the 100 foot ordinary high water mark setback or 10 foot side lot line setback.

Kenneth and Susan Jost were in attendance and presented their variance application. They summarized the variance request by stating that they needed more sleeping area. Their entire cabin is 24' X 20' which is smaller than most garages. The applicants are requesting a 12' X 24' addition to the non-lakeside rear of the cabin which will be used as an additional bedroom.

Krueger commented that there was talk at the lot viewal about changing the roof line and was wondering if new plans were submitted.

Jost explained that they have decided to proceed with the original design plan that was submitted.

Grob asked if the applicants were to change their mind and want a different roof line prior to construction if that was allowed or if an additional variance would be needed.

Buitenwerf stated that an additional variance would be needed if the design would change prior to construction.

There was discussion around possibly tabling the variance to give the applicants time to decide which roof design they wanted to submit. Buitenwerf reminded the Board that the design presented in the variance is the design that the applicants are wishing to act on and tabling the variance would not be recommended since the applicants are not requesting it.

Krueger opened the floor for public comment.

- James Fox, neighbor to the applicants, read six letters from other neighbors all showing their support of the variance request.

Grob commented that the topography of the lot and the slope of the roof and the proximity to the lake are all conducive to runoff and the Board's objective is to try and prevent runoff to the lake.

Krueger stated that gutters would significantly help control the runoff.

Grob moved to approve the variance application with the following condition: the roof slope of the residential structure facing the lake must be guttered with the gutter downspout runoff directed away from the lake.

Christianson seconded the motion.

The Board answered the finding of facts as follows:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

It is in harmony with the adopted condition of rain gutters.

Grob moved to adopt the findings of fact numbers two through six as presented in the December 2012 Board of Adjustment meeting Staff Report.

Christenson seconded the motion which carried unanimously.

The adopted findings of facts are as follows:

2. Without the variance, is the owner deprived of a reasonable use of the property?

An addition of 288 square feet of living space to a cabin that is only 480 square feet in size is reasonable as the resulting structure is still much smaller than the average size home of today.

3. Is the stated practical difficulty due to circumstances unique to this property?

The structure was constructed before enactment of the shoreland regulations at a nonconforming ordinary high water mark setback. The scope of the proposed addition relative to the existing structure does not warrant looking at if the entire structure could be moved back further from the ordinary high water mark.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

The structure was constructed before enactment of the ordinance by a party other than the landowner.

5. Will the issuance of the variance maintain the essential character of the locality?

The area will remain single family seasonal and year-round residential structures. The proposed addition to the cabin will result in a structure that is still very reasonable in size and will not harm the locality's character.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite economics as a difficulty. The difficulty is related to the house predating the ordinance and being located just barely into the shore impact zone.

The motion to approve variance application 66-V-12 carried unanimously.

**Variance Application 67-V-12 by Mark and Gail Anderson:** Lots 10 and 11, Little Wolf Shores, Section 1, Township 145, Range 32, Farden Township on Little Wolf Lake. Parcel #s 07.42.01000 and 07.42.01100. Part 1: Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance (SMO) for a proposed storage building that will not comply with the 20 foot road right of way setback and the 10 foot property line setback. Part 2: Applicants are requesting a variance from Section 502.2 of the SMO for a proposed septic system drainfield that will not comply with the 150 foot ordinary high water mark setback. Part 3: Applicants are requesting a variance from Sections 501.2 and 506 of the SMO for a proposed house and guest cottage on a lot that does not meet any of the minimum lot size requirements for a guest cottage.

Dave Knutson and Gail Anderson were in attendance and presented the application.

Knutson gave a quick summary of the variance application. He stated that the items are listed in order of importance to the applicants so the main item that they are looking for is to be able to build the storage shed and get a regular septic system out there instead of a holding tank. They wouldn't even look at building the house for three to four years.

Johnson asked about the guest cabin. He wondered if it would continue to not have water and if so, would the privy still be used. He commented that if the guest cabin was not included in the original septic design, then it would need to be added before installing to make sure the size is adequate to accommodate both structures if the house is approved and built. He also shared some concern over the fact that the driveway goes over the alternate site and should be moved and redesigned.

Krueger asked Johnson if he felt there would be room in the back part of the lot for a drainfield.

Johnson stated that he had looked over the delineation in the map and there isn't room from the neighboring well. The storage shed would work in the proposed area, but he questioned if the shed should be allowed to encroach into the road right-of-way instead of having less than a ten foot setback from the back property line. Most of the cabins or storage sheds along that road appear to have been built closer to the road than what the applicants are requesting.

Grob commented that part of the discussion that took place during the lot viewal was regarding the option of purchasing some additional land from the back neighbor so that the storage building could meet all setbacks. He wondered what initiatives the applicants have taken to try and obtain that land and be able to build this storage shed as a conforming structure rather than have a variance.

Anderson stated that the owners that have the property behind their property have been asked at least three other times from other adjacent property owners to purchase land and they have not accepted or entertained any ideas of selling any amount of land. They personally spoke with the owners and went over every detail of what they were proposing and how it would encroach on the ten foot setback. They asked if they could purchase some land so that it wouldn't encroach into the ten foot setback and were turned down. The applicants did leave an entire plan of what they are proposing for the adjoining neighbor and he didn't oppose.

Krueger asked the applicants if they were aware of what the Ordinance requirements were to allow a guest cabin on the property.

The applicants were aware of them and stated that their lot fell short on all accounts.

Knutson said that when the property was purchased in 2006, the realtor had checked and told the applicants that the lot was a buildable site on its own which was the main reason why they proceeded to purchase these two lots thinking that they would be able to build a year-round home and eventually move back to Minnesota.

Krueger commented that the term buildable doesn't mean a home and a guest cabin.

Christenson asked if the applicants' intent was to keep the cabin and boathouse, and build a new year-round home.

Anderson stated that those buildings are the original buildings and they have put a lot of time and money into fixing up the existing cabin and boathouse.

Christenson stated that she would not be in favor of allowing a new home to be built and keeping the existing cabin as a guest cottage since the lot is so undersized. The applicants would have to be willing to give something up. The issue is that there would be two separate buildings. It doesn't have anything to do with the size of the house, but that it is a house and a guest house.

Krueger stated that he would be more in favor of a larger proposed home and abandoning the guest house instead of having two different structures.

Knutson and Anderson both stated that they have put a ton of money into remodeling and fixing up the current cabin and boat house.

Anderson commented that their number one goal is to get a storage unit built so that they can have a place to house all of their summer stuff and get it out of the small cabin where it is currently stored. That out of everything was the most important item being requested.

Grob stated that he felt that if a large storage shed was approved as well as a new home, the current cabin and boat house would need to go due to the lack of lot size. If that isn't an option, then steps two and three probably would have to be denied and then discuss the storage shed individually. Building a home and keeping both the cabin and boat house would not work.

Johnson stated that the home meets setbacks. It was just the septic system that needed a variance and if they were keeping the cabin as a residence, then the lot would need a variance for duplex sizing.

Buitenwerf stated that the proposed home does meet all setbacks. The issue is the density of the lot in terms of the number of dwelling units on the lot.

Anderson restated that the shed is the utmost importance to the applicants.

Grob asked if the applicants would want to go forward with the storage shed if once a home was built, the cabin and the boat house would have to be removed.

Knutson and Anderson stated they would like to proceed with the storage shed even if it meant removing structures in the future.

Anderson stated that they also planned on adding a storm shelter into the storage shed.

Grob stated that would be fine and was already included in the plans that the Board had.

Knutson added that it would be nice to also get a septic system on the property so in case they don't build a new home, but wanted to add a bath house or add running water to the existing cabin, that would be an option.

Grob asked what the setback is to the current cabin.

Knutson stated that he isn't sure of what the exact setback, but he thought it was twenty feet at the most.

Grob stated that because of how close the cabin is to the lake, a variance probably would not be allowed for any additions to the cabin. He again asked if the applicants would still want the storage shed if a home was approved and they had to remove the other two structures. He wanted clarification on that.

Both applicants again agreed that "yes" they need the storage building. It isn't what they want to do, but it is difficult to pack everything up at the end of the summer to head home to California and have stuff sitting out for the winter.

Grob asked if the road that runs through the property is a heavily traveled road.

Anderson stated that it is strictly residential use of the few home owners.

Grob asked if the storage shed would be used as a type of garage where it would be driven in and out of on a regular basis.

The applicants stated that it is for storage.

Grob asked Johnson if the proposed septic system was adequately sized for the proposed home as long as the current cabin wasn't added to it.

Johnson stated that it is sized adequately, but that the alternate site would have to be moved because the only building site is the place where the alternate site is and the driveway is running through it. He stated that he would like to leave it up to the discretion of the designer to move the alternate drainfield and allow him to come within 75 feet of the lake.

Christenson asked about the road and whether the homeowners had petitioned to the township and asking them to abandon that road since they aren't maintaining it and then it would alleviate the setback issue.

Grob stated that if that was done, then the property owner in the back, who won't sell any land, would be the alternate road site.

Christenson stated that the road would remain the same, but the township would just give up any claim over it. It would not be a public road, but a private road so going into the road right-of-way would no longer be an issue.

Buitenwerf stated that the court would be the proper entity to get that road abandoned and vacated because the road has never been taken over in terms of maintenance by the township.

No correspondence was received and no public comment was given.

Johnson stated that as a whole, he would have to deny the application.

Krueger stated that maybe it would be best to take each of the three parts individually.

Johnson moved to approved part one with conditions.

Grob moved to approve the variance with the following conditions: 1. there is an alternate drainfield site laid out at least 75 feet back from the lake. 2. when the house is built, the existing cabin and boat house are removed. 3. the sand point well down by the cabin must be removed.

Krueger asked if they agreed to remove the structures, what they would do if they decided to build a bigger home to accommodate the loss of the guest cabin.

Grob stated that they would have to come back before the Board.

Buitenwerf stated that things are getting readily confused because there is a motion by Johnson without a second plus a motion from Ken with no second.

Johnson withdrew his original motion.

Discussion ensued regarding what proper conditions could be placed on this variance and if there is a valid connection between what is being granted and said conditions.

Krueger stated that the applicants have a good feel for the way the Board is leaning and again asked what the applicants want.

Knutson stated that they need the storage shed and would want that request to be approved and septic system as well. If new plans need to be done up if and when a home is built, then that is what they will do.

Grob stated that he would like to re-present his motion based on the fact that the applicants are willing to remove the two buildings.

Christenson stated that she didn't feel comfortable with placing conditions on a variance that Eric doesn't feel would stand.

The motion failed for lack of second.

Krueger moved to approve part one of the variance request for the storage shed.

Christianson seconded the motion.

Part one findings of fact:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes. We are allowing a structure that will meet the structure setback from the ordinary high water mark.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes. Storage is needed for the owners' needs and items that they have.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. The road forces the uniqueness of the property.

4. Were circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes. The land was platted out in 1963 with the road running through it.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. There are others in the area that are building with similar structures and setbacks.

6. Does the stated practical difficulty involve more than economic considerations?

Yes. They have a lot of expensive equipment that is stored out in the open on the lot and they would like to put it in a secured building. More than economics.

The motion carried unanimously.

Johnson moved to approve part two for the drainfield as presented.

Krueger seconded it.

Part two findings of fact:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes. There never has been an onsite septic system so installing one would be an improvement.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes. A bathroom somewhere with a septic system is reasonable.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. The lot is small and lacks depth.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes. The lot was created predating the Ordinance.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. The sewer would not be seen since it will be underground and if they hook up the existing cabin, removing the blue outhouse would be an improvement.

6. Does the stated practical difficulty involve more than economic considerations?

Yes. The application doesn't cite economics as a practical difficulty. The difficulty is the lot size and depth.

The motion carried unanimously.

Grob moved to deny part three for duplex sizing.

Chrsitenson seconded it.

Part three findings of fact:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

No. The lot is not large enough to accommodate the proposed home and guest cabin.

2. Without the variance, is the owner deprived of a reasonable use of the property?

No. There is a current residential structure and other proposed and or existing structures to accommodate living arrangements.

3. Is the stated practical difficulty due to circumstances unique to this property?

The lot size is too small to accommodate a guest cabin but clearly the road is the practical difficulty that makes it difficult for them to be conforming.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

No. The landowners' desire to have a home and a guest cottage is what is causing the situation.

5. Will the issuance of the variance maintain the essential character of the locality?

No; but not sure if there are other quest cabins on surrounding lots.

6. Does the stated practical difficulty involve more than economic considerations?

Yes. The applicant doesn't cite economics as a major difficulty. It is related to the lot's size, layout and depth.

The motion carried unanimously.

**Variance Application 68-V-12 by Kaleidoscope Holdings Group:** Parts of Government Lot 5 and the SW ¼ of the NE ¼, Section 19, Township 143, Range 32, Lakeport Township on Kabekona Lake. Parcel # 19.19.01200. Applicants are requesting a variance from Section 4, Subdivision A.1.a.3.b of the Subdivision Ordinance and Sections 501.2, 1001, 1003, and 1006 of the Shoreland Management Ordinance to create a riparian lot that doesn't comply with the 150 foot lot width requirement at the ordinary high water mark setback.

Terry Freeman and Rick Schaefer were in attendance and presented the application.

Krueger stated that the property is one that angles into the ordinary high water mark with less than the required lot width.

Freeman stated that earlier in the fall he was hired to do a boundary survey and locate the boundaries of the property. The applicants decided after purchasing the property that they would like to build a guest cabin and the lot didn't meet the requirements so they decided to subdivide out a portion to accomplish what they want and still be in harmony with the ordinance. The subdivision was kicked back and the applicants were told that a variance would be required to subdivide because at the ordinary high water level, the lot doesn't meet the 150 foot width, but the width does meet the requirements at the building setback.

Grob wanted to clarify what was viewed at the lot viewal and that all of the cabins on the current lot except the home had been removed.

Freeman stated that the lot used to be a resort and the three cabins, two trailers and lodge have been removed.

No public comment was received.

Grob moved to approve the variance application as presented and adopt the findings of fact as presented in the December BOA meeting Staff Report.

Christenson seconded it.

The adopted findings of fact are as follows:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes. The proposed nonriparian lot will be five times the size of the minimum lot size requirements and the proposed riparian lot will greatly exceed all minimum lot size requirements except for the 150 foot lot width at the shoreline. However, the lot width continually increases as the side lot lines move away from the ordinary high water mark so there is ample width at the 100 foot ordinary high water mark setback to site a residential structure, well, and typical accessory structures – which is the intent of the ordinance – to ensure the lot is large enough to be used as a residential building site.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes. The proposed subdivision is reasonable as both lots fully comply with or greatly exceed the minimum lot size requirements of the ordinance except for the riparian lot width at the ordinary high water mark. The lot width is something that is beyond the landowner's control.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. The lot is uniquely pie shaped with the point of the pie being located along the ordinary high water mark. As the side lot lines move away from the lake, the lot width continues to grow. The lot width at the ordinary high water is only 21.5 feet shy of the 150 foot minimum width requirement.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes. The lot was in existence in its current size and shape long before the landowner acquired the property.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. The area will remain single family seasonal and year-round residential structures as no increased dwelling unit density is being proposed for either of these two tracts and the proposed structures will comply with all setback requirements. The dwelling unit density on this overall property will comply with all setback requirements. The dwelling unit density on this overall property will actually be reduced from four units to two units- thereby contributing to maintenance of the locality's character.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite economics as a difficulty. The difficulty is related to the amount of frontage on the lake that predated the landowner's ownership of the lot and was not created by the landowner.

The motion carried unanimously.

**Variance Application 69-V-12 by Richard Bond:** Lots 1 and 2, Pine Haven Beach, Section 17, Township 139, Range 34, Hubbard Township on Long Lake. Parcel # 14.38.00100. Applicant is requesting a variance from Sections 502.2 and 706 of the Shoreland Management Ordinance for a proposed deck that will exceed the allowed deck encroachment toward the ordinary high water mark and encroach closer than 30 feet from the ordinary high water mark.

Stephen Holt, authorized agent for the Bonds, was in attendance and presented the application. Bonds don't actually have a deck right now. They have some stairs that are existing and accommodate entrances and exit for three different doors that are close together. They would like to rebuild the existing stair system with new materials since it is old and the cedar is starting to rot, but in addition, they would like to add an 82 square foot platform area to the existing landing so that they can actually use a small table and chairs. The platform would be moving back a foot off of the lake as well. The applicants also designed a planting area along the lakeshore to help offset the runoff and closeness of the platform.

Grob was pleased to see a design for plantings along the shoreline since his biggest concern was runoff to the lake. He felt that a 60 -70 foot planting at least five feet wide would be best. It would be very friendly to offset the deck.

No public comment was received.

Grob moved to approve the request with the condition that the proposed planting area be increased to 60 feet wide by five feet deep.

Johnson seconded it.

The adopted findings of facts are as follows:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes. The structure predates the ordinance and the house remodel that resulted in these three exterior doors that are in need of safe ingress/egress access was permitted by the County in 1993. The house design and location of these doorways require some form of deck/platform to provide safe access. The proposed enlargement to the deck/platform is only 18% of its current size and does not encroach closer to the lake than the existing deck/platform. The additional platform area is at the focal point of the platform/grass (ground) interface which is a high traffic area that makes sense to protect from erosion by covering it with a platform instead of creating exposed soil prone to erosion from the foot traffic. Also the addition of a 60 foot by 5 foot buffer zone brings the variance with the comprehensive plan and State Shoreland Management Rules. The addition of a 60' by 5' buffer zone brings the variance in harmony with the comprehensive plan and Shoreland Management Rules.

2. Without the variance, is the owner deprived a reasonable use of the property?

Yes. The proposed deck/platform is modestly sized and provides needed safe ingress/egress to these three tightly clustered exterior doors. It also protects this high traffic area from erosion by providing a high wear surface where grass would quickly degrade and lead to exposed soil prone to erosion. Many residences have lakeside deck/platforms – further evidencing that such a use is reasonable for a riparian property.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. The structure was constructed before the enactment of the shoreland regulations at a nonconforming ordinary high water setback. The interpretation/application of the ordinance by staff in the 90s is unknown in this unique situation as there is no documentation in the file. Only Mr. Holt's testimony is available. The deck/platform may have very well been allowed by past administration. Therefore, some deference should be given to the landowner in this situation.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

The difficulty is two-fold: 1. the residence predates the ordinance and is located at a nonconforming setback, and 2. there is a lack of documentation in the file to accurately determine how the existing deck/platform was handled nearly twenty years ago – i.e was it legally constructed? Neither item was created by the landowner.

5. Will the issuance of the variance maintain the essential character of the locality?

The area will remain single family seasonal and year-round residential structures. The proposed deck/platform is an accessory structure typically associated with and found along with residential structures on this lake and other lakes in the county that will not harm the locality's character in any way.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite economics as a difficulty. The difficulty is related to the house predating the ordinance and being located at a nonconforming setback, the uniqueness of the grouping of the exterior doors, the need to provide safe access to them, how the manner of doing so was administered/interpreted by staff in the past, and the lack of documentation of that interpretation.

The motion carried unanimously.

Grob moved to adjourn.

Johnson seconded.

Meeting adjourned at 10:25 a.m.

Respectfully submitted by:

Maria Shepherd  
Recording Secretary