Hubbard County Environmental Services

301 Court Avenue, Park Rapids, MN 56470
Phone: 218.732.3890 Fax: 218.732.7993
www.co.hubbard.mn.us/environmental.htm

Staff:

Eric Buitenwerf,
Env. Services Officer
Scott Navratil,
Env. Specialist
Steve Pachel,
GIS Technician
Maria Shepherd,
Admin. Assistant
Jeff Woodford,
Env. Specialist

Public Hearing and Public Meeting Cancellation Notice

The Hubbard County Board of Adjustment Public Hearing and Meeting scheduled for Wednesday, January 23, 2013 at 9 a.m. in the Lower Level Meeting room of the Hubbard County Courthouse has been cancelled for lack of an agenda.

Please check back after January 22, 2013 for the February agenda.

Hubbard County is an Equal Opportunity Employer.

Hubbard County
Board of Adjustment Meeting Minutes
February 20, 2013

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 December 17, 2012 Minutes:

Grob moved to approve the minutes as submitted. Christianson seconded the motion that carried unanimously.

Old Business:

There was no old business to discuss.

New Business:

Variance Application 1-V-13 by Kenneth and Susan Jost: Lot 27, Crow Wing Heights, Section 9, Township 139, Crow Wing lake Township on Third Crow Wing Lake. Parcel # 06.41.02600. Applicants are requesting a variance from Section 704 of the Shoreland Management Ordinance to amend the roof design for the cabin addition approved in Variance 66-V-12.

Both applicants were in attendance and presented their application.

Krueger explained that the Board has been out to the site on two different occasions. The applicants were before the Board in December of 2012 and were granted a variance. The applicants now are requesting an amendment to that approved variance.

Mr. Jost stated that the plan was to do an addition to the cabin and just have the new roof align with the existing roof. After some consideration of the project, now they would like to remove the entire roof and replace it with a new roof over the entire structure that would run north and south. The roof design is the only thing that has changed since their last request.

Grob stated that discussion was had at the last meeting regarding this roof design and the Board was in favor of it then. He felt the condition that was placed on the last variance still should be placed on this new one-that the use of gutters and downspouts be used to run the water away from the lake.

Jost questioned if it was necessary to have down spouts and gutters since the layout of the land is to run away from the lake.

Grob stated that gutters would ensure that the water goes to the back of the lot.

No public comment was given.

Christenson asked if the applicants could describe what their shoreline looks like from the house to the lake since it was winter and the Board was unable to visually see it.

Jost explained there is grass down to the water and the shoreline is rip-rapped.

Grob moved to approve variance application 1-V-13 with the following condition: the roof design encompass gutters and down spouts away from the lake and that the water be directed away from the lake, and accept the findings of facts as presented in the February 2013 BOA Staff Report.

Christianson seconded the motion.

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?

The roof height will only increase 2' from the 12' roof height approved in variance 66-V-12. The only change from the previous variance is that the roof ridge will now be running perpendicular to the lake instead of parallel. A 14' roof height for a structure at a 48' ordinary high water mark setback is very much in keeping with appropriate scale relative to the 35' structure height allowed at the 100' ordinary high water setback setback.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Creating a uniform 6/12 pitch over the existing cabin and addition is reasonable given the need to properly shed snow during the winter and thereby protect the structure's integrity. The proposed roof design will be a single ridge vs. the previous roof layout that involved two ridges and two valleys that would collect snow.

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 addition was approved by variance 66-V-12 and those findings of fact are incorporated by reference.

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 roofline orientation change and slight 2' height increase 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 carried unanimously.

Variance Application 2-V-13 by Thomas Corder: Part of Government Lot 2, Section 10, Township 140, Range 35, Todd Township on Fish Hook Lake. Parcel # 27.10.01100. Applicant is requesting a variance from Section 704 of the Shoreland management Ordinance to amend the deck construction design approved in Variance 55-V-08.

Larry may, authorized agent for the applicant, was in attendance and presented the application.

Krueger stated that there were two changes to the original approved design. The side deck would be extended two feet increasing the size from eight feet to ten on the east end and increasing the stair width from four feet to five feet.

Grob stated that it is a simple and reasonable request.

No public comment was given.

Christenson moved to approve the variance request and adopt the findings of fact as presented in the February 2013 BOA Staff Report.

Johnson seconded the motion.

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?

Neither proposed addition to the deck plan approved in variance 55-V-08 will encroach waterward or cause any harmful increase in impervious surface on the property. The deck is going to be at an 82' 7" ordinary high water mark setback per the application's site plan sketch.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Widening the access stairs to allow furniture and other large items to be brought into the house through the lakeside sliding glass door that is accessed from the deck is reasonable and widening the east side of the deck an additional 2' to 10' is reasonable as a typical table and chairs used to enjoy a deck space is a tight squeeze in an 8' wide space.

3. Is the stated practical difficulty due to circumstances unique to this property?

The structure predates the ordinance, does not meet the 100' ordinary high water mark setback, and it was modified by variance in 2008. Section 704.7 of the Shoreland Management Ordinance requires that any alteration to a structure previously constructed or modified by variance requires a new variance for the subsequent alteration which is a circumstance unique to the property and beyond the landowner's control.

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

As stated in the answer to question # 3 above, the difficulty is caused by the fact that the structure was constructed prior to enactment of the Ordinance and it doesn't meet the required 100' ordinary high water mark setback. It was also altered by variance in 2008 so Section 704.7 of the Ordinance requires that this proposed alteration to the deck be handled through the variance process. All these factors are outside of the landowner's control.

5. Will the issuance of the variance maintain the essential character of the locality?

The proposed project involves modifications to a lakeside deck that is a typical, allowable accessory component to all residential structures – including those located in the shoreland area and specifically on riparian lots. The surrounding properties are also being used residentially with the lots on either side of this lot having structures located closer to the water than this structure. Thus, the proposed deck enlargement will not negatively affect the lakeside views of either of these two lots. The neighborhood will remain single family seasonal and year-round residences after the deck enlargement project is completed.

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 structure predating the ordinance, not meeting the 100' ordinary high water mark setback, and having been previously altered by variance such that Section 704.7 of the Ordinance requires that all subsequent alterations be handled through the variance process.

The motion passed unanimously.

Variance Application 3-V-13 by Gary and Sue Schiess: Part of Government Lot 2, Section 29, Township 143, Range 32, Lakeport Township on Kabekona Lake. Parcel # 19.29.00900. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed new residential structure to be located at less than the required 100 foot ordinary high water mark setback.

Gary and Sue Schiess as well as Robert Lamoind, the applicants' architect, were in attendance and presented the application.

Gary stated he felt that the proposed plan in front of the Board is a win-win for everybody. He stated that this plan would better the land and lake. The property used to be a commercial property and it is their intent to take it out of a commercial use and make it private, residential use. Eventually this will be their year-round home. The current home is a six bedroom home and the new proposed home would be a three bedroom home which cuts down on the use as well as the wear and tear on the septic system. They would like to have a walkout basement and if they move it to the 100 foot setback, they will have to remove so much material to have a walkout that it would be detrimental to the lake. A walkout basement has less impact on the neighbors. It also helps to keep the height of the house down. If made to build at the 100 foot ordinary high water mark setback, a walkout basement would not work because of the topography of the land.

Sue stated that they currently live on a very small lake in Hennepin County. She is a master gardener and is very aware of the lakeshore considerations. At their current home, there is a twenty five foot native buffer zone. The current plantings on this property are not helping with runoff. Her master plan is to have numerous rain barrels and rain gardens as well as native,

deep rooted plants that will protect the shoreline from runoff. Her main concern is conserving and possibly improving the conditions of the lake.

Krueger stated that the property has already been split into individual lots. He questioned what the applicants' intent was for the cabin that is currently on the property.

The applicants stated that at first they were told they would have to tear it down. Hearing this news, they almost decided to sell the property. After doing more research on the variance that was granted when the previous owners split the property, they discovered that it wasn't a condition of the variance. Their desire would be to keep it and use it as a guest cottage.

Grob stated that it would need to be stated in the variance application that the existing cabin would remain as a guest cabin since the lot does not meet duplex sizing.

Sue questioned if it needed to be addressed since the cabin was allowed under a previous variance when the original owners split the property.

Grob stated that if either structure is altered, then it needs to be under the consideration of the new variance request. The cabin just can't be grandfathered in. We take a look at the lot and all of the nonconformities at the time of the variance request.

Buitenwerf stated that it would just need to be stated and documented for the record that intent in the application has changed from what you had originally submitted concerning the guest cottage to reflect that your request now is to retain the guest cottage.

Applicants stated that their intent is to keep the original cabin as a guest cabin.

Grob stated that it is hard with all of the snow on the ground to see what the front of the current structure looks like, but it is steep and it would appear that any runoff would be going straight to the water or onto the hillside.

Gary stated that any runoff runs off to the side of the house.

Lamoind stated that it is a gable situation with the gable side facing the lake which has gutters.

Grob stated that with the topography being what it is and to only build back thirteen feet would not deter runoff away from the lake. He didn't think that the thirteen feet movement of the new structure is conducive of altering runoff away from the lake. The main point is to keep the runoff and waterway from the lake. There is plenty of room to move the cabin back and build at the 100 foot setback. If at all possible the Board should try and not perpetuate a nonconforming condition. Your view and everything else would still be fine if the home was built at the 100 foot setback.

Sue stated that they want to avoid building a two story above ground home by utilizing a walkout basement. It just seems terribly disruptive to excavate such large amounts of material. There are planted terraces that go down from the current cabin that don't do anything right now in regard to managing the runoff. Their plan would be to plant native grasses and deep rooted prairie plants would make a huge difference to runoff.

Lamoind stated that the rain gardens and rain barrels that will be used will do some good because there will be thirteen more feet for runoff water to go through and filter through before running into the lake.

Grob stated that he felt they could do more by moving the cabin back to the 100 foot than leaving it where it is. It would be easier to have a little rain garden and control the runoff. They could do more.

Gary stated that as it is they have two options by permit. They can either go back to the 100 foot setback and build whatever they would like or they can rebuild the cabin where it sits as well as adding 50% to the existing footprint. He felt that if they were to build where it sits, everybody loses. They do not end up with a structure that they are happy with and the County doesn't gain anything either since the current structure is quite close to the lake. The other issue is the frozen septic that will be replaced with new tanks that will be installed at a deeper level to avoid issues in the future. They truly feel they are improving the property by what they are proposing. They freely admit that they will not build back at the 100 foot setback. It just isn't going to work for them. If they were to build back at the 100 foot setback, they would go up instead of into the ground; by going up we are certainly not improving the aesthetics of the lot.

Krueger asked if the applicants build back at the 100 feet, what would happen to the existing home and basement.

Buitenwerf stated that if the landowner is willing to voluntarily to do so, it is preferred that the location of the basement be filled in to match the surrounding topography as much as possible. That is not required though. The landowners could retain that as a platform area.

Christenson stated that she appreciated what they are saying about why they want to keep the house where it is at, but from the County's standpoint, there are two things that stick out: there is ample property to meet the 100 foot setback and it is your right to do the existing plus 50%.

Gary stated that it would be a shame, but that is what will happen if this request is turned down. They will just build where the existing cabin is and add on 50%.

Johnson stated that he agreed with Gary on this. He asked Buitenwerf what requirements this request was not meeting.

Buitenwerf stated that as proposed, it wouldn't meet the requirements of Section 704 because the addition would encroach on three different lot lines when the Ordinance states that for the 50% addition it can only encroach on two lot lines.

Johnson stated that the reason he is for this request is that he is moving back and without it, he will lose out. For safety reasons, there is a need to build where he is proposing to be able to see the lakeshore and what is going on down there.

Gary stated he understands the three directions rule, but commented that if this is denied, then he will build on the existing footprint and then back so that he is only encroaching on two sides making it worse again. He will abide by the ruling, but they are not going to build at the 100 foot setback. Rules are made to protect things, but this plan protects a lot.

No public comment was given.

Grob stated that by adding the cabin back into the variance, he didn't see any gain in this new design and where it is placed. He might think otherwise if not for the additional cabin, but putting that back deletes any benefit for lake protection.

Sue Schiess asked what the negative effect was with keeping the existing cabin where it was when it is up on a high, flat area.

Grob stated that they try their best to bring things into conformance with anything that is approved by the Board. This is a nonconforming lot. This is a nonconforming situation. There isn't a lot that by Ordinance would allow for a guest cabin. If the applicants were to say we will build back at the 100 foot setback and want to keep the cabin that would be more acceptable than what is being proposed right now.

Krueger stated that the Board now has to weigh the pros and cons and figure out the best option environmentally. Is it good for the lake to build a brand new cabin on the exiting footprint and add 50%? If the applicant's do move back 100 feet there would be a big gouge which can be left alone or turned into a patio so there is still going to be a runoff issue or the potential for one. Those are all things we need to consider.

Johnson asked if the applicant's would be willing to go back to what they originally had requested with removing the guest cabin.

Gary stated that he is trying his best to protect the property. There are a lot of options with this property that he didn't even want to think about. It is very emotional for him to be told that by moving it back to the 100 foot mark and removing a historical cabin would be best for the lake when that is just not the case.

Christenson stated that she sympathized with the applicants and truly believes the applicants have the lakes' best interest at heart. The property was valued like it was because of the lake. She didn't have any problem with them keeping the cabin. Go for it. She liked their plan but there is ample room to move the house back. The 100 foot setback is in place to protect the lake and when there is room to build back at a conforming setback it is very difficult allow for a lessor setback.

Gary Schiess stated that can see the struggle and respects what the Board is thinking. I don't kow what my plan will be if this plan is not approved. He will more than likely build right smack on top of what is existing right now. The 100 feet just doesn't answer the problem.

Grob stated that he doesn't understand why the applicant's impediments are that building at the 100 feet is less desirable than building on the existing foundation and adding 50%.

Gary Schiess commented that if they go back to the 100 foot he can't see the shoreline or any activity that is going on at the water.

Grob stated that isn't unique to this property. A lot of people can't see the shoreline.

Gary Schiess stated that is an argument that no one can win because Grob sees it one way and he sees it another. Just like he feels that the house can be moved back to the 200 foot setback and the applicant does not. The applicant then restated and talked about what all of his options were.

Lamoind wanted to add a comment regarding the site itself. He stated that he felt that the biggest reason to build the home where it is being presented is the walk out basement. Right now they can only go two feet above what the original roof line is verses is they move back to the 100 foot then they can build up to 35 feet high.

Krueger stated that he didn't know if seeing the grandkids swimming on the beach can be defined as a hardship. Again the Board needs to weigh the pros and cons for each scenario and figure out what is the best thing for the aesthetics, lake and lot.

Grob stated that the Board is at a disadvantage because of the winter weather conditions. They were not able to view what the 100 foot setback view is as well as what topography exists and how much dirt will have to be removed. There are different perceptions which can't be solved because they couldn't visually see any of those things when on site. He wanted to know what the applicants wanted the Board to vote on. Did they want a simple yes or no as it is or did they want to look at retracting their desire to keep the existing cabin as a guest cottage leaving one residential structure on the lot built at less than the 100 foot setback?

Gary Schiess stated that he felt he wanted a simple yes or no vote with the amended request to allow the cabin to remain as a guest cabin.

Christenson stated that she was confused with why the cabin was such an issue for Ken.

Grob stated simply that it was a conformance issue. It is a nonconforming cabin.

Johnson stated he keeps coming back to what Krueger stated earlier and that is that there would be a gouge in the land if that cabin was removed which can be left which would cause more runoff issues.

Krueger agreed that was one area that he was struggling with too.

Buitenwerf stated again that the slab where the basement is currently located could be left and used as a patio and the walls could also be left as well. They can't force them to do anything.

Johnson moved to approve the amended variance application.

Christianson seconded the motion.

The findings of fact were answered as follows:

1. Is the stated practical difficulty in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland management Rules?

<u>Yes. The structure will be moved thirteen feet further back than the original home making it more in compliance with the Ordinance and State Shoreland Management Rules.</u>

Finding of fact question 1 was approved on a 3 to 2 vote with Grob and Christenson voting nay.

2. Without the variance, is the owner deprived of a reasonable use of the property?

<u>Yes. The proposed building is reasonably sized.</u>

Findings of fact question 2 was approved on a 3 to 2 vote with Christenson and Grob voting nay.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. The existing structure was built before the Shoreland Ordinance as well as the topography and where things were built on the property.

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

Yes. The home was built in 1937 by a different owner.

Findings of fact question 4 was approved on a 3 to 2 vote with Christenson and Grob voting nay.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. The lot will be a single family residence.

6. Does the practical difficulty involve more than economic considerations?

Yes. The application doesn't cite economics as a difficulty.

The motion carried on a 3 to 2 vote with Christenson and Grob voting nay.

Variance Application 4-V-13 by Richard and Janice Olson: Part of Government Lot 5, Section 20, Township 140, Range 33, Nevis Township on Lake Belletaine. Parcel # 21.20.03000. Applicants are requesting an after-the-fact variance from Section 704 of the Shoreland Management Ordinance for modifications to a residential structure originally constructed by variance.

Richard and Janice Olson were in attendance and presented their application.

Richard Olson summarized the request as well as what transpired between 2007, when they purchased the property until present. They are seeking permission to keep the front and side porches as well as the deck that was replaced.

Grob stated that he doesn't object to what they did. It looks nice and was necessary. He tried to explain to the applicants the reason that the permits were needed even though it was simply replacing what was existing. He stated that once a structure is built per variance, any additions or alterations would require a subsequent variance. He asked the applicant, so he could answer the findings of fact questions, why they didn't come in and either apply for a variance or permit when the decision was made to replace the decks and entryways.

Olson stated that he is still struggling with the definitions. He read the Ordinance and couldn't find a definition to what an addition is or alterations were. He read in the Ordinance that a permit was not needed to alter or replace existing structures for maintenance. Based on reading that, he didn't think he needed a permit to replace rotting decks and entryways. He didn't know if he would have read the Ordinance any differently than he did the first time and

would still have thought that a permit was not needed. He apologized for not seeking out the office's help and receiving the appropriate permits.

Grob was asking for clarification on whether he consciously chose not to get a permit because he had read the Ordinance or why would the applicants had not checked with Environmental Services before commencing work to make sure they understood the Ordinance correctly. He is trying to understand why the Board keeps running into after-the-fact variances and permits.

Olson stated that this was his first experience in owning lakeshore. This was the first shoreland ordinance that he has read in all of the title work that he has done in his profession as an attorney. He couldn't see that removing an existing porch and replacing it with another porch would require a variance. It doesn't fit with his reason which he joked that maybe he doesn't reason well. If any exterior alterations would have been done, such as adding additional bedrooms, he would have been to the County for a building permit, but because the patios were existing and rotting, he replaced them without thinking about it and not knowing it required a permit or variance.

No public comment was given.

Johnson stated that he didn't have any problem with the request.

Christenson moved to approve the after-the-fact variance request as well as adopt the findings of facts as presented in the February 2013 BOA Staff Report.

Christianson seconded the motion.

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?

<u>In 1975, the Board of Adjustment determined that an 82' ordinary high water mark setback was the maximum setback attainable by a residential structure on this lot. The deck and covered porch additions involved in this variance are replacing two decks that were used as entrances to the residence and original to the house. The two additions blend in nicely with the home so that they do not create aesthetic issues for neighboring property owners or persons recreating on the lake. The additions are reasonable in scale relative to the house and comply with all other setback requirements. Section 704.7 of the Shoreland Management Ordinance requires such alterations to a structure previously built/modified by variance to go through the variance process to ensure the proposed alterations are reasonable, suited to the site, and in keeping with the ordinance's intent – which is the case with these additions.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property?

<u>A covered entry to a home is a reasonable use as it facilitates safe ingress/egress to the home by keeping the entry door out of the elements. The deck also serves as an entry into the home given its main floor entrance doors are a few feet above ground level and it too is reasonable. It would be unreasonable to not allow some form of safe ingress/egress into these two exterior doors.</u>

3. Is the stated practical difficulty due to circumstances unique to this property?

The structure was originally constructed by variance in 1975 and Section 704.7 of the Shoreland Management Ordinance requires a variance for any alteration made to a structure that has previously been built/modified by variance – which is a circumstance unique to this property and beyond the landowner's control.

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 is the fact that the house was originally constructed by variance in 1975 and Section 704.7 of the ordinance only allows the structure to be altered by having any alterations approved through further variance proceedings.

5. Will the issuance of the variance maintain the essential character of the locality?

The locality will remain single family seasonal and year-round residences (as is this house) and the addition of a covered porch and deck to this residential structure will not alter the locality's character in any negative way as they are typical accessory components of such structures.

6. Does the stated practical difficulty involve more than economic considerations?

Economic considerations were not cited by the applicant as the sole difficulty. The difficulty is the fact the structure was originally allowed to be constructed by variance and the ordinance requires that any subsequent alteration to the structure can only be made if authorized by further variance proceedings.

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?

A letter from the applicants to Scott Navratil dated June 24, 2010 (received by Environmental Services on December 7, 2012) that is on file with Environmental Services states that they did not believe they were violating any ordinance because they did not add any square footage to the house.

8. Did the applicant attempt to comply with the law by obtaining the proper permits?

No permits were required because the home was built per variance. The applicant honestly looked through the Ordinance and based on what he read didn't think a permit or anything was required because he was replacing not adding on.

9. Did the applicant obtain a permit from another entity that violated the law? Provide explanation below.

Not that we are aware of.

10. Did the applicant make a substantial investment in the property? Provide details below.

No. The covered porch and deck, while nicely done, do not constitute a “substantial investment” in our mind. (Staff recommends asking the applicants for the cost of the deck and porch so that figure can be cited in this answer to show that it was not substantial.)

11. Did the applicant complete the repairs/construction before the applicant was informed of the impropriety? Please provide details below.

Yes. The construction was completed at the time Environmental Services staff visited the property to inspect the work on January 9, 2012. Photos dated 01/09/2012 of the completed deck and porch are on file with Environmental Services.

12. Are there other similar structures in the neighborhood? Please provide details below.

It is typical for Lake Belletaine.

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. In 1975, the Board of Adjustment authorized the construction of the house at an 82’ OHW setback. The porch and deck are located further away from the OHW than the 82’ nearest point and they comply with all other setback requirements. The two additions also provide safe ingress/egress into two previously existing exterior doors on the house. The removal of these two additions would result in a detriment to the applicants that would far outweigh any benefit the County may gain if the additions were required to be removed.

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

No. The two additions are small in scale and comply with the 1975 82’ OHW setback variance granted for the structure. It is only because of Section 704.7 of the Shoreland Management Ordinance that these additions require a variance instead of being able to be constructed by permit. The additions comply with all other setback and structure height requirements and provide safe ingress/egress to the structure’s previously existing two exterior doors. The additions also replace two previously existing decks located in these two locations that were original to the home. Justice is best served by allowing the two additions to stay by receiving an after-the-fact variance and accompanying after-the-fact building permits.

The motion carried on a unanimous vote.

Miscellaneous:

There was no further business to discuss.

Christianson moved to adjourn. Johnson seconded the motion that carried unanimously.

The meeting was adjourned 10:23 a.m.

Respectfully submitted by:

Maria Shepherd
Recording Secretary.

Hubbard County
Board of Adjustment Meeting Minutes
March 18, 2013

Chairperson Krueger opened the meeting with the following members present: Tim Johnson, Charlene Christenson, Tom Krueger, Arnie Christianson, and Ken Grob. Also present was Environmental Services Officer Eric Buitenwerf.

Krueger welcomed everyone to the Board of Adjustment meeting and read the meeting protocol for all in attendance.

Approval of the February 20, 2013 Minutes:

Christenson moved to approve with no changes. Christianson seconded the motion that carried unanimously.

Old Business:

There was no old business to discuss.

New Business:

Variance Application 5-V-13 by Eagle Bay Lodge Cooperative Association: Part of Government Lots 5 and 6, Section 15, Township 141, Range 35, Arago Township on Eagle Lake. Parcel # 02.15.00310. Applicants are requesting a variance from Section 704 of the Shoreland Management Ordinance for a proposed addition to a nonconforming structure located in the shore impact zone.

No agent of applicant was present the variance application.

Christenson commented that because of how the existing overhang is situated, any and all runoff will go directly to the lake. She would like to see a shoreline, vegetated buffer zone to help direct and diffuse the runoff.

Grob stated that it is difficult, due to it being wintertime, to tell what the actual shoreline looked like. He wasn't sure, because of the sandy conditions, if the runoff would simply puddle there and soak in or truly would run down to the lake.

Christenson stated that the applicants stated that it was all flat.

Christianson stated that it was all sand out there according to what he was told by the applicants at the lot viewal of the property.

Krueger asked if the applicant's stated any hardship if they were asked to remove the overhang.

Grob commented that the applicant's stated that it could be removed but that wasn't desirable. The applicants want to retain the overhand with the idea of putting a table there for picnics and seating.

Johnson stated that building the addition where they are proposing is a more user friendly location. He felt that the new overhang was needed for the doorway and he didn't have a strong opinion one way or the other about retaining the existing overhang.

No public comment was made and no additional correspondence was received.

Christenson moved to approve the variance application with condition that a vegetative buffer zone be planted.

Grob stated that it is hard to specify specific dimensions on a no mow or buffer zone since they were unable to see what is out there. He agreed with the idea of a buffer zone but without being able to see it, it is very difficult to know what is needed. They have 2100 feet of shoreline and a lot of other things going on that a little buffer wouldn't make much difference in the long haul.

The motion died for lack of a second.

Grob moved to approve the variance as presented and adopt the findings of fact numbers 2-6 as presented in the March 2013 BOA Staff Report.

Johnson seconded the motion.

The Board adopted and 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?

<u>The addition is only 8' x 8' and 10' 6" high relative to the lodge which is easily 2000 square feet and another ~ 6' taller. The additions is also located outside the shore impact zone and the aesthetic and runoff impacts it created are minimal.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property?

<u>A covered 8' x 8' entryway into the lodge is a reasonable use especially in northern Minnesota with its long winters and significant snowfall.</u>

3. Is the stated practical difficulty due to circumstances unique to this property?

<u>The structure was constructed before enactment of the shoreland regulations at a nonconforming ordinary high water mark setback. The Ordinance requires a variance for any addition to a structure located in the shore impact zone (SIZ) – even if the addition itself will be located outside of the SIZ.</u>

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

<u>The structure was constructed before enactment of the Ordinance by a party other than the landowner.</u>

5. Will the issuance of the variance maintain the essential character of the locality?

<u>The area's character is unique in that this property has roughly 2100 ft of shoreline and ~21 acres of land and it is surrounded by a golf course that is over 50 acres in size. The nearest residential structure to the lodge is over 400' away. Thus, this small 8' x 8' addition to the side of the lodge that predates the Ordinance will not harm the locality's essential character.</u>

6. Does the stated practical difficulty involve more than economic considerations?

<u>The application does not cite economics as a difficulty. The difficulty is related to the lodge predating the ordinance and being located in the shore impact zone such that the ordinance requires a variance for any addition to the lodge.</u>

The motion carried unanimously.

Variance Application 6-V-13 by James & Paula Driessen and Greg & Mary Marotte: Island View Lots 7 and 8, Block 1, Section 3, Township 139, Range 33, Crow Wing Lake Township on Island Lake. Parcel #s: 06.51.00610, 06.51.00611, and 06.51.00620. Part 1: Applicants are requesting a variance from Sections 501.2, 1001, 1003, and 1006 of the Shoreland Management Ordinance (SMO) and Section 4, subdivision A.1.a.1.b of the Subdivision Ordinance to adjust a property line between two nonconforming riparian lots. The proposed lots do not meet the minimum residential lot suitable area requirement and one proposed lot does not meet the required 150 foot minimum lot width requirement at the 100 foot ordinary high water mark structure setback. Part 2: Applicants are requesting a variance from Section 502.2 of the SMO for less than the required 10 foot property line setback from an existing deck to a proposed property line.

Mary Marotte was in attendance and presented the variance application. She gave the Board a summary of the history of the property as well as the reason for the variance request.

Grob asked if all of the legal paperwork that establishes property lines and future use of the driveway has all been signed and agreed to by all parties.

Mrs. Marotte stated that a copy of the agreed upon settlement was included in the application that was distributed to the Board.

No public comment was made and no written correspondence was received.

Christenson stated that this is an unusual situation and all parties have come to an agreement that is satisfactory to everyone involved.

Krueger stated that was one of the main points for him was that it was a settlement and agreement that all parties had agreed to.

Christenson moved to approve that variance application and adopt the findings of fact as presented in the March 2013 BOA Staff Report.

Christianson seconded it.

Grob moved to adopt the findings of fact as presented in the March 2013 BOA Staff Report.

Christenson seconded the motion.
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?

<u>The applicants have done a good job in minimizing the amount of land that must be conveyed in order for the Marottes to own the land beneath their cabin and well. This is a very unique situation with no practical alternative solutions available to consider. There will be no impact to the lakes as nothing is changing except the location of a property line. Both lots are already developed with residential structures on them so there will be no potential for further impact to the lakes as a result of this variance.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property?

Asking to own the land on which one's house sits is a reasonable use of property. The cabin and attached deck cannot be reasonably moved due to the cabin's log construction, topography of the site, and large pine trees clustered around the cabin.

3. Is the stated practical difficulty due to circumstances unique to this property?

The structure predates the ordinance and the plat in which it is located. There is a bluff on the lots that makes getting house moving equipment to the location pretty much impossible. The cabin is log construction which further complicates the possibility of its movement.

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 and creation of the plat by a party other than the landowner. The Marottes thought the line between Lots 7 and 8 was located to the west of the Marotte cabin when they sold Lot 7 to the Driessens. Only later did survey work show that the line ran on the east side of the cabin.

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 only thing being adjusted if this variance is approved is a property line.

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 on a bluff covered with large trees such that it is nearly impossible to get house moving equipment onsite and be able to move the structure onto Lot 8.

The motions carried unanimously.

Variance Application 7-V-13 by Stephen and Mae Tinguely: Lot 19, Crystal Beach First Addition, 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 addition to a residential structure originally constructed per variance that does not comply with the 100 foot ordinary high water mark setback.

Both applicants were in attendance and presented the application.

Mr. Tinguely gave a brief summary of the new variance request. The applicants appeared before the Board in August 2012 where part of their variance request was granted and part of it was denied. Today they are requesting a modified request to what they were asking for before and what was approved. They reduced the square footage of the proposed addition and reduced the square footage of the proposed screened in porch.

Krueger asked if the request was to have the screened porch across the entire front of the home like the last plan.

Mr. Tinguely clarified that this design is across half of the addition.

Grob stated that he was unaware of the layout of the applicant's land and asked them to explain why the addition couldn't be moved back to get it further away from the lake.

Mr. Tinguely stated that the only way to access the addition from the top level is through the kitchen, which is lakeside. There would be no practical way to access this new addition even if were moved back as far as the drainfield.

Grob stated that after looking at the floor plan, if the addition was moved back, the applicants would have to go through a bedroom to access the upper level or the entire design would have to be rearranged.

Mr. Tinguely wanted to clarify that the screened in porch that is existing was approved with the original variance when the home was built. That was a question that the applicants were not able to answer at the last meeting.

Johnson asked Buitenwerf where the liability lies if the Board approved this request and the proposed addition created worse runoff that concentrated over on the neighbor's yard.

Buitenwerf commented that it was hard to say. Anyone could bring a suit along that line but it was found to have merit would be up to the judge. There would be no way to know.

Johnson stated that the topography is such that runoff is going to slope away from the lake, which is great, but there is going to be a lot of concentrated water that hasn't ever been there and the yard slopes towards the neighbor.

Mr. Tinguely commented that it does slope a little bit towards the neighbor but the land primarily slopes towards the street side. They would make sure that the water ran towards the street instead of having it affect the neighbor.

No public comment was made and no written correspondence was received.

Johnson moved to approve Variance Application 7-V-13 as presented with the following condition: stormwater runoff from this property onto the neighboring property (after the addition is constructed) must not increase from what currently exists prior to the addition being constructed.

Christianson seconded the motion.

Johnson moved to adopt the findings of fact numbers 3-6.

Christenson seconded the motion.

The Board answered and adopted he 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?

<u>Yes. The proposed addition is not going any closer to the lake than what was previously approved by variance.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property?

<u>Yes. The addition of bedrooms, bath and storage is reasonable. The current proposed size is basically with the screened porch is about the same as the previously approved variance.</u>

3. Is the stated practical difficulty due to circumstances unique to this property?

The structure was originally constructed by a 1986 ordinary high water mark setback variance so Section 704.7 of the Shoreland Ordinance requires a variance for any subsequent modification to the structure. This is a unique circumstance to the property.

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

The structure was constructed per a 1986 variance and Section 704.7 of the Shoreland Ordinance requires a variance for any subsequent modification to the structure. The ordinance language was not 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 addition to this single family seasonal structure will not change the residential use character of the locality.

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 being constructed per a 1986 ordinance and the requirement of Section 704.7 of the Shoreland Ordinance that any subsequent modifications to the structure must be made by variance.

The motions passed unanimously.

Adjournment:

Grob moved to adjourn.

Christianson seconded it.

The meeting was adjourned at 9:29 a.m.

Respectfully submitted by:

Maria Shepherd
Recording Secretary

Hubbard County
Board of Adjustment Meeting Minutes
April 15, 2013

Chairperson Krueger opened the meeting with the following members present: Tim Johnson, Charlene Christenson, Tom Krueger, Arne Christianson, and Lou Schwindt. Also present was Environmental Services Officer Eric Buitenwerf and Recording Secretary Maria Shepherd.

Amendment of Agenda:

Christenson moved to amend the agenda to include the election of officers. Christianson seconded the motion that carried unanimously.

Approval of the March 18, 2013 Minutes:

Christianson moved to approve the minutes as presented. Johnson seconded the motion that carried unanimously.

Old Business:

There was no old business to discuss.

New Business:

Election of Officers:

Johnson moved to nominate Lou Schwindt for Chairman. Christianson seconded the motion that carried unanimously.

Christianson moved to nominate Tim Johnson for Vice Chair. Christenson seconded the motion that carried unanimously.

Variance Application 8-V-13 by Greg and Jeanne Mehlhop: The North 150 feet of the North 300 feet of the South 600 feet of Government Lot 3, lying East of CR No. 39, Section 32, Township 144, Range 32, Hart Lake Township on Garfield Lake. Parcel # 10.32.02510. Applicants are requesting a variance from Section 513 of the Shoreland Management Ordinance for part of a geothermal heating system to be located within the required 100 foot ordinary high water mark structure setback.

Greg and Jeanne Mehlhop were in attendance along with their authorized agent Bryan Kirby, and Justin Isaacson, technician at Ike's Heating & Cooling.

Christenson voiced her concern for the depth at which the discharge pipe was going to be buried and the concern that the wave action could cause problems. She asked how much of the proposed two and a half feet would be below the ordinary high water mark level.

Kirby stated that to his knowledge none of the discharge pipe would be below the ordinary high water mark. He felt that there was enough elevation to have a little bit of fall, which is needed without it going below the ordinary high water mark. It was difficult to determine because of the snow but currently the pipe is above grade and drops off the side of the ice ridge.

Johnson asked if the applicants had considered the concept of a discharge air gap.

Kirby stated that he didn't quite understand it and asked for more clarification. He stated that it was knowledge that if there was a flowing well in the state of Minnesota that is drilled; it is allowed for it to flow into the lake. He asked for more information on how to prevent any back flow from the pipe.

Johnson read information regarding flowing wells that he got off of 4725.3450 of the Minnesota well code. He feels that it has merit in regards to this application because it is the same as an overflow discharge. The aquifer needs to be protected. A back flow preventer or a check valve inside the house doesn't replace the purpose of an air gap. An air gaps primary purpose is to prevent bacteria from crawling up the pipe and getting into the aquifer.

Kruger moved to deny Variance Application 8-V-13 and adopt the findings of fact as presented in the April 2013 BOA Staff Report.

Christenson seconded the motion.

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?

<u>There are too many unknowns in regard to the impact such a volume of water with differing temperature and oxygen levels and composition would have on the lake. Enough information is known about the volume and temperature of the discharge water to know that it will have a harmful effect on at least the littoral area immediately around the discharge outlet. If the discharge pipe would ever be damaged, the volume of water running through it could quickly create a significant erosion problem of the soil between the house and lake which would also pose serious harm to the lake and its inhabitants.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property?

<u>There are several other heating systems available to the landowner that do not pose the same environmental risk to the lake and safety risk to people recreating on the lake in the winter months (potential for weak ice from above freezing water entering the lake from the discharge outlet.)</u>

3. Is the stated practical difficulty due to circumstances unique to this property?

<u>The request has nothing to do with any unique circumstances on the property. It involves the landowners' desire to save money by using an open loop geothermal heating system instead of installing a closed loop geothermal system or using a different heating system (such as LP or electric) to heat/cool their residence.</u>

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

<u>The difficulty is entirely created by the landowners as it is their voluntary desire to use an open loop geothermal system to heat/cool their home. No one is making them use this heating/cooling system and the characteristics of the lot clearly are not requiring this form of heating system to be used.</u>

5. Will the issuance of the variance maintain the essential character of the locality?

The area consists of single family seasonal and year-round homes with a resort located a ways off. A geothermal system discharge pipe buried under the ground surface exiting at the shoreline would not alter the locality's character.

6. Does the stated practical difficulty involve more than economic considerations?

The only reason for the landowners wanting to install an open loop geothermal system is cost. A closed loop geothermal system could be installed that would comply with Section 513 of the Shoreland Management Ordinance and provide the landowners with the desired geothermal heating/cooling system. The sole reason for wanting to use an open versus a closed loop system in this situation is cost.

The motion carried unanimously.

Variance Application 9-V-13 by Doug Scraper: Lots 4-6, Birch Point, Section 16, Township 140, Range 33, Nevis Township on Lake Belletaine. Parcel # 21.38.00400. Part 1: Applicant is requesting an after-the-fact variance from Section 704 of the Shoreland Management Ordinance (SMO) for a deck addition to a structure previously altered by variance. Part 2: Applicant is requesting a variance from Sections 502.2 and 704 of the SMO for a proposed addition to a structure previously altered by variance.

Doug Scraper was in attendance and presented his application.

Schwindt moved to approve both parts of Variance Application 9-V-13 and adopt the findings of fact as presented in the April 2013 BOA Staff Report.

Christianson seconded the motion.

The adopted findings of fact are as follows:

Part 1:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

The portion of the lakeside deck that was not part of the 2006 variance, but that was constructed does not encroach further waterward than the portion of the deck approved in the 2006 variance or the existing lakeside screened-in porch on the cabin. The unauthorized portion of the deck also covers a high traffic area adjacent to the home that would likely be susceptible to erosion due to an inability to maintain vegetation if the deck were required to be removed because of this being a high foot traffic area.

2. Without the variance, is the owner deprived of a reasonable use of the property?

A lakeside deck with a portion thereof that is large enough to accommodate a table and chairs is a reasonable use on a lakeshore property where it is typical for landowners to want to be able to enjoy a view of the lake from a deck or platform.

3. Is the stated practical difficulty due to circumstances unique to this property?

The cabin was constructed prior to the ordinance and was modified by variance in 2006 so that Section 704.7 of the ordinance requires a variance for any subsequent alteration to the structure.

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

As mentioned in the answer for question # 3, the cabin was built before the ordinance at a nonconforming ordinary high water mark setback and it was modified by variance in 2006 so that Section 704.7 of the ordinance requires that any subsequent modification to the structure be only done by an approved variance.

5. Will the issuance of the variance maintain the essential character of the locality?

The locality will remain single family seasonal and year-round residences and the addition of a slightly larger deck to this residential structure will not alter the locality's character in any negative way as decks are typical accessory components of such structures.

6. Does the stated practical difficulty involve more than economic considerations?

Economic considerations were not cited by the applicant as a difficulty. The difficulty is the fact the structure was modified by variance in 2006 and the ordinance requires that any subsequent alteration to the structure can only be made if authorized by further variance proceedings.

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?

The application narrative states that the landowner was not aware when constructing the deck that the deck had to comply with the exact dimensions presented and approved in the 2006 variance application.

8. Did the applicant attempt to comply with the law by obtaining the proper permits?

Yes. He obtained a variance in 2006 for the cabin addition and a lakeside deck and then also obtained the accompanying permit on September 7, 2006.

9. Did the applicant obtain a permit from another entity that violated the law? Provide explanation below.

Not that we are aware of.

10. Did the applicant make a substantial investment in the property? Provide details below.

No. The deck, while nicely done, does not constitute a "substantial investment" in our mind. (Staff recommends asking the applicant for the cost of the deck so that figure can be cited in this answer to show that it was not substantial.)

11. Did the applicant complete the repairs/construction before the applicant was informed of the impropriety? Please provide details below.

Yes. The application states the deck was constructed in 2007. The fact that the deck was constructed larger than what was authorized in the 2006 variance was not identified until this past winter in the course of staff reviewing this variance application after Mr. Scraper submitted it.

12. Are there other similar structures in the neighborhood? Please provide details below.

Yes. Many of the homes along the lake in this area have lakeside decks/platforms.

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 additional deck square footage that was not part of the 2006 variance approval is not very large and protects a high traffic area adjacent to the house. Removing this portion of the deck would expose the underlying soil to high foot traffic and thereby increase the erosion potential. The deck surface is protecting the site from greater erosion potential.

14. In light of all of the above factors, would denying a variance serve the interests of justice?

No. The landowner states that he did not knowingly build the deck in violation of the 2006 variance. The deck does not go any closer to the lake than the portion of the deck approved in the 2006 variance or the existing screened-in porch on the cabin. It covers and protects an area around the house that sees high foot traffic and would thus be exposed to greater erosion potential if the deck were removed.

Part 2 - Below are proposed findings of fact for your consideration:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

The proposed addition is to the rear (non-lakeward) portion of the cabin and it is very reasonable in size (485 sq. ft.) relative to the existing cabin's size of 1886 sq. ft.

2. Without the variance, is the owner deprived of a reasonable use of the property?

The proposed addition is very modest in size and appears to be kept to just what is needed to reasonably provide the landowners with enough elbow room to make the home feasible as a year-round retirement residence.

3. Is the stated practical difficulty due to circumstances unique to this property?

The structure was originally constructed prior to enactment of the Shoreland Management Ordinance and Section 704.7 of the Shoreland Management Ordinance requires a variance for any alteration made to a structure that has previously been modified by variance – which is a circumstance unique to this property and beyond the landowner's control.

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 is the fact that the house was originally constructed prior to enactment of the ordinance and Section 704.7 of the ordinance only allows the structure to be altered by having any alterations approved through further variance proceedings.

5. Will the issuance of the variance maintain the essential character of the locality?

The area consists of single family seasonal and year-round residences and this minor addition to the rear of the cabin that does not increase in height will not change 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 cabin predating the ordinance and having been previously modified by variance such that Section 704.7 of the ordinance requires a variance for any addition to the cabin.

The motion carried unanimously.

Adjournment:

Krueger moved to adjourn. Christenson second the motion that carried unanimously.

Meeting was adjourned at 10:06 a.m.

Respectfully submitted by:

Maria Shepherd
Recording Secretary

Hubbard County
Board of Adjustment Meeting Minutes
April 15, 2013

Chairperson Krueger opened the meeting with the following members present: Tim Johnson, Charlene Christenson, Tom Krueger, Arne Christianson, and Lou Schwindt. Also present was Environmental Services Officer Eric Buitenwerf and Recording Secretary Maria Shepherd.

Amendment of Agenda:

Christenson moved to amend the agenda to include the election of officers. Christianson seconded the motion that carried unanimously.

Approval of the March 18, 2013 Minutes:

Christianson moved to approve the minutes as presented. Johnson seconded the motion that carried unanimously.

Old Business:

There was no old business to discuss.

New Business:

Election of Officers:

Johnson moved to nominate Lou Schwindt for Chairman. Christianson seconded the motion that carried unanimously.

Christianson moved to nominate Tim Johnson for Vice Chair. Christenson seconded the motion that carried unanimously.

Variance Application 8-V-13 by Greg and Jeanne Mehlhop: The North 150 feet of the North 300 feet of the South 600 feet of Government Lot 3, lying East of CR No. 39, Section 32, Township 144, Range 32, Hart Lake Township on Garfield Lake. Parcel # 10.32.02510. Applicants are requesting a variance from Section 513 of the Shoreland Management Ordinance for part of a geothermal heating system to be located within the required 100 foot ordinary high water mark structure setback.

Greg and Jeanne Mehlhop were in attendance along with their authorized agent Bryan Kirby, and Justin Isaacson, technician at Ike's Heating & Cooling.

Christenson voiced her concern for the depth at which the discharge pipe was going to be buried and the concern that the wave action could cause problems. She asked how much of the proposed two and a half feet would be below the ordinary high water mark level.

Kirby stated that to his knowledge none of the discharge pipe would be below the ordinary high water mark. He felt that there was enough elevation to have a little bit of fall, which is needed without it going below the ordinary high water mark. It was difficult to determine because of the snow but currently the pipe is above grade and drops off the side of the ice ridge.

Johnson asked if the applicants had considered the concept of a discharge air gap.

Kirby stated that he didn't quite understand it and asked for more clarification. He stated that it was knowledge that if there was a flowing well in the state of Minnesota that is drilled; it is allowed for it to flow into the lake. He asked for more information on how to prevent any back flow from the pipe.

Johnson read information regarding flowing wells that he got off of 4725.3450 of the Minnesota well code. He feels that it has merit in regards to this application because it is the same as an overflow discharge. The aquifer needs to be protected. A back flow preventer or a check valve inside the house doesn't replace the purpose of an air gap. An air gaps primary purpose is to prevent bacteria from crawling up the pipe and getting into the aquifer.

Kruger moved to deny Variance Application 8-V-13 and adopt the findings of fact as presented in the April 2013 BOA Staff Report.

Christenson seconded the motion.

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?

<u>There are too many unknowns in regard to the impact such a volume of water with differing temperature and oxygen levels and composition would have on the lake. Enough information is known about the volume and temperature of the discharge water to know that it will have a harmful effect on at least the littoral area immediately around the discharge outlet. If the discharge pipe would ever be damaged, the volume of water running through it could quickly create a significant erosion problem of the soil between the house and lake which would also pose serious harm to the lake and its inhabitants.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property?

<u>There are several other heating systems available to the landowner that do not pose the same environmental risk to the lake and safety risk to people recreating on the lake in the winter months (potential for weak ice from above freezing water entering the lake from the discharge outlet.)</u>

3. Is the stated practical difficulty due to circumstances unique to this property?

<u>The request has nothing to do with any unique circumstances on the property. It involves the landowners' desire to save money by using an open loop geothermal heating system instead of installing a closed loop geothermal system or using a different heating system (such as LP or electric) to heat/cool their residence.</u>

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

<u>The difficulty is entirely created by the landowners as it is their voluntary desire to use an open loop geothermal system to heat/cool their home. No one is making them use this heating/cooling system and the characteristics of the lot clearly are not requiring this form of heating system to be used.</u>

5. Will the issuance of the variance maintain the essential character of the locality?

The area consists of single family seasonal and year-round homes with a resort located a ways off. A geothermal system discharge pipe buried under the ground surface exiting at the shoreline would not alter the locality's character.

6. Does the stated practical difficulty involve more than economic considerations?

The only reason for the landowners wanting to install an open loop geothermal system is cost. A closed loop geothermal system could be installed that would comply with Section 513 of the Shoreland Management Ordinance and provide the landowners with the desired geothermal heating/cooling system. The sole reason for wanting to use an open versus a closed loop system in this situation is cost.

The motion carried unanimously.

Variance Application 9-V-13 by Doug Scraper: Lots 4-6, Birch Point, Section 16, Township 140, Range 33, Nevis Township on Lake Belletaine. Parcel # 21.38.00400. Part 1: Applicant is requesting an after-the-fact variance from Section 704 of the Shoreland Management Ordinance (SMO) for a deck addition to a structure previously altered by variance. Part 2: Applicant is requesting a variance from Sections 502.2 and 704 of the SMO for a proposed addition to a structure previously altered by variance.

Doug Scraper was in attendance and presented his application.

Schwindt moved to approve both parts of Variance Application 9-V-13 and adopt the findings of fact as presented in the April 2013 BOA Staff Report.

Christianson seconded the motion.

The adopted findings of fact are as follows:

Part 1:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

The portion of the lakeside deck that was not part of the 2006 variance, but that was constructed does not encroach further waterward than the portion of the deck approved in the 2006 variance or the existing lakeside screened-in porch on the cabin. The unauthorized portion of the deck also covers a high traffic area adjacent to the home that would likely be susceptible to erosion due to an inability to maintain vegetation if the deck were required to be removed because of this being a high foot traffic area.

2. Without the variance, is the owner deprived of a reasonable use of the property?

A lakeside deck with a portion thereof that is large enough to accommodate a table and chairs is a reasonable use on a lakeshore property where it is typical for landowners to want to be able to enjoy a view of the lake from a deck or platform.

3. Is the stated practical difficulty due to circumstances unique to this property?

The cabin was constructed prior to the ordinance and was modified by variance in 2006 so that Section 704.7 of the ordinance requires a variance for any subsequent alteration to the structure.

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

As mentioned in the answer for question # 3, the cabin was built before the ordinance at a nonconforming ordinary high water mark setback and it was modified by variance in 2006 so that Section 704.7 of the ordinance requires that any subsequent modification to the structure be only done by an approved variance.

5. Will the issuance of the variance maintain the essential character of the locality?

The locality will remain single family seasonal and year-round residences and the addition of a slightly larger deck to this residential structure will not alter the locality's character in any negative way as decks are typical accessory components of such structures.

6. Does the stated practical difficulty involve more than economic considerations?

Economic considerations were not cited by the applicant as a difficulty. The difficulty is the fact the structure was modified by variance in 2006 and the ordinance requires that any subsequent alteration to the structure can only be made if authorized by further variance proceedings.

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?

The application narrative states that the landowner was not aware when constructing the deck that the deck had to comply with the exact dimensions presented and approved in the 2006 variance application.

8. Did the applicant attempt to comply with the law by obtaining the proper permits?

Yes. He obtained a variance in 2006 for the cabin addition and a lakeside deck and then also obtained the accompanying permit on September 7, 2006.

9. Did the applicant obtain a permit from another entity that violated the law? Provide explanation below.

Not that we are aware of.

10. Did the applicant make a substantial investment in the property? Provide details below.

No. The deck, while nicely done, does not constitute a "substantial investment" in our mind. (Staff recommends asking the applicant for the cost of the deck so that figure can be cited in this answer to show that it was not substantial.)

11. Did the applicant complete the repairs/construction before the applicant was informed of the impropriety? Please provide details below.

Yes. The application states the deck was constructed in 2007. The fact that the deck was constructed larger than what was authorized in the 2006 variance was not identified until this past winter in the course of staff reviewing this variance application after Mr. Scraper submitted it.

12. Are there other similar structures in the neighborhood? Please provide details below.

Yes. Many of the homes along the lake in this area have lakeside decks/platforms.

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 additional deck square footage that was not part of the 2006 variance approval is not very large and protects a high traffic area adjacent to the house. Removing this portion of the deck would expose the underlying soil to high foot traffic and thereby increase the erosion potential. The deck surface is protecting the site from greater erosion potential.

14. In light of all of the above factors, would denying a variance serve the interests of justice?

No. The landowner states that he did not knowingly build the deck in violation of the 2006 variance. The deck does not go any closer to the lake than the portion of the deck approved in the 2006 variance or the existing screened-in porch on the cabin. It covers and protects an area around the house that sees high foot traffic and would thus be exposed to greater erosion potential if the deck were removed.

Part 2 - Below are proposed findings of fact for your consideration:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

The proposed addition is to the rear (non-lakeward) portion of the cabin and it is very reasonable in size (485 sq. ft.) relative to the existing cabin's size of 1886 sq. ft.

2. Without the variance, is the owner deprived of a reasonable use of the property?

The proposed addition is very modest in size and appears to be kept to just what is needed to reasonably provide the landowners with enough elbow room to make the home feasible as a year-round retirement residence.

3. Is the stated practical difficulty due to circumstances unique to this property?

The structure was originally constructed prior to enactment of the Shoreland Management Ordinance and Section 704.7 of the Shoreland Management Ordinance requires a variance for any alteration made to a structure that has previously been modified by variance – which is a circumstance unique to this property and beyond the landowner's control.

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 is the fact that the house was originally constructed prior to enactment of the ordinance and Section 704.7 of the ordinance only allows the structure to be altered by having any alterations approved through further variance proceedings.

5. Will the issuance of the variance maintain the essential character of the locality?

The area consists of single family seasonal and year-round residences and this minor addition to the rear of the cabin that does not increase in height will not change 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 cabin predating the ordinance and having been previously modified by variance such that Section 704.7 of the ordinance requires a variance for any addition to the cabin.

The motion carried unanimously.

Adjournment:

Krueger moved to adjourn. Christenson second the motion that carried unanimously.

Meeting was adjourned at 10:06 a.m.

Respectfully submitted by:

Maria Shepherd
Recording Secretary

Hubbard County
Board of Adjustments
May 20, 2013

Chairperson Schwindt opened the meeting with the follow members present: Tim Johnson, Charlene Christenson, Lou Schwindt , Tom Krueger, 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 April 15, 2013 Minutes:

Schwindt moved to approve the minutes as presented. Johnson seconded the motion that carried unanimously.

Old Business:

There was no old business to discuss.

New Business:

Variance Application 10-V-13 by Terry Nelson: Lot 27, Idle Acres, Section 16, Township 139, Range 33, Crow Wing Township on 3rd Crow Wing Lake. Parcel # 06.39.02600. Applicant is requesting an after-the-fact variance from Sections 502.2 and 503 of the Shoreland Management Ordinance to allow a platform to be located inside the bluff impact zone.

Terry Nelson was in attendance and presented his application. He apologized to the Board for all of the trouble that the paver platform he put in three years ago has caused. He stated that he read the Ordinance and didn't realize that a paver stones were considered a structure. He now knows differently. The main concern would be erosion issues on the bluff but in several instances paver stones are used to control erosion problems. He said that these pavers have been in place for a few years now and there is no erosion going on. The neighbors have no problems with it. On his side of the lake, it is all bluff and all of the neighbor's homes are virtually right on the edge of the bluff. He hired a guy to put it in and assumed he would do whatever it was that was needed to get permission to do so.

Johnson asked when the house was built.

Nelson thought it was built in 1960. He purchased the home in 1985 so it was built well before he took procession. Because of the location of the existing home there is only a small area on the lakeside of the cabin. That is the difficulty for him. There really isn't any other area to use except where the platform is. It was sandy, and dirty and he couldn't get grass to grow so he cleaned it up with the pavers.

Grob asked if prior to the installing the patio or pavers where did the water running off the roof go.

Nelson responded that the ground is so porous in that location. The downspout that is now setting on top of the pavers used to be in that exact location and the runoff would simply get absorbed into the sand. There has never been an issue with water pooling there.
Christenson asked Buitenwerf if the Board could impose a fine on the applicant since it is his second after-the-fact variance.

Buitenwerf stated that is not allowed.

Grob stated that because it is his second after-the-fact request it makes it problematic but when out on the site it did not appear that any erosion has occurred on the bluff. It doesn't appear to be affecting the runoff. There is lots of vegetation on the bluff side. If there was some way to ensure that all the water coming off your roof was diverted to the side of the cabin and not onto the pavers, it might overall, be a better situation than what existed before. He felt that if this variance was to be approved a condition should be placed on it that would ensure any water running off the roof doesn't go into the lake. He also observed that there was a 4" x 4" post that was installed part way along the platform as a sort of edger. The applicant should extend that edging the whole length of the platform to again ensure that any water coming off of the roof is diverted away from the lake and has a chance to absorb before getting to the lake. That might be enough mitigation to forgive the after-the-fact request in his opinion. It appears that the platform is not having any negative effects on the hillside.

Schwindt stated that the property to the north of the applicant had more erosion of the bluff than this property. He thought the stones might actually be doing some good.

Grob felt that the applicant's property is flat or slopes away from the lake which was why if the downspout was moved it would push the water to the back of the property and away from the lake. There isn't a large amount of water that would come off the roof since it is not big in size.

No written correspondence was received.

Schwindt opened the meeting for public comment.

Chuck Diessner, 24328 Hazelwood Drive, spoke on behalf of COLA. He is concerned about the bad faith here. The applicant clearly knew that there was Ordinance, since he had already violated it once before. If the Board grants this there is no punishment or disincentive to just go ahead and do whatever you want. He is doing what he wants to do and then he come and asks for forgiveness. There is no penalty for it. This situation is bigger that this particular applicant. There was a whole string of after-the-fact variances last year and the Board needs to think seriously on if someone comes in and knew the law and went ahead and violated it, there is no justification for it. A terrible precedent would be set for future applicants.

Public comment portion of the meeting was closed.

Johnson stated he believed this situation was a miscommunication between the applicant and his contractor.

Johnson moved to approve the application with two conditions: 1.Rain gutters must be installed along the east side of the cabin facing the lake and the runoff from the gutters must be directed toward the west side of the lot away from the lake. 2. A 4" x 4" wooden beam must be installed

in the ground at the same height as the existing 4” x 4” wooden platform edging beam located on the lakeside edge of the platform to add onto and extend the edging beam so it runs along the entire lakeside edge of the platform.

Grob 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, because after three years this is no signs of erosion at all. With the conditions for mitigation in place the platform and overall drainage ends up with a better condition for the bluff than before it was installed. It would be more harmful to the bluff than leaving it where it is.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes. The cabin is on one side of the lot and there is little room. Having a stable surface to use the lakeside of the cabin is a reasonable request.

3. Is the stated practical difficulty due to circumstances unique to this property?

The cabin was constructed prior to the ordinance taking effect and there being a bluff impact zone regulation. There is no way to place a platform or correct the sandy, gravel , undesirable conditions along the lakeside exterior wall of the cabin without doing so in the bluff impact zone.

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

The legal nonconforming structure was placed there by a previous owner.

5. Will the issuance of the variance maintain the essential character of the locality?

The locality will remain single family seasonal and year-round residences-many of which have platforms or decks as accessory components of their residences. A lakeside platform is a typical feature on riparian lot residential use properties.

6. Does the stated practical difficulty involve more than economic considerations?

Economic considerations were not cited by the applicant as a difficulty. The alleged difficulty is the fact the structure was built before the ordinance was enacted and bluff regulations came into play.

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?

I believe he acted in good faith. There was a communication breakdown between the contractor and the applicant.

8. Did the applicant attempt to comply with the law by obtaining the proper permits?

If the applicant left the obtaining a building permit up to the contractor than the answer would be yes.

9. Did the applicant obtain a permit from another entity that violated the law? Provide explanation below.

No other permits were applied for.

10. Did the applicant make a substantial investment in the property? Provide details below.

No. The platform does not constitute a major investment. A 320 square feet of paver stones is not a big investment.

11. Did the applicant complete the repairs/construction before the applicant was informed of the impropriety? Please provide details below.

It has been three years since it was built so I would say yes.

12. Are there other similar structures in the neighborhood? Please provide details below.

Yes. Staff reports the fact that other homes along the lake have lakeside platforms.

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?

The landowner was already granted a variance for a wooden platform and this platform consists of loose fit pavers placed on top of ground surface. The pavers would be easily removable but the benefit of the mitigation would offset the erosion or runoff that would exist without the platform.

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

No. The Board is not pleased with the fact that it is the second after-the-fact variance. The owner should have known better but justice is served by maintaining it with the mitigations.

The motion carried unanimously.

Schwindt reminded the applicant that the proper building permits and septic inspection would need to be received to the Environmental Services Office.

Variance Application 11-V-13 by Ronald and Linda Bouchie: Part of Government Lot 4, Section 3, Township 145, Range 34, Rockwood Township on Arrow Lake. Parcel # 22.03.00510. Applicants are requesting a variance from Sections 502.1 and 801.3 of the Shoreland Management Ordinance to install a septic system at less than the required 150 foot ordinary high water mark setback.

Buitenwerf stated that at the site visit Mr. Bouchie would be submitting something in writing to the office withdrawing the application. The letter has not been received yet, so his

recommendation would be to table the application for a month in hopes that the information arrives. If people have attended for that variance, they should be allowed to make public comment now.

Schwindt opened the meeting for public comment.

No public comment was made and the public comment portion was closed.

Christenson moved to table the meeting until the June Board of Adjustment meeting at which time the application will either be withdrawn or acted upon.

Krueger seconded the motion that carried unanimously.

Variance Application 12-V-13 by Michael and Julia Brooks: Lot 6, Re-Arrangement of Minndiana, Section 35, Township 141, Range 34, Lake Emma Township on Little Sand Lake. Parcel # 16.43.00600. Applicants are requesting a variance from Sections 502.2, 503, and 704.7 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residential structure that is located in the bluff impact zone, does not comply with the 100 foot ordinary high water mark setback, and was previously modified by variance.

Michael Brooks was in attendance and presented his application to the Board. He needs a variance because the house is in the bluff impact zone and already has a variance on it. He would like to add a bump out to the South side of the house, non lakeside, 56 square feet to expand the dining room which is really just a breakfast nook currently. In the next two to three years this home will be their primary residence.

Krueger asked what the total percentage of expansion with this request as well as the previous addition that was approved.

Grob state that it will be still well below the 50%. The notes that he made say 280 square feet on a 1000 square foot cabin.

Krueger stated that when it is back to back variances that number is important to know.

No written correspondence was received.

Schwindt opened the floor for public comments.

Bill Cowman, 16231 Dakota Shores Drive, spoke on behalf of COLA. He stated that they didn't object to what the applicant is asking for but rather wanted to suggest that there has to be a stop on variances for this property. This is the third variance that is impacting the bluff impact zone. The addition is small but because of excavation there will be a big impact to the bluff impact zone. The bluff impact zone is there to not only protect the structural integrity of the bluff itself but also protect the environmental integrity. It seems to him that this property is at the point where it is time to say enough is enough. This will be the last opportunity there is for this particular property. He is assuming that there are gutters on the existing house and if not that would be a condition if this were to be approved.

Maggie Yerks, 22682 Greenwood Loop, President of the Little Sand Lake Area Association, spoke in favor of the request. She was on site for the lot viewal and in looking at the request for the variance she doesn't see a permanent problem with it. It is a small addition. She speaks from personal experience regarding needing variances on a nonconforming structures that were built prior to the Ordinance. This is going to be their permanent residence and in order to make it a little bit more livable a variance is needed and she felt that it should be granted.

The public comment portion of the meeting was closed.

Schwindt stated that even though he agreed that there have been a number of variances granted on this property he didn't feel the Board had the authority to set a limit on the number of variances allowed. An applicant may request as many variances as they wish. It is up to the Board to either grant them or not grant them based on the findings.

Buitenwerf stated that even if the Board placed a condition on the variance approval that specified that no further variances be applied for on a specific lot or structure they can request a variance from that condition. It is a moot point.

Grob stated that since it is not near the 50% and it is an addition to the back side of the cabin it makes sense.

Christenson questioned if there were gutters existing on the structure.

Brooks stated that there are gutters on the gable end above the porch but not where the addition is. The plan is to put another gable roof above this addition.

Johnson commented that the applicant plans on sauna tubes and not do a full four foot foundation.

Brooks mentioned that there will be no digging out for the foundation besides what is needed to place the tubes in.

Christenson moved to approve the application and adopt the findings of fact as submitted in May2013 BOA Staff Report.

Krueger seconded the motion.

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?

<u>The addition is very small (4' x 14') and located on the rear (non-lakeside) side of the house. The house was built prior to the ordinance and bluff language and has previously been altered by variance so a variance is required for any subsequent alterations to allow the Board of Adjustment an opportunity to review such proposals and make sure they comply with the intent of the ordinance and rules. The landowner has done everything possible to locate the proposed addition in a spot that minimally impacts the bluff and lake and thus complies with the ordinance intent as much as possible.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property?

The proposed use of the addition is not stated in the application. However, the current house is 1264 square feet in size and the proposed addition is 56 square feet. This is a very reasonably sized addition to a structure that is currently reasonably sized relative to the average size of a home today.

3. Is the stated practical difficulty due to circumstances unique to this property?

The house was built prior to enactment of the ordinance and the front half of it is in the bluff itself with the back half fully located in the bluff impact zone. The house also sits at a 56' ordinary high water mark (OHW) setback so it does not meet the 100' OHW setback either. The house has previously been altered by variance so Section 704.7 of the shoreland ordinance requires a variance for any subsequent alteration. Thus, the difficulty is due to circumstances unique to the property.

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

The difficulty is caused by the facts laid out in the answer to question # 3. The landowner is not causing the difficulty. The difficulty is due to the fact the house predates the ordinance and sits in a bluff impact zone and the ordinance requires a variance for any alteration to the structure because it has previously been altered by variance.

5. Will the issuance of the variance maintain the essential character of the locality?

The area consists of single family seasonal and year-round homes. This 56 square foot addition will not change the character as this house will remain a single family residence.

6. Does the stated practical difficulty involve more than economic considerations?

Economics are not cited as a factor in the application. The difficulty involves the fact the house was built before the ordinance was enacted, it is located in a bluff impact zone, it does not meet the 100' OHW setback, and it had been previously modified by variance such that a variance is required for this or any other subsequent modification.

The motion carried unanimously.

Variance Application 13-V-13 by Scott and Carrie Parks: Part of Government Lot 1, Section 9, Township 139, Range 34, Hubbard Township on Long Lake. Parcel # 14.09.00600. Applicants are requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance for proposed additions to a nonconforming residential structure that does not meet the required 100 foot ordinary high water mark structure setback. The proposed additions will exceed the 50% square footage allowed by permit and the two foot height increase allowed by Section 510 of the Shoreland Management Ordinance.

Scott Parks was in attendance and presented the application. The request is to build a garage attached to the east end of the existing structure. The entire garage is back behind the setback but the existing structure that it will be attached to is within the setback. They would like to increase

the roof pitch as well to add insulation since currently there is none. The last part of the request is to put on a roof extension, an 8' x 8' extension on the entry way to help with snow and ice accumulation.

Grob clarified that the only reason a variance is needed is because the garage will be attached to a nonconforming structure. Since the garage meets all of the setback requirements if it were detached it could be built by permit. With the garage being attached it brings him over his 50% allowed addition by 44 square feet and the roof height is a little higher than what would normally be allowed. In his opinion both of those things are minor.

Buitenwerf agreed that he felt the changes were minor as well.

Christenson asked what the plan for the part of the driveway that goes through the lot.

Parks stated that the portion on the north side will be discontinued.

Johnson asked if the level of the garage and the house would be the same.

Parks answered that the garage will sit eight to ten inches or whatever code requires below the slab level of the house just for carbon monoxide reasons.

Johnson asked how much of the bank would have to be cut then.

Parks said there actually wouldn't be much excavation.

Grob stated that the only issue he had was that with this being an attached garage it could be converted into living space and if all the work was interior the office might never know about it since interior work doesn't require a permit. He felt that a condition should be placed that the garage be used only for garage purposes unless an additional variance was granted to be converted into living space.

Krueger questioned that by placing that condition on it takes away his right for 50% living space addition.

Johnson stated that unless the applicants were adding bedrooms the County wouldn't really care. He felt that would be denying him his future 50% request if that condition was placed the approval. He wondered if it would be a better idea to place a condition that states the applicant would have to come to the County to turn the garage into living area.

Buitenwerf clarified that if this variance is approved then any subsequent proposed additions or alterations would need variance approval. He would no longer be allowed to come in and get a permit for a 50% addition without variance approval.

Grob asked then if the garage was converted into living space and the applicant decided he wanted a garage would that be allowed as long as he kept it under the 25% impervious surface.

Buitenwerf stated that if the detached structure meet all the setback requirements than it would be allowed by permit.

Grob wondered than it is made sense to place the condition on the variance stating that it be sued for garage purposes only. He asked if there were no conditions placed, could the applicant convert the garage to living space without any notification or approvals needed.

Buitenwerf stated that unless a condition is placed that states the proposed addition must be used solely as a garage then at some future date it could be converted to some other use.

Grob would still like to see that condition be placed on this application. It doesn't deny him from converting it to living space but it does require the owner to come back for a variance. By doing so the Board as well as the County would be aware of the intentions to convert the garage.

Parks stated that he didn't have any problem with that condition being placed. His intention is to use this addition as a garage and doesn't have plans on converting it into or use.

Krueger stated that if the applicant didn't have a problem with the condition being placed on the application than he didn't either.

Christenson asked if property were sold would the variance and conditions stay with the property.

Buitenwerf stated that yes. Any new owner would have to come back and seek variance approval if they wanted to convert the garage into living space.

Christenson stated that even though the applicant has no intention of converting that doesn't say that future owners wouldn't want to.

Johnson stated that he would be in agreement of the condition as long as it is stated that he is allowed to come back and request that. He had seen it when a previous Board's decision and restrictions were upheld even if the current Board would have approved it.

Grob and Krueger agreed that it isn't saying he can't do it but simply that it requires variance approval to do it.

No written correspondence was received.

Schwindt opened the floor for public comment.

Chuck Diessner, speaking on behalf of COLA, commented on the variance request. They have no objection to the application or the grating of the application. He did feel that it needs to have some sort of condition that states the second floor of the garage can't have guest quarters in it. He also suggested that if the condition states no living quarters then define living quarters. State that the second floor of the garage can't be improved in any way; no flooring, windows or walls. Last year a situation came up where a gentleman built a detached garage and the second floor was finished with windows, flooring and doors but stated that it was not used for living quarters and therefore the Environmental Services Office couldn't hold him in violation of the Ordinance. Be specific with this gentleman and future owners of what they can or in this case can't do.

The public comment portion of the meeting was closed.

Schwindt asked if a second story was planned on the garage. To his knowledge it was just going to be a single story building.

Parks stated that was correct. There weren't going to be attic trusses or anything.

Grob stated that based on the pitch and size of the building the maximum height inside for a second story would be six feet.

Schwindt stated that no matter the condition is stated, there is no way to cover everything. There are always loopholes. The basic concern in the staff report was that it should not be converted into living space with an additional variance. He agreed that if down the road wanted to convert the garage into living space they should be allowed to come back and request a variance to convert the garage into living space.

Grob moved to approve the variance application with the condition that the attached garage addition cannot be converted into living space without an additional variance and adopt the findings of fact as presented in the May 2013 BOA Staff Report with a minor addition to answer number one.

Christenson seconded the motion.

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?

<u>The roof height change is very reasonable and being under fifteen feet after the project is completed will not harm the aesthetics for the neighbors or lake users' views. The covered entry is reasonable to protect the main door from the elements. The garage addition will be located at a spot that conforms with the 100' OHW setback so allowing it to be attached to the house is a technicality that does not run afoul of the ordinance/rules intent. The addition of a condition that the garage not be converted except by additional variance keeps this in harmony with the Shoreland Management Ordinance (SMO).</u>

2. Without the variance, is the owner deprived of a reasonable use of the property?

<u>Increasing the roof pitch from 3/12 to 6/12 for better snow/rain shed is very reasonable (especially in light of this winter's snow load.) A covered entry over the main door for safety considerations of keeping snow/ice off of the deck surface is reasonable. An attached garage is also a reasonable request in this area with our winter weather extremes – especially since the garage location itself complies fully with the 100' ordinary high water mark (OHW) setback.</u>

3. Is the stated practical difficulty due to circumstances unique to this property?

<u>The structure was constructed prior to the ordinance at a nonconforming 58' OHW setback. Also, Section 704 of the SMO requires a variance for any proposed addition to a structure that exceeds 50% of its square footage. The proposed additions total 53.4% of the existing structure's square</u>

footage, but consist of non-"living" space. Both of these items create the difficulty and are unique circumstances.

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

As stated in the answer to question # 3 above, the difficulty is caused by the structure predating the ordinance and being located at a nonconforming 58' OHW setback and the requirement in Section 704 of the SMO that any additions to a structure in excess of 50% of the existing structure square footage can only occur through approved variances. The landowners have nothing to do with these two items.

5. Will the issuance of the variance maintain the essential character of the locality?

The area consists of single family seasonal and year-round homes and this house, if the additions are allowed and constructed, will remain a single family residence that will thus continue to fit in with the surrounding residential homes and thus maintain the locality's essential character.

6. Does the stated practical difficulty involve more than economic considerations?

The difficulty involves the fact that the structure was built before the ordinance was enacted at a 58' nonconforming OHW setback. Economics were not cited as a difficulty in the application

The motion carried unanimously.

Variance Application 14-V-13 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 Section 502.2 of the Shoreland Management Ordinance for a proposed new structure to replace an existing structure at less than the required 100 foot ordinary high water mark structure setback.

Fred Stinar, authorized agent, was in attendance and presented the application. He stated that they are simply asking to build a new structure in the same footprint as what is existing except have one roof height instead of the four roof lines that are there now and expand the soffit from twelve inches to eighteen so there is more protection to the builing.

Grob asked how many bedrooms are in the existing building.

Stinar stated that there are eight bedrooms and then the middle section is a meeting area.

Grob wanted to know if there were kitchen facilities in the building.

Stinar answered there is no kitchen facilities or bathroom facilities. The building is simply eight bedrooms and a meeting area. They would like to modernize the unit and add bathrooms and showers to this building that would be handicap accessible.

Grob asked if adding bathrooms was part of the application and if the septic system was big enough to accommodate the bathrooms.

Johnson said that the septic system is large enough to handle it. A bathroom doesn't increase the size of a septic system anyway.

Grob asked why it was necessary to rebuild this structure with the eight bedrooms instead of having two different cabins with four bedrooms and at a conforming setback.

Stinar stated that they looked at all of the options and with the flow of the camp and where the kids hang out and line of sight, this is the best location for the cabin to be rebuilt.
Johnson questioned if the entire structure would be torn down.

Stinar stated that the intention is to tear down the existing and built a new structure on a concrete slab instead of the piers it is on now.

Christenson asked if the applicants had looked at moving the structure back to a conforming setback since there is ample room to build there.

Stinar stated that it is a central location for where all of the action is when bible camp is in session. From the cabin the adults can see the beach and the bathrooms and kitchen. If the building were to move it would make it difficult to see the kids down at the water.

Schwindt stated that the 100 foot setback is closer than the applicant is thinking. The 100 foot setback is approximately where the garage is now.

Grob mentioned that the difficulty is that the building is located in the shore impact zone, only 44 feet from the water and there is ample room to rebuild at a conforming setback. A practical difficulty doesn't exist here since there is room to build a building back at the 100 feet. A reasonable alternative exists and could be done by permit.

Stinar was concerned about the main road that runs through the camp.

Grob said that when he was on site that he felt there was room to move the building and not change the flow of the camp, the view or the ambiance at all. Building at 100 feet back doesn't seem detrimental at all.

Krueger questioned why this does not fall under a resort category.

Buitenwerf explained that statute requires that the property be able to meet certain criteria and this property does not. It is a tax exempt property.

Discussion ensued on whether it should be classified as a resort or not.

Buitenwerf again stated that it does not meet the standards set forth by state statute to constitute as a resort and it is a tax exempt property.

Schwindt opened the floor for public comment.

Chuck Diessner, 24328 Hazelwood Drive, speaking on behalf of COLA made public comment. Cola supports the staff's recommendation for denial. There is no practical difficulty in this situation. Under the law in order for there to be a practical difficulty there has to something

unique regarding the characteristics of the land. That isn't the case here. There is an alternative location. Under the current law there is no way that this application can be approved. The applicant's are causing the need for a variance by requesting a new building be built at a nonconforming location.

The public hearing portion of the meeting was closed.

Grob commented that if this were a residential, private residence, or a resort, under state law they would be allowed to rebuild the exact structure and footprint. Staff is stating that this is not a resort and not a private residence based on its tax status and how it is operating. Therefore it doesn't qualify for being able to be rebuilt under statute.

Stinar wanted to know if they were able to remodel the structure.

Buitenwerf answered that they would be allowed to remodel the interior of the structure under Section 510 of the Shoreland Management Ordinance under Repairs and Maintenance.

Stinar asked for clarification to know if they were to fix up the rooms inside the building or adding bathrooms without rebuilding.

Christenson wondered if they would be able add bathrooms since there are none existing right now.

Buitenwerf stated that it would require a permit and review of the septic system to make sure it was sized adequately for the additional bedrooms that would be serviced by the system but could be done. He emphasized that no changes to the structural frame could be done.

Grob offered as a suggestion moving the garage and build the desired building in that location and relocate the garage to a different spot.

Stinar thought that location might work. They had never thought about that.

Schwindt stated that he agreed with the staff report. The best solution is to build at a conforming setback by permit and then there are very few limitations on what can't be done or remodel the existing structure internally.

Schwindt moved to deny the variance request and adopt the findings of fact as received in the May 2013 BOA Staff Report.

Christenson seconded the motion.

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?

<u>Why or why not? There is sufficient space on the property to build the proposed structure at a conforming setback by permit. Because a permittable alternative exists, granting a variance where</u>

there is no practical difficulty in complying with the ordinance would not be in harmony with the ordinance and rule's intent.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Why or why not? A permittable location is available for the proposed new construction at a conforming location on the property. Having a permittable option means the landowner is not deprived of the use of the property in the manner prescribed by the construction and proposed use of this proposed new structure.

3. Is the stated practical difficulty due to circumstances unique to this property?

Why or why not? The application does not provide any stated difficulties why the requested new structure cannot be built at a conforming setback on the property by permit.

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

Why or why not? The landowner's desire to construct the proposed new structure in the shore impact zone instead of pursue permittable options for the requested structure when there is ample space on the property where the proposed structure could be constructed by permit is the sole reason for seeking the variance. Therefore, the difficulty is being created by the landowner.

5. Will the issuance of the variance maintain the essential character of the locality?

Why or why not? The area would remain single family seasonal and year-round residential structures. However, most of the residential structures on surrounding properties meet the 100' OHW setback. The proposed new structure would create a new commercial structure in the shore impact zone. For this reason, 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?

Why or why not? The application does not cite any economic considerations as being the practical difficulty in this matter. The alleged difficulty concerns a desire to reconstruct a nonconforming structure that predates the ordinance and is located in the shore impact zone.

The motion carried unanimously

There was no other business to discuss.

Adjournment:

Schwindt moved to adjourn. Grob seconded the motion that carried unanimously.

Meeting was adjourned at 10:34 a.m.

Respectfully Submitted by,

Maria Shepherd
Recording Secretary

Hubbard County
Board of Adjustment
June 17, 2013

Chairman Schwindt opened the meeting with the following member present: Tim Johnson, Charlene Christenson, Lou Schwindt, Arne Christianson, and Oakley Williams. 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 May 20, 2013 Minutes:

Johnson moved to approve the minutes as presented. Christianson seconded the motion that carried unanimously.

Old Business:

There was no old business to discuss.

New Business:

Variance Application 15-V-13 Denise Davis: Part of Outlot 2, Oak Haven, Section 14, Township 140, Range 36, Todd Township on Fish Hook River. Parcel #: 27.37.01200. Applicant is requesting an after-the-fact variance from Sections 502.7 and 704 of the Shoreland Management Ordinance for a greater than 50% addition to a nonconforming structure located in the shore impact zone that exceeded the 4 foot maximum height increase allowed by Section 704 for an addition.

Denise Davis was in attendance and presented her application.

Johnson asked if there was a plan in place for the retaining wall that was deteriorating.

Davis stated that her plan is to ask a professional landscaper what the best thing to do there and then get the necessary permits.

No written correspondence was received.

Schwindt stated that a building permit was originally issued on this project. The reason it is an after-the-fact variance is because there was some confusion during the building process. He asked Buitenwerf for some clarification.

Buitenwerf stated that the contractor that pulled the permit represented that the structure complied with the ordinary high structure setback. The permit was issued on that basis. A post construction inspection was done it was discovered that the structure does not meet the setback and is located in the shore impact zone which would require a variance from the setback requirement.

Schwindt stated that if the structure had met the structure setback all of the improvements would have been allowed by permit. In essence the applicant did

everything that she needed to do but the contractor that was hired misrepresented the setback, causing the issues.

Schwindt opened the floor for public comment.

Jay Mondary stated that he is not in opposition of the request. He felt that if in fact there is a willful violation by a contractor there should be some penalty. The conversation around the coffee table, for whatever it is worth, is that nothing happens to people that have violations. They come to the Board and ask for an after-the-fact variance and it is granted and everybody goes home happy. To eliminate situations like this in the future the Ordinance should be amended to include penalties. He didn't know who the contractor was but if the contractor was slapped with a monetary fine the word would get out and it would cut down on the number of after-the-fact requests. He restated that he is not against her application. It is what it is. He would like to see the debris that is out front of the property that has been piled up for over a year.

The public comment portion was closed.

Davis stated that she felt that the County should have inspections for building permits. She hired a contractor to figure out what was wrong and help with the application.

Schwindt stated that unfortunately it looks like a shady contractor was hired. He stated that the applicant got the State Inspectors involved. There is more involved with this contractor than what is shown on paper. The applicant is trying to solve the problem.

Davis stated that when the State Inspector did his inspection they said that it was an over built. It is a sturdy structure. He deviated from the plan and had cost over runs of thousands of dollars but she had no input on the deviations.

Schwindt stated that he didn't feel the County has any means to penalize the contractor but the State might.

Davis mentioned that the State did fine the contractor, which didn't help her at all, but he did have to answer for what he did. There was point during the construction process when he walked away, in November, and left the house wide open with no roof. She had to hire another contractor to come and finish the project.

Christenson stated that the applicant had the State Inspector come out and view her project but thought that Todd Township had their own zoning laws and any inspections would have been done by them.

Buitenwerf stated that Todd Township does have their own zoning but they don't regulate the shoreland area.

Christenson moved to approve variance application 15-V-13 and adopt the findings of facts as presented by the June 2013 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?

The new house construction primarily involved adding a second story addition and replacing the previous ground level portion of the home with new construction. The only part of the project that went waterward was the 8 ½' x 22' second story riverside deck. The part of the project that did not go upward (garage stall addition) went to the side of the house. The house is on a lot that faces the old mill pond created from the area's logging days. This pond is an artificial creation that would likely be devoid of water if the water level of the river was not artificially kept high by the dam just a mile or two downstream on the river.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Adding more second story living space and another garage stall for storage or vehicle use is a reasonable use of a single family residential use lot.

3. Is the stated practical difficulty due to circumstances unique to this property?

The house was constructed prior to enactment of the shoreland ordinance at a nonconforming ordinary high water mark setback. The lot lacks sufficient depth to move the house back to a conforming 150' ordinary high water mark setback.

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, the structure was constructed in the shore impact zone prior to enactment of the shoreland ordinance and there is insufficient depth on the lot to move the house back to a conforming setback and build the addition or construct a new home at a conforming setback. The landowner did not construct the original house and was not involved in the ordinance's enactment.

5. Will the issuance of the variance maintain the essential character of the locality?

The locality will remain single family seasonal and year-round residences – just like the house on this property.

6. Does the stated practical difficulty involve more than economic considerations?

Economic considerations were not cited by the applicant as a difficulty. The alleged difficulty is the fact the structure was built before the ordinance was enacted and it is located in the shore impact zone.

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?

The applicant authorized a building contractor to serve as an authorized agent on her behalf. The contractor represented on the permit application that the structure was located outside the shore impact zone and apparently that the addition would comply with the 50% addition language in Section 704 of the shoreland ordinance. A permit was

obtained and then the landowner renewed the permit in 2010 – showing good faith in attempting to comply with the ordinance requirements.

8. Did the applicant attempt to comply with the law by obtaining the proper permits?

Yes. As stated in answering question 7, the applicant applied for a permit in 2009 and then a renewal of the permit in 2010.

9. Did the applicant obtain a permit from another entity that violated the law? Provide explanation below.

Not that we are aware of.

10. Did the applicant make a substantial investment in the property? Provide details below.

Yes. The ground level portion of the house was completely reconstructed, a new second story addition was placed above it, a single stall garage addition was built, a second story deck was constructed, and the house was newly sided, shingled, and fitted with new doors and windows. All of these items constitute a significant 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 construction was finished before Environmental Services staff performed a site inspection on February 23, 2012.

12. Are there other similar structures in the neighborhood? Please provide details below.

Yes. Other homes along the river are also single family residences of similar size and ordinary high water mark setback as this one. The adjacent lot to the south of this property is an example of this.

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 landowner has invested a significant amount of money in the addition to and remodel of this home. Most of the new construction replaced an existing ground level portion or went up – thereby not increasing the footprint or waterward encroachment of the structure significantly. The house sits on an artificial mill pond created when the area was logged at the turn of the 20th century and is roughly 240 ft from the river's main channel. There is not enough depth on the lot to move the structure back which is another reason to leave it be.

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

No. There is inadequate depth on the lot to move the structure back. The house predated the ordinance and sits at a nonconforming setback. The additions did not

increase the footprint of the house much and did not extend waterward, but instead went upward – which is in keeping with the ordinance's intent. The landowner attempted to comply with the ordinance by not only applying for a permit, but also renewing the permit and applying for this variance. There are no viable options to letting the house remain as is.

The motion carried unanimously.

Variance Application 16-V-13 by Stanley Turbes and Elizabeth Holleque: The East 100 feet of the West 200 feet of Government Lot 2, Section 19, Township 140, Range 33, Nevis Township on Lake Belletaine. Parcel #: 21.19.01800. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed new residential structure to replace an existing nonconforming residence at less than the required 100 foot ordinary high water mark structure setback.

Stanley Turbes and Elizabeth Holleque were in attendance and presented their application. He stated that the only reason why they are before the Board if because the DNR changed the ordinary high water mark. This house was originally constructed at a conforming setback of 100 feet but now is considered a legal nonconforming structure.

No written correspondence was received and no public comment given.

Johnson stated that he felt asking for a vegetative buffer was unnecessary since there was at least a 3% increase in slope heading up hill towards the lake.

Johnson moved to approve the variance application as presented and adopt the findings of fact as presented by the June 2013 BOA 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?

The proposed new house is reusing the existing home's footprint and not moving closer toward the lake. The lowest level of the home will be brought into greater compliance with the ordinance's intent on the 3' vertical separation of the structure's lowest level from the water table by the basement being filled in and converted to a crawlspace. The roof height increase will be less than 2' so the aesthetic impact of the new structure when viewed from the lake will be negligible when compared to the existing structure.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Correcting the water issues present in the existing structure by doing away with the basement and installing a crawlspace is a reasonable use as is the proposed garage addition that will be located on the backside of the structure.

3. Is the stated practical difficulty due to circumstances unique to this property?

The existing house was built in 1993 at a conforming 100' ordinary high water mark setback. The DNR raised the ordinary high water mark in 2006 which made the structure nonconforming in terms of its ordinary high water mark setback. The proposal is to reuse the existing structure's foundation. These factors combined create a unique circumstance on this property.

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

The existing house was constructed in 1993 by a previous owner. The ordinary high water mark was raised by the DNR and not the landowner. The landowner seeks to correct some moisture issues in the home and make it more protected against flooding by filling in the basement and converting it to a crawlspace.

5. Will the issuance of the variance maintain the essential character of the locality?

The house and surrounding properties in the locality are single family year-round and seasonal residential uses. The proposed variance seeks to maintain this property's single family year-round use and therefore will maintain the essential character of the locality.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite economics as a difficulty. Instead, the cited difficulties are the ordinary high water mark being raised by the DNR which caused this structure's ordinary high water mark setback to become nonconforming and the moisture issues present with the current basement.

The motion carried unanimously.

Variance Application 17-V-13 by Edith Westfall: Part of Government Lot 4, Section 24, Township 141, Range 34, Lake Emma Township on Gilmore Lake. Parcel #: 16.24.02000. Applicant is requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residence located in the shore impact zone. The addition will exceed the maximum 4 foot height increase allowed by Section 704.

Edith Westfall was in attendance and presented the application.

Schwindt asked if the structure itself is sound enough to support the additional weight of the addition.

Westfall stated that the contractor has been inside the home and has deemed it sturdy enough. She stated that they are relying on his expertise.

Johnson asked Buitenwerf if an additional variance would be needed if the contractor realized that the lower level wasn't strong enough to hold the upper level addition.

Buitenwerf stated that it would depend on how the motion was made. If the Board would allow structural changes to the lower level if the need arises then an additional variance would not be needed. If the application is approved as presented then an addition

variance would be needed since the application doesn't make any mention of any changes to the lower existing level under the new loft.

Schwindt stated that according to the sketch it appears that only one wall would bear the weight. There may not be a lot of weight but there would be some additional weight added.

Westfall stated that the current ceiling of the kitchen would become the floor of the loft so there isn't really a second floor but the pitch of the roof will change to accommodate more space.

Schwindt stated that in changing the roofline from the current pitch to the new proposed one will be an improvement from the winter snow weight for sure.

No written correspondence was received and no public comment was made.

Johnson moved to approve the variance application and allow the contractor the ability to make any necessary changes to the exterior ground level load-bearing walls located immediately below the proposed addition to properly support the addition, if needed and adopt the findings of facts as presented in the June 2013 BOA Staff Report

Williams 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?

<u>The proposed addition is going upward instead of increasing the structure footprint in the shore impact zone. The proposed roofline minimizes the aesthetic impact of the new loft and the structure height will still be under 19'. There is no room on this lot to go any direction (to the side or rear) so going up makes a lot of sense and this proposed addition fits perfectly with the ordinance's intent.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property?

<u>The cabin is less than 700 sq. ft. in size. The addition will add less than 400 sq. ft. to the cabin. Having additional living space is very reasonable given the current cabin size.</u>

3. Is the stated practical difficulty due to circumstances unique to this property?

<u>The house was built in 1952 prior to enactment of the ordinance at an 18' 9" ordinary high water mark setback. The lot is only .33 acres in size. A variance was granted in 1997 for a holding tank - thereby already recognizing and determining the lot lacks space to do much of anything.</u>

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

As previously stated, the cabin was built in the shore impact zone in 1952 prior to enactment of the ordinance. The lot was created by someone other than the landowner prior to the ordinance.

5. Will the issuance of the variance maintain the essential character of the locality?

The locality and this property are made up of single family seasonal and year-round homes and the proposed addition will maintain this character.

6. Does the stated practical difficulty involve more than economic considerations?

Economics are not cited by the applicant as a difficulty. The difficulty is the fact the lot is only .33 acres in size and lacks depth, the fact that the house was built in 1952 before the ordinance was enacted, and the fact that the cabin sits at an 18' 9" setback in the shore impact zone.

The motion carried unanimously.

Variance Application 18-V-13 by Donald and Karen Poirot: Lot 6, Portage Bay, Section 5, Township 140, Range 35, Todd Township on Portage Lake. Parcel #: 27.47.00400. Part 1: Applicants are requesting an after-the-fact variance from Section 706 of the Shoreland Management Ordinance (SMO) for a waterward expansion of a lakeside deck on a nonconforming structure that exceeds the 15% permitatable waterward encroachment. Part 2: Applicants are requesting a variance from Sections 502.2 and 704 of the SMO for proposed additions to a nonconforming residence that exceed the 50% allowed square footage addition and 4 foot maximum height increase allowed. The residence does not comply with the 100 foot ordinary high water mark structure setback.

Donald and Karen Poirot were in attendance and presented the application.

Don gave a brief summary of the history with the deck. It was in need of repair and replacing. In the process of replacing what was existing, he did add on a dimensional six feet to the front of the deck which is six inches to much to not have gone over the 15% forward deck allowed by permit. He stated that it was pure ignorance on his part. This is the first lake home they have owned and was not aware that when he added the six feet he needed an additional permit or that it was not in compliance. The second part of the variance request is to build a second level to the home.

Schwindt asked if the contractor had looked at the house to make sure it was sound enough to handle a second story addition.

Donald stated that several contractors had looked at the structure and felt that it was sound enough.

No written correspondence was received and no public comment was given.

Schwindt moved to approve Parts 1 and 2 of the variance application as presented as well as adopt the findings of fact that were presented in the June 2013 BOA Staff Report.

Christianson seconded the motion that carried unanimously.

The adopted findings of fact for Part 1 are as follows:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Only a 24 sq. ft. area does not comply with Section 706 of the shoreland ordinance. The majority of the deck complies with this section. The impact to the lake is negligible and not worth requiring this small area to be removed.

2. Without the variance, is the owner deprived of a reasonable use of the property?

A lakeside deck is a reasonable use of a riparian lot that is enjoyed by a majority of riparian lot owners on this lake and all other lakes of similar or different classification within the county and across the state.

3. Is the stated practical difficulty due to circumstances unique to this property?

The cabin was constructed prior to the ordinance taking effect at a nonconforming ordinary high water mark setback. The cabin possesses a lakeside walkout basement with a sliding door facing the lake on the main floor so a deck of some kind is required for safety reasons to provide secure access through this sliding door.

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

The cabin was constructed prior to the ordinance at a nonconforming ordinary high water mark setback. The landowner did not own the cabin at the time of its construction.

5. Will the issuance of the variance maintain the essential character of the locality?

The locality will remain single family seasonal and year-round residences-many of which have lakeside decks as accessory components of their residences. A lakeside deck is a typical feature on riparian lot residential use properties.

6. Does the stated practical difficulty involve more than economic considerations?

Economic considerations were not cited by the applicant as a difficulty. The alleged difficulty is the fact the structure was built before the ordinance was enacted at a nonconforming ordinary high water mark setback.

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?

The applicant replaced old, rotten boards on the existing deck and decided to expand the deck at that time. He did not have total knowledge of what the Ordinance would or would not allow him to do.

8. Did the applicant attempt to comply with the law by obtaining the proper permits?

He did not. There was not a deck that was issued when the old deck was torn down and replaced. He didn't have the knowledge that a permit was needed.

9. Did the applicant obtain a permit from another entity that violated the law?

No, he never received a permit because he was unaware that he needed one.

10. Did the applicant make a substantial investment in the property?

No. The portion of the deck that does not comply with Section 706 does not constitute a "substantial investment" in our mind. The investment was just for roughly 24 sq. ft. of deck surface.

11. Did the applicant complete the repairs/construction before the applicant was informed of the impropriety?

Yes. The deck was finished prior to the office becoming aware of its existence at the time of this variance application's submittal.

12. Are there other similar structures in the neighborhood?

Yes. Other homes along the lake in this area have lakeside decks.

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?

Yes. The County would gain roughly 24 sq. ft. of deck compliance by denying the variance while the landowners would incur a sizable cost having to redo the deck to remove this area.

14. In light of all of the above factors, would denying a variance serve the interests of justice?

No. Justice is served by recognizing that the infraction is minimal and not worth requiring that it be removed.

The adopted findings of fact for Part 2 are as follows:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

The proposed addition is primarily going upward instead of increasing the structure footprint and the cabin is close enough to the ordinary high water mark setback that the proposed 28' height will be in-line with the 35' maximum height allowed at the 100' ordinary high water mark setback when viewed from the water.

2. Without the variance, is the owner deprived of a reasonable use of the property?

The cabin is less than 1000 sq. ft. in size. The addition will add 880 sq. ft. to the cabin. Having additional living space is very reasonable given the current cabin size.

3. Is the stated practical difficulty due to circumstances unique to this property?

The house was built prior to enactment of the ordinance at a nonconforming ordinary high water mark setback.

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

As previously stated, the cabin was built at a nonconforming ordinary high water mark setback prior to enactment of the shoreland ordinance.

5. Will the issuance of the variance maintain the essential character of the locality?

The locality and this property are made up of single family seasonal and year-round homes and the proposed addition will maintain this character.

6. Does the stated practical difficulty involve more than economic considerations?

Economics are not cited by the applicant as a difficulty. The difficulty is the fact the house was built before the ordinance was enacted and the fact that the cabin sits at a nonconforming ordinary high water mark setback.

The motion carried unanimously.

Variance Application 19-V-13 by Greg and Jeanne Mehlhop: The North 150 feet of the North 300 feet of the South 600 feet of Government Lot 3, Section 32, Township 144, Range 32, Hart Lake Township on Garfield Lake. Parcel #: 10.32.02510. Applicants are requesting a variance from Section 513 of the Shoreland Management Ordinance for a geothermal heating and cooling system to be located at less than the required 100 foot ordinary high water mark setback.

Schwindt stated that the applicants requested this application to be tabled until the July Board of Adjustment Meeting.

No written correspondence was received and no public comment was made.

Christenson moved to table the variance until a later date per the applicant's request.

Christianson seconded it.

The motion carried unanimously.

Variance Application 20-V-13 by Brad Bond: Part of Government Lot 5, Section 9, Township 141, Range 35, Arago Township on Island Lake and Hay Creek. Parcel #: 02.09.02310. Applicant is requesting a variance from Section 502.7 of the Shoreland Management Ordinance for a proposed new accessory structure to be located at less than the required 150 foot ordinary high water mark setback.

Schwindt stated that the Board was out and viewed the property and there has been a slight amendment to the original request. He asked for more clarification on the amendment from the applicant.

Brad Bond was in attendance and presented his application. He explained his request is to square off the existing footprint that is currently there and move the structure four feet towards the shoreline to mitigate moisture problems for the future. He would be more than willing to create a vegetative buffer to mitigate any environmental impact there could be. The land is all flat and sand so there shouldn't be a great impact. At the time the variance application was submitted he was unaware that a variance would be needed for a concrete apron, which is already his existing driveway and parking area so that request has been added to the request. The apron would be six feet of concrete in front of the garage.

Oakley asked if the bridge that went over Hay Creek was used since it was gated off.

Bond stated that it is used some, more so in the winter time to gain access to the lake over the open water.

Christenson clarified that the reason the building wasn't being rebuilt as existing was because of the issues in the back with moisture.

Brad stated that was one of the main reasons but also decided to build it different because a second story wasn't needed. There currently is an apartment up above but they are in need of more storage and possibly a game room for the guests.

No written correspondence was received and no public comment was made.

Johnson asked Buitenwerf if a bathroom could be added to this structure without the need for an additional variance.

Buitenwerf stated that he would be allowed a bathroom as long as there were no exterior changes needed and the use wasn't changed to a rental unit or residential use.

Johnson moved to approve the amended variance request and adopt the findings of fact as presented in the June 2013 BOA Staff Report.

Christenson 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?

<u>This is the furthest setback from the creek that can be realized on the property due to the topography of the slope occupying much of the area that complies with the ordinary high water mark setback. The location is currently occupied by a structure that predates the ordinance and a variance is required because the applicants want a different layout than the existing structure. The lot lacks depth as well – making it further challenging to site structures in compliance with the creek setback.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property?

A storage structure on a resort is a reasonable use and the property does not have any other storage structures other than the existing building that will be replaced by the proposed new pole building.

3. Is the stated practical difficulty due to circumstances unique to this property?

The lot lacks depth from the creek and there is a large steep slope that runs through the property where the setback can be met. The applicant is simply seeking to replace an existing grandfathered structure with a new structure possessing a different, more functional footprint.

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

As stated previously, the lot lacks depth from the creek and there is a steep slope that runs through the property where a structure could meet the ordinary high water mark setback. The landowner did not create the lot or alter its topography.

5. Will the issuance of the variance maintain the essential character of the locality?

The property will continue to be a resort use and the proposed structure will be used for storage just like the structure it will replace. The surrounding properties are residential use, but they have coexisted with this resort without conflict for decades so this accessory structure replacement will maintain the locality's character.

6. Does the stated practical difficulty involve more than economic considerations?

Economics were not cited by the applicant as a difficulty. The difficulty is the lack of lot depth and the steep slope that runs through the portion of the property that could meet the ordinary high water mark setback.

The motion carried unanimously.

Variance Application 21-V-13 by Mike and Sandy Stafford-Senst: Lot 9, Musky Bay, Section 9, Township 140, Range 33, Nevis Township on Lake Belletaine. Parcel #: 21.47.01000. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed residential structure that will not comply with the 100 foot ordinary high water mark setback.

Mike and Sandy Stafford-Senst were both in attendance and presented their application.

Sandy gave some background on the property. They purchased the property and were told that there was a variance approved for a home and a two stall garage on the lot at a 75 foot setback as long as the home was 1200 square feet of less. When they came to pull a building permit they were told that because the ordinary high water mark which changed what the setback would be. They found a home and garage that meets the requirements of the variance so it was a shock to find that an additional variance was needed since they had been in contact with the Environmental Services Office on several occasions and it was never mentioned that the current variance may not be good anymore or that things had changed. She stated that this house will be back further than any of the neighbors. The office came out to measure the setbacks and flag them

before the home and garage were delivered and it was reviled that because of the change in the high water mark the home and garage will now not fit on the lot which is why they are requesting to be allowed to place the home at the old setback of 75 feet which with today's high water mark is around 63 feet.

No written correspondence was received and no public comment was made.

Schwindt asked what the setback would be now verses what was approved back in 1998 under the old ordinary high water mark.

Sandy stated that the setback from the current ordinary high water mark is 63 feet.

Schwindt clarified that as of today the setback that is being request is 63 feet which would have been 75 feet back from the old ordinary high water mark.

Buitenwerf stated that the setback at the nearest point is actually 62 feet on the east side and 64 feet on the west side. It would average out to 63 feet.

Sandy stated that the house sits on the lot crooked.

Schwindt asked if there was any other way to position these structures so that they would be able to make it on the lot and still use the 75 foot setback from today's water mark.

Both the applicants stated that there is no possible way to fit everything on the lot. They had already changed where the garage was going to be placed to make it fit better.

Christenson stated that the applicant is correct when it was stated that the neighbor's are a lot closer than this home would be set at.

Williams moved to approve the application as presented.

Christianson 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?

<u>Yes. The rules changed. There was a prior variance on this property allowing a structure at 75 foot and because the DNR changed the high water mark in order to get the approved structure on the property the setback needs to be 62 feet from the current ordinary high water mark.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property?

<u>This is residential lakeshore. It is 100 foot lot and requesting a residential structure on the lot is a reasonable use request.</u>

3. Is the stated practical difficulty due to circumstances unique to this property?

It is unique because the practical difficulty was due to the ordinary high water mark being changed by the DNR as well as the fact that there was a previous variance granted which the applicant's thought was still valid.

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

The practical difficulty was created by the changing of the ordinary high water mark by the DNR.

5. Will the issuance of the variance maintain the essential character of the locality?

This is residential lakeshore and as noted residences on both sides of this property are closer to the water than this house will be.

6. Does the stated practical difficulty involve more than economic considerations?

Economic considerations were not a factor.

The motion carried unanimously.

Variance Application 34-V-12 by Gary and Susan Spear: The North 150 feet of the South 450 feet of Government Lot 3, Section 32, Township 144, Range 32, Hart Lake Township on Garfield Lake. Parcel #: 10.32.02600. Part 1: Applicants are requesting an after-the-fact variance from Section 706 of the Shoreland Management Ordinance (SMO) for a lakeside deck that exceeds the maximum allowed 15% of the structure setback waterward encroachment. Part 2: Applicants are requesting an after-the-fact variance from Section 902 of the SMO for greater than 10 cubic yards of material moved in the shore impact zone.

Gary Spear and his son, Jeff Spear, were in attendance and presented the application.

No written correspondence was received and no public comment was made.

Christenson asked if the applicant's would remind her what the topography of the lake was. She thought it was fairly flat and slopes gently to the lake.

Jeff stated that it used to be a more drastic slope towards the lake but with the retaining wall that was added to protect the footings and home foundation it has helped to level that out having less water going towards the lake.

Gary stated that there is a partial ice ridge and the land actually goes up a tiny bit next to the lake.

Johnson asked for a refresher on why a permit wasn't obtained.

Gary stated that he did not know that he needed a permit. He didn't know anything about the Shoreland Management Ordinance. It is the first time he has owned lake property and just didn't know. He did go to the County since he had to lift up the whole cabin to redo the foundation and by doing that the deck was removed and was told that all of that could be done under repairs and maintenance.

Christenson answered that if the applicant would have simply replaced the existing deck and not expanded the size it would not have needed a permit.

Schwindt asked Tim if he was referring to the staff report needing answers to why the applicant failed to get a permit.

Johnson answered that he was gaining the information needed to answer those questions.

Schwindt stated that on the staff report a no mow zone was recommended. The shoreline is rip rapped now and the grass goes up to the rock. He asked the applicant's if there was any reason why they would be opposed to having a ten foot wide no mow zone.

Jeff answered that mosquitoes would be one concern. There is an area that a bunch of plant material was added to help with the root system and so this area that would be a no mow zone is the only area available for recreational use.

Buitenwerf stated that if the applicants wanted to plant trees and shrubs along the shoreline it would achieve the same end result as the no mow zone.

Williams asked if there used to be a fire ring by the water.

Jeff stated that the ring was removed. They are trying to improve the errors that were there and make the property better.

Christianson stated that a sidewalk was removed as well.

Williams felt that they have taken fabulous care of their lakeshore property. It looks very good the way it is.

Johnson moved to approve the variance application as presented with no mow zone and adopt the findings of fact as presented by the June 2013 Staff Report.

Williams 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?

<u>Only the deck's width was increased from the previous deck which does not encroach further waterward. The gravel and rock do allow water to percolate through and are alleged to help address a water problem that was said to have been occurring in the cabin that led to its foundation being worked on a few years ago. The mitigation provided by the no-mow zone addresses the increased impervious surface area created by the deck and gravel area as well as the aesthetics of these items being in the shore impact zone by eventually providing some screening of these items when viewed from the lake.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property?

A lakeside deck is a reasonable use on a riparian lot and landscaping around the house to address a water drainage issue is also a reasonable use.

3. Is the stated practical difficulty due to circumstances unique to this property?

The cabin was constructed prior to the ordinance taking effect and is located in the shore impact zone. Therefore, its setback limits the deck size to only 7.2' deep if Section 706 is applied without relief and requires a variance for landscaping to address drainage around the cabin because permittable levels stop at ten cubic yards which is not much when trying to create proper grade around a foundation.

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

The cabin was constructed in the shore impact zone before the ordinance took effect by someone other than the landowner.

5. Will the issuance of the variance maintain the essential character of the locality?

The locality will remain single family seasonal and year-round residences-many of which have lakeside decks as accessory components of their residences. A lakeside deck is a typical feature on riparian lot residential use properties. The gravel/rock landscaping will not harm the locality's residential use character.

6. Does the stated practical difficulty involve more than economic considerations?
Economic considerations were not cited by the applicant as a difficulty. The alleged difficulty is the fact the structure was built before the ordinance was enacted at a nonconforming ordinary high water mark setback in the shore impact zone.

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?

He didn't know the Ordinance to know he needed a permit. He did act in good faith.

8. Did the applicant attempt to comply with the law by obtaining the proper permits?

He didn't know that a permit was needed.

9. Did the applicant obtain a permit from another entity that violated the law? Provide explanation below.

No he did not.

10. Did the applicant make a substantial investment in the property? Provide details below.

No. The deck and landscaping rock does not constitute a "substantial investment" in our mind. The two projects together were probably done for less than five figures.

11. Did the applicant complete the repairs/construction before the applicant was informed of the impropriety? Please provide details below.

Yes. The deck and landscaping were in place at the time Environmental Services staff observed and documented it during a field visit on July 25, 2012.

12. Are there other similar structures in the neighborhood? Please provide details below.

Yes. Other homes along the lake in this area have lakeside decks and landscaping.

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 deck encroachment on what Section 706 requires is ~ 5' and the landscaping's aesthetic and impervious surface impacts are being addressed and mitigated by the no-mow zone condition placed on the variance approval. Requiring the deck to be cut back to 7.2' lakeward and removal of the gravel/rock would be excessive especially when they can be effectively mitigated with the vegetative buffer along the shoreline.

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

No. As mentioned in the answer to question 13, the minor impacts of these two items can be mitigated through the no-mow zone and the two items are reasonable to have on a lakeshore cabin. The issues stem from the cabin being located in the shore impact zone and there being foundational water issues that required grading work and these items were beyond the landowner's control.

The motion carried unanimously.

Variance Application 22-V-13 Hanzon Prop. of Little Sand Lake: Part of Government Lot 4, Section 2, Township 140, Range 34 and Part of Government Lot 4, Section 35, Township 141, Range 34, Henrietta and Lake Emma Townships on Lake Ida and Little Sand Lake. Parcel #s: 13.02.02320 and 16.35.01710. Applicant is requesting a variance from Sections 502.1, 502.2 and 904.6 of the Shoreland Management Ordinance for a proposed platform that will not comply with the 50 foot road right-of-way setback on a lot that exceeds the 25% impervious surface coverage.

Robb Swanson, authorized agent, was in attendance and presented the application.

Schwindt stated that at the site visit it was discussed the possibility of using pavers that allowed water seepage.

Robb stated that he had looked up the prices on such pavers and it is about four and a half times the cost of the blocks he currently had purchased to do the platform. It is a substantial cost difference.

Schwindt stated that most of the water that is going to run off of the platform goes to the back side of the property. They had discussed some sort of a catch basin and wondered if Robb had a chance to discuss that option with Eric.

Robb said that he would like to hear more about how that idea works but thought he could make the existing French drain to flow and operate properly by getting in there and cleaning it out. It doesn't seem to be working the way it was designed. That would be a huge help for this issue and would help with his parking lot issue. He loses a lot of parking space every time it rains.

Schwindt stated that all of the water runs though the parking lot and pools in one area. When that puddle gets to be a decent size at least six parking places are lost. The French drain, to him, only looked like it was working off the way backside of the property which does nothing for the parking lot. He was wondering if a groove could be cut in the asphalt to carry the water over to the French drain. The drain might not need any work but it could be that the water just never reaches the drain because of the asphalt.

Buitenwerf stated that maintenance to the drain would assist in the water getting to the drain. There is an area where three to four inches of soil that has been built up that is preventing water from reaching the drain. Another thing that would help assist that would be to create a berm, earthen or asphalt, along the boundary of the parking lot where it interfaces with the lawn and then the lake.

Schwindt was concerned that by adding a berm it could cause a dam effect unless the water can be channeled towards the drain.

Buitenwerf stated that another alternative would be to dig out and create a rain garden where the water currently flows to.

Christenson asked Robb what his preference would be.

Robb said he would be willing to do both. He didn't have any problems creating a rain garden with plants and getting the drain to function properly.

Williams asked what the capacity in gallons that French drain.

Robb didn't know. It was there when they purchased the property.

Williams stated that if a large rain came he didn't feel that the drain would be able to handle it. He felt something in addition to the French drain would be needed.

Christenson thought that by installing the currently selected pavers it would be adding to the problem instead of trying to help it.

Robb stated that there used to be concrete there before and when it rained it would pool on the patio. He felt that since there is a slight slant to the pavers as well as a slight gap in between them it will help the situation.

Christenson wanted to know if seating would be added to the patio.

Robb stated that ideally they would add three or four tables outside.

No written correspondence was received and no public comment was given.

Schwindt thought that putting the pavers wasn't a big change from what was there before. The cracks in between the pavers will allow some water to seep into the ground more that the existing concrete would have. The addition of a rain garden and fixing the French drain up will drastically help the runoff situation.

Schwindt moved to approve the variance application with the following conditions: 1. a four foot x eight foot rain garden must be installed by the French drain where the parking lot storm water runoff enters the grass buffer between the parking lot and the lake and planted with suitable water-loving plants, 2. a two inch berm of earthen material along the north edge of the north parking lot must be installed to direct storm water into the rain garden and French drain along with adopting the findings of fact as presented in the June 2013 Staff Report.

Christenson seconded the motion that carried unanimously.

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 conditions imposed on the variance will mitigate the excessive impervious surface area on the property and the reduced platform setback from the road right-of-way is not an issue because the setback will still be 27' which is 7' more than the setback required for a township road and the curve of the road along the restaurant is such that vehicle speeds must be significantly lessened such that the road at this point functions at a lesser speed typically seen on a township road and is thus suited to a 20' setback.

2. Without the variance, is the owner deprived of a reasonable use of the property?

The proposed platform location is right next to the restaurant and parking lot in a traffic path so it is reasonable to cover this area in a safe, pedestrian-friendly surface.

3. Is the stated practical difficulty due to circumstances unique to this property?

The restaurant predates the ordinance and never met the 50' road right-of-way setback. The vehicle and foot traffic seen on this property due to the restaurant use is unique and the restaurant has long been in operation here – presumably prior to the ordinance. Paving the area does protect the soil from erosion due to the heavy traffic, but does create the need to manage the storm water before it reaches the water due to the pavement's concentrating the runoff and not allowing it to infiltrate the ground.

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

The restaurant use and location predate the ordinance and the landowner's ownership of the property.

5. Will the issuance of the variance maintain the essential character of the locality?

The restaurant use will continue and not be affected by the proposed platform and the surrounding residential uses have not been harmed by the restaurant nor will they be harmed by an accessory platform located next to the restaurant.

6. Does the stated practical difficulty involve more than economic considerations?

The difficulty concerns the restaurant's location and use predating the ordinance and the unique circumstances of heavy vehicle and foot traffic seen by the restaurant from its patrons. Economics were not cited by the applicant as a factor.

The motion carried unanimously.

Variance Application 23-V-13 by R & I Jackson LLC: The South ½ of the SE ¼, Section 29, Township 143, Range 34, Lake George Township on the Schoolcraft River. Parcel #: 17.29.00200. Applicants are requesting a variance from Sections 502.7 and 704.7 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residence originally constructed per variance that does not comply with the 150 foot ordinary high water mark setback.

The applicants were not in attendance to present their application.

Buitenwerf stated that it was his understanding that the applicants wished to table the application until the August meeting but an official written request was not submitted to the office in time.

Schwindt stated that the Board had viewed the property and didn't think that there was a reason to table the application unless it was strictly to satisfy them. He felt that the Board could act on it. They are asking for a small addition to the side and rear of the cabin.

Johnson stated that he remembers asking the Board if there was electricity on the property and then after rereading the application and request he noticed that one of the reasons for the addition would be probably to put in an electrical system and bathroom and shower.

Christianson stated that he had no problem with this application.

No written correspondence was received and no public comment was made.

Christenson moved to approve the variance application as presented and adopt the findings of fact as presented in the June 2013 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?

Section 704.7 of the shoreland ordinance requires that any subsequent alteration to a structure previously approved by variance be also processed by variance. In 2009, the

Board of Adjustment determined that the structure's location was reasonable in light of the factors involved. A 108 sq. ft. addition to a 936 sq. ft. house is reasonable and it does not go closer to the river than the existing structure.

2. Without the variance, is the owner deprived of a reasonable use of the property?

A 108 sq. ft. addition to a 936 sq. ft. cabin is reasonable. The structure is not excessively sized.

3. Is the stated practical difficulty due to circumstances unique to this property?

The existing house was approved by variance in 2009. Section 704.7 of the shoreland ordinance requires a variance for any subsequent alterations to the structure. This is a circumstance that is unique to the property.

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

As previously mentioned, the house sits at a nonconforming setback per a 2009 variance and Section 704.7 of the shoreland ordinance requires that any subsequent alterations to the structure be processed by variance. This requirement is not something that the landowner created. The County created it.

5. Will the issuance of the variance maintain the essential character of the locality?

The locality is remote with very few structures along the river. This is a seasonal use site that does not see much use. The proposed addition is not going to change the locality's character or harm it in any way.

6. Does the stated practical difficulty involve more than economic considerations?

Economics were not cited in the application as a difficulty. The difficulty is the previously mentioned required of Section 704.7 of the ordinance that any alterations to a structure previously approved by variance go through a variance process as well for approval.

The motion carried unanimously.

Miscellaneous:

There was no miscellaneous business to discuss.

Adjournment:

Schwindt moved to adjourn. Christianson seconded the motion that carried unanimously.

The meeting was adjourned at 10:25 a.m.

Minutes respectfully submitted by:

Maria Shepherd
Recording Secretary

Hubbard County
Board of Adjustment
July 15, 2013

Chairman Schwindt opened the meeting with the following members present: Tim Johnson, Charlene Christenson, Lou Schwindt, Arne 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 June 17, 2013 Minutes:

Christianson moved to approve the minutes as presented. Christenson seconded the motion that carried unanimously.

Old Business:

There was no old business to discuss.

New Business:

Variance Application 24-V-13 by Daryl and Denise Seaman: Apartment 2, Vacationaire Estates, Section 10, Township 141, Range 35, Arago Township on Island Lake. Parcel # 02.41.00200. 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 their application.

Grob stated that because this is a grandfathered residential development, operating like a planned unit development, he felt that Section 1015 should be applied towards this request. He asked Buitenwerf if that was what they should be making their decision on.

Buitenwerf stated that the Board should consider whether or not the scope of the proposed addition is reasonable to add onto the existing structure or if it makes sense given the scope of the project to contemplate whether the structure can be moved back to a greater setback. He wouldn't base the decision on Section 1015 of the ordinance since it doesn't apply to this particular situation.

No written correspondence was received

Grob asked for clarification on the request. He thought it was for an addition to a structure in the shore impact zone and the overall height change.

Johnson stated that the roof was going up but the size was staying the same. He was wondering if the current walls were strong enough to support this addition.

Buitenwerf commented that would have been a question to ask the applicants on what if any work would need to be done to the lower level to accommodate the upper level addition.

Depending on how a motion is made, if work is needed to be done with the lower level than they would be required to come back before the Board.

Grob asked if the application should be tabled so that the applicants could be at the meeting and explain exactly what they are doing.

Johnson felt that the Board would be able to act on it without tabling but he felt that the contractor should be given the freedom to beef up a wall if need be.

Grob still felt that this was similar to a planned unit development conversion and felt that the Section 1015 applies to this situation. Typically when a resort is converted to a planned unit development conditions placed on cabins in the shore impact zone that state no additions or expansion are allowed. On this particular property seven out of the eight cabins are in the shore impact zone. Of the seven cabins that are sitting in the shore impact zone, there are five that are relatively close in size and out of those five this one is the largest. He didn't feel there was any need to expand this cabin. He felt that if this request is granted the Board will see a lot more requests from the other cabins, both on this property and in general. There is no need or practical difficulty for this request to be approved.

Johnson countered that this property doesn't have that constraint and has grandfathered rights. He didn't know if they could use Section 1015 as reason for denial.

Grob stated that it wouldn't be a reason for denial but rather the applicants are requesting something that is normally controlled by the Ordinance. They not the smallest cabin. This is the largest of the five smaller cabins.

Christianson stated that the roof line that is on the cabin is not meant for a winter roof line. If there is a lot of snow in a given year that roof is going to sag.

Grob stated that the roof was not cited in the application as a reason for the remodel and roof height change. The applicant's have owned this property for ten years and so if that was truly their intent they would have changed the roof line a long time ago. He was trying to make the point that by allowing this property to have a greater density than what is normally allowed, there needs to be constraints placed.

Christenson stated that Eric's recommendation stated that a vegetation buffer should be placed if this request was approved. She wondered how that worked since they only own the cabin and not the land in front of it.

Buitenwerf stated that the association has to give approval for application since they are the ones that own the land. After seeing the property, there are a sufficient number of large trees that would screen the height from the lake. To help with storm water runoff gutters would certainly be an option or a no mow zone of some sort along the shoreline in front of the structure. He felt 40-50 feet in front of this cabin would be reasonable.

Christianson stated that there are no gutters currently on the property.

Grob countered that it won't make a difference. It doesn't matter if gutters are placed or not, the topography is such that it will all go into the lake anyway. A vegetative buffer in front of this cabin when all along the entire property the land slopes towards the lake won't help. He didn't feel the runoff was an issue. To him the issue was allowing an expansion in the shore impact

zone on a property where the density is greater than allowed. It is operating as a planned unit development and approving this request is heading down the wrong path.

No public comment was given.

Grob moved to deny the variance application.

The motion died for lack of a second.

Johnson moved to approve the variance application with the following conditions: 1. Gutters must be installed on the cabin and the downspouts must direct the runoff away from the lake. 2. A 10 foot deep (measured landward from the edge of the existing sand beach) by 40 feet wide (centered on the middle of the Seaman cabin) no mow vegetative buffer zone must be established and permanently maintained. He also moved to adopt the findings of fact as presented in the July 2013 BOA Staff Report.

Christenson seconded the motion.

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 proposed addition is going up instead of increasing the cabin's footprint. It is only a 180 sq. ft. addition to an existing 800 sq. ft. cabin and the height is only increasing from 11' 10" to 17' 2" so there will be minimal aesthetic impact from the structure when viewed from the lake. The applicants are attempting to comply with the ordinance intent by going upward with an addition instead of increasing the footprint.

2. Without the variance, is the owner deprived of a reasonable use of the property?

An 800 sq. ft. cabin is a small structure such that asking for an additional 180 sq. ft. of living space in the form of a loft is a reasonable request/use of the property.

3. Is the stated practical difficulty due to circumstances unique to this property?

The structure predates the ordinance and is located at a nonconforming ordinary high water mark setback in the shore impact zone. Given the scale of the addition relative to the existing structure, it would be unreasonable to require the structure to be moved to a more conforming setback in order for the addition to be constructed.

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

As mentioned in previous answers, the structure predates the ordinance and is located in the shore impact zone. The ordinance requires a variance for any additions/alterations to structures located in the shore impact zone. The landowner did not create the structure or ordinance.

5. Will the issuance of the variance maintain the essential character of the locality?

The house and surrounding properties in the locality are single family year-round and seasonal residential uses. The proposed variance seeks to maintain this property's single family year-round use and therefore will maintain the essential character of the locality.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite economics as a difficulty. Instead, the cited difficulties are the structure predating the ordinance and being located in the shore impact zone, and it not making sense to consider moving the structure because of the scale of the proposed addition relative to the existing cabin's size.

The motion carried on a 4 to 1 vote with Grob voting nay.

Variance Application 25-V-13 by Steven and Patricia Haataja: Part of Government lot 8, Section 12, Township 139, Range 34, Hubbard Township on Big Stony Lake. Parcel #14.12.01400. Applicants are requesting a variance from Sections 502.2 and 706 of the Shoreland Management Ordinance for a proposed lakeside deck on a nonconforming residential structure located in the shore impact zone. The proposed deck exceeds 15% of the structure's existing ordinary high water mark setback and will be located within the required minimum 30 foot ordinary high water mark setback.

Patricia Haataja was in attendance and presented her application.

No written correspondence was received and no public comment was given.

Grob stated that the current Ordinance states that a deck can't be built less than 30 feet from the lake. The structure is 20. He felt that after viewing the property and seeing all of the structures that are there, the lot exceeds the amount of impervious surface that is allowed. He didn't think that this deck in anyway help with the runoff situation. He felt that if the deck was built with the board butted together, which he felt is how the deck would want to be built, that the water would simply cascade off of the deck. The land slopes heavily towards the lake. This deck will not make a better situation of what is out there. He also didn't see any need or practical difficulty since there is already a lot of nonconforming issues on the lot. There are already two small decks off to the side of the house for access to the house. He made the point that he didn't see any reason to approve this application because it is the applicant's desire to have a deck. He is not supportive of approving this application.

Haataja stated that she did feel that this will improve the runoff situation. She stated that there will be a gap in-between the decking boards. The water will run through the deck boards and be absorbed into the ground. Currently the runoff hits the concrete pad that is there and runs right off towards the lake. The applicant's made the deck considerably smaller than the current concrete patio which will also increase the amount of water that is absorbed into the lake, again helping the runoff situation, not making it worse.

Johnson stated that he agreed with the applicant. He has not seen a deck that was built so that the boards are touching. There is always a gap and by removing the concrete that in of itself is improving the runoff situation.

Haataja stated that the intent is to remove the concrete and are open to suggestions as to what to do underneath the deck to help improve that situation. She stated they would do whatever

the Board asked. They would prefer to not have rock there but whatever environmental services felt would be best is what they would do.

Grob stated that he still felt that the deck will still create an issue with runoff. The ultimate saving in runoff with this deck verses the concrete patio is very small and not a valid point for approving a deck that will be 20 feet from the lake. He felt that the size of the proposed deck and the size of the existing patio in his eyes are very similar. There isn't a significant change in impervious surface. He is still against it.

Haataja stated that there were photos that showed the current size of the patio with the proposed deck size and there was a considerable difference. They were trying to be conservative in the size of the deck they are requesting. It is only ten feet in depth.

Christenson asked how much of the concrete in the photos submitted would be removed.

Haataja stated that all of the concrete would be removed besides where the steps come down. There are also railroad ties that are existing that will be removed as well.

Schwindt stated that he felt by removing the railroad ties that are soaked with creosote is a big improvement itself. All of the water right now runs right over the top of them and carries those chemicals towards the lake. He felt that underneath the deck wood chips could be installed which would pick up some of the water runoff and would then slow down the runoff that is going towards the lake. He felt that planting shrubs and other plants along the front side of the deck would catch a lot of that water and hold it. They aren't ever going to be able to stop all of the water but they can stop a lot of it.

Haataja stated that they would ask for help from a landscaper to know what the best things to do are.

Grob stated that if the main objective is to get rid of runoff then all of the concrete would be removed and not replace it with 200 square feet of additional impervious surface. He felt that the bigger issue is all of the runoff that is coming off of the property to begin with and it all funnels into an area in front of the lake. He doesn't think there is any room to put any type of buffer zone that would be effective without eliminating foot traffic.

Johnson stated that he agreed but the concrete is a legal nonconformity so they can leave it there.

Grob stated that the only motive for the deck is personal reasons and so that there is a view of the lake. It isn't because they want to get rid of the stuff and make a better situation. The motive is to put a deck on that is not consistent with the harmony of the ordinance. They have a big vacant lot next door that give plenty view of the lake for a picnic area. There is no incentive to have to have a deck just to see the lake given all of the other circumstances of the property. It is very inconsistent with things that the Board has done in the past.

Johnson stated that by creating this deck the applicant will now have access to the front of the house which in his opinion is a reasonable use that they don't have now.

Grob argued that there is already a deck that gives the applicant's access to the house. It is only four feet but it is there.

Haataja explained that the two decks that are existing come off of two bedrooms. In order to use them they would have to come and go through the bedrooms all of the time.

Schwindt asked Buitenwerf if his office would get involved with what she can or should do to prevent runoff.

Buitenwerf stated that his recommendation for the area currently occupied by the concrete platform would be to put geo-textile fabric down and on top of that put a heavy layer of wood chips or shredded bark. That would be the best thing and then plant shade loving plants in that area. That would address any runoff that the new deck would generate.

Grob stated that the slope needs to be flat and not tapered at all or the water is still going to run through the woodchips. He felt that the gaps in the decking still won't make a difference and that 95% of the water will still cascade off of the deck and cause a runoff issue. There is no justification for having this deck less than 30 feet from the lake.

Christenson stated that this variance request is an either/or situation. If the variance is denied than the concrete will stay as well as the creosote railroad ties and any runoff right now is going over those railroad ties and going into the lake which is really bad.

Grob stated that he couldn't verify if there is creosote or not. The logs are old and he felt that there probably isn't very much creosote left.

A member of the audience tried to make a comment but the public comment portion was closed.

Schwindt moved to approve the variance application as presented and adopt the findings of fact as presented in the July 2013 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?

<u>A nonconforming concrete platform that is larger than the proposed deck is being removed in exchange for the deck – thereby reducing the impervious surface area in the shore impact zone which is in keeping with the ordinance's intent. The structure predates the ordinance and is located in the shore impact zone. A ten foot waterward deck is reasonable in order to provide sufficient room to safely maneuver on the deck.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property?

<u>A lakeside deck in exchange for removing a larger, existing concrete platform is a reasonable use for a house on a riparian lot. Many people owning a house on a lake like to enjoy viewing the lake from a lakeside deck.</u>

3. Is the stated practical difficulty due to circumstances unique to this property?

The structure and platform were present prior to the ordinance and are located in the shore impact zone at a distance of 22'. There is no way to have a lakeside deck on this structure without a variance as the ordinance requires that decks not encroach closer than 30' from the ordinary high water mark or 3.9' lakeward of the structure's 24' ordinary high water mark setback.

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

The structure was present before the ordinance was enacted and it is located in the shore impact zone at a 22' ordinary high water mark setback. The landowner did not construct the house at this setback or enact the ordinance.

5. Will the issuance of the variance maintain the essential character of the locality?

The house and surrounding properties in the locality are single family year-round and seasonal residential uses. The proposed deck will maintain this property's single family year-round use and therefore will maintain the essential character of the locality.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite economics as a difficulty. Instead, the cited difficulties are the structure's being constructed in the shore impact zone at a setback that does not allow a deck to be built by permit and the ordinance's requirement that a lakeside deck not be closer than 30' from the ordinary high water mark when there is only 24' between the house and ordinary high water mark.

The motion carried with a 4 to 1 vote with Grob voting nay.

Variance Application 26-V-13 by Northwoods Bank of Minnesota: Part of Government Lot 6, Section 15, Township 141, Range 32, Akeley Township on 11th Crow Wing Lake. Parcel # 01.15.01600. Part 1: Applicant is requesting a variance from Section 1003.1 of the Shoreland Management Ordinance (SMO) and Subd. 2.10 of the Individual Sewage System Standards Ordinance to create two new lots that do not have room to allow for two standard subsurface sewage treatment systems (SSTS) per lot. Part 2: Applicant is requesting a variance from Sections 501.2, 1001, 1003 and 1006 of the SMO and Section 4, subd. A.1.a.3.b of the Subdivision Ordinance to create two riparian lots that do not comply with some of the minimum lot size requirements. Part 3: Applicant is requesting a variance from Sections 502.2 and 801.3 of the SMO for a proposed SSTS that will not comply with the required 150 foot ordinary high water mark setback.

Kevin Lindow, authorized agent for the application, was in attendance and presented the application. He gave a brief run down on the application for the benefit of those in the audience that have not viewed the property. The parcel currently had four dwelling units on it. The applicants decided it would be best to split the property into two pieces and limit the use on the property to two single dwelling units, cutting the current density in half. In attempting to do so they discovered there were some practical difficulties in doing so. The main one being that the total lot area for Tract A falls a little bit short of the required 40,000 square feet and the residential lot suitable area was a little low as well; primarily due to the fact that the county road is in close enough proximity to the lake that this property is sandwiched in-between the two. It isn't something they created. It is just the way these parcels sit and were created originally. The parcel currently has 315 feet of lakeshore. Tract "A" will have 152 feet of lakeshore and

Tract “B” will have 163 feet of lakeshore. The structures are existing and all the applicants are wanting to do is take a bad situation and make it better.

Christenson asked for Lindow to explain what is going to be done to the duplex to ensure that it won’t be used as living quarters.

Lindow stated that if the variance is approved the applicant’s will completely disconnect the well and septic hook ups to the structure.

Grob stated that should be a condition that is placed on any variance that any of the water supply and septic facilities in those two units be completely removed.

Johnson stated that it looked like the well that services Tract “A” is on the neighbor’s property and wanted to know if it was required for a well easement be granted before this subdivision would be approved.

Buitenwerf stated that it isn’t a requirement according to the ordinance but it is certainly something that the Board could request be completed prior to the subdivision being approved.

Grob stated that in the staff report there was a recommendation for a buffer along both lots. It was suggested at ten feet but after viewing the property he felt that in front of the main home a fifteen foot buffer would be more effective. Ten feet in front of the cabin is fine.

Lindow stated that there is already a buffer in place now. They have proposed a buffer across 90% of the entire property. In front of the house to the lake the topography is relatively flat. He felt that the ten foot buffer zone that was proposed was adequate given the flat nature of the land.

Grob said that the cabin is flat but it slopes pretty well from a water runoff standpoint in front of the main cabin so more buffer would be better. He paced it off and from what is already existing another five feet would very helpful and wouldn’t affect the use at all. He asked Johnson if it is out of the question to recover or reuse the drainfield that was located behind the duplex. The undisturbed soil area that is being saved for a new drainfield is the only logical building space for future buildings on Tract “B”. The cabin is small and someone in the future is going to buy that and want to expand it. It is 22 feet from the lake which is very problematic. He didn’t want to put the drainfield where it is being proposed and basically create a practical difficulty so that they now will try for a variance on a cabin in the shore impact zone. He would rather see them try and reuse the drainfield by the duplex and save this area for a future building site. He wondered if this matter should be relooked at by a septic designer before approval is granted.

Johnson stated the designer did a good job and he chose a spot with undisturbed soil like the state has trained him to do. He asked Buitenwerf if the Board had the ability to grant the designer authorization to use a site as a primary and alternate site.
Buitenwerf stated that the septic sites have been thoroughly vetted by the designer and has looked at every conceivable location for a drainfield and he has proposed the location that he has. A primary site should go always into undisturbed so that there is a reasonable assurance that the system is going to operate as it should. If a system is placed in disturbed soil there is no guarantee whatsoever. He agreed that it is good to look ahead but cautioned the Board not to “what-if” themselves into a corner. The garage would be a plausible location for building a home if someone ever wanted to meet the setback.

Grob asked if the drawing showed how large the drainfield would be.

Johnson stated that it 10' x 25' bed which isn't very big.

Buitenwerf stated that the design showed the dimensions.

Grob was satisfied that there would still be a building site that could meet the setbacks besides where the proposed drainfield is.

Lindow stated that if a future owner came before the Board for a variance on the cabin they would still be able to come and present their case and get another crack at expanding the existing cabin. The system is being installed in undisturbed soil to protect the environment and ensure that the waste is being treated correctly.

No written correspondence was received.

Schwindt opened the floor for public comments.

Chuck Diessner, speaking on behalf of COLA, commented on the proposal. He suggested that Eric read his recommendation to the Board before public comment is opened up. He felt that by doing so opportunities won't be missed. In the last variance application he recommended a shoreline buffer and that was overlooked. Eric is the expert. He felt that his recommendations should be read at the meeting as a reminder to the Board and so the public is made aware of his recommendations. He asked if anyone on the Board truly believed that if this application is approved that the Board just approved a guest cabin. He felt that by disconnecting the swere and water from the duplex that wouldn't discourage people from using it as a gust house. He suggested that if approved the duplex has to come down because of the nature of its use or keep the duplex and rid of the cabin that is only 20 feet from the water. That would be COLA's preference.

Public comment input portion was closed.

Johnson asked if Tract "A" septic system fell under an operating permit or if that was only the case if the alternate was used.

Buitenwerf stated that both locations are in disturbed soils and would need an operating permit for the primary as well as the alternate sites.

Schwindt asked Buitenwerf if he felt it would be satisfactory to disconnect the water and septic from that building for it to be not considered a residential dwelling unit.

Buitenwerf stated that in the application it states that it will not be used as a residence and that the sole residence will be the cabin by the lake. That is sufficient for the department. That building could be converted into a garage but that doesn't preclude someone a year or two down the road from retrofitting that or using it as a guest house.

Grob moved to approve the variance request with three conditions: 1. the duplex must be completely gutted and never be used for living or sleeping conditions. 2. all water and sewer access be removed, 3. a fifteen foot buffer be placed on Tract "A" and a ten foot buffer be placed on Tract "B". He also moved to accept the findings of fact as presented in the July 2013 BOA Staff Report. He felt that those conditions are consistent with Eric's recommendations.

Johnson asked to add the condition that the well on the west side of Tract “A” obtain an easement to allow it to stay in its current location and service the main home.

Christenson seconded the motion.

Buitenwerf needed clarification on the conditions. He asked for the definition of “gutting the duplex” so the office knows whether or not the condition has been met.

Grob stated that since he wasn’t allowed inside the structure it is difficult for him to define exactly what he wants to see. He wanted all bedrooms and living space removed.

Schwindt stated that the original proposal was to remove the water and septic and the fixtures.

Grob stated that wasn’t sufficient to keep people from using the building as living space.

Christenson felt that the definition to her would mean removing everything to the studs.

Grob said it should state that it won’t be used for living space. That is what they are proposing so this condition shouldn’t be a hardship. It needs to be an open space inside without walls.

Lindow stated that to tear out the sheetrock and take everything out doesn’t seem reasonable when it can be used for recreational use.

Grob stated that wasn’t what he was implying. The things that make it a home needs to go. He stated that upon entering the structure he want to see one big room with no walls in it. His definition of “gutting” is no interior walls or facilities such as kitchen sinks etc.

Lindow stated that is going to add a lot of additional expense. There is a lot of wiring in the walls so in order to take the walls out there are multiple people who will need to be hired to do as he is asking.

Christenson stated that she agreed with Ken. The Board is trying to alleviate a long term problem.

Grob stated they are trained that if there is something the Board wants to see done it needs to be a part of the motion and not left up to chance that it will be done. The intent is right and how the lot is going to be split up is all positive. There have been too many cases in the past where an applicant state that a structure won’t be used for living space and it happens anyway because the Board didn’t require them to eliminate the things that make is living space.

Schwindt wondered if Buitenwerf was comfortable enough with the motion that the office could enforce it.
Buitenwerf stated that Ken wants all interior walls removed, all kitchen cabinets and fixtures removed as well as bathroom fixtures and cabinets gone. All things interior to the space need to be gone.

Grob stated he felt that cabinets for storage weren’t wrong but in order to make it easier to enforce he’ll leave it that way.

Buitenwerf stated that it needs to be as clear cut as possible since it will be an expense to the applicant's and they won't want to remove more than what is required.

A suggestion was made from the audience to have Ken, Eric and Charlene go out and view the property with the bank and leave it up to them to reach an agreement.

Schwindt didn't think that would be allowed. It is up to Eric's office to interpret what needs to be done. Once he is comfortable with the interpretation then the Board can move on.

Buitenwerf stated that it needs to be laid out black and white in the condition so that if the applicant questioned or appealed that condition it isn't up to interpretation but clearly stated.

Grob stated no water, no sewer, no living space and all interior walls removed.

Schwindt asked if any of the interior walls are support walls. That could be a big problem if a support wall is removed.

Grob said his comment is relevant to each individual unit not as a whole. The wall that is dividing the two sides can stay since it is more than likely a support wall.

Christianson questioned why the need to remove everything else when the water and sewer are being removed.

Grob said he would give Arnie names and addresses of places where people created living space with no water and no sewer. He stated the recommendation is on the table and it is clear enough.

Schwindt was concerned about all of the electrical that would be in the walls and how much cost and work it would take to remove it.

Grob wasn't concerned. He stated that it wouldn't be that hard to disconnect the circuit breaker. He stated that if the constraints aren't in place he would guarantee that this structure would be used as a guest house. The Board's responsibility is to make sure that doesn't happen.

Buitenwerf needed to know where the measurements started for the buffer zones.

Grob wanted them to be fifteen and ten feet from the ordinary high water mark covering 90% of each lot.

The applicant was asked if the conditions were clear.

Lindow stated that he didn't agree with them but he understood them. He understands what the concept is and what the Board is trying to accomplish but to go in start removing wiring and walls and sheetrock there is going to be a large expense. The applicant's didn't create the issue and are trying to do the right thing. The last thing they want to have more expenses.

Schwindt agreed with Kevin. He didn't think the Board should be adding expenses to what the bank already has on its hands. That is the only condition that he has a problem with.

Johnson didn't feel that they are going to stop someone from using that space as living quarters even gutted. A person could sleep in there if they wanted to but the applicants have stated that

they will not use it or portray to prospective buyers that the duplex can be used for living quarters. He isn't for that condition either.

Grob said to call the vote.

The motion failed on a 2 to 3 vote with Schwindt, Johnson and Christianson voting nay.

Johnson moved to approve the variance application and adopt the findings of fact as presented in the July 2013 BOA Staff Report with the following conditions: 1. The water and sewer hook ups must be disconnected and the toilets and sinks must be removed from the duplex structure. The duplex structure cannot be used for living quarters. 2. A no mow vegetative buffer must be installed on Tract A. It must be 15 feet deep from the ordinary high water mark, running the width of the lot so 90% of the lot width is covered by the buffer. 3. A no mow vegetative buffer zone must be installed on Tract B. It must be 10 feet deep from the ordinary high water mark, running the width of the lot so 90% of the lot width is covered by the buffer. 4. An easement for the well located on parcel 01.15.01700 that is servicing proposed Tract A must be obtained

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?

<u>The dwelling unit density is being cut in half from four to two units. A well that does not meet SSTS setback requirements is being abandoned and a new well that does meet setbacks is being drilled. A vegetative buffer along 90% of the shoreline is being installed to mitigate the lots not meeting all size requirements. This is a "win-win" for all parties involved.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property?

<u>Reducing the density from four dwellings to two dwellings and creating two lots so that the density cannot be increased in the future is a reasonable use of the property that can only be achieved by variance because the proposed lots are not able to comply with all the lot size requirements as there simply is not enough land to do so.</u>

3. Is the stated practical difficulty due to circumstances unique to this property?

<u>The property historically consisted of four grandfathered, legal nonconforming dwelling units. Over the years, SSTS for these units have used up space requiring that variances be granted to allow new SSTS to be installed as so much of these two proposed lots have disturbed soil that is not suited to use for drainfields. The lots are already improved (meaning they have residences on them with indoor plumbing connected to an SSTS) and working around structures that predate the ordinance so they can comply with setback requirements and the uniqueness of a 50' road ROW setback from CSAH 25 that eats up a lot of the RLSA on these two lots further contribute to the list of unique circumstances on the property.</u>

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

The property was created prior to the ordinance and the structures were constructed prior to the ordinance. The road ROW setback is the primary reason why the two lots cannot meet the RLSA requirement. The landowner did not create the lot or the structures on it or the ordinances that established these lot size and SSTS regulations.

5. Will the issuance of the variance maintain the essential character of the locality?

The variance will improve the essential character of the locality by reducing the dwelling unit density from four to two units – one per lot – which matches the standard dwelling unit density of one unit per riparian lot.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite economics as a difficulty. Instead, the cited difficulties are the road ROW setback affecting the RLSA, the location of structures that predate the ordinance, and the disturbed areas that do not allow SSTS to be installed.

The motion carried on a 3 to 2 vote with Christenson and Grob voting nay.

Variance Application 27-V-13 by Kathy Grell: Part of Government Lot 4, Section 21, Township 140, Range 34, Henrietta Township on Lake Peysenski. Parcel # 13.21.03300. Applicant is requesting a variance from Section 906 of the Shoreland Management Ordinance for creating a pasture from an existing non-agricultural use that does not comply with the required 500 foot ordinary high water mark setback or 5 acres minimum pasture size.

Kathy Grell was in attendance and presented the application.

Johnson asked if the horses were there year round.

Grell stated that the horses would be housed there mostly during the summer months. They don't ride during the summer because the flies are so bad. The horses are boarded about tow miles away for the remaining months. The horses normally arrive mid May until early September.

Johnson stated that he noticed the drainfield is in the fenced in area but has seen drainfields fail because of people pasturing over them.

Grell stated that if she noticed that the drainfield started to show signs of wear and tear she would move the fence to exclude the drainfield area or fence them out of it.

No written correspondence was received and no public comment was given.

Grob moved to approve the variance application with the condition that a maximum of two horses can be pastured on the property at any given time as well as adopt the findings of fact as presented in the July 2013 BOA 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?

The proposed pasture is ~3.5 acres in size and its closest point is 200' from the lake and separated from it by County 20. Limiting the number of horses allowed to be in the pasture to two will ensure that the vegetation does not become overgrazed and thereby create a potential erosion problem. The raised grade of the roadbed of County 20 will also guard against any stormwater reaching the lake.

2. Without the variance, is the owner deprived of a reasonable use of the property?

The entire property is 5.1 acres in size. If the entire property was fenced in for the pasture, only a variance from the 500' ordinary high water mark setback would be required. If the property had been in agricultural use, then no variance would be needed if the entire property was fenced. On a five acre parcel in a rural part of the county, it is reasonable to pasture two horses on ~3.5 acres of ground, a good portion of which complies with the 500' ordinary high water mark setback.

3. Is the stated practical difficulty due to circumstances unique to this property?

The property was created in the 70s when the ordinance did not contain Section 906 or regulate livestock pastures. The lot is 5.1 acres in size so pasturing the entire property would require the fence to encompass the house and outbuildings which is not practical or safe. Even if that were done, the majority of the lot falls within 500' of the lake. There is no way to comply with the ordinance requirements without a variance.

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

The difficulty is created by the lot's size, dimensions, and proximity to the lake. The lot was not created by the landowner.

5. Will the issuance of the variance maintain the essential character of the locality?

Limiting the number of horses allowed to be in the pasture to two will ensure that this livestock use does not become a primary use of the property and that it remains accessory to the primary residential structure dwelling unit use. There are several trees on the property and topographic changes that screen much of the pasture area from the view of neighboring properties.

6. Does the stated practical difficulty involve more than economic considerations?
The application does not cite economics as a difficulty. The difficulty is the lot was created before this section was added to the ordinance and fencing the entire property is impractical due to it would include the house in order to comply with the five acre minimum and then the property would still be unable to comply with the 500' setback requirement and thus still need a variance.

The motion carried unanimously.

Miscellaneous:

Buitenwerf commented that the County Board is looking at the possibility of combining the Board of Adjustments and the Planning Commission into one board. He asked for the Board members thoughts.

Discussion ensued regarding the pros, cons, and other logistical aspects of combining the boards.

Adjournment:

Schwindt moved to adjourn. Christianson seconded the motion that carried unanimously.

Meeting was adjourned at 10:47 a.m.

Respectfully Submitted,

Maria Shepherd
Recording Secretary

Hubbard County
Board of Adjustment
August 19, 2013

Chairman Schwindt opened the meeting with the following members present: Tim Johnson, Charlene Christenson, Ken Grob, Lou Schwindt, and Arne Christianson. 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 15, 2013 Minutes:

Christianson moved to approve the minutes as presented. Schwindt seconded the motion that carried unanimously.

Old Business:

There was no old business to discuss.

New Business:

Variance Application 28-V-13 by Gail Budd Revocable Trust: Apartment 5, Vacationaire Estates, Section 10, Township 141, Range 35, Arago Township on Island Lake. Parcel # 02.41.0050. 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.

Steve Budd was in attendance with John Mason, the authorized agent and presented the application.

Mason gave a brief explanation of the project. The plan is expand the cabin to accommodate a growing family but more importantly make the home able to be used year round. The proposed plan is to add twelve inches of height of the walls of the existing cabin and add an addition to the rear of the cabin, away from the lake. A loft or partial second story would be added over the new addition and part of the existing cabin. The overall height of the structure will increase by twelve feet so that the height once completed will be 24 feet. A diagonal cat walk would be built from their lakeside deck to the side so an emergency exit door could be installed in the existing kitchen. The other plans for the property include reroofing, new siding, changing the pitch direction of the roof to help with water flow and run off. Gutters will be utilized to manage the water flow. The new siding would be half log and would be stained to match the surrounding buildings so that it blends in. It would not be an eye sore.

Christenson asked if the current cabin, the way it is could be used in the winter time.

Budd stated that it could be used but the kitchen is extremely small and very hard to use because of its size.

Christenson asked if the applicant owned any other property in Vacationaire Estates where family could stay.

Budd answered that they do own cabin 4 as well but would like to get the whole family together in one cabin. The kitchen in cabin 4 is smaller than the cabin in question. He mentioned that

Schwindt stated that the cabin is in the shore impact zone which is the reason this request is before the board. A 50% addition is not allowed to structures within the shore impact zone and this addition exceeds that.

Grob stated that with a normal residential structure and lot. The 50% addition shouldn't apply to this cabin regardless of if it were out of the shore impact zone since this is a converted resort that is over density.

Schwindt felt that the request is excessive considering how close the cabin is to the water.

Grob shares Lou's view. It is in the shore impact zone which is an area where the Board generally doesn't allow expansions of a cabin's footprint. This request is almost a 200% increase. If this request was approved, in essence the Board is allowing a brand new structure to be built in the shore impact zone and only 30 from the lake. It is not in harmony with the ordinance and is not consistent to the other cabins in the development.

Mason stated that the footprint is only increasing fifteen feet in depth and is on the backside of the cabin, away from the lake. It is cut into a hill and there are no cabins behind it so this structure will not block anyone's view of the lake. He agreed that the addition was large but stated it will be a much nicer looking structure and will accommodate a growing family.

Schwindt stated that there is a larger two story structure on the property but it is back behind the 100 foot structure setback. He asked if the cabin could be moved back to a conforming setback.

Mason stated that there is a road and another storage building that would be in the way.

Schwindt stated that the road is for private use and not a public road so it could be moved or the structure could be built behind the 100 foot setback.

Budd felt that the cabin could possibly be moved but stated that moving the road would be extremely difficult and would not be favorable with the other residents.

Johnson stated that he isn't against an addition but he is against the additions as presented. He didn't like that an addition would be but into the hillside. The cabin sits nicely where it is. He could see more of a second story addition would be less intrusive. The deck addition didn't really have a purpose. He didn't see a reasonable use or a denied use if the walkway around the cabin wasn't allowed. He felt the request as submitted is excessive.

Schwindt opened the floor for public comment.

No written correspondence was received.

Bill Cowman, representing COLA, stated that they support Eric's recommendation for denial. It is an excessive addition. It is setting precedence in as much as each request that is coming before the Board is a little larger than the one before. If the numbers are correct the addition would be a 178% increase to a building that is located in the shore impact zone.

The public comment portion of the meeting was closed.

Grob moved to deny the variance request and adopt the findings of fact as presented in the August 2013 BOA 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?

The proposed addition will make the structure 178% larger than the current structure and double the structure height from 12' to 24' – all at a 37.5 foot ordinary high water mark structure setback to the eave. Thus, the resulting structure will essentially be a brand new house. There is room on the property to build the proposed structure at a greater ordinary high water mark structure setback than what is proposed. Therefore, the plans should be modified to move the proposed structure further from the lake as there is an alternative that is more in-line with the ordinance and State Rule's intent.

2. Without the variance, is the owner deprived of a reasonable use of the property?

The current structure provides a reasonable use of the property and there is room on the property where the structure could be reconstructed with the proposed addition at a conforming setback. There also are nine other residential units on this property that provide a very reasonable use of the property.

3. Is the stated practical difficulty due to circumstances unique to this property?

There is room on the property to move the structure back. Given the scope of the proposed addition relative to the existing cabin's size, it makes sense to look at if there is a conforming or more conforming ordinary high water mark structure setback that can be realized. The application only cites a difficulty of the structure being in the shore impact zone, but given the proposed addition being twice the size of the existing cabin, it is appropriate to look at moving the structure back.

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

The structure was constructed prior to enactment of the shoreland ordinance at a nonconforming ordinary high water mark setback that is in the shore impact zone.

5. Will the issuance of the variance maintain the essential character of the locality?

The house and surrounding properties in the locality are single family year-round and seasonal residential uses. The proposed variance seeks to maintain this property's single family year-round use and therefore will maintain the essential character of the locality.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite economics as a difficulty. Instead, the cited difficulty is the structure being located in the shore impact zone and having been constructed prior to enactment of the shoreland ordinance.

The motion carried unanimously.

Variance 29-V-13 by Dennis and Nancy Carlson: Lot 6, Block 1, Two Shores on Midge, Section 10, Township 145, Range 32, Farden Township on Midge Lake and Little Midge Lake. Parcel # 07.52.00600. Applicants are requesting an after-the-fact variance from Section 502.2 of the Shoreland Management Ordinance for an addition to an accessory structure that does not comply with the required 100 foot ordinary high water mark setback, additions to a residential structure located in the shore impact zone, and a platform that does not comply with the 100 foot ordinary high water mark setback.

Dennis and Nancy Carlson were in attendance and presented their application.

Dennis gave a brief description of the variance request. An addition was made to the attached garage, strictly for storage. The size of the garage addition was 10' x 12'. An addition was added onto a storage shed, 7' x 13' for additional storage. The last addition was added onto the back side of the cabin, away from Midge Lake but going closer to Little Midge Lake, and is an outdoor kitchen, brick base and has a roof that has fold down awning on two of the sides. It is a seasonal property and is not insulated.

Grob asked for the dates of these additions.

Dennis stated that he couldn't remember exactly but he looked at his tax statements and saw that the addition to the garage was done in 2006, the addition to the storage building was done in 2011 and the outdoor kitchen has been a work in progress, starting in 2008 and completed the project in 2012. The awning was added after the big storm came through and took out nine of their large trees that provided shade over the patio.

Grob thought that the outdoor kitchen was more like a patio and wondered if it would be looked at with the 50% addition rule or is it just impervious surface.

Buitenwerf stated that any addition that contains a roof is considered an addition to a structure which requires a building permit or variance depending on the structure's setback.

Grob asked if it would be considered living quarters.

Buitenwerf stated that it is considered part of the structure just as a covered porch would be.

Johnson stated that there is a temporary bar that is on the property that does not meet the setback requirements either. He asked when the temporary bar showed up.

Dennis stated the bar came first and has been there for at least ten years.

Johnson asked if the temporary bar is considered a structure and therefore needs to meet setback.

Dennis and Nancy both stated that the bar is temporary and on wheels.

Buitenwerf answered that a temporary structure is required to meet the same setbacks as a permanent structure. The term temporary refers to the length of time the structure is on the property and not if it is moveable or on wheels.

Johnson stated that the additions do exceed the 50% that would have been allowed. He wasn't sure if that was part of the request or not. It is 129 square feet over.

Buitenwerf stated that the application does state that they are requesting a variance from Section 704 which deals with nonconforming structures.

There was a letter of correspondence was received and distributed to the Board.

The floor was opened for public comment.

Bill Cowman, speaking on behalf of COLA, stated that it looks like there are two different camper pads there. He wanted to know how Section 512 applied to this situation.

The public comment portion was closed.

Buitenwerf stated the Ordinance allows for occasional and intermittent use of RV, travel trailer cites for guests visiting. The pads would be allowed per that Section of the Ordinance. No permits are required for occasional and intermittent use of such structures.

Nancy stated that the campers are used once a year for a week for a family reunion. The kids bring their own campers and they own one camper themselves.

Schwindt stated that he didn't see anything on those pads during the lot viewal.

Dennis stated that the campers come and go and only stays there for a maximum of four months.

Grob thought that temporary campers like that are allowed as long as they are for short period of times.

Buitenwerf stated that they are to be used for occasional and intermittent use. Nothing in the Ordinance states that a camper can't be placed on the property and park it there. The use needs to be occasional or it would be considered a guest house and the lot would then have to meet duplex sizing.

Grob stated that the camper pads were not large and didn't appear to be used extensively from his observation. He asked the applicant why they failed to obtain the appropriate permits for the record.

Dennis stated that the township they live in does not require building permits so when they were told that they didn't think to check with anyone else. He had no knowledge of the Shoreland Management Ordinance until the violation letter arrived.

Grob stated that a variance process was needed several years ago on this property.

Dennis stated that it was Nancy's past husband that was involved with the previous variance.

Grob assumed that the need for a previous variance would have alerted the applicant's of the need for approval for these projects.

Nancy stated that they thought the variance was for the septic system and not the building itself. They thought that was when a variance was needed but not for a building.

Christenson commented that the garage addition is almost on the property line. Per the conversation that was held on-site it is her understanding that that was due to the DNR when the property was sold.

Dennis stated that when the lot was sold to Nancy from the DNR, the ordinary high water mark used when selling and what is used now on Little Midge Lake is different.

Christenson asked if they were aware of a ten foot side lot line setback requirement.

Nancy stated that the one side of the structure if twelve feet and the other side is less than the ten.

Grob commented that the neighboring structure is even closer to their lot line than this one is. After viewing the property, all the water runoff from any of the structures flows away from Midge Lake. There is ample vegetation on the Little Midge side of the lot to filter any runoff. With the constraints of having two lakeshore and restrictions on both sides of the property there is a practical difficulty there.

Grob moved to approve the variance request as presented.

Christianson seconded the motion.

The findings of fact were answered as following:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

<u>Two of the additions are to the rear or side of the structure which is in keeping with the ordinance intent. The addition to the accessory structure is waterward, but it is very small in size. There is no place on this lot where anything can be placed/constructed without need of a variance because of the overlapping ordinary high water mark setbacks from the two lakes.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property?

<u>The property already has two camper pads, a cabin, and an accessory structure that appears to be used as a guest cottage – all of which offer reasonable uses of the property.</u>

3. Is the stated practical difficulty due to circumstances unique to this property?

<u>The lot lacks sufficient depth to meet the dual ordinary high water mark setbacks of 100' from Midge and 150' from Little Midge that overlap one another on the property. There is no location on the lot that is able to meet all setback requirements.</u>

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

The lot was created by the State of Minnesota in 1989 in the plat of Two Shores on Midge despite this lot and other lots in the plat not complying with the State's own shoreland management rules. There is nowhere on the lot where a structure can be placed and meet all setback requirements. A variance of some kind is needed to place anything on this lot.

5. Will the issuance of the variance maintain the essential character of the locality?

The locality will remain single family seasonal and year-round residences. The three additions do not change the locality's character in any negative way.

6. Does the stated practical difficulty involve more than economic considerations?

Economic considerations were not cited by the applicant as a difficulty. The alleged difficulty is the fact the structure was built before the ordinance was enacted and it is located in the shore impact zone. The lot also lacks sufficient depth to be able to meet the required setbacks due to the uniqueness of this lot being ~190' deep and there being a 150' ordinary high water mark setback from Little Midge and a 100' ordinary high water mark setback from Midge.

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?

The applicant commented that they were not aware of the Ordinance applying to anything other than septic systems and the township they live in doesn't require permits. He acted in good faith.

8. Did the applicant attempt to comply with the law by obtaining the proper permits?

No. No permit applications for the three additions were submitted to the County.

9. Did the applicant obtain a permit from another entity that violated the law? Provide explanation below.

Not that we are aware of.

10. Did the applicant make a substantial investment in the property? Provide details below.

No. The three additions are small in size and the open air porch only consists of a roof – no sides. The garage addition is 10' x 12' and the accessory structure addition is 7' x 14' with both being single story.

11. Did the applicant complete the repairs/construction before the applicant was informed of the impropriety? Please provide details below.

Yes. The construction was finished before Environmental Services staff performed a site inspection.

12. Are there other similar structures in the neighborhood? Please provide details below.

Yes. Other homes in this development on Midge are also single family residences of similar size and ordinary high water mark setback as this one.

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 three additions are minor relative to the extent of existing improvements on the property. Only one of the three additions is waterward and it encroaches an additional 7' lakeward. There would not be much environmental protection/benefit gained by requiring these three additions to be removed.

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

No. There is inadequate depth on the lot to meet both ordinary high water mark setbacks from Midge and Little Midge. The property complies with the 25% impervious surface coverage requirement. The combined square footage of the structures involved is reasonable compared to today's average lake home size. Two of the additions comply with the ordinance's intent of being placed on the side or rear of a structure and may very well have been approved if a variance had been requested before commencing construction.

The motion carried unanimously.

Variance Application 30-V-13 by Dee Ann Thiede: Lot 14, Duck Lake Addition, Section 31, Township 139, Range 33, Crow Wing Lake Township on Duck Lake. Parcel # 06.38.01400. 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.

Dee Ann Thiede was in attendance and presented the application. She would like to expand a bathroom by four feet to allow for a regular sized one piece shower unit.

There were no questions from the Board.

There was no written correspondence received and no public comment was made.

Christenson moved to approve the variance application and adopt the findings of fact as presented in the August 2013 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?

The proposed addition is going to the side of the structure and it is only 20 sq. ft. in size relative to the existing cabin's 840 sq. ft. The addition will only be 9' 6" high relative to the cabin's current 16' height so it will not increase the aesthetic impact of the cabin when viewed from the lake.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Enlarging the current 4' wide x 5' 6" long bathroom to allow the current 24" x 32" shower to be enlarged to 36" x 48" is a reasonable use.

3. Is the stated practical difficulty due to circumstances unique to this property?

The structure predates the ordinance and is located at a nonconforming ordinary high water mark setback in the shore impact zone. Given the scale of the addition relative to the existing structure, it would be unreasonable to require the structure to be moved to a more conforming setback in order for the addition to be constructed.

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

As mentioned in previous answers, the structure predates the ordinance and is located in the shore impact zone. The ordinance requires a variance for any additions/alterations to structures located in the shore impact zone. The landowner did not create the structure or ordinance.

5. Will the issuance of the variance maintain the essential character of the locality?

The house and surrounding properties in the locality are single family year-round and seasonal residential uses. The proposed variance seeks to maintain this property's single family year-round use and therefore will maintain the essential character of the locality.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite economics as a difficulty. Instead, the difficulties are the structure predating the ordinance and being located in the shore impact zone, and it not making sense to consider moving the structure because of the scale of the proposed addition relative to the existing cabin's size.

The motion carried unanimously.

Variance Application 31-V-13 by Victor and Debra Olson: Lots 2 and the north ½ of Lot 3, Miller's Lakeview, Section 27, Township 141, Range 33, Mantrap Township on Spider Lake. Parcel #s: 20.38.00200 and 20.38.00300. Applicants are requesting a variance from Sections 502.2 and 503 of the Shoreland Management Ordinance for a proposed residential structure that will be located in the bluff zone and not comply with the required 100 foot ordinary high water mark structure setback.

Vic Olson was in attendance and presented his application. He gave a brief history of how this variance application today came about. In 2002 a variance was granted for a home to be built on Lot 2. Lot 3 was going to be split in half with part of it being combined with lot 2 and the other half being combined with Lot 4. A recent survey was completed on lot 2 to complete the administrative subdivision application. It was found that the crest of the bluff was behind the road making the originally approved building site in the bluff. The bluff language has changed since the original variance was approved. During the lot viewal someone pointed out the overhead power lines. He had the power company come out and view the property to see what can be done. They were out there for a few hours to see what could be done. If it is left the way it is any structure would need to be at least fifteen feet away. The line could possibly be moved across the road but would be very costly. He has revised his plan to accommodate for the 15 foot setback from the road. It places the house at a setback of 75 – 80 feet from the

ordinary high water mark setback. The septic system for this house is going to be on the back lot and a gutter system would be installed and utilized to minimize runoff and erosion.

Grob stated that the plans are only for a house and wondered what the provisions were for a garage and parking.

Vic stated that parking would be alongside the road where a bump out is or across the road. The neighbor parks alongside the road. There is no intention of building a garage on this property. If a garage was needed or wanted, provision would be made to allow one across the road on the back lot.

Grob asked how much property the applicants own across the road.

They own two and a half acres which leave plenty of room for a garage or septic expansion.

No written correspondence was received and no public comment was made.

Schwindt asked if the revised request was part of the record or if the neighbor's needed to be notified again.

Buitenwerf answered that the notice that was sent to the neighboring properties still accommodates this request without any trouble. The department stated that the only concern with the new request is that the exact location of the power line is unknown. It makes it difficult to ensure that the house is going to comply with the fifteen foot setback from the power line.

Vic stated that the power line does follow the property line. He will ask the surveyor to mark it on the survey. He also stated that if the power company can justify burying the cable then the setback is less.

Grob stated that based on the amendment if this is approved the building can go no closer than the 75 – 80 foot setback.

Buitenwerf stated that the department would like to know exactly where that power line is so that the exact distance from the lake would be known.

Vic stated that the power company assured him that the power line runs with his back property line.

Schwindt thought that they would be able to act upon the request and if he finds he can't make the setbacks that were allowed then he would have to shrink down the size of the house or come back before the Board.

Grob stated that he would be in favor of acting on it now. He is comfortable with a 75 foot setback. He asked Buitenwerf if this request is approved if the original variance that was approved in 2002 was voided.

Buitenwerf stated that the previous variance was still valid and would remain as such.

Grob asked if it would be a wise move to condition the approval of this request on abandoning the previous variance.

Buitenwerf stated that he wasn't sure why they would do that since the previous variance is what approved the subdivision of the lots.

Grob had forgotten about the lot structure that was approved.

Johnson moved to approve the amended setback request of 75 feet from the ordinary high watermark and 15 feet from the road right-of-way and adopt the findings of fact as presented in the August 2013 BOA Staff Report with an addition to the answer of question 3.

Christenson seconded the motion.

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 entire lot is in the bluff impact zone. In 2001, the bluff language was different such that the "top of bluff" definition did not cause the proposed building site to be in the bluff impact zone. Since then, the top of bluff definition changed – thereby causing the 2001 building site to fall in the bluff impact zone. The slope where the building site is located is not as severe as the slope on the portion of the lot nearest to the shoreline. The proposal places the house as far back on the lot as possible to protect the slope and the size of the house (20' x 40') is reasonable and not excessive given the lot's characteristics.

2. Without the variance, is the owner deprived of a reasonable use of the property?

An 800 sq. ft. house is a small structure and asking for this variance to allow the applicants to proceed with the building plan that was approved in 2001, but is no longer possible due to a change in the "top of bluff" definition is reasonable.

3. Is the stated practical difficulty due to circumstances unique to this property?

The lot was created before the bluff language was added to the ordinance. The lot is an average of 125' deep so a variance is needed to place any structure on this lot as it is not possible to comply with the ordinary high water mark and road right-of-way setbacks. The lesser setback to the ordinary high water mark is also being allowed due to the fact that a power line runs the length of the property line and there must be a fifteen foot setback from it.

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

The landowner did not create the lot or the bluff language in the ordinance. The ordinance bluff language creates the practical difficulty because the entire lot is located in the bluff impact zone.

5. Will the issuance of the variance maintain the essential character of the locality?

The surrounding properties are developed into single family seasonal and year-round homes. The proposed use of this lot will be the same – a single family residence such that it will thus maintain the locality's essential character.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite economics as a difficulty. Instead, the difficulty is the entire lot being located in a bluff impact zone.

The motion carried unanimously.

Variance Application 32-V-13 by Carl Meyer: Lots 1 and 2, Crow Wing Heights, Section 9, Township 139, Range 33, Crow Wing Lake Township on 3rd Crow Wing Lake. Parcel #s: 06.41.00100 and 06.41.00200. Applicant is requesting a variance from Sections 502.2, 507.1, and 704 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residential structure located in the shore impact zone that does not meet the required 3 feet vertical separation between the structure's floor and the highest known water level of the lake.

Carl and Linda Meyer were in attendance and presented the application. He gave a brief history of the lot and building. The lots were purchased back in the 1960s. When the cabin was built there were no restrictions as to how close to the water a structure should be or vertical separation. He inherited the cabin from his parents. They had plans to build a brand new cabin at a conforming setback in 2008; due to medical complications made it impossible to do. They wanted to figure out a way to make their current cabin more livable and comfortable. They met with contractors who drew up the plans that were presented to the Board. They wanted to stay under the 50% addition requirement. They realize that the cabin is too close to the water but it was placed there prior to there being any rules.

Grob asked how much remodeling and upgrading is going to be done to the existing structure to make the existing structure compatible to the new addition.

Carl stated that the breezeway will be insulated and gain thicker walls. Two new bedrooms will be added but an existing bedroom is being eliminated.

Grob asked if new siding would be put on the entire structure.

Carl stated he wasn't sure. The new addition would have new siding and the breezeway would have new siding. When the cabin was originally built, the siding was creosoted which is why the cabin has held up so well.

Grob asked if there would be a lot of remodeling inside the house.

Carl stated that there would be significant remodeling on the inside of the house.

No written correspondence was received and no public comment was

Grob commented that he appreciated what the applicant's were trying to do but the cabin is in the shore impact zone. He wasn't concerned with only being 30 inches above the water level. He feels that this is not a minor addition. When it is all said and done it will practically be a brand new cabin that is only 30 feet from the water. The lot is not unique. There are no topographical issues that would restrict a cabin being built at a conforming setback. He isn't comfortable with allowing this expansion to a cabin that is only 30 feet from the water. He felt that the cost shouldn't be a factor in this decision. It will cost more to build back at a conforming setback but that is the right thing to do.

Johnson felt that it was a reasonable request. The applicants requested less than the 50% when they could have requested more. The structure predates the Ordinance and has grandfather rules for it to stay where it is at.

Christenson stated that the applicants don't cite economic considerations were not stated as a factor for this variance.

Grob stated that even though they didn't cite it as a reason for the variance, based on the conversation he feels differently. Looking at the land, there is no practical difficulty. They are 30 feet from the lake and it is not desirable to perpetuate a nonconformance with building a new structure that will be around for years to come. He would not be in favor of it. He feels that it should be built back at a conforming setback.

Schwindt moved to approve the variance application and adopt the findings of fact as presented in the August 2013 BOA Staff Report.

Johnson seconded the motion.

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?

<u>The proposed addition is going to the rear of the cabin away from the lake and will not be visible from the water – which is in line with the ordinance's intent. The addition also will not go any higher than the existing cabin. The scope of the addition does not warrant moving the existing cabin back, further away from the lake.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property?

<u>A 416 sq. ft. bedroom and bathroom addition is a reasonable size for a 976 sq. ft. cabin and a reasonable use of the property.</u>

3. Is the stated practical difficulty due to circumstances unique to this property?

<u>The structure predates the ordinance and is located at a nonconforming ordinary high water mark setback in the shore impact zone and a nonconforming floor height above the highest known water level because the cabin was constructed before the ordinance.</u>

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

<u>As mentioned in previous answers, the structure predates the ordinance and is located in the shore impact zone. The ordinance requires a variance for any additions/alterations to structures located in the shore impact zone and that do not meet the 3' vertical separation requirement from the highest known water level. The landowner did not create the structure or ordinance.</u>

5. Will the issuance of the variance maintain the essential character of the locality?

The house and surrounding properties in the locality are single family year-round and seasonal residential uses. The proposed variance seeks to maintain this property's single family year-round use and therefore will maintain the essential character of the locality.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite economics as a difficulty. Instead, the difficulties are the structure predating the ordinance, being located in the shore impact zone, and not meeting the 3' vertical separation requirement, and it not making sense to consider moving the structure because of the scale of the proposed addition relative to the existing cabin's size.

The motion carried on a 4 to 1 vote with Grob voting nay.

Miscellaneous:

There were no miscellaneous items to discuss.

Adjournment:

Christianson moved to adjourn. Christenson seconded the motion that carried unanimously.

Meeting was adjourned at 10:22 a.m.

Minutes Respectfully Submitted by:

Maria Shepherd
Recording Secretary

Hubbard County
Board of Adjustment
September 16, 2013

Chairman Schwindt opened the meeting with the following Board members present: Oakley Williams, Charlene Christenson, Ken Grob, Lou Schwindt and Arne Christianson. Also present were Eric Buitenwerf, Environmental Services Officer and Maria Shepherd, recording secretary.

Schwindt welcomed everyone to the meeting and read through the meeting protocols and procedures.

Approval of the August 19, 2013 Minutes:

Christianson moved to approve as presented. Christenson seconded the motion that carried unanimously.

Old Business:

There was no old business to discuss.

New Business:

Variance Application 33-V-13 by Paul and Jodi Kjolhaug: Lot 9, Stillwell Beach, Section 24, Township 144, Range 35, Lake Hattie Township on Lake Hattie. Parcel #: 18.37.00800. 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 was previously modified by variance that does not meet the 100 foot ordinary high water mark structure setback.

No one was in attendance to present the application.

Grob stated that the only reason this request is in front of the Board is because there was a previous variance issued on the property for the deck and the existing structure does not meet the 100 foot setback.

There was no written correspondence and no public comment was made.

Christenson moved to approve the variance request as presented and adopt the findings of fact as presented in the September 2013 BOA Staff Report.

Christianson seconded the motion.

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?

<u>The proposed addition is going on the rear of the cabin and it constitutes only a 44% increase in size on an 864 sq. ft. existing cabin. The additions will comply with all other setback requirements and will themselves be located beyond the 100' ordinary high water mark setback.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property?

<u>A screened-in porch and covered deck are reasonable uses for a property and their scope (384 sq. ft.) relative to the existing cabin's size (864 sq. ft.) is very reasonable.</u>

3. Is the stated practical difficulty due to circumstances unique to this property?

The cabin was built by permit in '73 at a 100' ordinary high water mark setback. Over the years, the shoreline appears to have eroded such that the structure became nonconforming in terms of its ordinary high water mark setback. Section 704.7 of the Shoreland Management Ordinance (SMO) requires that once a variance is granted to a structure, subsequent additions/alterations also require a variance. The cabin's no longer meeting the ordinary high water mark setback led to the need for a variance in 2011 for a lakeside deck. This then triggered the need for a variance for these additions.

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

The structure was constructed at a 100' ordinary high water mark setback in '73. The shoreline apparently eroded over the years since then – making the cabin no longer meet the 100' ordinary high water mark setback. The structure was not built by the current landowner and the shoreline erosion is beyond the landowner's control. Section 704.7 of the Shoreland Management Ordinance requires a variance for these additions because of the lakeside deck in 2011 requiring a variance. This ordinance requirement is also not created by the landowner.

5. Will the issuance of the variance maintain the essential character of the locality?

The house and surrounding properties in the locality are single family year-round and seasonal residential uses. The proposed variance seeks to maintain this property's single family year-round use and therefore will maintain the essential character of the locality.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite economics as a difficulty. Instead, the difficulty is the shoreline apparently eroding since 1973 and the structure having been altered by a variance in 2011 such that a variance is now required for any subsequent addition or alteration.

The motion carried unanimously.

Variance Application 34-V-13 by John and Sanja Wallace: Part of Government Lot 1, Section 15, Township 143, Range 34, Lake George Township on Lake George. Parcel #: 17.15.02510. Applicants are requesting a variance from Sections 502.2 and 704.7 of the Shoreland Management Ordinance for a proposed platform addition to a nonconforming residential structure originally constructed per variance that does not comply with the required 100 foot ordinary high water mark structure setback.

Sanja Wallace was in attendance and presented the application.

Grob asked the applicant what the plans for a buffer zone were. A drawing was supplied but not specifics on what their thoughts and plans were.

Sanja stated that they were planning on planting natural Minnesota natural prairie grasses to protect the shoreline. She doesn't have specific plant types or quantities. They are working with a landscaper though and she will seek his advice on what would be best planted. He already has some in mind.

Grob stated that there is a twenty foot section that is currently natural vegetation and a berm exists. He doesn't want anything done to the vegetation that is currently there.

The applicant agreed that they were not planning on touching that area.

There was no written correspondence and no public comments were made.

Christenson moved to approve the variance request with the following conditions:

1. The existing natural vegetative buffer located in the shore impact zone that is shown on the variance application site plan sketch must be left alone and remain unaltered.

2. A plan for the native vegetative buffer in condition # 1 must be submitted to and approved by Hubbard County Land Records – Environmental Services prior to the native vegetative buffer being planted and before a permit for the platform involved in this variance application will be issued.
3. A native vegetative buffer must be planted in the area on the property where said buffer is shown to be located on the variance application site plan sketch. This buffer must be planted before a permit for the platform involved in this variance application will be issued.

As well as adopt the findings of fact as presented in the September 2013 BOA 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 proposed platform is only 352 sq. ft. in size and its aesthetic and impervious surface impacts will be offset by the condition placed on the variance that the native grass and wildflower planting buffers be installed as shown on the site plan sketch. The lot lacks usable depth due to a large wetland in the rear of the lot. This difficulty led to a variance being granted in 2011 to allow a residential structure to be placed on the lot because it is not possible to place a structure at a 100 foot ordinary high water mark setback on the lot due to the wetland's location.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Having a 354 sq. ft. platform on the lakeside exterior wall fo a riparian lot residence is a reasonable request. People purchase such lots to enjoy a view of the lake – which often includes having an outside platform or deck on the lakeside of a residence from which the lake view can be enjoyed.

3. Is the stated practical difficulty due to circumstances unique to this property?

The residence was constructed per variance thus Section 704.7 of the Shoreland Management Ordinance requires a variance for any subsequent alteration/addition. The lot lacks usable depth due to a large wetland that occupies the rear of the lot. This lack of depth caused the residence to be built at a lesser ordinary high water mark setback by variance and caused the need for an ordinary high water mark setback variance and Section 704.7 variance for this platform.

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

The difficulty is caused by the large wetland occupying the rear of the lot that prevents the house and this platform from complying with the 100 foot ordinary high water mark structure requirement. The difficulty is also caused by the Section 704.7 requirement that any subsequent alterations to a structure approved by variance also go through the variance process – which is a difficulty not created by the landowner.

5. Will the issuance of the variance maintain the essential character of the locality?

The house and surrounding properties in the locality are single family year-round and seasonal residential uses. The proposed variance seeks to maintain this property's single family year round use and therefore will maintain the essential character of the locality.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite economics as a difficult. Instead, the difficulty is the structure having been constructed by variance such that any subsequent additions/alterations require a variance.

The motion carried unanimously.

Variance Application 35-V-13 by John Anderson: Lot 8, Belletaine Westview Beach, Section 18, Township 140, Range 33, Nevis Township on Lake Belletaine. Parcel # 21.52.00800. Applicant is requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed detached garage that will not comply with the required 10 foot side lot line setback.

Steve Wilson, contractor for the project, was in attendance and presented the application.

Schwindt asked if he was able to talk to the applicant after the lot viewal to get their thoughts on what was discussed on site.

Wilson stated that he had spoken with the applicant about the difference scenarios that were discussed. The neighbor is upset and doesn't want to allow a five foot setback. The suggestion was to move the building so that it complies with the ten feet but if they were to do that than they would have to use the neighbor's driveway as a construction driveway if he is that adamant about the five foot setback. It was suggested that they could drive around the south side of the new garage to get to the construction site but that is a lot of heavy duty equipment such as cement trucks and backhoes. It will rip up his yard. He was wondering if it is possible to move the garage further into the woods and on top of the septic line.

Buitenwerf stated that a variance would be needed to run over the sewer line. He stated that it probably would easier to reroute the line.

Grob asked if they had tried to talk to the neighbor that was in question to see if he would be opposed to allowing access to the construction site through his driveway. He didn't think the neighbor would have an issue with it especially if the applicant was willing to fix and repair his yard.

Wilson stated that it will be a six week project so it will definitely ruin his yard for next year and he has not had a chance to talk to the neighbor yet. The owner will be up this coming weekend and will take care of that.

Christenson asked if the applicant's plan was to build a home next year.

Wilson stated that he needs to sell his current home so at the most it would be two years before he builds. He needs a garage first so he can start to move out of storage and have a place to put it while he builds.

Christenson stated that when they were out on the site there was room to build the garage at a conforming setback from the property line.

Wilson stated that he felt there could be room but it would be close and difficult to get trucks in and out. If the neighbor isn't agreeable to allowing them to use his driveway then the applicant might chose not to build his house because it would be too difficult.

Schwindt stated that it was difficult to approve something when the solution is to build it at a conforming setback. There is a permitable solution. The difficulty is that the applicant wants to build a garage first and then a house second. The other part of the solution could be to talk to the neighbor and see about driving over the corner of his lot.

Grob thought that if the garage was built where it is being proposed then there would be ample room for the trucks and equipment needed to get through. He asked what's the most trauma for the neighbor: building five feet closer to his property line or tearing up the whole pea patch for construction equipment.

Wilson felt that to him it would be less traumatic to have a building five feet closer than to have the yard tore up for the summer. A privacy edge would be put in place during the construction to help block it from the neighbor's view.

Christenson stated that she agreed with Lou. There are other solutions than granting a variance because he wants to the build the garage first and the home second.

Schwindt stated that if the sewer line was moved the applicant would be able to keep all of the

Grob felt that the if the applicant was willing to put up a screen to buffer it from the neighbor it seems that would be the lesser impact on the neighbor. He isn't in favor of creating nonconformities but because of the constraints on the property a lesser side lot setback would have the least impact.

Williams felt that it did make sense to put the garage at a five foot setback as long as a fence or shrubs would be planted to screen it from the neighbors. He felt that driving trucks through ten feet of the lot would make a big mess and moving the sewer line was an unnecessary added expense.

Christianson stated that he agreed with Lou.

There were no written correspondence and no public comment was made.

Christenson moved to deny the variance request.

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?

<u>No because it encroaches closer than the required ten foot lot line setback.</u>

2. Without the variance is the owner deprived of a reasonable use to the property?

<u>No. He can still access the property and build a house.</u>

3. Is the stated practical difficulty due to circumstances unique to this property?

<u>No. He has other options.</u>

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

<u>No. The location of the garage was chosen by the landowner.</u>

5. Will the issuance of the variance maintain the essential character of the locality?

<u>Yes it would. The garages in the neighborhood are setback about where he wants to put his.</u>

6. Does the stated practical difficulty involve more than economic considerations?

<u>The applicant didn't site that as a reason.</u>

The motion carried on a 4 to 1 vote with Grob voting nay.

Variance Application 36-V-13 by James and Jean Scheuring: Lots 8, 9, and 10, Doran's Long Lake Division, Section 4, Township 139, Range 34, Hubbard Township on Long Lake. Parcel #: 14.42.00500. 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 constructed and modified by variance that does not comply with the 100 foot ordinary high water mark setback.

Tom Welle, representative for the applicants, was in attendance and presented the application.

There was no written correspondence was received and no public comment was made.

Grob moved to approve the request and adopt the findings of fact as presented in the September 2013 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?

The proposed addition is going to the side of the house and its lakeside profile is small (14') such that it will not be very noticeable when viewed from the lake. The house was constructed by variance in 1995 at an 87' ordinary high water setback so the proposed addition is in harmony in that Section 704.7 of the Shoreland Management Ordinance requires that it be proposed through a variance application to ensure the addition IS in harmony with the ordinance and State Rule.

2. Without the variance, is the owner deprived of a reasonable use of the property?

A screened-in porch addition to the side of the existing structure on top of part of an existing deck is a reasonable use of the property. Riparian lots are purchased to enjoy a view of the lake and this screened-in porch facilitates that in a bug-free environment.

3. Is the stated practical difficulty due to circumstances unique to this property?

The difficulty is that the house was constructed by variance in 1995 and Section 704.7 of the Shoreland Management Ordinance requires that any subsequent addition/alteration to the structure also go through a variance process.

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

The structure was constructed by variance in 1995 and Section 704.7of the Shoreland Management Ordinance requires that any subsequent addition/alteration to the structure also be handled through a variance process. This ordinance requirement was not created by the landowner.

5. Will the issuance of the variance maintain the essential character of the locality?

The house and surrounding properties in the locality are single family year-round and seasonal residential uses. The proposed variance seeks to maintain this property's single family year-round use and therefore will maintain the essential character of the locality.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite economics as a difficulty. Instead, the cited difficulty is the structure having been originally constructed by variance and Section 704.7 of the Shoreland Management Ordinance requiring that subsequent additions/alterations to the structure be processed through a variance as well.

The motion carried unanimously.

Variance Application 37-V-13 by Todd & Kristie Griffin and Mike & Missy Dube: Lot 1, Block 1, Cool Ridge, Section 26, Township 141, Range 34, Lake Emma Township on Big Sand Lake. Parcel #: 16.73.00100. Applicants are 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.

Brent Nicklason, authorized agent, was in attendance and presented the application.

Grob stated that the only reason for the variance request is that the existing structure encroaches on the bluff impact zone setback. The addition is not encroaching on it. It is only because there is an existing nonconformance. The house is 130 feet from the lake.

Brent stated that the applicants decided to switch the roof line of the house so that it is more balanced looking from the lakeside. The new roof line for the addition will just continue through the entire house.

There was no written correspondence received and no public comment was made.

Grob moved to approve the variance request and adopt the findings of fact as presented in the September 2013 BOA staff report since the structure is 130 feet back from the lake and the addition doesn't impact the bluff impact zone. It is a very small cabin and the expansion is reasonable.

Christenson seconded the motion.

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 proposed structure footprint layout does not fit the lot well. There is room to move the structure further from the ordinary high water mark and the house can be redesigned to realize a greater ordinary high water mark setback. The road right-of-way setback is 20' and the proposed structure will be 50' from the right-of-way so there is 30' available to move the structure back and thereby get it very close to meeting the ordinary high water mark setback.

2. Without the variance, is the owner deprived of a reasonable use of the property?

The current structure provides a reasonable use of the property and there is room on the property where a new replacement structure could be placed in greater conformance with the ordinary high water mark setback than what is proposed.

3. Is the stated practical difficulty due to circumstances unique to this property?

The lot does not have much depth (140' on one side and 186' on the other side.)

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

Despite the lot not having a lot of depth to work with, the ordinary high water mark setback for the proposed residence can be increased beyond what is proposed by modifying the floor plan and decreasing the setback from the rear lot line/road right-of-way.

5. Will the issuance of the variance maintain the essential character of the locality?

The house and surrounding properties in the locality are single family year-round and seasonal residential uses. The proposed variance seeks to maintain this property's single family year-round use and therefore will maintain the essential character of the locality.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite economics as a difficulty. Instead, the cited difficulty is the lot's depth.

The motion carried unanimously.

Variance Application 38-V-13 by Steve and Phyllis Trutna: Lots 5, 6, and 7, Block 1, Sabin's Park, 25, Township 140, Range 34, Lake Emma Township on Little Sand Lake. Parcel #: 16.39.00400. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed new residential structure to be located at less than the required 100 foot ordinary high water mark structure setback.

Steve Holt, representative for the applicant's presented the amended application.

Christenson asked if Mr. Holt would give more details for the record of what changes he made once he got involved in the project.

Steve stated the original proposed structure setback was 65 feet and the new proposed structure setback is 74 feet. The garage was scooted forward a little bit. He stated that the house was moved back as far as possible and still allow for an alternate septic site between the house and the road. They existing cabin will come down and a silt fence will be installed to protect the water. They will reestablish the vegetation where the cabin was.

Christenson stated that she appreciated the attempt at maximizing the setback

Schwindt stated that the current structure is only 40 feet from the water. This will be a vast improvement. This is a small lot with a road in the back of it. This is the best that can be done.

There was no written correspondence received and no public comment was made.

Christenson moved to approve the variance request.

Christianson 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?

<u>Yes. By redoing the house plan they have maximized the use on the lot and set it back as far as possible and allowed for an alternate drainfield site.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property?

<u>There is an exisiting cabin that is in tough shape and it needs to be replaced.</u>

3. Is the stated practical difficulty due to circumstances unique to this property?

<u>Yes. It is due to the lot depth.</u>

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

<u>The original designer that created the lots that now don't meet today's standards.</u>

5. Will the issuance of the variance maintain the essential character of the locality?

<u>Yes. The neighbor's are seasonal dwelling units as well.</u>

6. Does the stated practical difficulty involve more than economic considerations?

They did not site economic considerations as a factor.

The motion carried unanimously.

Variance Application 39-V-13 by Harley Hanson: Lots 5, 6, 7, 8, and N 30 feet of Lot 9, Block 1, Kola Tepee Park, Section 10, Township 141, Range 35, Arago Township on Island Lake. Parcel #: 02.38.00300. 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 that does not comply with the 100 foot ordinary high water mark structure setback.

Harley Hanson was in attendance and presented the application.

Christenson wanted it mentioned that the only reason a variance is needed is because they are attaching it to the existing structure which does not meet the 100 foot setback. The addition itself meets the setback requirements.

Harley stated that the reason they wanted to attach it instead of making it a separate structure is for family gatherings. It is nice to have them all in one place instead of spread out.

Schwindt stated that he owned 230 feet of shoreline and the lots had been combined into one lot.

Grob stated that there is clearly space to move this addition to a conforming structure. The existing cabin is in very good shape but he felt that it is unreasonable to make him tear it down only to meet the setback. The lot meets duplex sizing so he could have built his 50% addition as well as a guest cabin at a conforming setback. The drainage is definitely going away from the lake. He is supportive of the variance request.

There was no was no written correspondence received and no public comment was made.

Grob moved to approve the variance request as proposed and adopt #'s 1, 3, 4, 5, and 6 of the findings of fact as presented in the September 2013 BOA Staff Report..

Williams seconded it.

The adopted and amended 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 proposed addition will fully comply with all setback requirements. The existing cabin predates the ordinance and is located at an 86' ordinary high water mark setback. The addition will stay out of the bluff impact zone and the only reason it requires a variance is because it will be connected to the existing structure that does not meet the 100' ordinary high water mark setback.

2. Without the variance, is the owner deprived of a reasonable use of the property?

The current structure provides a reasonable use of the property and there is room on the property where the structure could be reconstructed with the proposed addition at a conforming setback however it is not reasonable to require the movement under the current conditions.

3. Is the stated practical difficulty due to circumstances unique to this property?

The applicants have a large family that the current ~1200 sq. ft. cabin is not able to reasonably accommodate. More room is needed to handle the family's size.

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

The structure was constructed prior to enactment of the shoreland ordinance at a nonconforming ordinary high water mark setback.

5. Will the issuance of the variance maintain the essential character of the locality?

The house and surrounding properties in the locality are single family year-round and seasonal residential uses. The proposed variance seeks to maintain this property's single family year-round use and therefore will maintain the essential character of the locality.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite economics as a difficulty. Instead, the cited difficulty is the structure being located at a nonconforming ordinary high water mark setback and having been constructed prior to enactment of the shoreland ordinance.

The motion carried unanimously.

Variance Application 40-V-13 by James and Paula Driessen: Part of Lot 7, Block 1, Island View, Section 3, Township 139, Range 33, Crow Wing Lake Township on Island Lake. Parcel #: 06.51.00611. Applicants are requesting a variance from Section 502.2of the Shoreland Management Ordinance for a proposed new residential structure that will not comply with the required 100 foot ordinary high water mark structure setback.

James Driessen was in attendance and presented the application.

Grob asked that if this structure had to be moved to the 100 foot if there would be an issue with the bluff setback on 3rd Crow Wing Lake.

Buitenwerf stated that it would depend on the shape and size of the house.

Christenson asked what the reasoning was for wanting the home where it is being proposed.

James stated that there is a deck they were wanting to keep and also wanted some more separation from the neighbors on Lot 7.

Williams asked how much dirt would need to be moved in order to move the house back to the 100 feet back. He stated that there are also a lot of trees that would need to be disturbed and if the soil is disturbed too close to the Norway pines that are on the lot it will kill them. He has seen it happen many times. He doesn't think it is a good idea to move to close to the trees.

Schwindt asked how the land slopes. He was wondering if it would be better to allow a lesser setback to the bluff instead of Island Lake. He thought it might be better to allow a lesser setback to the bluff instead of the lake.

Grob stated that the runoff isn't affected.

Schwindt stated that there is a road in between the lake and where he wants to build.

Buitenwerf stated that he felt it would be better to have a lesser setback to the bluff than allowing them to be closer to Island Lake because of how the land slopes.

Christenson stated that when they were on the lot it showed that the home could be moved back further than what was being proposed.

Grob agreed with that observation. He personally isn't in favor of granting a non-conformity for a brand new structure. In his opinion, trying to preserve a deck isn't a reason to build closer to the

lake when another option exists. It still will probably require a variance but it would be a more favorable variance.

The other Board members agreed as well.

Schwindt asked if the variance could be acted upon today or do neighbors need to be re-notified in case there is a bluff impact zone variance needed.

Buitenwerf stated that a lesser setback from the bluff would require us to re-notify the neighbors of the request since the request has changed. The information would need to be turned in by the deadline for the October meeting so we could amend the notice accordingly.

James asked if adding onto the current structure if that would be more favorable than building a brand new structure at less than the 100 feet.

Grob stated that a 50% addition would be allowed by permit. If a greater than 50% addition is wanted then a variance is still needed.

There was a letter of written correspondence that was received and given to the Board members.

The floor was opened for public comment.

Brent Nicklason made public comment. He was on site with the applicant and looked things over with them. The subject to add on was brought up and the pros and cons were discussed. There is room to move the structure back but there wouldn't be room to meet the setbacks due to the constraints of both lakes.

Schwindt thought that the easement road could be moved.

Nicklason stated that if the easement was moved then they would either be driving in front of the home or on top of the bluff where a lot of trees would need to be removed and he didn't think that was the wisest thing to do since it is on top of the bluff.

Grob asked if the neighbors would consider their own driveway so that the easement wouldn't need to be worried about.

Driessen stated that they do have their own driveway but in the winter time due to the slope it is very difficult to use.

Grob stated that after being on the site there is at least another twenty feet that the structure could be moved back but he couldn't go along with building a brand new home at 55 feet.

Schwindt stated that if tabling the variance was agreeable with the applicant then that would make sense. It will allow them time to look redo plans and figure out the best case scenario for everyone involved.

Buitenwerf stated that the department didn't see an issue with tabling the application but the department would have to have the amended design by the variance deadline. If that can't happen then the application as presented should be acted upon.

James stated that he would be able to get the information to the department by the deadline.

Schwindt moved to table the application for 30 days.

Grob seconded the motion that carried unanimously.

Miscellaneous:

There was no miscellaneous business to discuss.

Adjournement:

Christenson moved to adjourn. Christianson seconded the motion that carried unanimously.

Meeting was adjourned at 10:11 a.m.

Respectfully Submitted by:

Maria Shepherd
Recording Secretary

Hubbard County
Board of Adjustment Meeting
October 21, 2013

Chairman Schwindt opened the public meeting with the following members present: Charlene Christenson, Ken Grob, Tim Johnson, Lou Schwindt, Arne Christianson. 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 September 16, 2013:

Christenson moved to approve the minutes as presented. Christianson seconded the motion that carried unanimously.

Old Business:

Tabled Variance Application # 53-V-09 by 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 Shoreland Management 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 road.

Mike Reinhart was in attendance and presented his application. There is a road that accesses the property that is windy and has trees on either side of the road. The plan when they purchased the property was to build the following year. They have since decided that they can't afford to pay the taxes on such a large piece of property and build a home. They decided to subdivide the current parcel into two lots, both of which meet the requirements set forth by the township as well as the county. The problem with the subdivision is that there isn't a 33 foot wide easement to the properties. They had given their neighbor an easement and assumed they had one but there was never one recorded. The neighbors are opposed to the subdivision because they do not want their road expanded and against the 33 foot wide requirement.

Johnson stated that when this application came before the board last year it was tabled once again to grant the applicant time to try and obtain a cart way to the property which would negate the need for the variance and the 33 foot wide easement criteria. There is a letter from an attorney that stated a cart way could be pursued and in his opinion would be easy to obtain. He wanted to know why that option hasn't been explored.

Reinhart stated that the majority of it was a cost and time factor but eventually could be obtained. He didn't know how much time it would take. He filed for his variance before that information was presented to him. He stated that he doesn't want to force anything down people's throat. He figured that he would try it this way to see if he would be approved and if not then he will explore the other options that are available.

Johnson felt that even if the 33 foot easement was obtained it would not change the current road. Just because there is an easement doesn't mean that the road would need to be widened.

Reinhart stated that agreed with that statement and that no one wants the road to widen.

Johnson stated that the road is placed in the only place where it could be put. The whole north side of the lots are all wetlands

Reinhart stated that he had approached the neighbor to the north if there was anyplace they could put a driveway and was told the same thing. The majority of that property was marshy and unable to be filled and driven through.

Johnson asked if there is legal access to get to the public road.

Reinhart stated that it has been a while since he looked into that but he was pretty sure that he does have an easement into his property. A lot of things were done with a handshake and not necessarily written and recorded.

Grob agreed with Tim's observation that just because there isn't a 33 foot easement doesn't change the fact that the road would remain as it is. It would never be widened. The concern to him is that no progress or attempts have been made since this application was tabled last year to obtain legal documentation that would grant legal access to these lots. He wanted to know why nothing has been done in the last year towards trying to obtain a cart way. The main reason the application was tabled again was to allow sufficient time to make head way on obtaining legal access. He felt that the access needed to be obtained prior to the Board granting approval for subdividing the lot.

Reinhart stated the neighbor that was most against it recently found out he doesn't have legal access to his property either. It has been a mutually used road for many years.

Grob felt that the other property owners would want to get this all settled and everyone would want legal access to their property.

Johnson thought that this was the only lot on that road that is big enough to subdivide. The rest of the landowners wouldn't ask for permission to subdivide because they wouldn't be allowed to.

Grob thought that the legal easements should be cleared up for the entire road regardless of whether or not the lot is subdivided since people are driving through the other landowner's properties. He questioned how many lots based on the size of the property could be made.

Reinhart stated that the township's standard's for subdividing is that the lots have to be a minimum size of 5 acres and 300 feet of lakeshore. When they purchased the property they granted easements to three other property owners allowing them to cross the applicant's property. It never occurred to him that they didn't have legal access to his property.

Grob asked Buitenwerf if he could concur that the township did in fact have the 5 acre minimum and 300 feet of lakeshore lot size requirements within the shoreland zone.

Buitenwerf stated that it sounds correct. He clarified to the board that there wasn't an easement for this property to the public road received with the application. A partial easement was exchanged as the applicant was explaining with the properties to the south.

Christenson stated that he agrees with Ken. It isn't so much that the land is being subdivided but that the property as it sits today has no legal easement and access to the property. If the application is approved the problem of easements still remains. There are property owners that do not have legal and documented access to their own properties.

Reinhart stated that it has been a struggle to even get to this point with the majority of the property owners live out of state and even if the road won't change people don't want a 33 foot wide easement recorded on their property.

Grob asked Buitenwerf if they could state that a less than 33 foot wide easement be obtained instead of what the request is. In other words if the road is 10 feet then the requirement would be that a 10 foot wide easement be granted.

Buitenwerf clarified that the request before the Board to subdivide a property without having to provide legal access to the proposed tract. It isn't for a reduced easement; it is strictly asking to forego the requirement for easement access to the property of any kind.

Grob was glad for the clarification since that was not how he had read the request. He stated that the two options the Board could take are to either deny the variance as requested or approve it with the condition that he receives legal access across all of the private property from Junco Road.

Buitenwerf stated that the department's recommendation would be that the owner has to provide evidence of the access prior to the Board granting any variances.

Christenson asked if the property owner that is against him subdividing his property could prevent him from legally accessing his property.

Buitenwerf stated that the avenue of obtaining a cart way from the township has not been explored. That would be a permittable alternative to needing the variance. The department does not feel that a practical difficulty has been shown in this instance.

Christenson asked the applicant if he had been before the township to see about obtaining a cart way.

Reinhart stated that he had not done that as of yet. The attorney stated that was an option but he had not yet pursued it. He is bringing it to the Board to see if it would be approved without having to go down that path. If it is denied then he will have to pursue that option.

Johnson asked if a person accessed the lot by the lake if that was considered legal access.

Buitenwerf stated that it would not be considered legal access according to the Hubbard County Subdivision Ordinance.

The floor was opened for public comment.

Helen Marsh spoke against the approving of the variance application. She would like to see only one home developed on the applicant's property. All of the homeowner's are against having a 33 foot wide easement recorded on their properties. There are wetlands on either side of the current road.

Bill Cowman, representing COLA spoke on the matter. He wanted to know more about whether or not this lot could be subdivided down into more lots than what the applicant is asking for. He recalled a similar situation where a non-riparian 40 acre parcel in Henrietta township, where the township has a minimum zoning requirement of 5 acre lots, was being subdivided and concerned neighbors were told that because it was within 1000 feet of Long Lake that the Shoreland Management Ordinance lot sizes were the rules governing that subdivision. He was able to subdivide it into much smaller lots than 5 acre minimums. He didn't see what the difference was in this situation. He wondered why the Shoreland Management lot size requirements applied to that 40 acre parcel and not the applicant's parcel.

The public comment portion of the meeting was closed.

Christenson observed that when the variance was tabled last year, had the applicant started the cart way process shortly thereafter, more than likely the legal access issue would not be an issue any longer.

Grob felt that nothing has changed from when the application was before the Board last year. Anyone purchasing that lot would find that there isn't any legal access to it and it will cause problems for the applicant. The issue is the same this year as it was last year. There is a permittable option that the applicant has not yet pursued even when the application was tabled last year for him to do so.

Grob moved to deny the variance request and adopt the findings of fact as presented in the October 2013 Board of Adjustment meeting staff report.

Christianson seconded the motion.

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?

No. The property does not have any legal easement access to it. The Subdivision Ordinance requires a 33' minimum width easement access. Four years have been given to the applicant to try to obtain an easement of some kind and no progress has been made toward such. Granting a variance from the ordinance's easement requirement in this matter would not be in harmony with the ordinance's intent.

2. Without the variance, is the owner deprived of a reasonable use of the property?

No. The property can be developed into a single family dwelling use by permit and also be used for recreational enjoyment and lake access without need of any permit or zoning approval.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. The lot was created before the ordinance 33' easement provision was enacted. It is over one-half mile from the nearest public road and there are ~ eight properties which the existing access road crosses between the public road and this property. The access road is only one vehicle width wide for most of its length and there are several structures located right next to the road along this stretch.

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

Yes. The property and access road were not created by the landowner. The access road predates the ordinance as do a lot of the structures located near the road that pose safety concerns with any increased traffic on the road.

5. Will the issuance of the variance maintain the essential character of the locality?

No. This is a large property able to be subdivided into several lots – possibly up to eight. Allowing that number of new residences to be located at the end of this narrow access road without any legal access to their properties would alter the locality's character by greatly increasing the vehicle traffic past the homes that are right along this road and create safety concerns with vehicles/pedestrian interactions given the route the road takes between homes and the lake and so close to some of the homes.

6. Does the stated practical difficulty involve more than economic considerations?

Yes. The application does not cite economics as a difficulty. Instead, the difficulty is the one-half mile distance between this property and the nearest public road and the lack of any easement over the road.

The motion carried unanimously.

Tabled Variance Application # 40-V-13 by James and Paula Driessen: Part of Lot 7, Block 1, Island View, Section 3, Township 139, Range 33, row Wing Lake Township on Island Lake. Parcel # 06.51.00611. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed new residential structure that will not comply with the required 100 foot ordinary high water mark structure setback.

Jim Driessen was in attendance and presented variance request. He thanked the board for tabling the application at the last meeting to give them a chance to redo their designs and setbacks.

Christenson asked for clarification on the deck. The previous application tied the new home into where the current deck sat but according to the new application drawing it appears that the deck will not be left where it is at.

Driessen stated that the deck would be physically moved.

Johnson stated that the septic system is shared with the neighbor. He thought it looked like it could be in the bluff. He beings it up since if there ever was an alternate site needed it would need to be closer to that bluff. He didn't realize it was a shared system. The ground is undisturbed up where the trees are.

Grob asked for clarification on the size difference on the cabins.

Driessen stated that the old cabin was 20' by 24' and the new proposed cabin will be 28' by 32'.

Grob stated that it is a little over 50% but still under 1000 square feet. He commented that there are several nice red pines on the property and it was brought up at the last meeting that the root system will be affected if digging is done to close to them. It was reasonable to allow a new cabin and a variance would be needed whether it was a setback from the bluff or a setback from the lake. He felt that after being on the site that the proposed location and new setback are the best that it could be. He has done the best he can with the difficulties of the red pines and the easement road.

There was no written correspondence and no public comment was given.

Grob moved to approve the variance request as proposed.

Schwindt 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?

<u>Yes. The owner has balanced the setback as best he can given the constraints of the bluff setback, and the two lakes setbacks.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property?

<u>Yes. The size of the cabin and relocation is a reasonable request. The desire to have a new cabin offset from the lot to the left is reasonable.</u>

3. Is the stated practical difficulty due to circumstances unique to this property?

<u>Yes. There is a bluff impact zone on the lot that is located on the southeast half of the lot facing Third Crow Wing Lake that prevents a structure from being placed on the lot in full conformance with the 100' ordinary high water mark setback.</u>

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

<u>Yes. The lot was platted by a party other than the landowner back in 1972. The bluff impact zone regulations were added into the shoreland ordinance roughly two decades later and this too was not done by the</u>

landowner. The bluff impact zone, lot depth, and OHW setback requirements from both Island and Third Crow Wing Lakes create a depth difficulty on this lot in being able to meet both OHW setbacks.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. The house and surrounding properties in the locality are single family year-round and seasonal residential uses. The proposed variance seeks to maintain this property's single family year-round use and therefore will maintain the essential character of the locality.

6. Does the stated practical difficulty involve more than economic considerations?

Yes. The application does not cite economics as a difficulty. Instead, the cited difficulty is the lot's unique dimensions, driveway location, and bluff location.

The motion carried on a 4 to 1 vote with Christianson voting nay.

New Business:

Variance Application 41-V-13 by Kimberly Kurth and Denise Bramer: Lot 6, Block 1, Palmer Pines First Addition, Section 29, Township 139, Range 33, Crow Wing Lake Township on Palmer Lake. Parcel # 06.44.00500. Applicants are requesting a variance from Section 502.1 and 704.7 of the Shoreland Management Ordinance for a proposed waterward addition to a nonconforming structure originally constructed by variance at less than the required 150 foot ordinary high water mark setback.

Denise Bramer was in attendance and presented the application. There is currently a deck on the lakeside of the cabin and the request is to square off the deck, extend the roof to cover the whole deck and screen it in.

No written correspondence was received and no public comment was given.

Christenson stated that although she can see the appeal of having a screened in deck on the lakeside of the cabin but felt that there was ample room on the property to build a screened in porch elsewhere.

Bramer stated that she understood that but there is already a surface where they are proposing the screened in porch and felt it would be better and easier to just cover what is there and she didn't see what difference screens made.

Christenson stated that once a deck is covered with a roof and screened it is considered an addition to the home and is counted as living space.

Bramer stated that there is no intent of it becoming part of the cabin or used for anything other than a screened in porch. There will be no power added to it. Neither of the neighbors on either side, which are both considerably closer to the lake than they are, have any problem with the request.

Grob asked if this was going to be a fully enclosed porch with windows or strictly a screened in porch.

Bramer clarified that there is no intention of putting in windows and enclosing it. It will have a partial wall and then screens. They will make screened in windows where the roof extends so that it can still be seen out of when in the loft.

Schwindt stated that is opposed to the idea of a screened in porch because even if it is the applicant's intention not to put in windows and create more living space that doesn't stop the next buyer from closing it all in and creating more living space.

Grob asked if the application was approved if a condition could be placed that it never be enclosed and turned into three season living. He agreed with Schwindt's concern.

Schwindt didn't feel that placing that condition would solve anything. There is no one that will inspecting it on a continual basis.

Bramer didn't realize that this would be that big of a deal. They simply wanted more use of the property.

Johnson asked if the applicant had looked into temporary screened structures.

Bramer answered that it would look funny and not good. They are trying to make it aesthetically look nice. This won't be seen from the lake.

Christenson moved to deny the variance request and adopt the findings of fact as presented in the October 2013 BOA Staff Report.

Johnson 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?

No. The addition is proposed for the lakeside of the cabin and no consideration has been given for placing it on the side or rear of the cabin – away from the lake – where there appears to be room to accommodate a screened-in porch.

2. Without the variance, is the owner deprived of a reasonable use of the property?

No. There is an existing single family residence on the property and the property can be used for recreational purposes and to access the lake – all of which are reasonable uses of the property.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. The cabin was built by variance in 1976 at a 115' ordinary high water mark setback verses the required 150' ordinary high water mark setback. Section 704.7 of the shoreland ordinance requires that any structure constructed or modified by variance obtain a subsequent variance for any further alterations.

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

Yes. The structure was constructed by variance in 1976 by a party that is not the current landowner. Section 704.7 of the shoreland ordinance that requires a variance for the proposed addition was also in place before the landowners owned the property and was not created by the landowners.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. The house and surrounding properties in the locality are single family year-round and seasonal residential uses. The proposed variance seeks to maintain this property's single family year-round use by adding a screened-in porch to the existing residence and therefore would maintain the essential character of the locality.

6. Does the stated practical difficulty involve more than economic considerations?

Yes. The application does not cite economics as a difficulty. Instead, the difficulty is the residence being constructed at a nonconforming ordinary high water mark setback by variance in 1976 and the ordinance's requirement that any alteration to a structure constructed or altered by variance requires a subsequent variance for any further alterations.

The motion carried unanimously.

Variance Application 42-V-13 by Randy and Kathy Soldwisch: Government lot 1, Section 8, Government Lot 1, and the NW ¼ of the SW 1/4 , Section 9, Township 141, Range 33, Mantrap Township on West Crooked Lake. Parcel #s: 20.08.00111, 20.08.00112, 20.09.00330, and 20.09.00340. Part 1: Applicants are requesting a variance from Section 704.7 of the Shoreland Management Ordinance to remove a variance condition placed on a structure restricting its use to that of a recreational facility. Part 2: Applicants are requesting a variance from Section 1103 of the Shoreland Management Ordinance to exceed the rental dwelling unit density.

Randy and Kathy Soldwisch were in attendance and presented the application. The property was purchased as a home with five cabins that could be rented out. They were later informed that it was a recreational hall and four rental cabins. They would like to start the process of getting it to what they had purchased a home with five rental units.

Christenson asked the applicant's to state for the record what their attorney had found.

Randy stated that they used an attorney and title insurance for the closing and none of this was brought up at the closing. They did their due diligence to research the property before the purchase and neither the attorney nor the title company found these restrictions.

Christenson asked for clarification on the applicant's plan for building a home on the land at a later date.

Randy stated that the intent is to build a residence in the future since a family of five isn't conducive to living in the current structure. The plan was to always have this as a temporary fix and not a permanent house solution. A residence would be built back behind the recreational hall.

Grob asked if there was room on the property to build a home on the property.

Buitenwerf stated that the Ordinance does allow for an owner's or manager's lodging. He felt that there is sufficient room to physically build another structure.

Schwindt clarified that once the owner's home was built the living portion of the recreational hall would have to go back to strictly recreational use. He didn't feel that a timeframe was necessary since the outcome is still the same. Once the home is built then the use needs to cease above the rec hall.

Buitenwerf stated that the application stated that their timeframe was five years which is why it was proposed as a condition.

Randy and Kathy stated that they can't imagine it would be longer than five years to build.

Grob agreed that the condition needed to be placed on it stating that when the home is built then the use needs to cease but didn't feel that a time frame condition was necessary

No written correspondence and no public

Grob moved to Part 1 of the variance request with the condition that once a new residential structure is constructed on the property, the structure involved in this variance can only be used as a recreational hall and adopt the findings of fact as presented in the October 2013 BOA Staff Report.

Christenson seconded the motion.

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 structure already exists and there is not another owner's residence on the property. Allowing the structure to be used as a residence until a new residence is constructed will pose no environmental harm.

2. Without the variance, is the owner deprived of a reasonable use of the property?

It is reasonable to allow the resort owner to use a structure as a residence until such time as a new residential structure meeting all setback requirements is constructed.

3. Is the stated practical difficulty due to circumstances unique to this property?

A condition was placed on the variance allowing the structure to be built that limited its use to that of a recreational facility. This is a unique circumstance.

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

The difficulty was created by the previous owner asking that the structure be used as a recreational facility in the variance that allowed it to be constructed and the Board of Adjustment placing a condition on the variance that limited the structure's use to that of a recreational facility.

5. Will the issuance of the variance maintain the essential character of the locality?

The adjacent property to the east of this property is also a resort use. These two resorts have been active in one form or another for several decades. Allowing the existing structure to be temporarily used as a residence will not change the locality's character.

6. Does the stated practical difficulty involve more than economic considerations?

The difficulty here is the condition placed on the variance by the Board of Adjustment based on the previous owners' proposal that the structure be used as a recreational facility.

The motion carried unanimously.

Christenson asked Johnson for his opinion on the septic system.

Johnson stated that the design for the recreational hall was not sized for a home. The system size would need to be increased if it was going to be used as a home. The cabin designs he had not had a chance to look at.

Buitenwerf stated that as far as the department knows the sizing is not an issue for the system in its entirety.

Schwindt stated that the issue is that the density is over on the number of cabins allowed. His thoughts were that the cabin has been in existence for quite some time. The applicants purchased this as a five cabin resort. It has been operating as a five cabin resort. The septic system is sized for it. It has always been over on density. He didn't have a problem with the density since it was purchased like this and has been operating as such for a while.

Grob asked if there was sufficient room that the cabin could be moved to the second tier.

Buitenwerf stated that there isn't sufficient room in the second tier for a fifth cabin. The office had numerous discussions with the previous owners informing them that the maximum number of rental units was four.

Johnson stated that the building could be left where it is as long as it wasn't being used a rental.

Christenson stated that even though there isn't room on the property for a cabin in the second tier she agreed with Lou. It was marketed as a rental and the owner's purchased a resort with five rental units.

Grob thought that if this is approved there should be a condition placed that if this is ever sold then cabin #1 would need to be removed and this property be sold as a four cabin resort. These owners were sold something that was represented incorrectly but they can market it properly and a new buyer would purchase it with the correct density. Cabin one is the one that is closest to the lake and is the smallest. It makes the most sense to get rid of that cabin. That would be the only way that he could see they could justify leaving that cabin as a rental.

Grob moved to approve Part 2 with the condition that any future sale of the resort of conversion to a planned unit development that cabin # 1 couldn't be used as a rental if operated as a resort and cannot be sold as a living unit if converted into a planned unit development.

Christenson seconded it.

The Board answered the findings of fact as follows:

1. Is the variance in harmony with the comprehensive plan, zoning ordinance and State Shoreland Management rules?

<u>Yes. The cabin is existing. It has been operating as a resort and the use will continue.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property?

<u>Yes. Reasonable use is the five rental unit resort that they thought they were purchasing.</u>

3. Is the stated practical difficulty due to circumstances unique to the property?

<u>Yes. The condition that was originally placed on the variance was limiting it.</u>

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

<u>Yes. The practical difficulty is that the property was purchased with five rental units and to operate it as a resort all five rental units will be needed.</u>

5. Will the issuance of the variance maintain the essential character of the locality?

<u>Yes. This is an operating resort and will continue to be an operating resort and there is an operating resort right next door.</u>

6. Does the stated practical difficulty involve more than economic considerations?

<u>Yes. No economic considerations were involved. The resort will just continue to operate as it has been.</u>

The motion carried unanimously.

Variance Application # 43-V-13 by Jean Dalton: Lot 8, Block F, Pine Haven Beach, Section 17, Township 139, Range 34, Hubbard Township on Long Lake. Parcel #: 14.38.05900. Applicant is requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residence located in the shore impact zone that does not comply with the 10 foot side lot line setback.

Kevin Chase and Brandon Chase were in attendance and presented the application.

Christenson asked if they would address what measures would be in place to help with the drainage.

Kevin stated that they would create a berm and settling area behind the house to allow for better drainage and keeping it from going towards the neighbor's home.

Schwindt stated that the addition is less than 50%.

Grob added that it isn't lakeward.

Kevin stated that it is a functional addition and it won't be seen from the lake. The roof line won't go any higher than what is there.

Grob stated that the neighbor's were nervous that the addition would encroach closer to their property. After being on site it was shown that the addition will not extend any further towards the property line.

Johnson wanted to make sure that they would do something to help with runoff heading towards the neighbor's yard.

Kevin stated that they would do everything they could to help with the runoff.

Brandon stated that there has already been extensive landscaping done on the property to help fix some of the runoff issues.

No additional written correspondence and no public comment was made.

Schwindt moved approve the variance application and adopt the findings of fact as presented in the October 2013 BOA 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?

<u>Yes. The proposed addition is going on the rear of the cabin and it constitutes only a 43% increase in size on a 1037 sq. ft. existing cabin.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property?

<u>Yes. The requested additional bedroom and bathroom space is a reasonable use of the property. A three bedroom home is not unreasonable.</u>

3. Is the stated practical difficulty due to circumstances unique to this property?

<u>Yes. The cabin was built prior to enactment of the Shoreland Management Ordinance at a nonconforming ordinary high water mark setback. There is not a lot of depth to the lot and the addition's scope is relatively</u>

small in scale such that it is not feasible to look at moving the cabin 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?

Yes. The structure was built prior to enactment of the Shoreland Management Ordinance at a nonconforming ordinary high water mark setback by a previous owner. The lot lacks depth to accommodate the 100' ordinary high water mark structure setback and provide room for the detached garage and Sub-Surface Sewage Treatment System and the lot was created prior to enactment of the Shoreland Management Ordinance.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. The house and surrounding properties in the locality are single family year-round and seasonal residential uses. The proposed variance seeks to maintain this property's single family year-round use and therefore will maintain the essential character of the locality.

6. Does the stated practical difficulty involve more than economic considerations?

Yes. The application does not cite economics as a difficulty. Instead, the difficulty is the structure's predating the Shoreland Management Ordinance and being located in the shore impact zone on a lot that lacks the depth necessary to consider placing the structure at a conforming ordinary high water mark setback.

The motion carried unanimously.

Variance Application 44-V-13by Donald and Lisa Anderson: Part of Government Lot 4, Section 1, and Lot 11, Crescent Beach Wolf Lake, Township 245, Range 32, Farden Township on Big Wolf Lake and Little Wolf Lake. Parcel #s: 07.39.00600 and 07.01.01100. Applicants are requesting a variance from Sections 502.1, 502.2, 704, and 904 of the Shoreland Management Ordinance to make an addition to a nonconforming structure located in the shore impact zone that exceeds the 25% impervious surface threshold.

Lisa Anderson was in attendance and presented the application. She stated that when they purchased the property in August the cabin had about 20 years of neglect. The request is to square off the cabin because it needs all new electrical. The cabin is being stripped down so it is the most logical time to add on.

Christenson asked if Lisa would explain what their plans are for the shoreline and the permit that was taken out.

Lisa stated a shoreland alteration permit was taken out for rip rap / retaining wall. This year their plan is to build the wall where it is eroded from both properties washing away. They are going to fill that area in with some fill which will probably happen next spring so it has time to settle to build it up and plant some vegetation to help with the erosion.

Christenson asked if the planting would be behind the retaining wall but in front of the ridge.

Lisa stated that was correct.

Schwindt stated that he saw the retaining wall as an improvement since it will help the runoff situation right now.

Grob stated that most of the runoff and impervious surface from this project will rund towards the back, towards Mud Lake. There is a wetland, a road and vegetation back there that will help protect the lake.

Lisa stated that their plan next year is to do a lot of land fixing so there will be vegetation and not moss.

Buitenwerf stated that there was new information as far as the foundation since there was some concern if the current foundation was capable of supporting a second story.

Lisa stated that a builder came out to see if the current structure was stable enough handle a second story and was told it wouldn't be a problem. Another contractor came out and because they mostly deal with new construction and the new rules and said that they weren't comfortable adding a second story and didn't know if it was the best thing to do. They have now had four contractors come out and look at the building and the plans and three out of the four consultants stated that the foundation would be fine. There could be some shifting but stated that shifting is possible with any construction.

Grob asked if the variance is approved, do they need to add a condition that they have to get approval from the Mississippi Headwaters Board.

Buitenwerf stated that it would not need to be placed as a condition because it is a requirement that they must get approval from them before a building permit can be issued and the applicant's are aware of that fact.

Christenson asked if there should be a condition regarding what vegetation should be planted.

Buitenwerf stated that it could be specified since there is a nexus between that and an impervious surface variance.

Grob thought that because someone from the office is already working with the applicants, and a retaining wall is being installed, he didn't feel that any of the runoff from the current home is running towards the back and there isn't much that could be said or done to specify what should be done. The buffering that is taking place is the large wetland. They could plant more grass where the septic tanks are but otherwise it would be difficult to specify. They will do the best they can.

Schwindt agreed with that. He also stated that rain gutters could help too even though the water runs toward the back, away from Big Wolf Lake.

Grob stated that it is only an addition 100 square feet of impervious surface so that the roof lines line up.

No written correspondence was received and no public comment was made.

Johnson moved to approve the application and adopt the findings of fact as presented in the October 2013 BOA Staff Report.

Christianson seconded the motion.

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?

<u>With the exception of the minor squaring off of one corner of the cabin, the addition is going up instead of out which keeps the structure footprint contained and thus in keeping with the ordinance intent. Additionally, the increased stormwater runoff and aesthetic impact of the proposed addition is being offset by a vegetative buffer being required to be installed along the shoreline.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property?

Asking for additional living space in a cabin that is 1028 sq. ft. including the garage is a reasonable request.

3. Is the stated practical difficulty due to circumstances unique to this property?

The lot and structure were created prior to the ordinance's enactment. The lot lacks depth to be able to meet the ordinary high water mark setback requirements from Big Wolf and Mud Lakes.

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, the difficulty was created by parties other than the landowner. The lot was created by a party other than the landowner and the cabin was constructed by a party other than the landowner.

5. Will the issuance of the variance maintain the essential character of the locality?

The house and surrounding properties in the locality are single family year-round and seasonal residential uses. The proposed variance seeks to maintain this property's single family year-round use and therefore will maintain the essential character of the locality.

6. Does the stated practical difficulty involve more than economic considerations?

The application does not cite economics as a difficulty. Instead, the difficulty is the lack of area and depth to the lot and the structure's having been constructed before the ordinance was enacted.

The motion carried unanimously.

Adjournment:

Christenson moved to adjourn. Christianson seconded the motion that carried unanimously.

The meeting was adjourned at 10:42 a.m.

Respectfully submitted by,

Maria Shepherd
Recording Secretary

Hubbard County
Board of Adjustment
November 18, 2013

Vice-Chairman Johnson opened the public meeting with the following members present: Oakley Williams, Charlene Christenson, Tom Krueger, Tim Johnson, and Arne Christianson. Also present were Environmental Services Officer Eric Buitenwerf and recording secretary Maria Shepherd.

Johnson welcomed everyone to the meeting and went through the meeting procedures.

Approval of the October 21, 2013 Minutes:

Christianson moved to approve the minutes as presented. Christenson seconded the motion that carried unanimously.

Old Business:

There was no old business to discuss.

New Business:

Variance Application 45-V-13 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 new residential structure at less than the required 100 foot ordinary high water mark setback. Part 2: Applicants are requesting a variance from Section 801.2 of the SMO and Subdivisions 2.10 and 2.11.G of the Individual Sewage System Standards Ordinance for a proposed drainfield to residential structure setback that will be less than the required 20 feet.

Barry Royce was in attendance and presented the application. He applied for a variance in 2012 that was denied. He rethought what he wanted and what was the most important and came up with the plan in front of the Board today. He scaled down the house, moved it further back from the water and decided not to build a garage. The most important this to him is to have a year round home. There currently is a shed and a bunkhouse on the property in addition to the cabin which would all be removed if the variance is approved. There is a deck on the current cabin which would be scaled down by 150 square feet and that area will be re-vegetated. The plan is to put in a septic system instead of the holding tanks that are out there currently.

Christenson stated that when the Board was on site it was apparent that the applicant is attempting to control the erosion issues and asked that the applicant address that issue for the record.

Barry stated that a couple of years ago there was an extraordinary high water level and with that came a lot of erosion. The Grace Lake Association had a grant that was given to them by the Department of Natural Resources, to help restore and return lakeshore to natural habitat. The requirements for the grant were approximately 70% had to be restored. The applicants drew up plans and now the majority of the shoreline is going back to natural vegetation. There are pine trees and oak trees and natural grasses and flowers to help stabilize the shoreline.
Christenson stated that she wasn't on the Board last year when the original proposal came before the Board but she was concerned how the applicant is going to address the needs of winter without a garage long term and if the shed is removed where will he store outdoor things in the winter.

Barry stated that currently his car sits outside all winter long so it wouldn't be any different from what he is doing now. He has spoken with the neighbors who own the majority of the land behind the

road about putting up a shed on their property for storage and possibly looking at a garage long term on the back property. He said his main concern is having a year round home to live in. He would also be in favor of doing a tuck under garage and a full two story house like the Board had recommended last time.

Krueger asked again for more clarification on the lakeside deck.

Barry stated that the new deck would be smaller. It is 38 feet long parallel with the lake. There is a 10 foot by 15 foot section that will be removed. The new deck would stop where the current deck steps are. The new deck dimensions will be 10' x 23'.

No written correspondence and no public comment was made.

Christenson asked Buitenwerf if he felt there would be ample room on the back property to put a garage. She is aware that there are wetlands there.

Buitenwerf stated that the wetland is fairly close to the road so he didn't feel that there would be room to build a garage without having to go through the Wetland Conservation Act of mitigation process. If it were approved then they would be allowed to fill in some of the wetland and a garage could be built. The property isn't in Barry's name so it would be up to the current owner to go through that process.

Barry stated that there is enough high ground currently to place a shed but wetland credits would need to be purchased in order to build a garage.

Krueger stated that he was on the Board when the original request came before the Board. The applicant was requesting a house and garage and septic system which was just too much for the size of the lot. This plan does reduce the amount of impervious surface which is a good thing.

Johnson sees that it is a positive that the impervious surface variance aspect was not needed and the expansion is going away from the lake.

Krueger agreed with Christenson and was a little concerned because he is putting a lot of money into this property and wonders if down the road it is going to be a problem that there isn't a garage. He wondered if a different property would work better for their needs.

Barry stated that they fell in love with this lot. It is quiet and perfect for them. The cars sit outside now year round so it won't be any different.

Williams asked how serious he was about putting a shed on the back lot for storage.

Barry stated that he was serious about it. If the variance is approved then more serious talks will take place but he is removing the current shed to get the impervious surface under the 25%. He felt that his neighbors would be okay with building a shed and if the wetland credits can be purchased they would be okay with a garage as well.

Christenson stated that she appreciated the new plan and the removal of the shed and bunkhouse and the want for a septic system but she still struggles with if the applicant will be okay long term with having no garage. She would hate to approve this and then have them come back in a few years asking for a garage. The lot is too small for that.

Barry stated that he wouldn't try that since that was the request last time and it was denied. Knowing that lakeshore management is getting more restrictive he didn't feel that the odds would improve of having a garage approved.

Krueger moved to approve the variance application with the following conditions: 1. the storage shed and bunkhouse must be removed. 2. the lakeside deck must be scaled down to the dimensions proposed in the variance application.

Christianson seconded it.

The Board answered the 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. It is an existing building that is grandfathered in. He is reducing his impervious surface with the new plan.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes. As it is, it is not a year round home.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. It is a tiny lot and if it would have had to be built back at a conforming setback it wouldn't have been allowed.

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

Yes. The lot was created by a party other than the current landowner and the difficulty, as cited in the answer to question 3 above, is the lot's lack of depth and area such that it is not possible

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. The house and surrounding properties in the locality are single family year-round and seasonal residential uses. The proposed variance seeks to maintain this property's single family residential use and therefore will maintain the essential character of the locality.

6. Does the stated practical difficulty involve more than economic considerations?

Yes. The application does not cite economics as a difficulty. Instead, the cited difficulty is the lot's unique dimensions, driveway location, and bluff location.

The motion carried unanimously.

Variance Application 46-V-13 by Gary Spears: North 150 feet of the south 450 feet of Government Lot 3, Section 32, Township 144, Range 32, Hart Lake Township on Garfield Lake. Parcel # 10.32.02600. Applicant is requesting a variance from Sections 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.

Gary and Jeff Spear were in attendance and presented the application. They are looking to create more usable space since the cabin is so small for entertaining and accommodating the entire family. Right now the driveway comes into the area and is dusty and creates a big mess into the house. There is a class five base material already there so it wouldn't be adding any impervious surface or cause any disturbance by putting in the patio.

Gary apologized for not being at the lot viewal.

Krueger stated that it looked like after measuring again there were four feet that the garage could be moved back.

Jeff stated that there are four feet but felt that because of how the property sits compared to the lake it is very interesting to how it lays out. Everything is at a severe angle. The garage could potentially be moved back the four feet but the road that runs behind them is fairly busy and the septic system is such a tight fit in that area it would eliminate any type of a turn around and parking area. There is only fifteen feet right now and most of that will be utilized for a turn around. There are only about 450 square feet that would be inside of the 100 foot setback. There is a total of 19 yards of paver blocks and sidewalks. They wanted something creative instead of just a rectangle and looks nice.

Gary stated again that they wouldn't be added any impervious surface they would actually be taking some away since they plan on re-vegetating the area that isn't needed for the patio.

There was no written correspondence and no public comment.

Krueger felt that there was a large deck on the lakeside of the cabin for gathering as well as room on the south side of the garage to put the proposed patio so it would be completely behind the 100 foot setback.

Jeff stated that the septic line runs through which wouldn't be wise to build on. There also is a large group of trees that they want to save. Big pines that age are hard to come by. They didn't want to remove all of them just for a patio. There would be a view to the lake if the patio were built where it is proposed but if it were to be moved to the south then there wouldn't be a view of the lake.

Krueger stated that there is a fire pit on the property, that isn't on the site plan that takes up a lot of area and is closer to the lake. He didn't understand the need for this patio when there is a large lakeside deck and a large fire pit patio on the property already.

Jeff stated that they were allowed up to a 400 square foot patio no closer than 30 feet from the water and the current fire pit patio is 300. They aren't trying to go above and beyond their means but with the size of the family and the small cabin the extra gathering space is needed.
Krueger stated that it would be difficult to answer the question that asks if the applicant's are deprived of a use of their property since you already have a large deck and a large patio near the lake. This is more of a it would be nice to have instead of a need.

Jeff stated that the deprived portion is that they are limited on the area that is buildable on this property because of all of the setbacks and the size of the lot. The cabin is very small. The lot is a large lot but because of the setbacks a large portion of it is not useable.

Christianson asked if the garage was going to have water and sewer in it.

Gary stated that yes that was the plan. They want a bathroom in it.

Johnson stated that the proposed depth of the garage is 30 feet so by cutting back the garage to a normal 24 foot depth that give more space and the patio would be behind the setback mark and would be allowed per permit. The garage isn't built yet so it should be flexible and able to be moved or sizes changed.

Gary stated that the depth of the garage is needed because of the size of the boat they have and eventually they want a pontoon.

Christenson stated that people are wanting more and more on their lots and are asking for lesser setbacks.

Gary felt that they weren't changing anything from what is already there since it is class five and has a hard surface now. They would actually be adding vegetation instead of taking anything away.

Christenson stated that they would be able to keep the sidewalks if they moved the patio to the south. They would be able to fit it in by the trees too without cutting them down.

Gary stated that if they did that they would be over the septic.

Christenson asked Buitenwerf and Johnson if pavers can be placed over a septic line.

Buitenwerf stated that placing paver over the line is okay.

Jeff stated that it wasn't recommended.

Christenson moved to deny the variance application and adopt the findings of fact as presented in the November 2013 BOA Staff Report.

Krueger seconded the motion.

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?

<u>No. There is room on the lot for the proposed platform to be located to the south of the detached garage and meet all setback requirements.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property?

<u>No. There is room to move the proposed platform to the south of the detached garage and construct it by permit such that the owner is not deprived of a platform use without the variance. The lot also currently has a single family residential structure use on it along with an accessory lakeside deck and a detached garage which are all part of an existing reasonable residential use.</u>

3. Is the stated practical difficulty due to circumstances unique to this property?

<u>No. The application states that there is a 34 foot wide area where the platform could be constructed and meet all setback requirements. There is sufficient depth on the lot to build the proposed platform by permit.</u>

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

No. The difficulty is created by the landowner's desire to place the platform on the lakeside exterior of the detached garage instead of to the south of the garage where it could be installed by permit per the applicant's own admission in the application narrative.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. The property is used as a seasonal residential use and the locality is a mixture of year-round and seasonal residential uses. A platform is a typical accessory use to a principal residential use and therefore will maintain the locality's essential character.

6. Does the stated practical difficulty involve more than economic considerations?

Yes. The application does not cite economics as a difficulty.

The motion carried on a 4 to 1 vote with Williams voting nay.

Variance Application 47-V-13 by the Stell Cottage Irrevocable land Trust: Part of Government Lot 1, Section 31, Township 142, Range 33, Thorpe Township on Big Mantrap Lake. Parcel # 26.31.00100. Applicant is requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance for a proposed second story addition to a nonconforming structure that does not comply with the 100 foot ordinary high water mark setback.

Michael Stell was in attendance and presented the application. The request is for a second story over the back half of the cabin. They are adding a couple of bedrooms and a bathroom. The footprint of the existing structure will not be changing at all. The septic system is sized adequately for the expansion. The house has been in the family for 56 years and a larger cabin with more space is sorely needed. With the current space it is near impossible for the entire family to gather together.

Christenson stated that they were out on the property to view it. The request is reasonable and the addition is going up.

No written correspondence was received and no public comment was made.

Christenson moved to approve the variance application and adopt the findings of fact as presented in the November 2013 BOA Staff Report.

Krueger seconded the motion that carried unanimously.

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 addition to the cabin is going up instead of out so that its footprint is not increasing and the roofline slope and height increase is such that its impact will be minimal when viewed from the water.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes. The current cabin is 1062 square feet per the application which s not a large space and only has two bedrooms. The proposed addition is ~820 square feet and will add one bedroom to provide more space for a large extended family which is a reasonable use.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. The cabin predates the ordinance and is said to be located at 50.14 feet ordinary high water mark setback. The cabin would need to be moved over 500 feet to the north portion of the lot in order for it to meet setback and the addition to be permitted.

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

Yes. The cabin was built prior to enactment of the ordinance at a nonconforming ordinary high water mark setback by a party other than the current landowner.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. The cabin and cabin next door are seasonal residential structures. The proposed addition will not change that use. The property shares a unique peninsula with this next door cabin such that there really aren't additional properties that make up the locality.

6. Does the stated practical difficulty involve more than economic considerations?

Yes. The application does not cite economics as a difficulty. Instead, the difficulty is the lot's unique dimensions and the cabin's ordinary high water mark setback and construction date.

The motion carried unanimously.

Variance Application 48-V-13 by Run Away Bay Lodge Beach Owners Association: All of the common elements, Run Away Bay, Section 17, Township 140, Range 34, Nevis Township on Lake Belletaine. Parcel # 21.71.02600. Applicants are requesting a variance from Section 902 of the Shoreland Management Ordinance for a proposed landscaping project that will exceed the permittable threshold for grading/filling projects in the shore impact zone.

No one was in attendance to present the application.

Buitenwerf passed out photos of the project area were passed out to the Board. The ordinary high water mark was located and flagged by the Environmental Services staff. Based on the flag locations the first tier would need to be rip rap instead of a retaining wall since it is below the ordinary high water mark. If the variance were approved the department would recommend it be approved with a condition that the rip rap course receive Department of Natural Resources (DNR) approval. The approval is needed because the DNR has a 200 foot linear foot limit on the amount of rip rap that can be installed on a property. A permit is needed to exceed the 200 foot linear amount. The ordinary high water mark was located last Friday and the applicant has not had opportunity to make application with the DNR to see if approval would be granted.

Krueger asked if the current sauna was under the ordinary high water mark.

Buitenwerf stated that yes it is and it isn't the only building that is because of where the DNR repositioned the ordinary high there are several buildings around the lake that are within the ordinary high water mark.

Christenson asked what option the Board has for acting on this variance today.

Buitenwerf stated that the Board could table the application in hopes that the applicant or agent could be in attendance to amend the design or allow him time to obtain DNR approval or approve the upper tiers and exclude the lower tier until it is all straightened out. He spoke with the area hydrologist this morning and was told that the area hydrologist didn't see any issues with the request but that he couldn't speak for the other parties involved.

Christenson stated that she would be opposed to only acting on the upper tiers and excluding the lower tier. To her this is complete project.

Johnson agreed with her.

No written correspondence was received and no public comment was made.

Christenson moved to approve the variance application with the condition that approval from the Department of Natural Resources must be obtained on the rip-rap portion of the project and adopt the findings of fact as presented in the November 2013 BOA Staff Report.

Christianson seconded the motion.

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. Creosote railroad times are being removed from the shore impact zone and replaced with a more environmentally friendly rock retaining wall system. The slope has been altered in the past (probably before the ordinance was enacted) by the current retaining wall system such that some form of retaining wall is needed to maintain the slope's integrity.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes. Not being able to replace the existing retaining wall system will cause a continually increasing safety hazard as the railroad ties continue to deteriorate. Being able to maintain a safe slope and stairway to the lake is a reasonable use.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. The difficulty is the retaining wall system appears to have predated the ordinance and its alteration of the slope requires that a replacement retaining wall system be installed in order to maintain the slope's integrity without incurring unreasonable cost in trying to restore the slope to where it is able to be maintained naturally without artificial support.

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

Yes. The creosote retaining wall was created prior to the owners association owning the property.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. The retaining wall and stairway system is a common landscaping feature use to stabilize slopes in shoreland areas and provide a means of safely traversing them. If anything, converting the

existing railroad tie system to a rock system will cause it to be more supportive of the locality's essential character by appearing more natural.

6. Does the stated practical difficulty involve more than economic considerations?

Yes. The application does not cite economics as a difficulty. Instead, the difficulty is the retaining wall system's location in the shore impact zone, its having been created before the ordinance took effect, and its scope being such that the volume of material needed to replace the ties exceeds the ordinance's permittable threshold.

The motion carried unanimously.

Variance Application 49-V-13 by Michael and Julie Marino: lots 13-16, Bethany Beach, Section 4, Township 145, Range 32, Farden Township on Grace Lake. Parcel # 07.40.00500. Applicants are requesting a variance from Sections 502.2 and 704.7 of the Shoreland Management Ordinance for a proposed alteration to a residential structure previously approved to be constructed at less than the 100 foot ordinary high water mark setback by variance.

Julie Marino and John Schrader, authorized agent, were in attendance and presented the application. The request is to take change the roof from a shed roof to a gable roof on the side of the house away from the lake.

No questions were asked from the Board.

No written correspondence was received and no public comment was made.

Christenson moved to approve the variance application as presented and adopt the findings of fact as presented in the November 2013 BOA Staff Report.

Christianson seconded the motion.

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 requested roofline change is over a minor area (~8' x 12') that is allowed to be impervious surface area per variance 51-V-10. The requested change only affects aesthetics of the structure and it is located on the non-lakeside portion of the home so there will be no aesthetic impact to parties on the lake.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes. The proposed roofline adjustment from a shed roof to a gable roof is a reasonable request that will not harm anything environmentally.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes. The difficulty is the fact that the house design was approved by variance in 2010 so that any subsequent amendments to the design must be authorized by variance per Section 704.7 of the shoreland ordinance.

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

Yes. The difficulty, as stated in the answer to question 3, is the fact that section 704.7 of the shoreland ordinance requires that any alterations to structure previously allowed to be constructed/modified by variance be handled through a subsequent variance application. The landowner did not create this ordinance language.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes. The house will remain a single family year-round home that will continue to fit in with the surrounding seasonal and year-round residential uses and the nearby church camp use.

6. Does the stated practical difficulty involve more than economic considerations?

Yes. Economics were not cited as a difficulty in the application. The difficulty is the fact that Section 704.7 of the shoreland ordinance requires that any alteration to a structure constructed or previously modified by variance must be authorized by a subsequent variance.

The motion carried unanimously.

Adjournment:

Christianson moved to adjourn. Krueger seconded the motion that carried unanioulsy.

The meeting was adjourned at 9:59 a.m.

Minutes respectfully submitted by,

Maria Shepherd
Recording Secretary

Hubbard County
Board of Adjustment
December 16, 2013

Vice- Chairman Johnson opened the public meeting with the following members present: Charlene Christenson, Ken Grob, Tom Krueger, Tim Johnson and Arne Christianson. Also present were Environmental Services Officer Eric Buitenwerf and recording secretary Maria Shepherd.

Johnson welcomed everyone to the meeting and went through the meeting procedures.

Approval of the November 18, 2013 Minutes:

Christenson moved to approve the minutes as presented. Christianson seconded the motion that carried unanimously.

Old Business:

There was no old business to discuss.

New Business:

Variance Application 50-V-13 by Gary Johnson: Lots 15 & 16, Block 1, Friendship Springs, Section 33, Township 43, Range 32, Lakeport Township on Kabekona Lake. Parcel #s 19.41.01700 and 19.41.01800. Applicant is requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance for a proposed lakeside platform and a greater than 50% addition to a nonconforming residential structure that does not comply with the 100 foot ordinary high water mark setback.

Gary Johnson was in attendance and presented the application. He gave a quick summary of what the request is for. The cabin was built in 1947. It is 845 square feet and the applicant would like to add on an additional 516 square feet of living space to the cabin. They want to replace two small bedrooms in the existing cabin. The structure predates the ordinance so a 50% addition would have been allowed by permit but what they are asking for 93.5 square feet over what would have been allowed by permit. The cabin is 80 feet back from the ordinary high water mark. There would be a small at grade platform in front of the addition. The neighbors wrote a letter in opposition to the lakeside platform but after they came over and spoke with the applicant they wrote another letter withdrawing their opposition. They didn't understand what a lakeside platform was and thought it was going to be much closer to the lake than it was.

Christenson asked if the applicant was going to pull the permit for the platform prior to pulling the addition permit or if he was planning on coming back to the Board for approval of the patio.

Gary Johnson stated that the variance request is for the greater than 50% addition as well as a lakeside platform that will not meet the 100 foot setback as well as being attached to a structure that has a variance. He would have been able to pull a permit for the platform but thought this was the easiest and cleanest way to do it.

Grob asked about the two lots in question that total 200 feet of lake frontage and over 50,000 square feet of area making it a conforming lot when put together. They are platted lots and he wondered if they were permanently joined together or if they could be sold off as individual lots.

Buitenwerf stated that the two lots are functioning as one lot at the current time.

Tim Johnson stated that the septic system is on the other lot.

Grob asked if that is something they should consider as a condition that the two lots can never be sold off separately.

Krueger thought that it would require a variance to sell off a lot separately.

Buitenwerf stated that he would have to look to see when the lots were created or platted but he thought it was done prior to 1971 so it would fall under Section 707.1 which states that if you have a 100 foot lot and all setbacks can be met and two drainfield sites are present then the lot can be developed if it is currently unimproved. He stated that a condition should be placed on an approval if the decision is based on the fact that the lot is the size that it is.

No new written correspondence was received and no public comment was made.

Tim Johnson felt that the design was well thought out and it was a good idea to build the expansion off to the side.

Gary Johnson said that they aren't trying to build a huge cabin. They like the quaintness of it but it is just so small that this will make it much more livable.

Grob moved to approve the variance request with the condition that the condition that the two lots remain under common ownership and that the current unimproved lot cannot be developed into an improved lot and adopt the findings of fact as presented in the December 2013 BOA Staff Report.

Christenson seconded the motion.

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?

<u>The proposed addition is being placed on the side of the structure and angled away from the lake – which is in keeping with the ordinance intent. The addition's height will be the same as the existing structure. The entire structure, post addition, will still be modest in size relative to many homes constructed today. The proposed platform complies with what is allowed in Section 704 of the ordinance for such and is only a little over half the allowed maximum size.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property?

<u>The existing structure is only 845 sq. ft. in size. Adding another 516 sq. ft. of living space to increase the size of the cabin's two bedrooms is a reasonable use. Providing a 202 sq. ft. lakeside platform for the structure that complies with Section 704 of the ordinance and only needs a variance due to the proposed construction sequence of the addition and platform and how Section 704.7 of the ordinance requires a variance for the platform if it is built after the addition, but the platform can be constructed by permit if built before the addition.</u>

3. Is the stated practical difficulty due to circumstances unique to the property?

The structure was constructed at a nonconforming ordinary high water mark (OHW) setback prior to enactment of the ordinance. Given the scope of the proposed addition and platform, it does not make sense to require the structure to be moved further from the OHW.

4. Were the circumstances causing the practical difficulty created by someone or soothing other than the landowner?

As mentioned in the answer to question # 3, the cabin was constructed at a nonconforming ordinary high water mark setback prior to the ordinance's enactment.

5. Will the issuance of the variance maintain the essential character of the locality?

The house and surrounding properties in the locality are single family year-round and seasonal residential uses. The proposed variance seeks to maintain this property's single family residential use via an addition and accessory platform and therefore will maintain the essential character of the locality. There will be at least 100 feet between the addition and the adjacent property – per the application sketch.

6. Does the stated practical difficulty involve more than the economic considerations?

The application does not cite economics as a difficulty. Instead, the cited difficulty is the fact that the structure predates the ordinance and it was constructed at a nonconforming ordinary high water mark setback. Additionally, for the platform, the difficulty is the ordinance's requirement that a variance be obtained for the platform if it is constructed after the addition, but not if it is constructed before the addition.

The motion carried unanimously.

Variance Application 51-V-13 by Tim and Deb Skadberg: Part of Government Lot 10, Section 25, Township 141, Range 34, Lake Emma Township on Lake Ida. Parcel #s 16.35.02800, 16.35.02900, 16.35.03000, 16.35.3300, 16.35.03400, 16.35.03600, and 16.35.03700. Applicants are requesting a variance from Section 1013 of the Shoreland Management Ordinance to exceed the allowed rental unit density for a proposed resort use.

Tim and Deb Skadberg were in attendance and presented their application. At this time there are seven rental cabins, a small home, and six camp sites. Zoning regulations say that the density allowed is seven rental cabins and two camp sites. The request is to allow the four camp sites to remain. They enhance and compliment the resort when larger groups come in. During the summer time you can't see the campers from the lake. They are well hidden. They would like to continue running it as is. They are upgrading three different septic systems, the one for the home has been done. They have to be upgraded by July 11th and the other two will be done. They are waiting to upgrade the other systems until they get through all of the necessary processes to allow them to operate a resort. They didn't feel it was wise to keep putting money into the place if they won't be allowed to operate it as a resort. They want to run the campground without a septic system for a while and make it so the campers would just have to haul their sewage away with them when they leave.

Grob asked Buitenwerf asked if this request falls under the commercial PUD requirements.

Buitenwerf answered that once a conditional use permit was applied for and if it were granted then it would be a commercial PUD / resort use.

Grob asked the applicants if they lived in the home that is on the property.

Skadberg stated that they live there more than six months out of the year. They go to Colorado for the ski season to work.

Grob stated then that the home was not for rental use and the applicants agreed that it was for their personal use.

Christenson stated that when the Board was out on lot viewal it was difficult to see the current camp sites. She wondered if there are definite sites or if there is just an area that the campers set up wherever they can.

They are not numbered and once the campground is up and running there will be designated spots. Right now there are technical spots where it is leveled out and where they would be.

Krueger asked if the applicants had looked at the area in the next tier that is available for campsites. It seemed there was room to place a few sites.

Skadberg stated he wouldn't be opposed to moving the campground over to that spot but right now they couldn't take on that expense but yes it could be done.

Krueger thought that it was rather hilly where they wanted the camp sites now and it would be a better idea to move them to the next tier.

Grob stated for clarification that whether or not this variance is approved the request to operate a resort will need to go before the Planning Commission and County Board. So if this is denied it doesn't deny them from running a resort but simply denies them from being over the allowed density.

Johnson asked if the State had the resort registered with six camp sites either currently or in the past.

Skadberg stated that nothing can be done with the State until the conditional use permit is granted but said that they are not sure about in the past what was registered with the State since the person they have to deal with on those issues is almost impossible to get information from. They will take out money but they won't answer questions or get us proper documentation.

The Board was trying to determine if the campground sites were there legally and registered with the State, as it should have been, or were they operating six camp sites illegally.

Grob stated that if they weren't in existence prior to the Ordinance then they would have needed a variance for those six sites since it puts them over allowed density.

Johnson felt that if they weren't already existing it is difficult to grant a variance for density. It is a very undeveloped campground and wasn't a huge investment for each site. Rebuilding those sites at a conforming distance from the lake and in the proper tier wouldn't be hard to do.

Skadberg stated that even if they moved and rebuilt these camp sites in the next tier they would still need a variance for density. They are allowed nine rental units in tier one and two rental units in tier two but they are asking for the seven cabins and six camp sites that are already there or a total of thirteen.

Krueger asked if there was electric and water to the campsites.

Skadberg stated that there is very obvious electric and water hookups for four sites. There are six fire rings up there.

No written correspondence was received and no public comment was made.

Krueger stated that the request is for six camp sites but the applicant is saying there are four that have been developed and established with water and electric hookups so there isn't proof that the extra two were there.

Johnson agreed with that statement.

Grob commented that this is a small, natural environment lake and there are special protection regulations for small lakes for a reason so requesting an additional four units past what would be allowed seems to be a major deviation from the ordinance and he would be in favor of not approving the variance.

Christenson thought that six campers in the area that they are requesting is too much. There are other options that would keep it in compliance. Not the six that they are wanting but they would be allowed four campsites, two in tier one and two in tier two.

Krueger moved to deny the variance request and adopt the findings of fact as presented in the December 2013 BOA Staff Report.

Christenson seconded the motion.

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?

<u>No. The Tier 1 area on the property is 2.25 acres shy of the 9 acres needed to comply with the ordinance's density regulations to allow these 13 proposed rental units to be located in Tier 1. Allowing such a significant exception to the State shoreland rule and ordinance rental unit density regulations would not be in harmony with their intent.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property?

<u>No. The property can be used residentially, subdivided into multiple residential lots, and be used as a commercial 9 unit resort by applying for and obtaining approval of a conditional use permit for such – among other possible uses. The property can also be used to access Lake Ida and recreationally to enjoy the outdoors. All these uses are reasonable such that the owner is not deprived of a reasonable use of the property without the variance.</u>

3. Is the stated practical difficulty due to circumstances unique to this property?

No. The application alleges the difficulty is that the previous owners did not disclose to the applicants that the resort use lapsed for lack of activity. This alleged difficulty has nothing to do with the property. It is common for buyers of property to feel and/or allege that a seller did not disclose something concerning a sale and property to them. No difficulty attributable to the property and its characteristics has been presented in the application.

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

No. No practical difficulty has been shown in this application. The landowner created this alleged difficulty by not inquiring with the County about the property's zoning status prior to purchasing the property.

5. Will the issuance of the variance maintain the essential character of the locality?

No. The requested rental unit density would be 44% greater than what is allowed given the Tier 1 area and the average size of the proposed rental units. Two and a quarter additional acres in Tier 1 are needed in order for the property to be allowed the requested 13 Tier 1 rental units without a variance. Lake Ida is small (~75 acres) and surrounded by properties being used residentially. The requested rental unit density would significantly exceed the allowed density level on a small lake that is likely not able to support the additional use that would result from the requested four additional units above the 9 allowed units.

6. Does the stated practical difficulty involve more than economic considerations?

No difficulty meeting the legal definition of such has been shown in the application. The sole reason that a reasonable person looking at the facts could see for the requested variance is economics – i.e. having sufficient rental units to make a resort cash flow. Economics alone cannot be the reason for granting a variance.

The motion carried unanimously.

Adjournment:

Christianson moved to adjourn. Johnson seconded the motion that carried unanimously.

The meeting was adjourned at 9:35 a.m.

Respectfully submitted by:

Maria Shepherd
Recording Secretary