Hubbard County
Planning Commission/Board of Adjustment Meeting
January 27, 2014

Johnson opened the meeting with the following members present: Charlene Christenson, Ken Grob, Tom Krueger, Tim Johnson, and Arne Christianson. The only member not present was Commission Greg Larson. Also present were Environmental Servicers Officer Eric Buitenwerf, and recording secretary Maria Shepherd.

Election of Officers:

Christenson moved to nominate Ton Krueger as Chairman. Johnson seconded the motion that carried unanimously.

Christianson moved to nominate Tim Johnson as Vice Chairman. Christenson seconded the motion that carried unanimously.

Christianson moved to nominate Charlene Christenson for Secretary. Grob seconded the motion that carried unanimously.

Approval of the Planning Commission August 12, 2013 meeting:

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

Approval of the Board of Adjustment December 16, 2013 meeting:

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

New Business:

By-laws

Buitenwerf gave the Board background on the by-laws. The Board of Adjustment and Planning Commission Board was established in Section 1102 of the Shoreland Management Ordinance. Once the Boards were combined and become one and the same new by-laws are needed. Examples were included in the board packets of different County's by-laws with combined boards. The draft that was presented for the Board's consideration was written based on what the Ordinance language for Section 1102 states should be in the by-laws verses is what is addressed in the Ordinance itself. It is simply a draft so it can be changed, deleted or scratched all together is the Board wishes to.

Kruger commented that any changes that are made to the by-laws need to agree with what the County Board already approved in Section 1102.

Buitenwerf stated that once the by-laws are approved by the PC/BOA Board, it then would need to be brought before the County Board for their approval as well. Any additional or alterations to the by-laws would need to go through the same process.

The Board discussed the By-laws draft in length and proposed the following changes:

Article IV – Conflict

It is not the intent of these By-Laws to repeal, annul or in any way impair or interfere with provisions of State Statute, Law, or Rule or County Ordinances. If a conflict exists between these By-Laws and State Statute, Law, or Rule or County Ordinances, the highest standards will govern.

Article V – Officers

Section 5. The Recorder Designate shall keep the minutes and records of the PC/BOA; and with the assistance of such staff as is available shall prepare the agenda of regular and special meetings, provide notice of all meetings to PC/BOA members, arrange proper and legal notice of hearings, attend to correspondence of the ~~Commission~~ PC/BOA, and such other duties as are normally carried out by a Recorder Designate. Recording of the minutes will be done by Land Records - Environmental Services personnel who will be the Recorder Designate.

Article VI – Election of Officers

Section 1. An annual organizational meeting shall be held ~~on~~ at the first meeting of a calendar year.

Section 2. Nominations shall be made ~~from the floor~~ by the PC/BOA members present at the annual organizational meeting~~s~~ and election of officers shall follow immediately thereafter.

Article VII – Meetings

Section 2. Lot viewals to review applications to be considered at the regular meeting shall be conducted, unless otherwise determined, on the Thursday and/or Friday immediately preceding the scheduled meeting of each month. Additional lot viewal days may be added depending on the number of applications received, type of applications, ~~and~~ locations of properties to be viewed, and/or a special meeting is needed.

Section 3. Special meetings may be called by the Chairperson or Environmental Services Officer. It shall be the duty of the Chairperson or Environmental Services Officer to call a special meeting when requested to do so by a majority of the members of the PC/BOA. The Recorder Designate shall notify all members of the PC/BOA ~~in writing not less than five days~~ in advance of such special meeting.

Article VIII – Order of Business

Section 1. Although the same members make up both the Planning Commission and Board of Adjustment, the meeting of the Planning Commission will be held, as set forth in ~~this Article~~ these By-Laws, and upon completion of all applicable business pertaining to the duties of the Planning Commission as addressed in State Statutes and County ordinances, adjourn. Immediately following the Planning Commission meeting, the Board of Adjustment will hold its meeting, as set forth in ~~this Article~~ these By-Laws, and upon completion of all applicable business pertaining to the duties of the Board of Adjustment, adjourn.

Section 3. A motion ~~from the floor~~ by a PC/BOA member must be made and passed in order to dispense with any item on the agenda.

Buitenwerf stated that he would make the proposed changes and bring a revised draft to a later meeting to make sure that all of the proposed changes were made as well as allowing the Board another opportunity to review it with the changes.

Buitenwerf then asked for comments or suggestions on what should or shouldn't be included in regards to the meeting procedure. He gave everyone a draft that he had created as a starting point. It is a consolidation of the previous Board of Adjustments and Planning Commission meeting procedures that existed. The general flow is the same but there was some language that was specific to each of the separate entities that he attempted to merge together into this draft.

Krueger asked about the proper procedure for the signup sheet for addressing the Board. In the meetings for both the Planning Commission and Board of Adjustment when he was the Chair he never had that sheet to know if people who were giving public comment had actually signed up or if they were speaking without signing in.

Buitenwerf stated that the signup sheet is something that needs to be refined and a better method figured out.

There was discussion on collecting the signup sheet when the meeting starts and the Chair would call the people who signed up and allow them to speak but that runs the risk of someone coming in late and not having the ability to sign up.

Buitenwerf stated that legal counsel will be helping him with creating the meeting procedure so that we know what we can and can't do. The purpose of the meeting procedure is to have a smoothly run and effective meeting as well as telling the Chair what rules and standards he is able to hold the audience to.

The idea for the signup sheet is that people sign up ahead of time for each item on the agenda they wish to speak on; they would mark whether there are in favor or opposition of the request. At the beginning of the meeting the signup sheet would be brought to the Chair so he knows how many people wish to speak on each matter to know how much time will be needed for the public comment portion of each item.

Grob brought up for discussion the deadline for written correspondence and was wondering if there was any flexibility there. Many people want to write comments but wish to do so after they have viewed the lot and since the lot viewals are after the deadline he felt that it limited people from expressing their concerns or thoughts. He proposed the possibility of allowing those who attended the lot viewal and wished to send in written correspondence to have until Friday at the end of the business day as a deadline to get it to the Environmental Services Office. Lot viewals can make a big difference in a person's opinion and since the only time the public can legally view the property is during the designated lot viewal time it seemed appropriate to allow additional time to those people.

Buitenwerf stated that he agreed that it was good to allow the public to comment and address their concerns, which they are able to do at the meeting, in writing or while on site for the lot viewal. If the lot viewal were to be held on Friday then what would the deadline be? The other reason for Wednesday as a cutoff is that ensures that we are able to make copies and get them to the Board members at the lot viewal. If we gave Friday as a deadline it doesn't give the office much time to get

copies made and distributed to the Board as well as not allowing much time for review by the Board. There are times that the written material is quite lengthy and the more time we have to prepare those documents and allow sufficient time for review from the members the better.

Grob stated that the public does have ample opportunities to share their opinions and concerns and could see how a later deadline could cause constraints in getting the material to the members as well as allowing sufficient time to review.

Krueger felt that they were being very accommodating for the public to share their concerns or comments in multiple different ways.

Christenson felt that be allowing a Friday afternoon deadline could become a nightmare for the staff to manage and get the material out in time. The meeting times were moved so that the public had a better opportunity to attend the meetings.

There also was discussion regarding having a spokesperson for a group and allowing them a greater than 3 minutes of speaking time if they were representing a group of people who shared similar ideas and thoughts. Discussion ensued regarding how many people constituted a group and would it cause more disruption to tell a group of people that they have to come up with a spokesperson. The idea of a group spokesperson is good but the execution needs some more thought. They decided to see how it goes and if needed they can suggest or make changes to the by-laws. The point of a spokesperson is to eliminate eight people standing up in a row and state the same concern. It could be problematic to offer more time to a spokesperson since he is speaking on behalf of others than to an individual speaking.

Buitenwerf will create a new draft, run it by legal counsel and bring it to a future meeting for the Board's thoughts and comments.

Miscellaneous:

Krueger asked about any training opportunities that are coming up in the future.

Buitenwerf stated that he hasn't received notice of any yet but typically AMC puts on a training seminar in March. He hasn't heard that it has been scheduled yet but also hasn't heard that they won't be doing it this year. As soon as he knows he will let everyone else know.

Communications:

There were no communications to discuss.

Adjournment:

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

The meeting was adjourned at 8:04 p.m.

Respectfully submitted by:

Maria Shepherd
Recording Secretary

Hubbard County
Board of Adjustment
February 24, 2014 meeting

Chairperson Krueger opened the meeting at 6:27 p.m. with the following members present: Charlene Christenson, Ken Grob, Tom Krueger, Tim Johnson, Arne Christianson and County Commissioner Greg Larson. Also present were Environmental Services Officer Eric Buitenwerf and recording secretary Maria Shepherd.

Old Business:

There was no old business to discuss.

New Business:

Variance Application 1-V-14 by Robert and Andrea Otto: Lot 9, Duck Lake Second Addition, and part of Government Lot 6, Section 31, Township 139, Range 33, Crow Wing Lake Township on Duck Lake. Parcel: 06.38.40800. Applicants are requesting a variance from Sections 502.2, 707.1, and 904.6 of the Shoreland Management Ordinance to develop an unimproved lot into an improved lot (i.e. residential dwelling unit) where the proposed residential structure will not comply with the 100 foot ordinary high water mark structure setback and the 25% impervious surface area threshold will be exceeded.

Robert Otto was in attendance and presented the application. The property was platted in 1959 before there was a shoreland ordinance and size requirements for parcels. The lot is an inadequate size to meet all of the requirements. The variance is being requested because the lot is so undersized the setbacks cannot be met. In order to install a septic system the home had to be moved closer to the lake.

Krueger asked what the structure setback for the proposed home was.

Otto stated that the setback would be 66 feet from the ordinary high water mark and the front of the home would line up with existing structures in the area.

Grob stated that there was not any mitigation plans proposed. The lot slopes towards the lake as well as towards the neighboring property. It is difficult when runoff will occur but nothing has been offered to help or redirect that runoff. Anytime there is a new structure that is going to be placed closer than 100 feet to the lake, a mitigation plan of some sort is strongly encouraged. He asked the applicant if they had talked to anyone or had any ideas of what could be done to prevent additional runoff.

Otto stated that he had not explored any options but he was positive there are some that exist and he wasn't opposed to talking to professionals to come up with a plan.

Kruger stated that for the size of the lot, he felt that the proposed plan was a bit excessive. He felt that there were areas within the design that could be altered or scaled back which would in turn get the plan under the 25% impervious surface calculation.

Otto felt that there were changes that could be made to decrease impervious surface on the lot. He was confident that he could get his design under the 25% calculation. He would only have to decease it by about 400 square feet.
Krueger stated that if the application wasn't asking for an impervious surface variance it would be much more appealing.

Otto stated that it definitely could be done and by downsizing it will also help with the runoff.

Kruger stated that there weren't any structures in the immediate area that come anywhere near the size of this proposed house.

Johnson felt that downsizing the house would alleviate a lot of problems. The well is out front and will need to be serviced at some point and require access. This would give the access needed. A smaller house would also fit much better on the lot given its small size. He would have liked to see the septic system staked out, which given the amount of snow on the ground was very difficult, just to see how it will all fit on the lot. He also wanted to see where the neighboring property line was and have it staked so setbacks were easy to see. The snow made the lot viewal difficult to have a clear picture of how it will all be placed on the lot.

There was no written correspondence received or public comment made.

Grob felt that it might be best to table the application until the snow is gone so that the Board would be able to revisit the lot and see it clearly staked out. If tabled, it would also give the applicant an opportunity to submit a new design for the house and garage that comes under the 25% impervious surface without making them reapply as well as getting a mitigation plan in place.

Buitenwerf stated that in order to table the variance the applicant would have to be willing sign an extension letter. The County has used up the available review time under statute so in order to table this variance it would have to be at the owner's request.

Otto stated that he had no problem downsizing the home to meet the 25% impervious surface. He would be willing to sign the extension letter to allow additional time to review this request.

Buitenwerf passed out a form for an indefinite extension of the 60 day rule by the property owner. He stated that a motion to table should be very specific as to what the Board's expectations are and what they want to see at the next board meeting.

Krueger stated that his expectation would be to get the house plan under the 25% impervious surface. He also wants to have the septic system and the house staked out for the next lot viewal so that they can see exactly how it will all fit.

Otto stated that the septic designer assured him that the septic system would fit on the lot along with the home.

Grob moved to table the variance application until the May 27, 2014 Board of Adjustment meeting. He wants the applicant to amend his variance application to include the following: 1. a stormwater runoff mitigation plan, 2. a new design that brings the proposed project's impervious surface area under 25%, and 3. physically flagging/staking the septic system location in addition to the proposed structure location for the May lot viewal so the Board can see how the layout will work.

Christianson seconded the motion.

The motion passed unanimously.

Variance Application 2-V-14 David and Karen Hagert: Lot 17, Block 1, Wildpointe, Section 4, Township 140, Range 33, Nevis Township on Deer and Shallow Lakes. Parcel: 21.73.01700. Applicants are requesting an after-the-fact variance from Sections 501, 502, and 504 of the Shoreland Management Ordinance to allow a nonconforming structure to stay in its present nonconforming location.

David and Karen Hagert were in attendance for the meeting. Their authorized agent, Joel Fremstad, also attended and presented the application.

Krueger asked for clarification on what the variance request was for. He thought it was for a setback variance, a lot size requirement, and living quarters above a garage.

Fremstad started out by passing out a packet of written material stating it was his comments to what was said in the staff report as well as clarification for the exhibits that were passed out in the application. The application was quite substantial so he felt that this packet of information was a helpful tool.

Krueger questioned if the materials should be excepted since it was past the written correspondence deadline. The size of the packet was large enough he worried that new information was presented to the Board without them having ample time to read and evaluate. He asked the applicant's if they needed more time and if the application should be tabled.

Fremstad stated that this packet wasn't presenting any new material but rather clarification that will make it easier for the Board to follow along with his proposal. He also stated that he wasn't able to view the staff report until after the written correspondence deadline. There is brand new things that he had not seen until recently and he felt he had right to offer a response to those items that were brought up. He stated that they did not need more time. He was ready to proceed.

Fremstad stated that the staff report and other documents portrayed that this issue is about the Hagert's having money; that is not the truth. The issue is that appropriate to grant or deny a variance. He explained that the applicant's are small business owners who have worked hard all of their life. He stated that the structure was built at 101 feet from Deer Lake from the corner deck post that is there and 243 feet to Shallow Lake. There is a large grouping of Norway Pines that are located by the garage that would have to be removed if this structure were to be moved such as the Environmental Service Officer is recommending. He stated that there was an affidavit in the staff report from Barb Barth stating that the setbacks met the Ordinance standards. He stated that she should have done a better job of checking the setbacks. There is a lot of talk about how fancy the garage is. The structure's intent is to be a garage. There are some additional nice features of this garage but that doesn't mean that it is not a garage. He stated that the structure is 176 feet from the channel that runs in between the two lakes. He felt that structure fit in very well with the surrounding structures. It has green shingles, and log siding. This is part of a plat so there are covenants that state that all structures must be alike and complement each other. The neighbors have no objection to this structure staying where it is.

Fremstad stated that the biggest issue they have with the facts presented by the Environmental Services office is that the channel and low area in the Hagert's land is actually a lake. There are no cattails. The area is mowed and was mowed when the Hagert's took over the property. The channel is a far distance off in the background of this "new lake". A channel that is 176 feet away from the structure in question. At some point in time there was some water in this low area but that has not been the case for a very

long time. There are several affidavits from several people stating that this low area is not part of the lake. They stated that it is a wetland and has no setback. There is a path that is clearly visible on the other side of the channel that was created by Itasca Mantrap Cooperative Services when they dug in a power line. Trucks were driven through this area and at the time there was no water at that time.

Fremstad stated that the request is to allow the structure to stay where it is. The structure in this case is the garage as well as the decks. The deck has been constructed with underlayment so that water that runs off of the structure lands on the deck where it is caught. There is no way that the water will rush off of the structure and run towards either of the lakes or the low area. The deck post to the supposed ordinary high water mark is at least 70 feet. The deck is 13.5 feet wide so the corner of the garage is actually 83.5 feet from the alleged ordinary high water mark setback.

Fremstad then switched gears and spoke on the proposed findings of fact that were presented by the Environmental Services office. There are several comments that are scattered throughout the report that the Board of Adjustment is designed to prevent "an unfair, unjust application of the ordinance that will not be seen as discriminatory against property owners". The goal should be avoid the "public perception of a lack of trust in the fairness and even handedness of local government". He stated that he couldn't agree with those statements more. The interactions that the Board had with previous applicants is the way this application should have been handled. He explained that Mr. Hagert came before the Board, by himself in 2011d tried to work with the Board. Unfortunately, it was a different Board and comments were made regarding how much money the applicant's had. There was a perception that they were trying to bypass that County and do whatever they wanted. Since that denial the applicant and he have tried repeatedly to meet with Mr. Buitenwerf to come to some sort of agreement and solve this issue. A meeting was never held despite numerous attempts on his client's part. He stated the reason they are requesting a variance only to allow the structure to remain in its current location is that it is a starting point. It is difficult to start negotiations and come to a compromise if the structure isn't going to be allowed to remain. If the structure is going to need to be removed then there isn't any point in asking for a variance for the living quarters to remain.

Fremstad clarified that this is a new application. This is a new board and he personally has no issue with anyone on the Board. He was extremely pleased with how the previous applicants were treated. The Board offered flexibility and compromises. After the first variance application was denied the applicant's appealed that decision. The application was thrown out on a technicality which is why the applicant and variance request is once again before the Board. Because technicalities can lose an appeal, he feels he needs to bring up any and all issues he has or he isn't allowed to later bring it up in court. He went on to bring up the by-laws and meeting procedure that is being used for this meeting. He stated that they have not yet been approved by either of the Board's. He stated that Mr. Buitenwerf had ample time to create the by-laws and meeting procedures and they should have been voted on and approved prior to this meeting. He stated that because the Board has no by-laws they are not allowed to act. If the Board is not authorized to act then they are not allowed to reject a variance. It has to be approved.

Grob asked if Mr. Anderson would respond all of the comments that were just made. He wanted to know whether or not they were valid points in regards to their business tonight.

Anderson stated that it wasn't his view of Minnesota law that by-laws had to be approved and in place prior to acting as a Board. By-laws are important and should be in place, which the Board is currently working on now. The rules and procedures that were read at the beginning of the meeting have been

followed by the Planning Commission and Board of Adjustment for several years. He stated that in regard to the argument that you are not authorized to act, he doesn't agree with that at all.

Fremstad raised an objection stated he disagreed.

Fremstad then went on to state that the Board violated the open meeting violation. The Board rode together in a County vehicle to the site visit which, in his opinion, is not allowed and therefor a violation to the open meeting rule. He was not allowed to ride along in the vehicle so he has no proof that the application wasn't discussed and decisions made. He stated that ultimately he is making a record and knows that nothing he brings up will be agreed upon by Mr. Anderson but again stated that because of technicalities he is forced to bring these issues up now.

Fremstad then instructed the Board that they are not to take sides on issues. They alone have the power to grant or deny variances. They are to be impartial. He stated that the information that is being presented to the Board is definitely not impartial. He urged the Board to look at both sides. The Board is supposed to be making the findings of fact.

Krueger stated that they needed to move on and continue with the meeting. He felt that the issues being brought up should be argued in a different format and not at this meeting.

Fremstad stated that his concern is that if he didn't raise them here and now he wouldn't be allowed to raise them at a later time.

Krueger again asked if more time was needed to create a record and gather information.

Fremstad stated that no additional time was needed. He has asked for months to know what procedures and rules would be used during this meeting and never received any information. The rules state that a meeting can go until 10 o'clock at night and if at that time an application is not completed then the meeting will be tabled and resumed at a later date.

Krueger brought up what is stated on the building permit that was issued to the applicant's. It was issued for a 30' x 40' garage with a storage loft. At the lot viewal it was noted that there are 480 square feet of decks that were not on the building permit and were not allowed. There is 1200 square feet of living space on the second floor. He then asked how the septic tank got onto the garage floor foundation. That is illegal.

Fremstad again clarified that the variance request is strictly to allow the structure to remain where it is. They are not asking for variances for the other issues that were just brought up because if the structure is made to be torn down then there wasn't any point in requesting those additional variances. He stated that no one is disputing that there should or shouldn't be guest quarters or a septic system in the foundation. He asked if they could agree that based on the investment and the circumstances that the structure can stay. He knows that if this variance is allowed it doesn't mean that the septic can stay or that the living quarters can stay. They are aware that additional requests would need to be made to address each of the other issues raised.

Johnson stated that they Board should do what they always do and stick to the variance as requested.

Krueger asked for the input of the other Board members.

Christenson asked if the agent could define the word “garage” as it applies to this variance for the record because at the lot viewal he gave a definition.

Fremstad stated that the request is for a structure setback. The structure includes the decks and the garage both. The setback has always been measured from the corner deck post which is 75 feet.

Christenson stated that the packet of information that given to the Board on November 18th says that the garage was built exactly as shown on the drawing that was shown to the County with the permit application. The definition of the garage included the decks but those weren’t included on the permit application.

Fremstad didn’t disagree that was what he said. The garage itself was built where the garage was shown it would be built on the application. No one disputes that a permit for the decks was not obtained. An after-the-fact permit should have been obtained for the deck but until the issue of whether or not the structure is going to be allowed to remain in its current setback location there was no reason to obtain a permit for the deck. The garage was built where it was intended. The decks and living quarters were an afterthought after the garage was built and was not shown on the original plan for the garage.

Krueger commented that several other variances would be needed to bring this building into compliance. It would need a variance from lot size as well as a variance to allow greater than 700 square feet of living quarters for a guest cabin.

Fremstad stated that they are not requesting a variance from either of those areas today. He stated though that the Board’s past practices has been to allow a greater that 700 square foot guest cabin when it was above a garage. He commented that if the Board wanted to talk about the living quarters they would be more than happy to discuss it. The applicant’s have tried to discuss options with Mr. Buitenwerf and told them it would not be difficult to reduce the 1200 square feet to 700 square feet and use the remainder of that area as storage. That discussion has never happened with the County even after multiple attempts on the applicant’s part.

Krueger stated that if the lot doesn’t meet duplex sizing then the 700 square feet isn’t even allowed.

Fremstad stated that if the applicant’s come back and request a variance to allow a guest cabin on this lot that it could be denied and then the living quarter’s portion of the building would be removed. If a variance for living quarters above the garage was denied that doesn’t mean that the garage has to be torn down it means that the kitchenette and bedrooms would be removed out of the structure.

Fremstad then went on to state that the lot does meet duplex sizing. Mr. Anderson and Mr. Buitenwerf have stated that the additional piece of property that was purchased by the Hagert’s doesn’t count towards the overall size of the lot. The rule only applies if the land is considered open water. This property is not open waters and therefore should count towards the overall lot size.

Krueger asked what the intent was of the holding tank that is now under the cement of the garage.

Fremstad stated that it was intended to be the most environmentally conscious way address any waste from the bathroom located in the garage. He stated that they had offered to take the septic tank out

and just use an incinerator toilet or not have one at all but again the Environmental Services office has not allowed any discussions to take place.

Christenson asked how come the playground was not placed on any of the drawings that were submitted for this variance or any of the previous variance applications. She said that if all of this was an oversight on the applicant's part and they have good intentions, why the playground was added without permits and why was it placed where it was when it too does not meet setback.

Fremstad asked who told the Board that the playground didn't exist back in 2010.

Christenson stated that it was never placed on any of the drawings.

Fremstad stated that there were drawings from June of 2011 and December 2011 that show this playground. He stated that the Environmental Services Office has misrepresented this information once again. When the home was purchased there was a pea rock playground. It hasn't changed. The playground was changed out since the existing one was old but the pea rock under the playground did not change. It existed when they purchased the home.

Johnson stated that the property was platted in 2002. He asked Mr. Buitenwerf if permits for playground structures were needed when this land was platted and developed.

Buitenwerf answered that the item being discussed would constitute a structure per the Ordinance and would have required a building permit and would need to meet all setback requirements.

Johnson asked if a building permit was on file for the original playground.

Buitenwerf stated there was not.

Krueger stated that there are a lot of different violations that are starting to stack up. It is hard to see that it was an oversight when there are so many.

Fremstad asked if this was a violation that was found in November 2013, why the applicant's or himself were not notified until the lot viewal. He found it hard to believe that anyone on the Board would think to get a building permit when a swing set was already existing and all that was being done was switching out one play set for another. He asked what was next. The house doesn't meet setback either, are they going to make the applicant's tear down that too. The idea that the depression is now a lake is a new, created, manufactured idea. This is not a lake.

Grob had some comments and questions to share regarding what has been said and presented. He doesn't like the line of thinking that because something was there it can be redone. The Ordinance states that is considered a structure and to replace a nonconforming, illegal structure is something that can't just be done. He didn't buy the argument that because it was there already they didn't know it needed a permit. He restated what the applicant is asking for: a variance for a structure, not a garage that includes the original garage and decks. Nowhere in any of the documentation that was provided are there any suggestions, except possibly the holding tank, where there are any commitments made to correct the nonconformities that are illegally there.

Fremstad stated that they have not requested a variance for any other those items.

Grob stated that when many people have illegal nonconformities they offer to correct them or state what they are willing to do or changes they will make if their request were granted.

Fremstad answered that a commitment was made to ask for future variances if the variance is approved to allow the structure to stay in its current location.

Grob didn't think that was the same as a commitment to correct the deficiencies. There is an illegal holding tank under the garage. There was an affidavit from a plumber that stated it was a holding tank under the garage, which the applicant's knew was illegal to do so. The deck was not in the original building permit and does encroach into the shore impact zone.

Fremstad argued that they didn't agree that the decks or garage do encroach into the shore impact zone because they don't feel that the low depression area that is in question is part of the lake. From the front of the deck to Deer Lake it is 101 feet and to the channel it is 176 feet.

Grob stated that it is the applicant's responsibility to provide accurate, true representations when requesting a building permit. The drawing that was submitted shows the corner of the garage being 150 feet from Deer Lake but Mr. Fremstad just stated that it is 101 feet from Deer Lake. He wondered why the garage was built 50 feet closer to Deer Lake then what the original permit was.

Fremstad stated that the drawing he has in front of him shows 101 feet. If there is a permit application that shows 150 feet, he is confident that if they went out to the property and measured that they would meet the 150 feet. The setback is only 100 feet and so regardless that has been met.

Grob commented that the permit drawing shows the closest corner of the garage at a setback of 150 feet from Deer Lake so if it is only 101 feet then that shows that the garage was not built where the permit drawing indicated. Living quarters were constructed above the garage which was prohibited per the building permit. The lot isn't large enough for duplex sizing. He stated that Mr. Fremstad informed the Board that there is a kitchenette, and two bedrooms, and a bathroom.

Fremstad again disagreed that the lot didn't meet duplex sizing.

Grob stated that 1200 square feet of living space was created contrary to the permit.

Fremstad questioned the Board how they know what is upstairs in the garage since no one has actually been up there to see it.

Grob stated that he took Mr. Fremstad's word on what was up there since he told the board about the kitchen, bedrooms and bathroom. There is a concrete surface on the west side of the garage. The permit application drawing shows that the structure is 10 feet from the property line but that concrete pad is not shown on the drawing. Is the setback still 10 feet from the property line with that concrete slab or does this structure now not meet the side lot setback as well.

Fremstad stated yes.

Mr. Hagert said that the setback was 11 or 12 feet.

Grob questioned the setback because one drawing he saw showed 12 feet and the most recent one showed 2 feet. The concrete pad looks to be about 10 feet towards the property line.

Fremstad stated they have never been told otherwise by Mr. Buitenwerf's office that it doesn't meet the 10 feet setback.

Grob was trying to confirm that the structure that they are requesting a variance for meet all setbacks except the setback to the ordinary high water mark.

Mr. Hagert commented that the structure meets the 10 foot setback.

Grob answered that the concrete pad is considered part of the structure so does the concrete pad meet the 10 foot setback.

Mr. Hagert stated that he had a conversation with Environmental Services Office and was told by one of the staff members that the concrete pad didn't have to meet the 10 foot setback. The building itself is 12 feet away from the property line and the concrete pad is about 2 feet from the property line.

Grob asked Mr. Buitenwerf is that was true that a concrete slab could be built at less than the 10 feet property line setback.

Buitenwerf answered that a platform would be required to meet all setbacks including the side lot line setback.

Fremstad asked if it is a violation why no one has ever said anything and why was Mr. Hagert given permission to do this.

Grob stated that he is trying to point out things that have been done that over power the argument of wetlands and setbacks from wetlands.

Fremstad said that he can't address items that have never been brought up to him as being an issue. He then spoke of fundamental due process.

Grob stated Mr. Fremstad is trying to focus on something that is diverting from the core of the issue which is a structure was built with many violations from the Ordinance. The request is to a approve a structure variance but the only way he could see even entertaining an approval of this request would be to have numerous conditions placed on it, such as the holding tanks, side lot setbacks, and living quarters violations would all need to be corrected but there is no plan or commitment or even any attempt to try and fix those variations before the request is approved. That is typically how it is done. A good faith approach would be to have the applicant's fix some of the issues and nonconformities first and then come back before the board with a setback request for the garage.

Fremstad stated that respects and appreciates Mr. Grob's comments. The problem as he sees it is that they might spend the several thousand dollars that it will cost to remove the holding tank from beneath the garage, and remove the living quarters and fix some of the mentioned issues and the Board might still tell them to remove the structure. Why would the applicant's spend thousands of dollars in a good faith attempt if they are going to have to remove the structure anyway? He would love to have the variance request approved but have numerous conditions placed on it. He wouldn't nor would his

client's have any issue with conditions being placed on this approval if the structure is allowed to stay in its current location. This is the first time that he has informed that there is an issue with the side lot line setback. It hasn't been raised as an issue until the most recent lot viewal. The previous board, which also did a site viewal never brought to the Hagert's attention or questioned the concrete slab and the setback. He isn't' trying to make excuses but they simply didn't know it was an issue. If it is a violation then it can be addressed now that the applicant's are aware of it.

Grob again stated that some of the comments being made are not relevant to today's request. The relevant point is that the applicant's constructed a building far beyond what was permitted and with a very explicit statement that stated no living quarters. That does not show good intent.

Fremstad argued that at the time Mr. Hagert applied for a building permit there was no intention of adding living quarters to the upstairs of this garage. The intent was to have additional storage up there. The living quarters were an afterthought once the structure was built and the concrete foundation was poured. The builder stated that it was an afterthought that came up months after the project was completed. Mr. Hagert did build this building in good faith. He wasn't trying to hide the living quarters or if he was it was the worst hiding job in the world once the decks were added.

Fremstad stated that the intent is to keep the decks as a lookout point. The decks, if removed, will cause other issues. The decks were built with under decking which is attached to the roof structure. The under decking was the applicant's way of providing mitigation, which has always been so important to the Board, to control and address any additional run off created by this structure.

Christenson questioned that if all of this was in good faith how does he explain how a septic tank was buried under the garage floor. That must have been done when the foundation was being poured which was well before the structure was finished.

Mr. Hagert addressed this question personally. He stated that when they decided they wanted a garage they looked at what is allowed by the association. The association only allows one accessory structure with a maximum size of 30' x 40'. They decided that if they are only allowed one building they would build as big of a building as they were allowed. They chose the contractor solely based on the fact that he had been the one to build the house and they were pleased with the look and construction of that. They knew they were going to build a two story garage and they weren't quite sure what they were going to do with the upstairs so it would be used for storage. He admitted that he took bad advice from his contractor. His contractor told him that if they were going to do something with the upstairs then they needed to address sanitary issues now. The contractor then recommended a holding tank in the floor because it is the most environmental correct way to handle waste. He went along with his contractor's plan and advice and agreed now that he shouldn't have. Later that year, the contractor said that they should finish the upstairs into living space, add decks and then apply for an after-the-fact permit for everything.

Krueger stated that it appeared then that the intent all along was to convert the upstairs into living quarters or why would the contractor have advised him to put in a septic holding tank now when the upstairs was going to be used for storage.

Johnson stated that at the time this building was built it was illegal for bathrooms to be placed in garages so regardless it was illegal at the time this was installed.

Fremstad agreed that at the time it was illegal but has since changed.

Johnson again stated that even though it has since changed it was illegal at the time it was installed regardless if it was for future living quarters or just a bathroom in the garage.

Fremstad stated that the building permit stated that living quarters weren't allowed but it didn't state anything about a bathroom so they didn't purposely ignore the building permit when it came to this main floor bathroom.

Fremstad stated that it is ironic that if they were to attach the main home to the garage by breezeway or some other means it would make these violations go away and it would be allowed. There are lots of options available to correct the violations. He asked that they not focus on the violations and simply reject the whole proposal because there are ways to fix the other violations but it comes down to the structure being allowed to remain.

Mr. Anderson asked for clarification from Mr. Fremstad based on comments he just made. He wanted more clarification on the offer being made. He asked if Mr. Fremstad was suggesting that the applicant's are willing to agree that if there is a condition that the septic system under the slab be rendered inoperable, however that is accomplished, and the condition that the living quarters be removed from the second story of the building they would be willing to accept those.

Mr. Fremstad stated that they would like the opportunity to request a variance.

Mr. Anderson stated that he is simply trying to clarify what was said. Mr. Fremstad stated that either a variance or conditions were acceptable so Mr. Anderson asked if the board were agreeable to the structure remaining where it is but imposed conditions that the septic tank under the slab be rendered inoperable and that the living space be deconstructed on the second floor that that would be agreeable to his clients.

Fremstad stated that he would need to visit with his clients. He asked if a break could be taken so that he could converse with his clients.

Krueger stated that he would like to see the decks removed as well to show the living quarters have been removed. He felt that the decks had more to do with the living quarters than with the structure being a garage.

Fremstad countered the issue with removing the decks is that they are affixed, they are part of the mitigation plan on this property that has the under decking and the roof structure is tied into the deck. The decks cannot be removed without redoing the roof.

Mr. Hagert commented that he retained an attorney simply to protect himself ever since he received the letter stating he had to remove the structure. He wanted to make sure that the Board was aware that he had been up to Environmental Services office three or four times to sit down with Mr. Buitenwerf to come to some sort of reasonable conditions to fix this problem. The only response has been have your attorney talk to ours. There are multiple ways of fixing these issues that it is hard to bring forth conditions or suggestions without meeting and talking over the different options first.

Johnson stated for the record that he took the liberty of sending a photo to a mover that he has professionally worked with on numerous times. He simply sent a photo and didn't go into details on who it was for but simply wanted to know what the cost would be to move the structure. The mover told him that the cost to move the structure, without the decks, landscaping and concrete would be $12,000 – $15,000.

Fremstad asked if they could get that in writing because that is by far the lowest quote they have come across. Everyone else they had talked to and it has always been higher. He also commented that there are a lot of Norway Pines that would need to be removed in order for the garage to be moved which then causes mitigation problems. He also stated that the spot that Mr. Buitenwerf is suggesting the structure be relocated to is where the current drainfield is located, as well as the propane tank and a lot of trees. They have looked into moving this structure but it just isn't going to work with what else is located where the County wants it moved to.

Buitenwerf addressed the board by asking them to reference Exhibit "Q" in the staff report which addresses the comments that were just made regarding the proposed relocation of the structure. There is room for this structure to be moved and it would not interfere with the drainfield and would be allowed by permit.

Grob thought that if they removed the decks the mitigation measures would still be in place since the rocks would still be down below to help with runoff. In his opinion having just the rocks wouldn't be a worse condition than currently exists with the decks. He doesn't feel that the decks are so integrated into the roof that they couldn't be removed.

Krueger stated that the decks are simply for a residential use, if storage is all that is up there decks are not needed.

Mr. Hagert stated that it could be used for an observation deck.

Fremstad argued that just because a structure has a deck doesn't make it a dwelling. There isn't anything that says a deck on a garage is illegal. The benefit of having the decks as a mitigation feature is important.

Krueger stated that besides the violations and issues with this property he also struggled with good faith. He felt that if the garage were to be allowed to remain the decks would have to be gone or how would anyone know that it no longer has living quarters in it.

Fremstad maintained that the applicants were not trying to hide the fact that there are living quarters in the second story of this garage. Mr. Hagert admitted that he knew at the time the permit was issued he understood there was to be no living space. His contractor is the one who told him to convert the upstairs into living space and then ask for an after-the-fact permit.

The meeting was recessed for a short break at 8:03 p.m. and was reconvened at 8:13 p.m.

Fremstad had had a chance to meet and discuss the conditions with Mr. and Mrs. Hagert during the break. It was decided that if the structure was allowed to remain in its current location, they would agree to render the septic system inoperable and ask that they be given 60 days to either come with

either a variance proposal for a guest cottage or a variance to connect the home with the garage which would potentially make it a legal structure.

Mr. Anderson stated that they would not be willing to accept a condition that stated the living quarters must be removed.

Fremstad stated they are not willing to accept that as a condition simply because they have not made a variance request yet to know if the living quarters would be allowed to stay.

The meeting was opened up for public comment.

Dan Kittilson, President of Hubbard County Lakes Association (COLA), addressed the Board with concerns on this request. He stated the lakes in Hubbard County are at risk of several threats including shoreland development and human impacts. This after-the-fact variance with all of the violations is clearly a human impact. COLA supports the Environmental Services recommendation to deny the after-the-fact variance request. He urged the Board of Adjustment to say no to this request. There are clearly numerous violations to the Shoreland Management Ordinance and they need to remove the structure. There shouldn't be any conditions. It is strictly an egregious violation of the Shoreland Management Ordinance. He advocates that the ordinance be administered and enforced for the benefit of all. The law should be enforced fairly and consistently. The laws need to be followed. This after-the-fact variance is a clear violation on many fronts. This issue can't be fixed but rather the structure needs to be removed. He again urged the Board to deny the after-the-fact variance.

Chuck Diessner, speaking on behalf of COLA shared his comments and concerns. He read a portion from the policy of the Shoreland Management ordinance that directly addresses what is being talked about today. The whole purpose for the policy is: The policy is to regulate subdivision, use, and development of shorelands of public waters. In order to preserve, and enhance the quality of our surface waters, to conserve the economic and natural environmental values of shorelands, and to provide for the wise use of waters and related land resources. Everything in the Shoreland Management Ordinance is to protect, enhance our waters. He has sat back and listened for the last hour and a half, he read the variance application that was submitted to the Environmental Services Office, and he has never seen so much mud thrown at the walls to confuse issues. He supports and thanks Mr. Buitenwerf for his very good analysis of what is actually going on. It is difficult to sort through the numerous issues but if you take a step back they requested the exact issue, and nothing else should be talked about. The variance request is for one thing: a variance from the setback. That is it. There is no need to talk about the septic system, or the guest house. Assume there were no other violations besides the setback issue, what would the Board do with this request. There is no way that this structure would be allowed to be built where it is or should be allowed to remain where it is. We are all presumed to know the law, whether he knew it or he didn't, everyone is presumed to know the law. I didn't know isn't an excuse. It is everyone's duty to know. Mr. Hagert is responsible for that. He believes that the reasons the questions weren't asked is because Mr. Hagert didn't want to know the answer to them. He couldn't imagine anyone being on this property and viewing all of the open area, all of the marsh and cattails and thinking that it is okay to mow the area and that it wasn't part of the lake. This application wouldn't even be before the Board if the applicant would have spent a few hundred dollars and had a surveyor come out and flag where the ordinary high water mark is. None of this would have happened if a surveyor was involved unless it was done intentionally and the applicant didn't care where the ordinary high water mark was he was going to build his garage where he wanted. The attorney is confusing all of the issues. There has been arguments regarding what setbacks needed to be met or that the building meets the setback from Deer

Lake. The ordinance and State rules says that a structure must meet the setbacks of both bodies of water. A building permit was issued for a 30' x 40' structure with upstairs storage, not to be used as living quarters. That statement was written on the permit by a staff member that prepared the permit. The permit shows where the structure was supposed to be located. The drawing shows 150 feet from Deer Lake. The permit was violated. The structure is not 70 feet from the corner deck post and 83 from the concrete walls of the garage to the water. The height was supposed to be 25 feet tall and instead it is 31. The other thing that is very important in all of this is what Mr. Buitenwerf stated in his materials, there is a permittable location for this garage to be located. A variance is not needed to build this garage since there is a place that can meet all of the necessary setbacks. There is no practical difficulty. Under State law, and the ordinance, a variance cannot be granted. This is a huge structure that clearly violated the ordinance. There is no basis in law, regardless of what mitigation measures could be done, that says this building can remain where it is. He was present at the hearing in 2011 in which the contractor was also in attendance. The contractor was asked by the Board if he was aware that the permit stated no living quarters. He answered that he was in fact aware no living quarters were allowed. The Board then asked why he did it. The contractor responded it was a slow time and he didn't have any other work. He said Mr. Hagert wanted him to do it and he needed the money so he did it. Mr. Hagert, at the hearing, stated that it wasn't his contractor's fault but rather his fault. Mr. Hagert stated he was in fact responsible. The other violations seem to have been addressed by the Board. When a person buys property that has been platted it clearly lays out where property lines are. When looking at the plat of this property it clearly shows that the lot line does not go down to the stream. It goes around the whole "depression". The reason they did that is because it is part of a public body of water. He wrapped up by encouraging the Board to stand their ground. He asked what message would be portrayed to the community if this structure was allowed to remain in its current location. If this structure is allowed to remain where it is it makes the Shoreland Management Ordinance worthless and a joke. He hoped that the request is denied simply based on setback alone. The requirement would be that the building either is demolished or relocated to a location that meets all setbacks.

Charles Knight addressed the Board. He wanted to tell the Board that they were doing a good job at listening. He appreciated that. He also has heard talk of need to negotiate but he feels that this decision will have an impact on future requests. He felt people are going to build first and then come in to negotiate after the fact.

Darrin Hoverson, Minnesota Department of Natural Resources Area Hydrologist gave his professional opinion and concerns with this request. He commended the Board and staff on their thorough investigation on this issue. There have been a number of issues that have been presented regarding this request. He stated that he felt that all variances should be considered collectively when considering a single request to get a cumulative overall picture of what the scope of requests are. He asked the Board to pay special attention to Exhibit "K" that was provide in the staff report which is a letter from Mr. Hoverson to Mr. Buitenwerf as well as Exhibit "J" which is a letter from Mr. Hoverson to Joel Fremstad. These letters address determining the ordinary high water mark on Deer Lake and Shallow Lake and the area in-between the two lakes. The department does consider this area public water and would require a shoreland classification and when shoreland classifications overlap the more restrictive of the two classifications would be used. In this case it is pretty clear that there is overlapping classifications and both State rule and local ordinance is specific that the more restrictive classification is to be used. He also wanted to address the piece of property that was recently acquired through title action. The majority of this property is below the ordinary high water level. Mr. Hagert and Mr. Fremstad stated that area is being included as additional area for the property but State rules and the ordinance state that only area that is above the ordinary high water level can be used as determination and inclusion to

area for lot determination. He hoped that he was able to clear up a few of the issues that were presented to the Board regarding the classification of the public water between the two lakes as well as the newly acquired land and how that factors into lot area. The Department of Natural Resources supports the staff recommendation at this time as the variance has been presented and believes that the finding of fact support the decision.

Paul Bowles, pastor of the Church of Christ in Nevis spoke on behalf of the Hagert's. He stated that he appreciates the position that the Board is in. It is a difficult position to be just and be merciful at the same time. He spoke of his experience with the Hagert's. He does not question their integrity at all. He does however question their wisdom on some of the things that they have done and things that were pointed out to the Board. He believes that Mr. Hagert wanted to keep his options open when he installed the septic tank under the foundation of the garage. He does not believe that the idea from day one was to have living quarters on the second floor of the building. He has never seen that way of thinking in either of the applicant's. It is a beautiful place. It is a compliment to the community. It is an addition to the tax base. He understands all of the ramifications that have been addressed such as future variances and he is glad that he isn't sitting on the Board's side of the table. He asks that the Board not have their pride hurt by some of the things that have been said to them tonight. At the same time he asks that the garage be allowed to remain and that the Board be as merciful as they can about their decision.

Doris Mitchell, a member of the community spoke on behalf of the Hagert's as well. She lives on a lake in the County and stated she wishes she could wake up and look out her window to see a structure as beautiful as the Hagert's garage. Her view is of five travel trailers and her neighbors come up on the weekends and target practice. She stated that she is proud of the community and of the job the Board has done. She wouldn't want the Board's job. She spoke on the character of Mr. and Mrs. Hagert. They are beautiful people who have always helped out at potlucks and stayed late to wash dishes and do whatever was needed. There isn't a bad bone in their bodies. They are God fearing people. The mistake that was made was trusting his contractor. She wondered what the County could do to rectify the contractor's that cause these issues. He is a wealthy man that isn't tight with this money. He was just trying to help out a contractor who needed work. That is the type of man he is. She asked the Board not to get angry and these wonderful people and she encouraged the Board to continue to try and work things out with the applicant's.

The public comment portion of the meeting was closed.

Krueger asked if Mr. Fremstad would like five minutes to respond to any of the public comments that were made.

Fremstad stated that he didn't agree with a set time limit since the procedures don't limit the amount of time allowed for speaking on the applicant's side.

Mr. Hagert stated that he went into the office in good faith with his plan to the office and was granted a permit. He had no way of knowing that the low depression area in question was part of the ordinary high water mark. He had Shane Foley, who previously worked for Soil and Water Conservation District, out on the property and he thought it was a wetland as well. He was going to allow him to build right on top of it. The office granted the permit.

Fremstad stated that under Minnesota Law, it isn't Mr. Hoverson's decision whether or not something is part of a lake, the commissioner does. Mr. Hoverson is not the commissioner. The maps that were provided as exhibits do not show the channel or that depression area has never been classified. Mr. Diessner stated that the cattails gave it away. In 2010 when the applicant's purchased the property the area was being mowed by the previous owner. There have been cattails since then but at the time the permit was issued there were not cattails present. Mr. Hoverson also talked about how to calculate land that is below the ordinary high water mark and whether it can be included or not. The actual rule says that only land above the ordinary high water level of public waters can be used for lot area standards. The lake hasn't been classified so therefore it is not public water. Yes it is a technicality but part of this comes down the fact that this is very complicated. The Shoreland Management Ordinance does not apply to ponds in backyards. It only applies to water that is 25 acres or more. The low area is less than a half of acre. The intent was not to trick anyone by only bringing forth a variance that deals with the setback from the lake. The reason is because the setback is by far the most complicated issue. Mr. Hoverson is telling you his personal opinion on whether or not this depression is public water but remember that it isn't Mr. Hoverson's decision to make. He can't make it public waters simply by stating it is. They are not trying to make a joke out of the ordinance, nor it is about build first and negotiate after. There are other issues that need to be addressed and they have chosen to address those issues in subsequent variance applications. He asked that the exhibits he presented at the beginning of the meeting be made part of the record since he was not given time to finish going through them as well as he was given the information prior to the written comment deadline.

Mr. Anderson asked to address the comments that were just made regarding when the data request was ready. The letter that went out indicated that as of Friday, February 14, 2014 the public records were available. Mr. Fremstad chose to come and view the documents on Thursday, February 20, 2014. They were available prior to the deadline but he chose not to view them until after the written correspondence deadline had passed.

Mr. Buitenwerf commented on Mr. Hagert's statement. When a permit is application is made to the County, the application states that the landowner is presenting factual information and is accountable for the accuracy of that information. The County does not go out and verify the setbacks as part of the permit process. Staff relies on the information that is provided on the application to be accurate.

Fremstad stated that the Hagert's used the same modeling when they measured in 2010 that the prior owners used in 2005 when the home permit was taken out. They had good faith in measuring the way they did since they were going off of what the previous owner had used to obtain the permit for the home.

Mr. Hagert stated that when he went to take out the permit application staff members brought the property up on their mapping system and measured the distances while he was there. Nothing was ever said about the depression when he was in the office to get the permit. He asked Mr. Buitenwerf when the office discovered there was a problem since no one knew of any violations until much later. He wanted to know how the problem was discovered.

Krueger asked the Board for their thoughts and comments.

Grob thought that based on the DNR views and rules the depression in question is in fact part of public waters and under the high water mark it should be a basis for their decision. He again restated that to

approve the requested variance without any commitment whatsoever to fix all of the other violations makes him very reluctant to approve.

Johnson asked if out of the fourteen finding of fact questions how many needed to be answered negatively before the variance has to be denied.
Mr. Anderson answered that it is a two stage process. The first six questions have to be answered all yes in order to grant a variance. The rest of the questions, there isn't any settled law, are more of a weigh, some of them might be yes and some of them might be no. The first six have to be answered yes. He also commented that the public waters map that was given to the Board as an exhibit of the channel and depression not being part of open waters is an approximation. It says in the legend that boundaries of the protected water bodies shown on this map are plotted as accurately as possible consistent with map scale but are still approximate. The argument that was made that since it isn't depicted on the map makes it not public water isn't what the law states. The DNR for years has considered the channel, and in many of the deeds that were provided call it a river, as part of the lake. The channel is part of the water.

Johnson commented that for his job he deals with ordinary high water marks a lot. He installs, inspects, and designs septic systems. He finds the ordinary high water mark measurements and uses them on a daily basis. He stated that by all means he would know that was an ordinary high water mark. He could see maybe others being confused about that but that is why the applicant's should have asked someone like himself or a surveyor for help determining the ordinary high water mark.

Fremstad stated that they had asked a profession for help. Mr. Foley came out and told the applicant's it was a wetland. He stated that there is room for disagreement.

Kruger asked the Board if they wanted to allow the documentation presented at the beginning of the meeting to be part of the record.

The Board felt that because there was a deadline in place and the deadline was missed they shouldn't be accepted.

Fremstad countered that although the records he requested were available the staff report was not yet available until after the deadline. He addressed all of the proposed findings that were not available to him until February 20th in what he presented to the Board. He felt it was important to accept these records. He also told Mr. Johnson that all of the first six questions can easily be answered yes and would support an approval of this request.

Mr. Anderson asked Mr. Fremstad how much more time would he need to go through the remaining finding of fact questions since he was already given an hour and a half to present his material to the Board.

Fremstad didn't understand why Mr. Anderson was upset that it took him an hour and half to present the application.

Mr. Anderson responded that he wasn't upset and objected to that characterization. He stated that in the matters that he has seen the Board handle allowing an hour and a half to one applicant is an incredibly larger amount of time than what is normally allowed and yet Mr. Fremstad is saying he didn't have enough time.

Fremstad stated that Board procedures say that he is allowed to lay out the application and argument. He didn't feel that it was at all inappropriate for him to take more than an hour and a half to try and digest hundreds of pages of material. He provided the slides as a courtesy to try and summarize the position. It might take another hour or more to get through the rest of it but under the meeting procedure it addresses if a meeting can't be concluded in one night it carries over to the next night.

Grob felt that there was a lot of new material presented in the packet that was given to the Board at the beginning of the meeting and without having been given time to read through everything and review it he felt that it shouldn't be accepted as part of the meeting.

Fremstad again countered that he wasn't able to get the information to the Board any sooner since he was not privileged to the staff report until after the deadline and many of the accusations, such as the open meeting violation, didn't happen until the lot viewal.

Mr. Anderson offered his advice to the Board. He stated that just because the board members rode together in a single vehicle doesn't make it an open meeting law violation. Mr. Fremstad raising it during this meeting is an indication that they intend to raise that as an issue if what they have requested isn't granted. That seems pretty obvious based on the comments made and the fact that he is nodding his head in agreement right now. In light of that, the open meeting law violation and data practices has nothing to do with the variance application or the facts of it, regardless if it is new information or not. The variance application deals with the materials that were submitted to the Board as an official application. There have been a couple of mentions to the affidavit made by Mrs. Barth which is a big misdirection since they don't argue that the permit states no living quarters. Mr. Hagert and Mr. Fremstad have admitted that. In light of the fact that Mr. Fremstad is going to be making all of these claims, as he has indicated, he suggested that the Board accept the materials or allow him to talk for another hour.

Krueger stated that the material would be allowed as part of the record. He felt that there had been ample discussion to make a decision. He asked if the Board had any further questions.

No further questions were asked.

Johnson moved to deny the variance request and adopt the findings of fact as presented in the February 24, 2014 Planning Commission/Board of Adjustment meeting 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? No (X)

<u>The structure is located at a 70' ordinary high water mark setback instead of the required 150' ordinary high water mark setback. Per Minnesota Rule 6120's Statement of Need and Reasonableness, ordinary high water mark "structure setbacks are needed to provide an adequate distance between the development of a shoreland area and the adjacent waterbody to control the resource damaging effects of non-point source pollution." Ordinary high water mark structure setbacks also ensure that structures do not negatively</u>

impact aesthetic views of natural shoreline when viewed from the water and that there is a sufficient vegetative buffer between the impervious surface area of the structure and the waterbody that the buffer can process stormwater runoff from the structure before it enters the waterbody. The structure is also in violation of the ordinance's requirement that a guest cottage can only be located on a lot meeting duplex lot size criteria and that it must not exceed 700 sq. ft. in size or 25' in height when placed above a garage. By precluding such structures on lots of this size, the State of Minnesota seeks to protect water quality and the environment. The circumstances surrounding the issuance of the permit, what the landowner and his contractor were told, and the subsequent building of living quarters irrespective of that would frustrate the purpose of both County and State law, and is therefore not in harmony with the regulations. There also is room on the north portion of the lot where such a structure could have been built by permit, meeting all setback requirements.

2. Without the variance, is the owner deprived of a reasonable use of the property? No (X)

The lot already contains a ~34' x 58' two story residential structure and an attached ~ 30' x 34' garage on it which affords significant living and storage space. The lot can also be used recreationally to enjoy the outdoors (i.e. nature) and access Deer and Shallow Lakes. All of these uses are reasonable uses of the property. If this structure were removed, the lot would still support another accessory structure that meets setbacks. The structure could also be moved. Thus, no reasonable use is being deprived the owner.

3. Is the stated practical difficulty due to circumstances unique to this property? No (X)

As mentioned in the answer to question 1 above, the lot is sufficiently sized such that there is a permittable location on the north portion of the lot where this structure or a similar structure could be placed meeting all setbacks and thus be accomplished with a building permit and no variance being needed. The ordinary high water mark for this land is listed in the SMO and therefore easily available to all persons. The prohibition on guest cottages being placed on lots below a certain size is applicable across the County and the State of Minnesota, as it is a requirement set forth in the State's Shoreland Rules found at Minn. Rule 6120.3300, subp. 2(C).

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? No (X)

The location was chosen by the landowner. As mentioned in the answers to questions 1 and 3 above, there is room on the north end for this structure or a similar structure to be placed such that no variance would be needed for such and the structure could be accomplished by a building permit because the location would comply with all setback requirements. There is no practical difficulty in placing such a structure on the lot in a conforming location. As to all matters relating to lot size, those only seem to relate to the ability to place a guest cottage on the property. This was, according to the landowner's statements made at the variance hearing of August 15, 2011, a conscious choice made by him done in spite of it being precluded by the zoning ordinance, prohibitions in State law, permit documents that clearly forbid it, and oral statements made to him at the time of the application that no living quarters were allowed there.

5. Will the issuance of the variance maintain the essential character of the locality? No (X)

This lot is located in a plat that was recorded in 2002 at a time when no lot could be created on which any variance would later be needed in order to develop it. Thus, this lot was required to be and was sized large enough to provide sufficient room on it for a typical house, SSTS, and any reasonable accessory structures

to be able to be placed on it in locations that comply with all setback requirements and thus allow said items to be allowed through the issuance of building and SSTS permits alone – with no variance for such items required. All but a few lots in this plat were sized for being legally allowed to place solely one residential structure on them. None of the seven lots on the southern half of the plat where this lot is located were sized to allow a guest cottage to be placed on them. Allowing a ~1200 sq. ft. two story structure to be located in the shore impact zone in a plat where all the lots were sized for and required to have structures placed on them meeting all setback requirements would not maintain the essential character of the locality.

6. Does the stated practical difficulty involve more than economic considerations? No (X)

As stated in answers to the previous findings of fact questions, there is room on the lot where an accessory structure could be placed by permit without need of a variance. The application has not provided any reasons why this portion of the lot could not be utilized for the placement of a structure by permit without need of a variance.

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 applicants claim that they were unaware that the shallow depression/expanded portion of the channel between Deer and Shallow Lakes was below the ordinary high water mark. The building contractor claims in the application that he set the structure's location so it would comply with all setback requirements. However, in the meeting minutes for the 2011 variance application on this matter, the contractor states that he did not know what the channel setback was.

It is unclear if the applicants acted in good faith in determining the structure's location. The fact that the applicants constructed a large playground structure and accompanying sand play surface in the shore impact zone of Shallow Lake and the channel after the 2011 variance application was acted upon, and that by then no one could claim they were unaware of the setback issue, is indicative of a lack of good faith. Another fact indicative of a lack of good faith is the fact that the applicants and contractor constructed a guest cottage above the garage when the building permit explicitly stated that no living quarters were allowed in the structure. A knowing violation of a permit condition is inconsistent with good faith. Based on the applicants' actions in these other aspects of the structure and the contractor's involvement in another ordinary high water mark setback misrepresentation on a building permit for a property on the Fishhook River that caused the landowner to need and seek an after-the-fact variance to resolve the setback violation and the contractor's involvement in the installation of an illegal holding tank under a structure he constructed on yet another property, we are inclined to believe the applicants more likely acted in bad faith than good faith in placing the structure on this location.

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

Yes, in that they did obtain a building permit. No, in that the permit was issued strictly for a detached garage that was to be 26' high and the applicants constructed a 31' 6" high garage with a second story guest cottage that is nearly double the size of the 700 sq. ft. maximum size allowed for such, two exterior decks were added to the structure that were not shown on the building permit application, the lot is not large enough for a guest cottage, and the applicants installed an illegal septic holding tank underneath the structure's slab.

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

No, not that we are aware of based on information provided to us or that we have been able to obtain.

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

Yes. The applicant's materials indicate $280,000 was spent on the structure. It is finished with high quality materials and has two decks (one per level) constructed of logs. Significant landscaping has also been done around the structure.

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

Yes. The exterior of the structure was finished out at the time of the initial site inspection by department staff. The County does not know the state of completion of the structure's interior work at the time the applicant was informed of the impropriety as the applicant denied County staff access to the structure's interior.

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

No. Of the 26 lots in this plat, only five other lots have been developed with structures on them. These five lots have a single residence on them with two of the five lots having an accessory structure on them. None of these lots have a guest cottage on them. The rest of the lots in the plat are undeveloped.

13. Would the minimum benefits to the county appear to be far outweighed by the detriment the applicant would suffer if forced to remove the structure? Why or why not?

No. The applicants knowingly built a taller and larger structure than stated in the permit and knowingly constructed a guest cottage in the second story of the structure when the building permit explicitly stated that no living quarters were allowed in the structure. A landowner cannot be allowed to build what and where they want in knowing violation of County ordinance and State law and spend such a level of money on the structure in hopes that the structure cost alone would be used as an alleged reason for the County to let them have what they want. There is evidence of a lack of good faith in the actions of the applicants. If the County was to grant this request, doing so would send a message to its property owners that a landowner does not have to follow County ordinances if s/he has enough money and that the County will only enforce its ordinances on those landowners lacking financial resources to be able to construct structures of sufficient value that the County might answer this question "yes" if they build structures in violation of the ordinance and seek a variance.

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

Yes, for all of the reasons set forth in the answers to the preceding questions. There is no practical difficulty on the lot as there is room on the north portion of it to construct an accessory structure by permit without need of a setback variance. The lot was created in 2002 per ordinance regulations that required the lot to be sized such that it could be developed with a typical house, septic system, well, and accessory structures by permit and without need of any variance. The applicants constructed a structure that was taller than the structure shown in their permit application and that has two decks attached to it that were not shown on the permit application or permitted. The applicants also knowingly installed a guest cottage in the structure in full violation of the building permit's condition that no living quarters were to be a part of the structure. Further evidence of the applicants' lack of good faith is shown by

their constructing a large playground structure and sand area on the property in the shore impact zone of Shallow Lake and the channel well after they were made aware of the ordinary high water mark location and 150' ordinary high water mark structure setback requirement during the 2011 variance application hearing process. Lastly, allowing landowners who act in bad faith and have enough money to build something of such value that it might be viewed as an economic difficulty to bring the structure into compliance with the ordinance would create an unfair, unjust application of the ordinance that could be seen as discriminatory against property owners lacking such economic resources. It could easily lead to public perception of a lack of trust in the fairness and evenhandedness of local government. This could quickly erode the County's ability to administer and enforce its ordinance.

The motion passed unanimously.

Old PC/BOA Business:

By-laws:

Christenson moved to approve the by-laws as presented. Grob seconded the motion that carried unanimously.

Miscellaneous:

There were no miscellaneous items to discuss.

Adjournment:

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

The meeting was adjourned at 9:15 p.m.

Minutes respectfully submitted by:

Maria Shepherd, recording secretary

Hubbard County
Board of Adjustment
March 24, 2014 meeting

Chairman Krueger opened the meeting at 6:51 p.m. with the following members present: Charlene Christenson, Tom Krueger, Tim Johnson, and Arne Christianson. Ken Grob was absent. Also present were Environmental Services Officer Eric Buitenwerf and Recording Secretary Maria Shepherd.

Approval of Minutes: February 24, 2014

Christenson 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 3-V-14 by Marie O'Brien: Lot 16, Lakeview Heights, Section 9, Township 141, Range 34, Lake Emma Township on Pickerel Lake. Parcel: 16.55.01600. Applicant is requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed new residential structure to replace an existing residential structure at less than the required 100 foot ordinary high water mark setback.

Brian Backstrom, authorized agent for the application, was in attendance and presented the application. He stated that need for a variance is because they will be changing the overall roof height on part of the structure more than four feet and adding living space. The rest of the request would be allowed under the ordinance. They are adding a 50% addition to the structure and are out of the shore impact zone. The addition is to the back of the structure away from the lake.

Christenson stated that when looking at the lot, it appears that there is room to move the structure back to a conforming setback. She asked if the applicant could state for the record the information that was shared while on the lot viewal regarding why the structure can't be moved back to a conforming setback.

Backstrom stated the property is a very unique piece of property. The location that the structure is currently located on is the best location on the lot. Access to an existing building will be lost if the structure is moved back one direction. If it is moved in the other direction, then it will be too close to the property line. There is also a large wetland on the property that causes problems as well.

Johnson stated that due to the amount of snow on the ground at the time of the lot viewal, an exact measurement wasn't taken, but it appeared when looking on the county mapping system there is about 40 feet from the front of the existing building to the apron. He stated that the apron on the building was 20 feet and felt that was a large size. He thought if the building was moved back, it would encroach on the neighboring property, but it appears that he is the owner of the adjacent property.

Backstrom stated the drawing that Mr. Navratil from Environmental Services drew shows a better picture of what all is on the property. The structure if moved to the East would infringe on the wetland that is there.

Johnson wondered about that. He wasn't sure about that since it was under snow and unable to be physically seen.

Backstrom stated that the house doesn't sit on the lot squarely either. It is set on there at an angle. He stated that the wetland is not connected to the lake, but during high water, the water does come in up from the ground. There will be standing water there. He stated that the lot is very deceiving. It looks like there should be plenty of room, but because of the topography, it is difficult to make everything fit and work.

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

Krueger stated that it was a unique situation and lot.

Christenson moved to approve the variance as requested.

Johnson 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 (X)

<u>After seeing the drawing and having the applicant come up and show us how the two drawings fit together, there isn't room to move the structure back as originally thought.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X)

<u>The building is very old and is in need of replacing.</u>

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X)

<u>The uniqueness is from the wetlands that are on the property and where the high water mark is.</u>

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

<u>The lot is the issue.</u>

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X)

<u>The locality consists of single family seasonal and year-round residential structures so the proposed replacement of the existing residential structure on this lot with a new residential structure will not change the essential character, but rather maintain it.</u>

6. Does the stated practical difficulty involve more than economic considerations? Yes (X)

<u>Economic considerations were not cited.</u>

The motion carried unanimously.

Variance Application 4-V-14 by Mike and Liz Anderson: Part of Government Lots 3 and 6, Section 2, Township 142, Range 32, Steamboat River Township on Benedict Lake. Parcel: 24.20.01400. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed lakeside deck addition to a nonconforming residential structure that does not meet the 100 foot ordinary high water mark structure setback.

Michael and Liz Anderson were in attendance and presented the application. They decided to purchase the property in December 2013 as a retirement home. They noticed some things that they wanted to make changes to. They both have elderly parents and are thinking of ways to make it easier for them to also come and enjoy the property. The way the house is set up, the access is strictly in the front of the property. There is an exit out the front, non-lakeside and one out the garage. There isn't an exit out the back of the house. With the way it currently is, it is very difficult to get down to the lake from the existing deck. They were looking for ways to improve the exits and get access from the second level down to the lake. They did consider going straight out to the side, but they didn't want to encroach any closer to the neighbor's property. There were trees that would need to be taken out as well.

Christenson asked the applicant to show her on the drawing exactly what is meant when they said off to the side.

Mike Anderson came to the front and pointed out exactly where they were originally looking at building this deck.

Christenson stated that the function of the Board is to try and meet setbacks for the lake as best as they can which was why at first glance, there was room to build the deck off to the side.

Liz Anderson stated that another concern about the deck being built to the side is that it would not look very aesthetically pleasing and wouldn't flow into the house.

Johnson commented that the well location is unknown on the property so placing the deck off the side could be a problem. He liked the design that was proposed and he agreed that they need an exit from the second level. There is also existing impervious surface area facing the lake where the proposed deck would be placed. There is rock and patio block already there. If they move the deck off to the side, new impervious surface will be created. He liked this request as proposed.

Christianson didn't feel that it was fair to have them jump over the side of the deck.

Krueger agreed that they for sure need some stairs.

There was no written correspondence and no public comment made.

Johnson moved to approve the variance application as requested.

Christianson seconded the motion.

The Board answered the findings of fact as follows:

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

Yes. No new impervious surface will be created by placing the deck in the proposed location.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X)

Yes. They would be deprived a safe exit.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X)

Yes. The structure was built by previous owners and caused the current situation.

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

Yes. The previous owners caused the practical difficulty.

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X)

Yes. The locality consists of seasonal and year round single family structures and it will remain as such.

6. Does the stated practical difficulty involve more than economic considerations? Yes (X)

Yes. Economic considerations were not cited as a difficulty.

The motion passed unanimously.

Miscellaneous:

There was no miscellaneous information to discuss.

Communications:

Buitenwerf reminded the Board that the Land Use Issues Training is on April 17, 2014 in St. Cloud. The vehicles will be leaving the courthouse parking lot at 6 a.m.

Adjournment:

Christenson moved to adjourn. Christianson seconded the motion that passes unanimously.

The meeting was adjourned at 7:14 p.m.

Minutes respectfully submitted by:

Maria Shepherd
Recording Secretary

Hubbard County
Board of Adjustment
April 28, 2014 meeting minutes

Chairperson Krueger opened the meeting with the following members present: Charlene Christenson, Ken Grob, Tom Krueger, Tim Johnson, Arne Christianson and County Commissioner Greg Larson. Also present were Environmental Services Officer Eric Buitenwerf and Recording Secretary Maria Shepherd.

Krueger welcomed everyone to the meeting and read through the meeting procedure.

Approval of Minutes: March 24, 2014

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 5-V-14 by Larry and Kathy Grell: Part of the W ½ of the SW ¼, Section 36, Township 140, Range 35, Todd Township on the Fish Hook River. Parcel: 27.36.01000. Applicants are requesting a variance from Section 906 of the Shoreland Management Ordinance from the requirements that pasture area be set back at least 500 feet from the ordinary high water mark and at least 5 acres in size.

Larry and Kathy Grell were in attendance and presented their application.

Kathy Grell stated that the request is to start a deer farm for the purpose of raising large antlered bucks. The area would be approximately 5 acres in size and divided into six pens. The pens will be constructed with a center aisle to allow the animals to be rotated from one pen to the another while keeping them all contained. There is a structure on the property, outside of the lakeshore jurisdiction, that will be used for the storage of feed and other supplies.

Krueger inquired on the differences between a pasture and a feed lot. It appeared that what distinguishes one from the other is if there will be vegetative growth. Feed lots are not allowed under the current Ordinance where as pastures are. He asked how the applicant's will keep this use as a pasture and not allow it to become a feed lot. It seemed like the number of animals allowed would greatly help or hinder keeping it vegetated.

Kathy stated that their numbers would be limited compared to what they are allowed. State rules state that they would be allowed 50 animal units. An animal unit is 1000 pounds. A typical deer or them will weigh 200 pounds. Technically they would be allowed up to 250 deer which is way above what their intent is. They are planning on having approximately 50 deer in total.

Larry Grell stated that it would be approximately eight deer per pen.

Krueger questioned if 50 animals would wear out the vegetative growth making this use a feed lot and not a pasture.

Larry stated they should be fine. The plan is to rotate the deer often which will allow ample time to replant vegetation.

Grob asked how many total acres the property is.

Kathy answered that total acreage of the property is about 28 acres.

Grob wanted to know why they were restricting this area to just five acres instead of utilizing the whole area.

Kathy responded that they could have used more area but the farm is just starting out.

Larry added that the other land area is for development where they are going to build a home in the future.

Grob asked if they picked the pen size simply to have five acres of land.

Kathy stated that the area they picked for the pens is the furthest away from the lake. There is another five acre parcel that would work that used to be a gravel pit run by the previous owner of the property.

Grob felt that if they built the pens larger, they would easily be able to meet the five acre minimum requirement.

Krueger asked whose rule stated that it be a minimum of five acres. If the area is greater than 500 feet from the river if the five acre is still a requirement.

Buitenwerf stated that if the area in question was outside of shoreland then this request would not be before the Board.

Grob stated that only a portion of the property was within the shoreland zoning.

Kathy commented that they went to Todd Township to receive a conditional use permit to allow a deer farm but first needed to obtain variance approval from the County since part of two pens are within 500 feet from Fishhook River.

Kruger asked why they didn't split the area so that there would be no need for a variance.

Kathy answered that they need the center aisle for transporting the deer in and out of the pens without them getting loose. Without that center aisle the deer would need to be placed in a trailer to move them to a different pen. The deer will not be domesticated and are difficult to get close to.

Grob stated that he wasn't in favor of putting a rope around a deer's neck and trying to herd them into a different pen. He felt that the center aisle was needed. It allows the applicant's to close off and open up different pens so the deer can be moved from one pen to the other without escaping.

Larry added that there is no gating to the outside perimeter of the fence. The only access to these pens in through the center aisle.

Krueger opened the floor for public comment.

Ron Pederson made public comment. He stated that the lot in question has been stripped down of all of the black dirt down to mineral. He questioned if the land would make good pasture land. He stated that he wasn't totally against the deer farm but was against the number of animals that they are wanting.

Kathy responded that she had just picked up some pasture seed along with red clover and alfalfa and will be planting that. Most of the area is under pine tree cover. The cushion of pine needles is a natural habitat for the deer. The open areas are where the pasture mix will be grown. It won't grow directly under the pines trees but the pine trees are what make it such a great place for deer. They love the cover the pines provide. There will be a feeding area as well. She didn't think the deer would dig up the pine needles and get down to dirt.

Grob stated that the Department of Agriculture and veterinarians have very strict rules regarding deer and having them tagged. He wondered if eight deer were too many to have per pen. He asked if the applicant's had looked into what the standards are regarding density allowed per pen or area needed for each animal. He asked what the desirable concentration or density in a pen.

Larry stated that ten animal units within shoreland are allowed under the Minnesota Pollution Control Agency. An animal unit is defined as 1000 pounds which translates to almost 50 deer that would be allowed within the shoreland zone.

Grob stated that the restriction isn't in the number of deer allowed. Those guildelines have been laid out and are in place.

Krueger stated that the built in restriction is that it can't go from pasture to a feed lot.

Johnson stated that he has been to animal parks, where there are large numbers of deer, and there are worn paths here and there but for the most part it has remained in pasture land. He didn't see any problems with the request since it will all be fenced in.

Grob stated that he isn't opposed to the distance from the lake or foliage. He was thinking more in size of the pens and number of animals.

The public comment portion of the meeting was closed.

Grob moved to approve the variance request and adopt the findings of fact as presented in the April 2014 Planning Commission/Board of Adjustment 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? Yes (X)

<u>The five acre and 500' setback requirements are only found in the county shoreland ordinance and not in the State Shoreland Rule. The State Rule allows grazing as a permitted use. The intent of the regulations is to see that the animals are kept away from the waterbody as a means of protecting the river from nutrient loading and any soil erosion that may result from soil exposure due to grazing. The regulations' intent is also to see that the pasture area is large enough to guard against overgrazing and see that such a livestock use does not occur in an area of small lots where such an agricultural use would be incompatible. In this instance, the property itself is 26 acres in size, there is a similar grazing use ~500' to the north of this property, and the surrounding properties are quite large in size (20 acres or greater) and largely unimproved so there are no use compatibility issues. Only the NE ¼ of the proposed pasture area is within the 500' and the overall pasture area is within a tenth of an acre or a few tenths of an acre of the five acre minimum requirement. There also is a good forested vegetative buffer between the proposed pasture area and the river that will guard against any sediment or nutrients reaching or impacting the river.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X)

<u>Grazing pastured deer in an area just shy of five acres in size on a property that is 26 acres in size and located in a rural area comprised of similarly sized tracts of land with similar cattle grazing operations and a large amount of undeveloped land is a reasonable use of the property.</u>

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X)

<u>The property is located partly within the shoreland area and partly outside of the shoreland area. The way the shoreland area overlays the property makes it impractical to lay out the pasture area to be outside of the shoreland area.</u>

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

The difficulty is caused by the layout of the property in relation to the shoreland area and the property size/shape was created by a party other than the landowner and the 500' shoreland area was created by the County in years past when it decided to make the shoreland area buffer on rivers 500' vs. the State standard of 300'.

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X)

The locality consists of large tracts of land (20+ acres each) that are largely rural in nature and mostly undeveloped. There is a cattle pasture occupying a large area on a property ~ 500' to the north of this property. There also are commercial businesses in the area that should not be negatively affected by this proposed deer pasture and the few residences in the area also ought not to be harmed by this pasture. With all the mature trees in the area, it will be difficult to see this pasture, the deer, or the fence from neighboring properties and business/residence locations.

6. Does the stated practical difficulty involve more than economic considerations? Yes (X)

Economics are not cited by the applicant as a difficulty. Instead, the difficulty is the property's unique location and size/shape/orientation relative to the shoreland area along the river.

The motion carried unanimously.

Variance Application 6-V-14 by Jackson Family Limited Partnership: Part of Government Lot 4, Section 20, Township 140, Range 33, Nevis Township on Lake Belletaine. Parcel: 21.20.02700. Applicants are requesting an after-the-fact variance from Sections 502.2, 601, and 706 of the Shoreland Management Ordinance to: 1. allow an accessory structure to remain located at less than the required 100 foot ordinary high water mark setback and have a deck on its roof, and 2. allow a lakeside deck attached to a residential structure to be located at less than the 30 feet minimum ordinary high water mark setback that also exceeds the 15% of the existing structures ordinary high water mark setback maximum encroachment distance.

Gene Jackson was in attendance and presented the application. He is representing his five brothers and sisters who now own the property together. A year ago they started talking amongst themselves trying to figure out what they should do with the deck that is on the front of the house. It was in need of replacing. He was nominated to contact the appropriate zoning office to inquire about if a building permit is needed to replace an existing structure and what the process is to obtain said permit. He came to the office asking those questions and now he sits before the Board asking for an after-the-fact variance. The cabin dates back to the first part of the 1900s. His dad built the deck in 1977 or so. At the same time the boathouse, stairs and the walkway were redone as well. The deck was new but the boathouse, stairs and walkway were simply replacing what was there previously. His father failed to obtain the proper building permits. Impervious surface on the lot is about 8.5% which is well under the 25% that is allowed. They are planning on replacing it with environmentally friendly materials and no concrete. He commented that he had read past board minutes and saw that subsequent owners are looked at differently. It was their father that did this but the group that now owns the property found out there was an issue in the summer of 2013. They inherited the violation and were not aware that there was an issue until they came in inquiring about a building permit. He hoped the Board would look at this issue as a group of new owners even though they share the same last name.

Krueger asked if the intent was to replace the deck as is.

Jackson stated that the intent of the application is to replace the deck at its current size. He thought they would also replace the steps that lead down to the shoreline as well since they are starting to deteriorate.

Krueger stated that there is a slope so the stairs would be necessary down to the shore.

Christenson stated that the request was to replace the deck as it is currently but she wanted to know if the family had considered scaling the deck back into a more reasonable size.

Jackson stated that they had not discussed the idea of scaling the deck to a smaller size since their hope was to replace it to the existing size.

Christenson stated that the deck is larger than some houses are.

Jackson answered that it measures 24 feet by 53 feet.

Krueger asked how much of the deck is actually used. He felt that it is large enough for half a dozen picnic tables.

Jackson stated that they have a very large family with six siblings, all who have their own families. The entire deck is used by the family.

Grob commented that he was reading through the materials presented to the Board and both the deck and the boathouse structure were knowingly built contrary to the Ordinance. The property owners were notified of the violation. At that time a variance was applied for and subesquently denied. The homeowners at the time were told the boathouse and deck needed to be removed. That was ignored. The request is asking to replace something that past generations were not allowed to have or keep and were asked to remove.

Jackson stated that he requested a copy of the entire file from Environmental Services. He stated that he did see the file and he is here now doing what his father should have done previously. He did not know any of this until they asked about a building permit.

Grob asked if there were septic systems with drianfields or if they were just holding tanks.

Jackson stated that there are two septic systems with drianfields located on the property.

Grob commented that the Board tries not to let people rebuild or initially build any structures within the shore impact zone, which in this case is 50 feet. The proposal is for a building three feet off of the water and a deck that encroaches well into the shore impact zone. He felt there is room to build a reasonable deck lakeward and then wrap the rest of it around the sides of the house provided the septic tanks are setback far enough to allow that.

Jackson thought that the one on the west side the tank is ten to twelve feet from the house. The tank on the east side was unknown to him.

There was no written correspondence and no public comment was made.

Johnson stated he felt the current deck was very large and it was difficult to approve something that was ordered to be removed but he also felt that it is reasonable to have a lakeward deck on the cabin.

Jackson answered that they would be open to scaling the deck back if the Board is open to that idea. He didn’t like the situation he is in and having to sit in front of the Board knowing what happened in the past.

Krueger stated that the intent of the Ordinance is to correct violations when the opportunity arises. Now is the only time to make this situation better.

Grob asked if the request was to leave what is in place as an after the fact request or is it to allow the deck and structure to stay but also replace it all. He questioned if the replacement would be a different variance.

Buitenwerf stated that the department views it as an after-the-fact because both the storage shed and deck currently exist. If a variance is granted for those items then the applicant's would be allowed to maintain them per that variance approval.

Grob summarized for clarification that if the after-the-fact variance was granted then he would be able to replace what is existing as it is right now because they would be considered legal non-conformities.

Buitenwerf stated that he has information regarding Mr. Grob's question regarding septic tank setbacks. The installation inspection report shows the tank on the east side of the structure is 13 feet from the house and the tank on the west side is 12 feet from the house.

Grob commented that he is not in favor of allowing the structure down by the water to stay. It would never be allowed to be built now and so to allow it to remain and maintain it doesn't make sense to him. He is open up to discussion on how to handle the deck. He agreed with Mr. Johnson that a lakeside deck should be allowed but not the size that it currently is. Based on the numbers shown, the applicant's could build a twelve foot lakeward deck without encroaching into the shore impact zone. He didn't see the Board approving the request as presented.

Krueger asked if the applicant was in favor of amending the request.

Jackson stated that he would be in favor of amending the request but needed help understanding why the boathouse couldn't stay since it predates the zoning ordinance.

Grob answered that it was built during a timeframe when it wasn't allowed as well as it being built contrary to action by the Board of Adjustment. It didn't just exist prior to 1971 without some conditions.

Jackson stated the boathouse has been there since 1940.

Johnson stated that it had been rebuilt and without a permit. He questioned if a variance should have been obtained at that point.

Buitenwerf stated that there is a complaint in the file by the zoning administrator who stated that a deck and storage building were constructed without required board approval and permits. The complaint was dated August 30, 1978.

Jackson commented that the boathouse was replaced in 1978 and there wasn't a permit obtained when it was replaced but the original boathouse has been there since 1940.

Grob stated that in 1978 the boathouse would not have been allowed to be rebuilt which is why it went through the variance process back then.

Krueger felt that the request as presented was heading towards a denial. He asked Mr. Buitenwerf if the applicant would be able to amend the application.

Buitenwerf answered that an applicant always has the option of amending a request.

Jackson stated that when he first went into the office, he thought he was only dealing with the deck. The way he understood it was if there was proof that the boathouse existed prior to 1971 it would be allowed to remain.

Grob responded that Mr. Buitenwerf stated that it wasn't built prior to the Ordinance.

Jackson asked the Board for guidance on what they would like to see in the amended request.

Grob stated that the deck needs to be outside of the shore impact zone and the boathouse structure and deck needed to be removed or relocated to a conforming setback.

Christenson asked Mr. Buitenwerf asked if a variance would still be needed if the deck design was amended to be at least 50 feet from the ordinary high water mark.

Buitenwerf stated that by permit a 15% forward deck could be built. The dimensions can be 15% lakeward from what the original structure setback is as long as it doesn't encroach closer than 30 feet from the ordinary high water mark. He stated that the ordinary high water mark setback stated on the sketch should be verified and measured to know exactly what would be allowed by permit.

Grob asked if the request should be tabled to allow for more accurate measurements or deny the request and have the applicant reapply.

Christenson stated that there are two separate issues: the deck and the boathouse down by the water.

Jackson requested that the variance be tabled so that he could get more accurate measurements for the current cabin's structure setback. He would then bring an amended proposal back before the Board.

Buitenwerf stated that there are two options for how to handle this request; Mr. Jackson could sign a waiver of the 60 day rule or the County could extend their review of the application for an additional 60 days. He asked that the Board be specific on what information they were looking for.

Jackson stated that he is fine with signing the extension form.

Grob wanted to see an amended request that eliminates the structure down by the water and the deck wouldn't encroach any closer than fifty feet from the ordinary high water mark.

Krueger stated that the structure could be moved back to a conforming setback and permitted as such.

Christenson moved to table Variance Application 6-V-14 by Jackson Family Limited Partnership until the May 27, 2014 meeting.

Christianson seconded it.

The motion carried unanimously.

Variance Application 7-V-14 by Wayne Eimers and Katy Grisamore: Part of Lot 9 and all of Lot 10, Block B, Second Addition to Pine Haven Beach, Section 17, Township 139, Range 34, Hubbard Township on Long Lake. Parcel: 14.38.51000. Part 1: Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance (SMO) to construct a new residence and lakeside deck at less than the required 100 foot ordinary high water mark setback. Part 2: Applicants are requesting a variance from Sections 502.2 and 801 of the SMO and Article V, Section 1 of the Subsurface Sewage Treatment System Ordinance to allow a septic system drainfield to be placed at less than the required 10 foot property line setback.

Bernie Gartner, authorized agent, was in attendance and presented the application. The request is to rebuild the existing home and deck, to the same size and dimensions that would meet the ten foot side property setback. The current structure was built in 1927 so it is aged and needs to be redone.

Krueger asked why the structure wasn't being moved back further away from the lake since it will be a complete rebuild.

Gartner stated that the main reason was the tree cover on the property. The current garage, well location, and septic system are also concerns.

Krueger asked if a 70 foot setback would be too close to the garage and septic.

Gartner stated that to get outside of the root systems of the Norway pines it encroaches too close to the garage building. The property owners are extremely adamant about maintaining the aged Norway's on the property.

Christenson stated that the lot was very pretty. She asked how the applicant's are going to get the old cabin out without damaging or stressing the trees they are trying to save since it appears the cabin would need to be removed between them.

Gartner stated that the cabin would be removed gingerly so that it won't put stress on the trees. They had discussed this with the contractor and his idea was to make a step crawl space so that the footings wouldn't need to be as deep near the trees. The plan is to do what is necessary to not disrupt the integrity of the trees.

Grob stated that current house is approximately 35 feet from the lake and a ten foot lakeside deck which puts a structure within 25 feet of the water. He asked what the maximum distance the home could be moved back from the lake.

Gartner felt they were at the maximum right now in order to maintain the Norway trees.

Grob commented that the trees might have to go. He wondered if the trees were not in question what the setbacks could be. in his opinion, the whole house could be moved back an additional 25 feet so that the house and deck could be located outside of the shore impact zone. He wanted more clarification on other reasons as to why the home had to be built in the shore impact zone besides the homeowner's desire to keep the pine trees.

Gartner stated technically the main reason is the desire to save the large Norway trees, however if the house were to be moved back there would be additional trees besides the large Norway's that would need to be cut down. Pines have extensive root systems so getting anywhere near them will cause harm.

Krueger felt that the house could be moved back 25 or so feet and then new trees could be planted to replace any of them that were taken down.

Gartner stated that these trees are probably 100 year old trees.

Christenson asked about an existing shed that is on site.

Gartner stated that there is a small storage shed that would be removed during the construction phase to allow a well truck access to the lot. The applicant's had not yet decided if it would be replaced or not once construction is completed.

The floor was opened for public comment.

Chuck Diessner made public comment. He asked Mr. Buitenwerf what his recommendation after seeing the lot was and how far back could the house be located back. The staff report indicated that it appeared there was room to move the home back but stated that it was subject to reviewing the lot.

Buitenwerf answered that after seeing the lot the staff recommendation would be the same as what was written in the staff report. He felt that the home could be moved back another 20-25 feet from the lake.

The public comment portion of meeting was closed.

Johnson stated that when he was on site he estimated that the home could be moved back 15-20 feet. He did say that by moving the home back the two large Norway's would need to be removed. The next door neighbor's house is jutted out and the applicant's would lose half of their view of the lake by moving any further back than that. The other reason for the distance was to still allow room for servicing the well.

Krueger asked if the board wanted to move on the request or ask for a modification to the request.

Grob asked if when building a new home the deck had to also meet the ordinance setbacks.

Buitenwerf stated that a deck would need to meet setback requirements.

Grob shared his personal thoughts. The design of the home was fine but he wanted to see the front of the deck at no closer than 50 feet which would make it completely out of the shore impact zone.

Krueger commented that was how he was leaning too. He stated that if the Board was going to vote on this item as it is presented, it appears it is heading towards a denial. He asked what the applicant's would like to do.

Johnson felt that the deck could be downsized if they didn't want to move the cabin so far back and still meet the 50 foot threshold.

The applicants asked that the application be tabled to allow them time to submit an amended design.

Grob moved to table the application until the May meeting and would like to see a design that shows the house and deck that encroaches no closer than 50 feet.

Johnson seconded it.

The motion carried unanimously.

Miscellaneous:

There was no miscellaneous business to discuss.

Communications:

There were no communications to discuss.

Adjournment:

Christianson moved to adjourn.

Grob seconded it.

The meeting was adjourned at 7:42 p.m.

Minutes respectfully submitted by:

Maria Shepherd
Recording Secretary

Hubbard County
Board of Adjustment
May 27, 2014 meeting minutes

Chairperson Krueger opened the meeting with the following members present: Charlene Christenson, Ken Grob, Tom Krueger, Tim Johnson, Arne Christianson and County Commissioner Greg Larson. Also present were Environmental Services Officer Eric Buitenwerf and Recording Secretary Maria Shepherd.

Krueger welcomed everyone to the meeting and read through the meeting procedure.

Approval of Minutes: April 28, 2014

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

Old Business:

Amended Variance Application 1-V-14 by Robert and Andrea Otto: Lot 9, Duck Lake Second Addition, and part of Government Lot 6, Section 31, Township 139, Range 33, Crow Wing Lake Township on Duck Lake. Parcel: 06.38.40800. Applicants are requesting a variance from Sections 502.2 and 707.1 of the Shoreland Management Ordinance to develop an unimproved lot into an improved lot (i.e. residential dwelling unit) where the proposed residential structure will not comply with the 100 foot ordinary high water mark structure setback.

Robert Otto was in attendance and presented the amended request. His original variance request was brought before the Board in February 2014. At that time the Board tabled the variance and requested three things from him: 1. viewal of the property without snow cover to get a better view of the layout of the septic system and alternate drainfield, 2. reduce the amount of impervious surface so that it is less than 25%, and 3. include a plan for controlling runoff. The new request has a rain garden proposed on the lakeside of the property. Rain barrels will be used on the road side to collect rain water and control how that runs off. The size of house, garage and deck have all been reduced in size.

Krueger thought it looked like the entire structure had been moved back six feet further from the lake than the last request. He asked the applicant if that was correct.

Otto stated that the original request had been for 71 feet from the ordinary high water mark setback and the new plan has the structure at a 77 foot setback.

Grob asked what the applicant's approach was for designing the rain garden or who he had consulted with for help with that.

Otto stated that he has checked with a couple of websites, University of Wisconsin Extension Services as well as the University of Minnesota Extension Services, that have excellent resources available on their websites. One of those websites has a formula for sizing the rain garden depending on how much area of drainage is going into it. They suggested native plants, a depression of four to eight inches. There is a low corner in the area that this rain garden will be placed so he didn't think that there would need to be much digging involved but rather he would build a berm around that area.

Kruger asked for Mr. Johnson's opinion on the proposed septic area.

Johnson stated that it looked good. It was mapped out well. It was clear to see how it would go in there and it all fits in the designated area.

Christenson felt the applicant has done a good job of meeting the objectives that the board had requested.

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Otto liked this plan even better than the original. It is a nicer and more attractive plan that will better protect the lake and environment.

No written correspondence was received and no public comment made.

Grob moved to approve the amended variance request as presented with the condition that the applicant submit the plan for and photos of the rain garden upon its completion to Environmental Services for placement in the department's file for the property.

Christenson 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 Sate Shoreland Management Rules? Yes (X)

He has the right to use the property in a reasonable manner and although the structure is somewhat large for the lot, the storm water plan, and removing the privy and existing RV sites make it very consistent with the comprehensive plan.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X)

Although it is currently being used for seasonal use with an RV, the request for a permanent home and garage is very reasonable and the improvements make it very desirable.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X)

The lot predates the shoreland ordinance's enactment date and it lacks sufficient width (slightly less than 100 feet wide) and depth (155 - 165 feet) for a structure and two drainfield sites to be able to be placed on the property by permit.

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

As mentioned in the answer to question 3 above, the difficulty is caused by the size and shape of the lot. The lot was created prior to the ordinance by a party other than the landowner.

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X)

The issuing of the variance will allow a residential structure to be created in an area which is already residential use and although the structure is possibly larger than some of the surrounding homes, the basic cabin size is equivalent with neighbors but with the garage makes it a larger structure. Garages are a reasonable use for storage.

6. Does the stated practical difficulty involve more than economic considerations? Yes (X)

As stated previously, the difficulty involves the lot's size and shape in that there is insufficient room on the lot to construct a residence and two SSTS drainfields capable of meeting all setback requirements.

The motion carried unanimously.

Johnson commented that the applicant should rope off the area designated for the septic system during the construction of the cabin so no large trucks or equipment drive over the area that is intended for the septic system.

Otto thought was a wise idea.

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Amended Variance Application 6-V-14 by Jackson Family Limited Partnership: Part of Government Lot 4, Section 20, Township 140, Range 33, Nevis Township on Lake Belletaine. Parcel: 21.20.02700. Applicants are requesting an after-the-fact variance from Sections 502.2, 601, and 706 of the Shoreland Management Ordinance to: 1. allow an accessory structure to remain located at less than the required 100 foot ordinary high water mark setback and have a deck on its roof, and 2. allow a lakeside deck attached to a residential structure to be located at less than the 30 feet minimum ordinary high water mark setback that also exceeds the 15% of the existing structures ordinary high water mark setback maximum encroachment distance.

Gene Jackson was in attendance and presented the amended variance application. He explained that the original request was for a boathouse to remain where it was located as well as the deck to remain its current shape and size. The request has been amended. The new request is to reduce the deck area by about 50% and drop it down to a platform. The platform would encroach into the 30 foot setback requirements by about 15 inches and the overall square footage is a little over the allowed 400 square feet. The impervious surface is well under 25%. The width of the platform is 42 feet. The request is pretty straight forward. He was caught off guard last month with the boathouse. He was under the impression that if it existed prior to the Ordinance it could stay. He understands now what the situation is now regarding the boathouse and it is no longer part of the request.

Kruger stated that the proposal encompasses both doors of the cabin which he saw a need for.

Jackson agreed that there was a need for both doors to have access out of.

Grob clarified that the amended request involved removing the boathouse. The platform would still encroach closer to the lake than the allowed 30 feet platform setback. That is not desirable from the Board's standpoint. He didn't like that it would encroach into that setback. There was a lot of discussion on site as to how much width of the platform was needed and staying within the 400 square feet. He stated that if the platform came out 9.5 feet from the vestibule it would meet the requirements. He felt that if the platform was made to be 34 feet wide, about 8 feet less than what is proposed, then the deck would meet the 30 foot setback and be under the 400 square feet. By his calculations the proposed platform was going to be almost 600 square feet.

Jackson countered that by his calculations the platform would be 496 square feet if it were brought to which allows both doors to have access onto the patio. If they scaled it back to 30 feet it would be 450 square feet so the request it to allow an additional 120 square feet above the 400 so that the platform extends to both doors on the cabin. The width needed to encompass both doors is 35 feet.

Krueger stated that he felt the leniency of the variance is needed instead of making him build this platform by permit because without the variance they wouldn't be allowed to have access out both doors onto this platform.

Johnson stated he agreed with Mr. Krueger.

There was no written correspondence and no public comment was made.

Grob felt that it was possibly down to splitting hairs. He felt that if the platform was built to 34 feet wide it is possible to get down to the 400 square feet. If the desire is to include both the doors the applicant probably could get creative and figure out how to make it work but fundamentally it is getting to the same point which is not encroaching any closer than the 30 feet to the lake.

Jackson stated that request would be for twelve feet out from the foundation, or 10.8 feet out from the overhang. He hoped the Board would see this as a significant reduction from what is existing. He didn't know how much of a bargaining position he is in. They would like to have the 10.8 feet out from the overhang instead of the 9.5 that Mr. Grob is recommending.

Krueger felt that not allowing this platform to extend the width of both doors would be denying the applicant of a reasonable use but felt that the platform could be moved back to 9.5 feet.

Johnson moved to approve the request for a lakeside platform attached to a residential structure to be located at less than the 30 feet minimum ordinary high water mark setback that also exceeds the 400 square feet maximum allowed platform footprint as presented.

Kruger 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 (X)

A structure of this size will prevent foot travel and erosion.

2. Without the variance is the owner deprived of a reasonable use of the property? Yes (X)

A gathering place, like a platform, is a reasonable request. The platform also extends to both doors so it allows them to come out onto the platform instead of bare ground.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X)

The structure predates the ordinance.

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

The previous owner placed the structure there.

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X)

The locality's character consists of single family seasonal and year-round residences and the requested lakeside platform is a common accessory feature on such properties that would not alter the locality's character.

6. Does the stated practical difficulty involve more than economic considerations? Yes (X)

Economics are not cited by the applicant as a difficulty. No difficulty linked to the uniqueness of the property has been provided in the application.

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

Amended Variance Application 7-V-14 by Wayne Eimers and Katy Grisamore: Part of Lot 9 and all of Lot 10, Block B, Second Addition to Pine Haven Beach, Section 17, Township 139, Range 34, Hubbard Township on Long Lake. Parcel: 14.38.51000. Part 1: Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance (SMO) to construct a new residence and lakeside deck at less than the required 100 foot ordinary high water mark setback. Part 2: Applicants are requesting a variance from Sections 502.2 and 801 of the SMO and Article V, Section 1 of the Subsurface Sewage Treatment System Ordinance to allow a septic system drainfield to be placed at less than the required 10 foot property line setback.

Bernie Gartner and Wayne Eimers were in attendance and presented the application. The cabin has been moved back to a 50 foot setback which brought the request more into compliance with the intent of the Ordinance.

Kruger asked if the entire structure, including the deck would be moved back to 50 foot setback.

Gartner clarified that everything would be built behind the 50 foot setback.

Christenson asked if there is any other place on the property that the well could be located.

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Gartner didn't think so. They met on site with a septic contractor and was informed that was the best area and location for the well was where the design shows. Since they are the experts, they took that advice and came up with the plan before the Board. There would be a difficulty locating it anywhere else with all of the tree cover as well.

Christenson thought that the garage was going to be left for now.

Gartner stated that there was a little storage shed that would be moved and the owner wasn't sure if it would be replaced or not.

Christenson asked if any thought had been given to attaching the house to the garage.

Eimers stated that thought has not been discussed and it wasn't their intention or desire to have an attached garage.

Grob thought that the garage seems dated and probably would be a candidate for repair or replacing in the near future. If the house could be moved back another 20 -25 feet, it would save a lot of the nice trees that are on the property. Maybe combining the garage and house would be the best solution.

Gartner stated that the intent was never to have an attached garage. It isn't necessarily meant to be a year round cabin at this time. He asked Mr. Eimers to expand on their intentions and thoughts were.

Eimers answered that their intention wasn't to have this be a year round home at this time. The garage might need to be redone in the distant future but by attaching the garage it wouldn't save the trees because of the excavating that needs to be done.

Gartner agreed that it wouldn't save the trees. Just the excavation of the existing cabin is going to damage the two trees that are there right now anyway.

Grob asked Johnson for his opinion regarding the septic design and location.

Johnson stated that it is a tight fit.

Gartner agreed which is why the less than 10 foot setback to the road is being requested as well. It is going to be a tight fit.

Krueger asked if moving the house back more would hinder the area needed for the septic system.

Johnson answered that there wasn't a lot of room.

Eimers felt that the plan before the board is the best one that they could come up with. They didn't want to get into the scenario of the garage at this time since it won't need to be repaired or replaced for some time. Their view would be limited by moving the cabin back further than what the proposal is. They didn't want to move it at all to protect the large trees but after thinking about it, it is quite possible that the trees would be lost anyway due to excavation and disturbance if the cabin was built in the same location as now. So they felt that if the trees were going to be lost either way they were in favor of moving back to the 50 foot setback.

Krueger stated that this plan is definitely an improvement.

Eimers stated the current cabin is the problem since it has a rock foundation and all of the interior walls are deteriorating.

Krueger thought that by State statute the applicants would be allowed to tear down and rebuild a cabin right where it is if it were the same height and footprint of what is existing.

Buitenwerf stated that the existing structure could be replaced in its current location and an exact replica could be rebuilt.

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Krueger felt that moving it back to the 50 foot is a definite improvement since they could rebuild it there without variance approval.

Christenson asked Mr. Johnson where the well could be located if the house were to be moved back.

Johnson agreed that the proposed location for the well is the best and most ideal location on the lot.

There was no written correspondence and no public comment was made.

Johnson moved to approve the amended variance request 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? Yes (X)

<u>They have moved the cabin back to meet the 50 foot setback which brings it out of the shore impact zone.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X)

<u>The structure proposed is reasonable.</u>

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X)

<u>The lot is small. The home itself is grandfathered in so by moving it back it is making an improvement.</u>

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

<u>The lot was created prior to the ordinance.</u>

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X)

<u>The locality consists of single family seasonal and year-round residential structures so the proposed replacement of the existing residential structure on this lot with a new residential structure will not change the essential character, but rather maintain it.</u>

6. Does the stated practical difficulty involve more than economic considerations? Yes (X)

<u>Economics are not cited by the applicants as a difficulty.</u>

The motion carried unanimously.

New Business:

Variance Application 8-V-14 by DeWayne Edward Maciej Trust: Lot 1, Belletaine Beach, Section 17, Township 140, Range 33, Nevis Township on Lake Belletaine. Parcel: 21.46.00100. Applicant is requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed detached garage to be placed at less than the required 10 foot side lot line setback.

DeWayne Maciej was in attendance and presented the application. Because the lot is very narrow in depth, the current septic system is too close to the lake right now. If that system ever fails or if it needs to be improved there is not enough room to have a new septic system installed and a garage. The request is to allow a less than 10 foot side lot line setback to give them enough room to have the garage and still have the room needed for an alternate drainfield site. The requested setback is 5 feet.

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Christenson asked the applicant to give a little bit of information regarding the cartway that exists between the property line and the neighbor's lot.

Maciej stated that there is a cartway that is 16 feet and no one uses it. The current garage sits about two feet from the current cartway. The garage has been there for about 30 years. He attempted to vacate the cartway and the neighbor was in agreement as long as he got half of the land once it was vacated. The township stated that because it is all on one side of the section line, the land then goes back to landowners only on that side of the section line. The neighbor would have no right to that land. Once he heard that he was very mad about that and decided to fight the vacating of the cartway. The applicant has seen 2 vehicles use the cartway in the last 3 years and both of them had problems and got stuck.

Grob stated for the record the request is to be 5 feet closer to the cartway. If that is ever vacated at a minimum at least half or 8 feet would revert back to him so no matter what happens in the future he is encroaching on his own property so to speak.

Maciej stated that according to his attorney if anything ever happens with it the land would all go back to the development side of the section line.

Christenson asked Johnson for some clarification on the septic.

Johnson stated that it is a small lot and by keeping the garage where it is proposed it is saving a lot of good land for an alternate site.

There was no written correspondence and no public comment was made.

Johnson asked Grob for his thoughts on the runoff for the road.

Grob stated that there is a lot more vegetation than when he viewed the property several years ago. There also is vegetation down by the water. He didn't' know if there was anything else that could or should be done.

Maciej stated that there is a flower bed on the side which will be wide enough that run off and rain falls into it. It has an edge board on it that keeps the majority of the water on his property.

Grob stated that since that if there wasn't a legal access point on the property there is more that could be done but since it is legally an access path there isn't much more that can be done with that area.

Grob moved to approve as requested.

Christenson 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 (X)

<u>The need to replace an old structure, garage, and move it closer to the property line while preserving an alternate site for the septic system that doesn't encroach closer to a neighbor are all reasons why it is in harmony with the intent.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X)

<u>The garage is in need of replacement and to have a garage in this climate is more than reasonable for storage use.</u>

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X)

The lot is very small in area (~19,500 sq. ft.) such that trying to fit a residence, well, SSTS, and garage on the lot and have them all meet setback requirements is not possible. The proposed garage size is modest and reasonable for two vehicles.

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

The difficulty is the small lot size. There is not enough room to fit the normal essentials of a residential use lot (i.e. house, well, SSTS, and garage) and have them all meet all setbacks.

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

The locality consists of single family seasonal and year-round residential structures and the proposed detached garage is replacing an existing detached garage and such accessory structures are typical on single family residential structure lots.

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

Economics are not cited in the application as being the difficulty. The difficulty is the small lot size as stated in answers to previous findings of fact questions.

The motion carried unanimously.

Variance Application 9-V-14 by Stephen and Mae Tinguely: Lot 19, Crystal Beach First Addition, Section 17, Township 139, Range 34, Long Lake. Parcel: 14.39.41200. Applicants are requesting a variance from Sections 502.2 and 704.7 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residential structure previously constructed and added onto by variance.

Stephen Tinguely was in attendance and presented the variance application. The request is for an attached 12'x20' garage that extends 8 feet from the existing structure.

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

Christenson stated that even with the proposed addition the property is under the 25% impervious surface.

Krueger stated that when on site he noticed a little erosion from the last variance that was approved. He asked if there were any ways to correct that.

Tinguely stated that they are still in the building process. The Board did require that the runoff be taken care of so that it didn't go into the neighbor's yard. It has not been fully taken care of yet since there is still a lot left to complete with the project but the plan is to have a landscaper come out and correct the issue. The plan is to have a rain garden or French drain or some other means similar to redirect that water.

Krueger asked if there were temporary things that could be done in the mean time.

Tinguely said that they could look into that. The neighbor isn't upset about it so there isn't a lot of pressure but said that they would do something.

Johnson asked if they had lived there this winter.

Tinguely answered that it has been under construction to the point where they can't even come up here on the weekends.

Johnson was wondering how their septic system worked since there has been so much equipment moving over the top of it.

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Tinguely stated that it did have some use since the furnace ran all winter and toilets were flushed from the construction workers. He stated that the temporary driveway would all be removed and put back to a natural state but so far so good.

Christenson moved to approve the variance request and adopt the staff findings as presented in the May 2014 Planning Commission/Board of Adjustment Meeting Staff Report.

Grob 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 (X)

The proposed addition will comply with the north side lot line and east rear lot line setbacks – which are the nearest property lines to the proposed addition. The proposed addition will bring the property to ~20.1% impervious surface area which is still below the 25% impervious surface area threshold. The addition itself will be located beyond the 100' OHW structure setback.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X)

Having a two stall garage is a reasonable use of a single family residence.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X)

The structure was originally constructed by variance and later modified by variance, and Section 704.7 of the Shoreland Management Ordinance requires any alteration/modification of a structure constructed or modified by variance to have variance authorization in order to occur. This is a unique ordinance provision that applies to this lot. The lot also lacks sufficient depth for a structure to be placed on it that meets the 100' OHW and 20' road ROW setbacks.

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

The difficulty is caused by the lot not having sufficient depth which led to the need for an OHW setback variance in order to construct the original structure that then triggered the need for a variance for any alteration/modification to the original structure per the requirement of Section 704.7 of the Shoreland Management Ordinance.

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X)

The locality consists of single family seasonal and year-round residences and the proposed garage stall addition is a typical feature on a residential structure that will not harm the locality's residential character.

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

Economics are not cited by the applicants as a difficulty. Instead, the difficulty is the property's lack of depth that led to an initial OHW setback variance for the structure to be constructed and then subsequent variances (including this application) because of the requirement in Section 704.7 of the Shoreland Management Ordinance cited in answers to earlier findings of fact questions.

The motion carried unanimously.

Variance Application 10-V-14 by James and Kathryn Croal: The E ½ of the SE ¼ and Government Lot 8, Section 2, Township 141, Range 34, Lake Emma Township on Stocking Lake. Parcels: 16.02.01100 and 16.02.01400. Part 1: Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance (SMO) to allow a guest cottage that exceeds the 700 square foot maximum

allowed footprint size. Part 2: Applicants are requesting a variance from Section 902.1 of the SMO to exceed the permittable volume of earthen material able to be moved on a steep slope.

James and Kathryn Croal were in attendance and presented the application. The request is to build a year round retirement home and keep the guest cabin to remain.

Krueger stated that in regards to part 2 of the request, it seemed that it would be possible to move the structure back which would decrease the amount of material that would need to be removed. The road would more than likely need to be moved.

James Croal stated that the road will more than likely be moved anyway. The reason they picked where they did was because the basement will be a walkout and in order for that to work it needs to be at the elevation they have proposed.

Johnson stated that the proposed home could be placed there by a permit. The variance is because of the basement being a walkout. He would be allowed to remove a certain amount of material by permit so the request is for the overage of material, which by his calculations is 33 yards.

Grob commented that the house is more than the required 150 foot setback so if they cut back the amount of material that would need to be removed it could be done by permit.

Johnson thought that the proposal they are recommending was a good idea since it gets rid of the slope in the front that goes to the flat area before the bluff. He asked if the applicant's owned the property when the original cabin was built.

James stated that his father built the original cabin.

Grob asked if there was reason why the home wasn't moved back a little further, especially if the road was moved. The elevation changes so that it is up on a flat area and the view of the lake wouldn't change.

James stated that if they built on the flat area more earth would need to be removed for a walkout.

Grob countered that all though more material would need to be removed it would all be behind the cabin and not in front on the slope. He did acknowledge that it would need to be moved back quite a ways.

Krueger asked if the home was built back further if a variance would be needed.

Buitenwerf stated that once they were on the flat area and beyond the setback requirements the ordinance does not regulate earth movement. They meet the setback but it is still regulated because they are on a steep slope.

James stated that the house is about 185 feet back from the lake. Trees would need to be removed if the cabin was moved back further which he was opposed to since he planted the trees as a small child. The setback is more than adequate for the ordinance requirements. He doesn't want the hill to wash out in any way shape or form.

Krueger asked the applicant if he understood what the need for part one of the variance request was.

James answered that he was surprised that it was needed. The structure is over the 700 square feet. There was an old porch on one side of the cabin that was enclosed 30 some years ago which made the new footprint 24 b 40. The reason they aren't doing anything with the existing cabin is because of the giant hill. The driveway is so steep that it is hard to navigate up and down. If they were to live there all year he wasn't sure if it would be usable in the winter months.

Christenson asked if the applicant's had thought about subdividing the property.

James stated that they had no intent on selling off any property. He likes the privacy.

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Christenson clarified that just because a property is subdivided doesn't mean that a person can't maintain ownership of all of the property. The benefit to subdividing this property is that a variance would not be needed for the guest cabin since it would be the principle residential structure.

James stated that if it makes it easier they would separate the lot but it would cause the taxes to increase.

Krueger stated that if it was subdivided then the kids could sell it off or have the land divided amongst them.

James thought that probably could be and should be done sometime for the future but right now he isn't real excited about subdividing the lot and having his taxes increase.

Krueger added that if the lot were subdivided them future owners would be able to add onto the existing cabin by 50% but as the lot sits right now it would require a variance. He felt that if it is a guest cabin then future Boards might not be in favor of it expanding since it is already bigger than the allowed 700 square feet.

Grob stated that an alternate approach would be to place a condition on the approval that stated if this property were ever to be subdivided that the lot that contains the potential lot on which this new house and guest cottage would be located must meet the triplex lot size requirement (160,000 sq. ft. lot area, 80,000 sq. ft. RLSA, and 400' width) as this would be the equivalent of two single family residential dwelling unit lots sizes since the two structures are large enough to function individually as a primary residential structure.

James asked for clarification as to what this exactly meant.

Discussion ensued until the applicant's clearly understood what exactly the condition Mr. Grob was proposing. and what it meant in regards to future subdivisions if part 1 of the variance request is approved.

Buitenwerf stated that placing this condition simply makes it easier and allows more flexibility for the applicants in the future instead of a condition that states no future subdivisions allowed.

No written correspondence was and no public comment was made.

Christenson had a few questions regarding the proposed home and the amount of material needed to be excavated. She wondered if the elevation was changed, would that bring the volume into compliance with the ordinance.

James answered that there isn't a lot of wiggle room in order to stay above the road. A new road will probably need to be installed behind the new home to leave a buffer from the new house.

Christenson asked who owned the road.

James answered that it is a private road but they owned it. They were responsible for maintaining it.

Johnson moved to approve Part 2 as presented.

Christianson seconded the motion.

The Board answered the findings of fact as follows:

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

<u>The structure will meet the setback and the removal of the soil will get rid of a slope that will cause runoff to the lake from the new house.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X)

<u>A walkout basement on the slope is a reasonable request.</u>

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X)

Because of the topography, the steep slope and the road directly behind it, the home needs to be in the proposed location.

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

The road was there before the property was.

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X)

The proposed second residential structure would be on a lot that is still much larger than the required lot size for the number of residential structures such that the ordinance's dwelling unit density standards and intent would not be harmed and the low density residential use character of the locality would not be harmed.

6. Does the stated practical difficulty involve more that economic considerations? Yes (X)

Economics are not cited by the applicant as a difficulty. The application does not state any practical difficulties why the proposed structure cannot be constructed by permittable options listed in answers provided for the other findings of fact questions.

The motion passed unanimously.

Krueger asked for further discussion on Part 1 of the variance request regarding the guest cabin.

Christenson commented that understands the applicant's wish to not subdivide the property and she understands the conditions that was proposed but wondered if the findings of fact could be answered yes to all of the questions.

Krueger stated that without the variance the applicant's option would be to subdivide the property first. He wondered if the constructing of the new home would need to wait until the subdivision requirements and applicant were completed and approved.

Buitenwerf stated that was correct, a building permit would not be issued until the subdivision process was completed.

Grob stated that the ultimate goal would be to not end up with a nonconforming situation. He felt indifferent to whether the applicant subdivide now or place the condition on the property that would make them retain enough land to have conforming lots.

Johnson moved to approve Part 1 of the variance request with the condition that if the lot is ever subdivided, the potential lot on which the new home and guest cottage would be located must meet the triplex lot size requirement (160,000 sq. ft area, 80,000 sq. ft. RLSA, and 400 ft. width). Grob seconded the motion that carried unanimously.

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 (X)

The property is almost 40 acres in size with over three times the required shoreline width for a house and guest cottage. The property could be subdivided into lots to allow the desired second structure to be permitted, but the landowner does not want to subdivide the property and the County agrees that large tracts of land align with the ordinance's development intensity intent for natural environment lakes such as this one.

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2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X)

A primary residential structure is a reasonable use.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X)

The guest cabin predates the ordinance.

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

The previous owner created the difficulty.

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X)

The proposed second residential structure would be on a lot that is still much larger than the required lot size for the number of residential structures such that the ordinance's dwelling unit density standards and intent would not be harmed and the low density residential use character of the locality would not be harmed.

6. Does the stated practical difficulty involve more than economic considerations? Yes (X)

Economics are not cited by the applicant as a difficulty. The application does not state any practical difficulties why the proposed structure cannot be constructed by permittable options listed in answers provided for the other findings of fact questions.

The motion carried unanimously.

Variance Application 11-V-14 by Mike and Liz Anderson: Part of Government Lots 3 and 6, Section 2, Township 142, Range 32, Steamboat River Township on Benedict Lake. Parcel: 24.02.01400. Applicants are requesting an after-the-fact variance from Section 601.3.B of the Shoreland Management Ordinance to allow a water-oriented medical need accessory structure to exceed the 48 square feet maximum allowed structure footprint.

Liz Anderson was in attendance and presented the application. There is currently an 80 square foot structure on the property. The property was purchased in December of 2013 and the shed was existing. In the process of applying for a variance for a deck addition, which was approved, it was discovered that there a number of violations on the property from the previous homeowners. The violations needed to be satisfied prior to obtaining a building permit for the newly approved deck. Two of the three violations have been satisfied, this is the last one. It is an existing structure that is an 8x 10 instead of the 6x8 size that is allowed. There is a relatively steep slope down to the lake and the shed will be extremely useful.

Krueger asked if any estimates had been obtained for either moving the structure or scaling it back to the permittable size.

Liz stated that they spoke with 3 different people regarding moving the structure. The answer that they received from everyone is that it can't be moved. It would need to be demolished. It can't be moved across the lake because it is a spring fed lake. The lake wouldn't be stable enough to move it during the winter. The slope is too steep to move it that way. The contractor's that she had spoken with didn't have equipment that was large enough to do so. It would need to be demolished.

Johnson agreed that it would be impossible to move. He asked if the size was reduced to a 6x8, would it be allowed to stay by permit.

Buitenwerf stated that if the size were reduced to comply with what is allowed by Section 601 then it could be handled with a permit.

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Liz asked for clarification on how that would be or could be done.

Johnson stated that a contractor would peel back the shingles and move the outer wall in to shrink the size down. He didn't it wouldn't be a huge expense to have that work done.

Liz stated that there have been a lot of unknown expenses that they were not made aware of when they purchased the property. The previous owners aren't taking any responsibility or being helpful in any way shape or form. She was getting nervous about what it is going to cost to finally get all of the inherited problems taken care of.

There was no written correspondence or public comments made.

Grob stated that he isn't personally convinced that the structure couldn't be moved. This is a nonconforming structure, down by the lake that wouldn't be allowed or approved to be there. There is a medical reason why an accessory structure is needed and would be allowed but it is specific to a certain size.

Christenson stated that when they were out on site the neighbor's had a shed that was comparable in size and location. She wanted to know what if any bearing that shed has on this situation.

Buitenwerf stated that it wouldn't be germane to this application. The office can take a look at the particulars of the neighboring lot. He wasn't sure what the status of that structure was in regards to legal nonconformity or an illegal structure.

Liz stated that she felt as though she was following the rules, doing the appropriate steps necessary to correct the violation and she will have to either scale down the shed or remove it and there are numerous buildings such as this one along the lake. It seems that people can do what they want and if they don't get caught then everything is great.

Krueger stated that some structures down by the water could be grandfathered in and each one would need to be looked at on an individual basis.

Liz stated she isn't trying to cause any problems for any of her neighbors but was simply expressing her frustration. This structure has been in its current location for twelve to fifteen years.

Christenson stated that she sympathizes with the applicant and that it was unfortunate that the property they purchased had so many problems. It is up to the Board to try and do the best they can and bring things into conformance.

Christenson moved to deny the variance request and adopt the findings of fact as presented in the May 2014 Planning Commission/Board of Adjustment Meeting Staff Report.

Grob seconded the motion.

The adopted findings of fact are as follows:

1. Is the variance in harmony with the intent of the comprehensive pan, zoning ordinance and State Shoreland Management Rules? No (X)

<u>The structure is 80 sq. ft. in size which is 167% larger than the allowed 48 sq. ft. maximum footprint size for a medical disability accessory structure per Section 601.3 of the Shoreland Management Ordinance. The application does not provide any reasons why the structure cannot be reduced in size so that it complies with the 48 sq. ft. requirement or why the additional square footage is needed.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property? No (X)

<u>The property has a single family residential structure on it with a lakeside deck and several accessory structures such as detached garages. Also, the requested medical need accessory structure can be constructed by permit if it would be reduced in size to be no more than 48 sq. ft. in footprint.</u>

3. Is that stated practical difficulty due to circumstances unique to this property? No (X)

The application does not provide any information stating that the difficulty in complying with the 48 sq. ft. footprint regulation is due to circumstances unique to the property. If the existing 80 sq. ft. structure was able to be constructed on the property, then there is no reason why the structure cannot be scaled down to or replaced by a compliant 48 sq. ft. structure.

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

The structure was illegally constructed by a previous landowner.

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X)

The locality's character consists of single family seasonal and year-round residences with a resort located on the second property to the west of this lot and another resort located on the northeast corner of the lake. The shed, whether 48 sq. ft. or 80 sq. ft., will not negatively alter the locality's character.

6. Does the stated practical difficulty involve more than economic considerations/ Yes (X)

Economics are not cited by the applicants as a difficulty.

7. Why did the applicant fail to obtain a variance/or comply with the applicable requirements before commencing work? Did the applicant act in good faith?

Why or Why not? The applicants inherited the illegal structure when they purchased the property in December 2013 as the structure was constructed by a previous landowner.

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

Why or Why not? The applicants did not construct the structure as stated in the answer to question 7. Rather, the applicants inherited the structure when they purchased the property in December 2013. Once notified of the structure being in violation of the ordinance, the applicants have shown good faith and cooperated in taking steps to bring the structure into compliance by applying for an after-the-fact variance.

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

Not that we are aware of. The applicants did not construct the structure and submitted this variance application in an attempt to bring the structure into compliance.

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

No. The shed was on the property when the applicants purchased it last December and it probably is not valued at more than $1-2K at the most.

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

As previously stated, the applicants did not construct the structure. It was already on the property when they became the landowners in December 2013. The structure was constructed by a previous landowner.

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

There are similar structures surrounding this property.

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?

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No. The structure does not have much value to it and its construction style is conducive to easily scaling it down to a compliant size by removing four feet off the sidewall lengths and moving the rear wall up four feet. No reason has been provided in the application why the structure cannot be brought into compliance with the 48 sq. ft. footprint requirement or why the landowners need an 80 sq. ft. structure instead.

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

Yes. The burden of proof is on the landowners to show they have a practical difficulty in complying with the ordinance requirement. The landowners have not submitted anything in the application that shows a practical difficulty and thereby allows all these findings of fact questions to be answered in ways that support granting a variance. The structure can easily be scaled down to a compliant size or replaced with a compliant structure. For these reasons, justice is served by requiring the structure to be brought into compliance.

The motion passed unanimously.

Miscellaneous:

There was no miscellaneous business to discuss.

Communications:

There was no communications.

Adjournment.

Christianson moved to adjourn. Johnson seconded the motion.

The meeting was adjourned at 7:47 p.m.

Minutes respectfully submitted by:

Maria Shepherd
Recording Secretary

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Hubbard County
Planning Commission
June 23, 2014

Chairman Krueger opened the meeting with the following members present: Charlene Christenson, Ken Grob, Tom Krueger, and Tim Johnson. Also present were Environmental Service Officer Eric Buitenwerf and recording secretary Maria Shepherd.

Krueger welcomed everyone to the meeting and went through the meeting procedures.

Approval of Minutes: May 27, 2014

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

Old Business: None

New Business: None

With no further business to address the Planning Commission meeting was closed at 6:03 p.m.

Board of Adjustment

Approval of Minutes: May 27, 2014

Grob 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 12-V-14 by David and Sandra Wingert: Lot 3, Belletaine Westview Beach, Section 13, Township 140, Range 34, Nevis Township on Lake Belletaine. Parcel: 21.52.00300. Applicants are requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance for a proposed upper, above ground level main floor addition to an existing nonconforming residential structure and a lakeside deck.

David and Sandra Wingert were in attendance and presented their application. They recently purchased the property on Lake Belletaine. They are interested in completing the main level of the home. It is currently a walk out basement that is located within the 100 foot ordinary high water setback. They are requesting a variance to complete the main level of the home. Currently, it is a one bedroom home and actually it isn't a legal bedroom. They would like to go straight up on the existing foundation. The neighbors on either side of them are very similar and started out this same way. They were allowed to build the main levels of the homes.

Krueger asked how many bedrooms were currently in the structure.

David stated that it was one big bedroom but does not have egress windows. It has the small basement windows that would be tough to scramble out of in case of a fire.

Christenson wanted to know if the applicant's plan was to put in egress windows if this variance is granted.

David stated that the basement would be left alone and use it as a basement and complete the upper level for living with two bedrooms. There is an existing patio on the lakeside. They hoped to do a deck that would be the same dimension as the patio with an access walkway on the South side of the house. They are planning on installing gutters and bring it to the South so that it would go out onto the lawn instead of dropping straight off towards the lake.

Krueger stated that the narrative commented that there wouldn't be any change in runoff but the applicant's are agreeing to using gutters.

David answered that the because the addition would be going straight up and with the same dimensions there wouldn't be any changes but currently there isn't a gutter system so they would install them to improve the situation.

Krueger stated that was very desirable.

Grob asked why the front yard was terraced.

David didn't know the answer to that. It has been that way for several years. It was the previous owner that did it. He stated that he would like to go back to a more vegetative state. His plan would be to bring it back natural and would like to bring back in plants and grasses.

Grob stated that the drawing currently shows the cabin was located at 41 feet from the ordinary high water mark. He asked if that was correct.

David stated that it is 41 feet from the water. The property is quite elevated from the shoreline. The intent is to complete the original cabin design.

Christenson stated that it would appear there would be room to move the entire structure back to a conforming setback if they opted to. She wondered if the applicant's had considered that option.

David stated that they had considered it but didn't like the idea of ripping out an existing foundation that is functional. They are looking for a small cabin to use and aren't looking to expand it. It made sense to them to go up and complete what the original plan for the property was.

Grob commented for the applicant's benefit that the 100 foot setback is what would be a conforming setback and the first 50 feet is considered the shore impact zone where very little construction is allowed, whether new or alterations. He stated that the cabin is in the red zone. It seems that there is more than ample room to build at a conforming setback. He didn't see that there was a practical difficulty that would allow the granting of this variance. He didn't see that the drainfield or well would cause any issues that would restrict them from building at a conforming setback.

Johnson asked what the legal obligation would be, in regards to the basement, if they were to build back at a conforming setback.

Buitenwerf answered that the foundation walls and floor would be able to stay if they chose to build in a different location.

Krueger stated that in the staff report it states that the department is unsure of when this structure was built, if it was before the Ordinance or sometime after the Ordinance was in effect. He wondered why Section 704.6 doesn't apply to this situation. It is for structures that were built at a conforming ordinary high water mark setback and no long comply with that setback. The interpretation states that it was supposed to be because there were two different classifications on natural environment lakes, some were 100 feet and some were 150 feet. Once those two classifications were combined this section was added. He wanted to know if it specifically stated that it applied to Natural Environmental lakes.

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Buitenwerf answered that it doesn't specifically state natural environment lakes. That was the original purpose and over the years has been applied to other situations. A good example would be Lake Belletaine, where the ordinary high water level was raised by the Department of Natural Resources in 2006. Structures that were build per the previous 100 foot setback may not meet that same setback from the new ordinary high water mark. This section of the ordinance allowed them to make additions and alterations to their structures by permit.

Grob asked for clarification on the request. It appears that the applicant's are asking to double the size of the current structure where if it were outside of the shore impact zone only a 50% addition would be allowed.

David stated that it would double the living space square footage. They weren't trying to build a large cabin but simply want to complete what was started. Their thought process was to utilize the current foundation like the neighbors has been allowed to.

Krueger felt that on the lot viewal, neighboring properties were similar to this one. It looked like there hadn't been any erosion issues either.

There was no written correspondence that was received and no public comment was made.

Johnson stated that he is in favor of this request. Since the applicant is allowed to keep and use the current structure for storage and then build a home back at a conforming setback, the amount of impervious surface is being doubled.

Krueger agreed. He wasn't in favor of doubling the impervious surface on the lot.

Grob commented that they are doubling the size of the house and only 27 feet from the lake. There is room to build it back at a conforming setback. There is no practical difficulty that could be justified by the criteria necessary to warrant an approval. He isn't in favor of it.

Krueger stated that he wanted to do what was best for the lake and environment. Sometimes it doesn't always follow the rules exactly, that is what variances are for. Leaving a large patio and then building a home further back increases the impervious surface of the lot.

Grob countered that it is hard for him to see how leaving the structure where it is would be better than moving it back. The lot is very large. The amount of impervious surface, even if it doubled from what is there currently, would still be within the allowed amount.

Krueger commented that the structures on both sides of this lot that were the exact same situation.

Christenson commented that the request is practical since the foundation is existing but this is the Board's chance to implement what is required, which would be the 100 foot setback.

Krueger stated he would be inclined to agree but the concrete slab and foundation is already there, or if the Board were able to make the applicant's remove what is there but it is legally allowed to remain.

Christenson asked what the answer to the first question on the findings of fact.

Krueger stated that the intent of the ordinance is to protect the environment and lake. If there is less impervious surface and requiring on this cabin that they work with the zoning office to ensure the proper water control.

Grob felt that was an argument that could be made but it is totally out of step to do new construction in the shore impact zone.

Krueger stated that this will be an addition not new construction.

Johnson commented that the footprint will no bigger than what is currently there. He observed no erosion while on the lot viewal. Building a new home, along with what is existing, is creating a situation that has the potential for runoff and cause an erosion issue.

Grob moved to deny the variance request and adopt the findings of fact as presented in the June 2014 Planning Commission / Board of Adjustment 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? No (X)

The lot possesses sufficient depth for the proposed structure to be located at a conforming 100' OHW setback. Given the structure is currently just a block basement and the proposal is to construct a full home on top of the basement, now is the time to move the structure further from the lake – as there is room to do so at a conforming OHW setback such that a variance is not needed.

2. Without the variance, is the owner deprived of a reasonable use of the property? No (X)

The property is currently being used as a seasonal residence and for lake access – which are reasonable uses. There is depth on the lot to construct the proposed structure at a conforming OHW setback so there is no deprivation of the proposed use.

3. Is the stated practical difficulty circumstances unique to this property? Yes (X)

The exact date when the basement structure was constructed is not known. It was constructed in the early 1970s, but there is insufficient information to know if it was legally constructed before the shoreland ordinance was adopted in 1971 or if it was illegally constructed after the ordinance adoption date. The structure's being just a block basement with a roof on it and the location of the structure being in the shore impact zone are circumstances unique to the property that result in the stated difficulty of wanting to place an above-ground story to the structure, but needing a variance because the structure doesn't comply with the 100' OHW setback.

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

The difficulty is the existing structure's being just a block foundation with a roof on it and the structure being located in the shore impact zone such that the ordinance requires a variance in order to make any modification to it. The structure was constructed by a previous landowner and the current landowner thus did nothing to cause or contribute toward the stated practical difficulty.

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X)

The area consists of single family seasonal and year-round residential structures similar to the one proposed on this lot. Additionally, the residences on the adjacent properties are located at a similar OHW setback so the locality's character would be maintained if the requested variance was issued.

6. Does the stated practical difficulty involve more than economic considerations? Yes (X)

Economics are not cited by the applicants as the practical difficulty. As stated above in answers to previous questions, the stated difficulty involves the structure's being constructed by a previous owner at a nonconforming OHW setback in the early 1970s.

The vote was tied with Johnson and Krueger voting nay.

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Buitenwerf stated that since no decision was made the department would extend the review period to the full 120 days in hope that a fifth Board member would be found to break the tie vote.

Variance Application 13-V-14 by Donald and Lisa Anderson: Lot 11, Crescent Beach Wolf Lake, and Part of Government Lot 4, Section 01, Township 145, Range 32, Farden Township on Big Wolf Lake. Parcels: 07.39.00600 and 07.01.01100. Part 1: Applicants are requesting an after-the-fact variance from Sections 502.2, 704.7 and 904.6 of the Shoreland Management Ordinance (SMO) for a new residential structure that: 1. does not meet the ordinary high water mark (OHW) setback from Big Wolf Lake, 10 foot side lot line setback and 20 foot road right-of-way setback; 2. exceeds the 25% impervious surface area threshold; and 3. was built larger than the design approved in Variance 44-V-13. Part 2: Applicants are requesting a variance from Sections 502.2, 704.7 and 904.6 of the SMO for a proposed deck attachment to the above-mentioned residential structure that will not comply with the 100 foot OHW setback and the 25% impervious surface area threshold.

Lisa Anderson was in attendance to present the application. A variance application was applied for and approved in October 2013. Before a building permit could be issued the application also had to receive the approval of the Mississippi Headwaters Board. That was done early November and a building permit was issued later that month.

Krueger commented that what was approved by variance and what is actually built today are not the same. He asked for clarification on why that is.

Lisa answered that there were numerous unforeseen issues that came up after they started the remodeling project. When the variance was applied for, they did not realize what a mess they were getting themselves into. Prior to applying for the original variance, several contractors had come out and said that the structure was sound enough to hold a second story addition which was why they applied for an addition of a second story instead of a rebuild. She addressed the discrepancy in the height of the structure first. There is no formal house plans or drawings. The builders went in and built what they could with the structure as it was. The height that was applied for in the variance was a guess as to what it would be. They eyeballed the neighbor's home and thought it would be about that high. They did not take into account that the house roof and floor drop in three different spots and so the house itself is three feet higher than the garage floor. When the builders then tried to merge all of that together, the height needed to be raised by four feet to have it all come together. They were then informed that there wasn't a space that was structurally sound enough to use to grant access to the second story. The stairs would need to be outside. She did not want to have the stairs outside, especially with three little kids. She made the call and told the builders to do whatever needed to be done to get the steps inside which is why the breezeway was expanded. They knew that by expanding that area they would be over the impervious surface limit that was allowed to them by the variance so a shed that was removed to try and balance it out. Originally they were told that the existing walls would work and then they found out there was black mold in them so they had to go. There had been so much remodeling done already that it was a huge mess that wasn't structurally useable. They had to start over with new walls, but kept and built on the existing foundation.

Krueger wondered why, when the first set of problems came about, didn't they come back and discuss it with the Environmental Services Office to look at options.

Lisa stated that they should have, but it was getting to be wintertime and they had a small window of opportunity to get any work done that year so they just went and did it.

Johnson asked if they had hired a licensed contractor for the project. He asked if the builder read the variance and what was approved.

Lisa stated that they did hire a licensed contractor, but she wasn't sure if he had seen a copy of what was approved by the variance or not.

Johnson questioned how the builder knew what to build if there were no drawings and he had not seen the approved site plan from the variance.

Lisa answered that the builder ran the show for the most part because they were blind with what needed to be done. They weren't educated enough to make a lot of those decisions. The stairs were her decision and were done before the contractor was hired.

Johnson commented that on the lot viewal he observed that the main floor is way higher than the original cabin. He wanted to know what the plan was to get out the sliding door to the ground. It looked like the sliding door was at least 30 inches off of the ground now.

Lisa stated that there were steps there originally that were pulled away. They planned on having two steps again with a small landing to grant access in and out of the house.

Grob asked what the reasoning behind increasing the width of the breezeway was.

Lisa answered that the breezeway was expanded so that the steps could be built and located inside the home.

Grob asked if that area was going to be heated.

Lisa stated that it will be part of the main floor.

Christenson asked if the use of a spiral staircase was ever explored instead of expanding the breezeway.

Lisa stated that they had not.

Christenson asked for clarification on whether or not the lakeside portion of the floor was raised or changed in height.

Lisa answered that the lakeside floor was not changed. The back of the house had to be raised to come to what the rest of the house was at.

Christenson stated that the steps were not included in the request which would make the impervious surface calculation incorrect.

Buitenwerf stated that a 4’ x 4’ landing would be allowed in order to grant access to an exterior doorway.

Grob asked if there were steps that went down to the garage.

Lisa answered there are three or four steps down to get to the garage.

Christenson stated that the garage has living quarters above it.

Lisa answered that was part of the original request. There is one room above the garage.

Christenson went back to what happened and the comments and notes that were submitted as to why they didn't follow what was approved. She asked the applicant to tell the Board if she attempted to comply with the law by obtaining the proper permits.

Lisa stated that they should have gone back to the Environmental Services once they discovered the stairs would have to be placed on the outside and once they found out that the walls were not useable for a remodel.

Christenson asked why it wasn’t done.

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Lisa didn't have a reason. She admitted that she should have. It was late in the year and getting cold so she made a decision.

Christenson commented that one question the Board has to answer is did the applicant act in good faith. She asked the applicant to respond to that question.

Lisa answered that as soon as they knew the breezeway needed to be expanded to allow for the stairs to be inside, they attempted to comply with the impervious surface allowance. They removed a storage shed to try and offset the expansion. They are willing to take out part of the parking area if needed as part of a negotiation. She said that she guessed at the height and didn't realize how specific to what was approved it needed to be.

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

Grob felt that this was a very difficult decision. He was not at the lot viewal for this request but remembers the lot from last October. It appears to him, with the exception of the new deck that is being requested, this fundamentally is a similar request from the one that was approved last October. The changes being new construction verses a remodel and the change in height from a guess of 24 versus the actual height of 28. The height, even though it is four feet higher than what was guessed, is still under the Ordinance limit of 35 feet. Many of the concerns that the Board had last October still exist today. There is no other place on the lot for this home to be located. Any runoff goes into a wetland and not the lake. Mitigation measures were required with the last approval between the road and Mud Lake. The impervious surface calculation is over the allowed 25%, but over half of that is the road. They are being penalized because of the road. When that amount gets taken out of the equation, they are more in compliance. It is flat and is buffered from the lake. Other than the surprise of it being new, fundamentally what was done doesn't alter significantly the criteria that was talked about at the past meeting. He was inclined to be in favor of the after-the-fact request, but not the deck. That is the straw that breaks the camel's back. A shed was removed to offset the additional impervious surface of the breezeway expansion.

Krueger stated that each part should be acted upon individually unless the motion for both part one and two are the same. He wanted a condition placed on part one of the request if it were approved that specified that the landing for the front steps can be no greater than 4' x 4'.

Christenson commented to the rest of the Board that whether the applicant acted naively or not, she can't give a good reason as to why they didn't go back to Environmental Services for guidance. If this were to be approved as is, how can the Board encourage people to make sure they comply with a permit and variance.

Grob stated that he isn't in favor of after-the-fact requests and is very disappointed with the number of people that come in with after-the-fact requests, but he felt that it is a matter of degree. In this case, the changes that were made were not significant.

Christenson countered that the plan wasn't well thought out in the beginning and there were alternatives such as a spiral staircase that would have allowed them to have the stairs inside and stay within the permit limitations. She could have called Mr. Buitenwerf at any time during this whole process.

Grob agreed that is what the Board likes to encourage applicants to do.

Christenson moved to deny the variance application as presented and adopt findings of fact numbers 1-6, and 10-14 prepared in the staff report. The applicant answered questions 7,8, and 9.

The motion did not receive a second.

Krueger moved to approve Part 1 of the variance request with the following conditions: 1. a maximum of a 4' x 4' (16 square feet) platform is allowed for providing ingress/egress access to the lakeside sliding door, and 2.

a no mow vegetative buffer zone must be established and maintained along the shoreline of Mud Lake that is 25' deep (as measured from the ordinary high water mark) and runs the full width of the lot. The sole exception to the "no mow" requirement is that new trees that become established in the zone can be clipped.

Discussion ensued regarding the clarification of what exactly the no mow zone meant.

Johnson 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 (X)

They enclosed the stairway for safety reasons. With the exception of the breezeway and 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 storm water runoff and aesthetic impact of the proposed addition is being offset by a vegetative buffer being required to be installed along the Mud Lake shoreline.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X)

Asking for additional living space in a cabin that is 1028 square feet including the garage is a reasonable request.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X)

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 from Big Wolf and Mud Lakes.

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

As mentioned in 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. The practical difficulty relates to the placement of the structure at that location on the lot.

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X)

The locality's character consists of single family seasonal and year-round residences. While the structure was overbuilt and is larger and taller than what was designed, many of the residences along this part of the lake are excessively large relative to their lot sizes such that this structure does not stick out or alter the locality's character.

6. Does the stated practical difficulty involve more than economic considerations? Yes (X)

The stated difficulty is that the landowners did not do their homework sufficiently before applying for the October 2013 variance and they knowingly constructed a structure larger than what was presented and approved in the variance and permit applications.

7. Why did the applicant fail to obtain a variance/comply with the applicable requirements before commencing work? Did the applicant act in good faith?

The applicant did fail to obtain a variance and comply with the applicable requirements. The applicant gave permission to the footings contractor to extend the breezeway because she wanted the steps inside the structure.

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

No. The applicant stated that she should have gone back to Environmental Services but didn't and couldn't give a reason why not.

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

Not that we are aware of.

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

Yes. The old structure was essentially torn down and the current structure is over 90% brand new with new stud walls, sheathing, siding, windows, doors, etc. as documented by pictures taken by the department during its site inspection.

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

No. The exterior was shelled in and vapor barrier was installed on the outside of the structure. The interior was not finished and consisted of just roughed-in stud walls with no interior finishes, insulation, or sheetrock installed. The landowners were specifically informed by the department when it discovered the ordinance violations that no further work may be conducted on the structure until the outcome of this variance application is known.

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

Yes, there are other structures along this stretch of the south shore that are similarly oversized for the size of the lots in this area they are located on.

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?

If the County were to approve such after-the-fact variances, there would be no incentive and reason for anyone to comply with the ordinance regulations; however, the amount of change is not significant relative to the original variance and therefore there would be minimal benefits to the County to require that the structure be removed.

The answer to findings of fact question 13 was approved on a 3 to 1 vote with Christenson voted nay.

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

No. The Board approved a previous variance that allowed the majority of the footprint and the design of the construction. The changes are minimal compared to the impact to the area and waters on both sides of the property.

The answer to findings of fact question 14 was approved on a 3 to 1 vote with Christenson voting nay.

The motion carried on a 3 to 1 vote with Christenson voting nay.

Krueger moved to deny Part 2 of the variance request.

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? No (X)

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The impervious surface is already over what is allowed considerably and there isn't a need to add anymore.

2. Without the variance, is the owner deprived of a reasonable use of the property? No (X)

No. They don't need a deck to be able to use the property. There is plenty of walking space.

3. Is the stated practical difficulty due to circumstances unique to this property? No (X)

No. There isn't' a practical difficulty. There is no need for a deck. It is on the side and will be blocked off by the house.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? No (X)

The application states that the difficulty was the landowners' lack of proper planning and homework as to what the structure could accommodate for an addition and that they knowingly built the structure higher and larger than what they presented in the variance and building permit application.

5. Will the issuance of the variance maintain the essential character of the locality? No (X)

The impervious surface calculation is already at 41% and adding to that is not in character with the locality.

6. Does the stated practical difficulty involve more than economic considerations? Yes (X)

The stated difficulty is that the landowners did not do their homework sufficiently before applying for the October 2013 variance and they knowingly constructed a structure larger than what was presented and approved in the variance and permit applications.

The motion carried unanimously.

Variance Application 14-V-14 by Richard Hoium: Part of Government Lot 8, Section 27, Township 141, Range 33, Mantrap Township on Spider Lake. Parcel: 20.27.02100. Applicants are requesting a variance from Section 902 of the Shoreland Management Ordinance for a proposed retaining wall project in the shore impact zone that will exceed the permittable volume of material.

Cheryle Wilke, authorized agent, was in attendance and presented the application. There is a wall built out of railroad ties that is starting to fail. The basement is starting to crack as well as the cement wall and retaining walls are starting to disintegrate. The proposal is to remove the top row of railroad ties and replace it with anchor blocks. The plan is to use geogrid material that will reinforce the block which is why the wall needs to extend two feet into the shore impact zone. This is a large project. Almost 30 cubic yards of material would be removed and stored on the property. Once the tiers and retaining wall are completed the stored material would be put back. There is a lot of material movement in this area but it has to be completed by hand and any material that is removed will be used again once the project is complete. A silt fence will be utilized since the material will need to be stored between the project and the lake. They will replant and bring in a little dirt for the plants once it is done.

Christenson asked for clarification regarding the deck that is out there.

Cheryle stated that the sono tubes need to be replaced to keep the deck from collapsing.

Christenson asked Buitenwerf if an additional variance would be needed to do that work.

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Buitenwerf stated that if the foundation is being repaired then it will not need a variance or permit to do the work.

Johnson asked for clarification on the railroad ties. He thought he heard that only one layer was being removed.

Cheryl stated that all of the railroad ties are going to be removed.

Christenson asked if the shrubs that are existing are going to be replaced.

Cheryl stated that the plan is to remove what is existing and plant new material in. The current shrubs are too old to transplant and have them live.

Krueger asked how deep the foundation went into the ground.

Cheryle stated that she was told only about one foot. This will not be an easy project.

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

Christenson moved to approve the variance and adopt the findings of fact as presented in the July 2014 Planning Commission / Board of Adjustment 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? Yes (X)

The request will allow the slope to be stabilized which will ensure that the soil stays in place and does not enter the lake and that the structure's foundational integrity will be maintained. The slope will remain essentially the same after the project. The project simply seeks to remove an inadequate railroad tie retaining wall and replace it with an inert block product that will be more environmentally friendly than creosote railroad ties.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X)

The structure's foundational integrity is in jeopardy because of the failing railroad tie retaining wall. Thus, it is a reasonable use of the property to allow the retaining wall to be replaced/repaired so that the reasonable residential structure use on the property can be maintained as well.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X)

The structure was constructed prior to enactment of the ordinance at a 17' OHW setback at the crest of a steep slope. The retaining wall holding the top of the slope in place is failing and in need of repair/replacement.

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

The slope is a natural land feature and the structure was constructed in its present location by a previous landowner well before the shoreland ordinance took effect in 1971.

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X)

The area consists of single-family seasonal and year-round residential structures and the proposed retaining wall project will in no way alter or harm this character. Rather, by preserving the slope and integrity of the structure's foundation, the project will maintain the locality's character.

6. Does the stated practical difficulty involve more than economic considerations? Yes (X)

As stated previously, the difficulty involves the slope and the fact that the structure was placed at the slope's crest when it was constructed at least a decade or more before the ordinance took effect. Economic considerations were not cited in the application as a difficulty.

The motion carried unanimously.

Miscellaneous:

There was no miscellaneous business to discuss.

Adjournment:

Johnson moved to adjourn.

Christenson seconded.

The meeting was adjourned at 7:32 p.m.

Minutes were respectfully submitted by:

Maria Shepherd
Recording Secretary

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Board of Adjustment Meeting Minutes
July 28, 2014

Approval of Minutes: June 23, 2014

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

Old Business:

There was no old business to discuss.

New Business:

Variance Application 15-V-14 by Jason and Dawn Danford: Lots 4-7, Block A, Minneago Beach, Section 1, Township 140, Range 33, Nevis Township on 8th Crow Wing Lake. Parcel: 21.45.00500. Applicants are requesting a variance from Sections 502.2, 503, and 902 of the Shoreland Management Ordinance for a proposed detached garage to be located at less than the required 100 foot ordinary high water mark setback and in the bluff impact zone, and to move more than the permittable volume of material in the bluff impact zone.

Jason and Dawn Danford were in attendance and presented the application.

Krueger thought that while on site he overheard the applicant's say they would be willing to move the garage closer to the house.

Jason stated that there were not in favor of attaching the garage to the house. The age of the house and foundation issues that it could bring up along with additional expenses are a few of the reasons that they want to keep it unattached. They are moving it a little closer to the house and lake so that it has less impact on the bluff.

Krueger asked if they would be willing to move it closer to the lake if the Board was in favor of that.

Jason answered that they would like to keep the garage at the proposed 95 feet.

Christenson found that the impact on the bluff would be significant in the proposed location. She wondered why they would be opposed to moving the structure closer to the lake if it was allowed by the Board.

Dawn answered that if their builder and contractor felt that the new location would be a safe enough distance from their 100 year old foundation then they would be okay with that but they are not willing to move the garage location if it will jeopardize their cabin.

Jason added that their contractor was in attendance and would be willing to answer that question better than they could.

Jeff Mastley with Heartland Contractors answered that it is borderline getting into the bluff right now. They want to have access around the south side, or lakeside of the garage. If the garage is moved closer to the home it hinders that access. The other thing he was concerned about was drainage. By sliding the garage closer to the home, a large foundation is needed all the

way down to something solid and then it would have to be filled in again. To him it didn't make sense to do that. They feel they have found the best location for the garage. If the garage is moved closer to the house and lowering it that mean excavating out way more dirt out of the driveway which will create drainage problems.

Krueger questioned if they had looked at alternative locations for the garage, perhaps further down the driveway where the Board had parked their vehicle for the site visit.

Jeff answered that there is a shed down there.

Grob clarified that Mr. Krueger was referring to where the crest of the driveway is.

Jeff commented that location was illuminated early on because there is a turn-around loop that would be lost. The driveway itself as it sits right now is very narrow so adding a structure there would make it extremely difficult to maneuver in the driveway.

Krueger wanted to know how high the retaining wall would need to be to accommodate the cement platform for the garage.

Jeff answered that the back of the garage would retain the dirt and the retaining wall would be nine feet. They used lasers to determine the height. There are things that they can do to beef up the retaining wall to minimize the chances that it would cave in. There is no traffic on the back side of the garage so it shouldn't be an issue.

Johnson questioned why Mr. Mastley felt the drainage wouldn't go towards the house with the proposed location of the garage but that it would cause a drainage issue in a new location.

Jeff answered that the soils that are in the proposed location will help the drainage. The garage will be tucked in behind the retaining wall and the water will be diverted further down the driveway. The water will run towards the woods side of the property.

Grob commented that the request is for a 30'x30' garage which is a large structure. He felt that a more typical or reasonable garage for this area could be a 24'x30' which still allows for two cars to be parked in it as well as storage. He asked the applicants if they had looked at alternate sizes that might fit better on the property.

Dawn countered that the size of the garage is so that they can store their pontoon, fishing boat and one vehicle during the winter.

Jeff added that most people say after a storage building or garage is built that they should have built it bigger.

There was no public comment made.

Grob wasn't convinced that there isn't a less disruptive and appropriate location for the garage. There are trees located in the middle of the current turnaround that might have to be removed but it would be a better location and less impact on the bluff.

Jeff countered that was a matter of opinion not fact. The applicants are against removing trees. They are nice trees and by moving the garage further down the driveway it will block the turnaround. The applicants will be storing boats in this garage and when backing up a trailer it

would be extremely difficult to maneuver down that driveway if that turnaround was removed. He again stated that the location they are proposing is the best location for the garage with the least amount of impact.

Johnson felt that it would be less intrusive of the bluff to move the garage closer to the house. It may cost more money to put in a deeper footing but felt that would be better than digging so deep in to the bluff.

Jeff stated that if they moved the garage closer to the cabin, another exit out of the cabin would be needed. Without it a person would have to walk down the hill and around the garage and cabin to enter. He conceded that there could be a little space to move the garage forward.

Krueger agreed with Mr. Johnson. During the site visit, he could visually see better locations for the garage even though they were a little closer the lake.

Jeff asked what setback they were thinking.

Krueger didn't want to state a specific setback without first going back out on site and taking accurate measurements.

Jeff commented that by moving the location of the garage it would require less of a cut into the bluff but could be more material that actually needs to be moved. He asked what the amount of material that could be excavated in a bluff is. He wasn't even sure if it is a bluff.

Johnson stated that it has been determined to be a bluff. He felt that it wasn't the amount of material that was being removed but rather the depth and height of the cut into the bluff that was cause for concern.

Jeff understood now where the Board was coming from. He summarized that by moving the garage closer to the lake and home the cut into the bluff would be less. The slab would be at the same elevation so that could be a reasonable alternative location.

Krueger asked Mr. Buitenwerf if it would be better to have a new plan submitted or if the Board is able to approve a different setback.

Jeff stated that the only thing that would change on the plan would be the amount of material removed and the setback to the lake.

Buitenwerf would like to have more specifics as far as what the setback from the lake will be as well as the amount of material that will be excavated.

Krueger felt that tabling the request was best in order to give the applicant's time to put together a new plan.

Christenson wants to see specifics and a new plan with the proposed setbacks from the lake and house as well as the material that will need to be excavated.

Jeff wanted to know why the Board couldn't just tell them a setback. The request was for 95 feet setback from the lake. Instead of delaying the project another month could they say no closer than a certain distance.

Johnson answered that he was unaware of the elevation at a different setback so the impact to the bluff would be unknown without new plans. He was in favor of revisiting the site.

Dawn was concerned about tabling the variance because she wouldn't be around for the August meeting.

Krueger answered that Mr. Mastley could be authorized to act on their behalf.

Grob still wasn't convinced that there might be an even better site for this garage besides moving it further down the hill towards the house.

Christenson moved to table the variance application until the August 25, 2014 meeting. This will give the applicants time to amend the application proposal to show a revised location for the proposed garage.

Grob added that he would to see the proposed garage location moved further to the east of the originally proposed location with a possible turn-around area to replace the existing circular driveway and the elevation of the proposed garage floor shown relative to some existing benchmarks such as the paved driveway or cabin main floor elevation.

Johnson seconded the motion.

The motion carried unanimously.

Variance Application 16-V-14 by David Washburn and Amy Hietala: Part of Government Lot 1, Section 18, Township 144, Range 36, Lake Hattie Township on Big LaSalle Lake. Parcel: 18.18.00530. Applicants are requesting an after-the-fact variance from Sections 502.2 and 503 of the Shoreland Management Ordinance to allow a deck attached a residential structure to be located in the bluff impact zone.

No one in attendance to present the application.

Grob stated that he felt what they are did was reasonable. They are 450 feet from the lake. There was some misunderstanding of what they were allowed or not allowed to do. They admitted that they should have come and received a permit because they are within 1000 feet of the lake but still felt that they acted in good faith. There are some questions in the findings of fact that he would have liked to have the applicant's answer. He wasn't sure if they could proceed without them being here to answer those or not.

Christenson stated that some of the answers were given while on the site visit. She felt that most of the other responses needed were given and that the questions could be answered.

No public comment was made

Christenson moved to approve the variance application and adopt the findings of fact as presented in the July 2014 Planning Commission / Board of Adjustment Staff Report.

Grob 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 (X)

   The structure itself is located out of the bluff impact zone. Only the north portion of the attached deck is in the bluff impact zone and the portion of the zone that it is in is a 50' segment exceeding 18% slope instead of the main portion of the bluff that has over a 30% slope. The house was built two years before the bluff definition language in the ordinance changed and the house plan was laid out in a way that to deny the deck now would pose a safety issue because of the location of the two upper level sliding glass doors and hardship for the landowners because of the house floor plan being based on accessing the outdoors via this deck. The deck is reasonably sized. The intent of the ordinance is also to allow for variances in justifiable situations with unique circumstances which certainly describes this situation.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X)

   The house design with the location of the walkout basement and main story sliding glass doors is based on a deck being in this location so disallowing a deck would pose a safety hazard with the doors and limit the usability of the house as designed/constructed under the previous top of bluff definition.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X)

   The bluff on this property is complex in that it is three-sided and the house sits in the middle and near the front of a flat plateau that is encircled by the bluff except for on the non-lakeside (rear/east) portion of the house. Also, the house was built per the previous "top of bluff" ordinance language that changed in 2008. Had the deck been constructed in 2006 at the time the house was built, it would have been allowed and would be a legal nonconformity.

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

   The difficulty is the complexity of the bluff composition and the fact that the ordinance "top of bluff" language changed two years after the house was constructed and three years before the application states the deck was constructed.

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X)

   The locality's character consists of single family seasonal and year-round residences located on large tracts ranging from ~2.5 ac. on the adjacent property to the south to ~160 ac. on the adjacent property to the east. There are only three residences in a ¼ mile radius of this property.

6. Does the stated practical difficulty involve more than economic considerations? Yes (X)

   Economics are not cited by the applicants as a difficulty. The difficulty is the unique characteristics of the bluff and the fact that the house was constructed under previous ordinance bluff language and the deck was constructed under the current ordinance bluff language that is different (and more restrictive) than the language in place when the house was constructed.

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 states that the applicants admit that they ought to have contacted the County when they constructed the deck in 2011, but they didn't do so. The application also states that the landowners claim to have talked to a former department employee (now deceased) who they claim told them they didn't need a permit for the deck because the bluff on the north side of the house is not a lake-facing bluff. The applicant's acted in good faith. They admitted that they should have come to the office to obtain a permit but there was a misunderstanding of what they could or could not do since the home was located so far back from the lake.

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

   No. The application states that the landowners, in retrospect, now recognize that they ought to have contacted the County before constructing the deck, but they didn't think to do so.

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. While this is a decent size, nice quality deck, its likely cost is not something we would consider to be substantial. Substantial would constitute something like the construction of a house or garage.

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

    Yes, the application states that the deck was constructed in 2011 and the department became aware of the violation and notified the landowners of it in 2014.

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

    Yes. There were similar structures in the area.

13. Would the minimum benefits to the county appear to be far outweighed by the detriment the applicant would suffer if forced to remove the structure? Why or why not?

    Yes. The bluff impact zone encroachment is minimal given the deck is in an area at the top of the bluff that still meets the 18% slope requirement over a 50' segment. The structure is over 400' from the lake. Making the landowners remove the deck would be excessive in light of its scope relative to its encroachment into the bluff impact zone.

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 deck is reasonably sized and does not encroach into the bluff impact zone very much and its impact on the bluff impact zone (which is in grass cover for vegetation) is minimal. Requiring the deck to be removed would also render the house design of the two sliding doors that provide access onto the deck and the walkout basement underneath the deck unusable and the two doors unsafe.

The motion carried unanimously.

Variance Application 17-V-14 by Kevin Lund: Lot 28, Block 1, Shoreham Shores, Section 25, Township 141, Range 34, Lake Emma Township on Little Sand Lake. Parcel: 16.64.02800. Applicant is requesting a variance from Sections 502.2 and 707.2 of the Shoreland Management Ordinance (SMO) to make an unimproved lot into an improved lot that will not comply with the 150 foot ordinary high water mark subsurface sewage treatment system setback and two standard drainfield sites requirements and from Section 801.2 of the SMO and Article V, Section 1.01 of the Subsurface Sewage Treatment System Ordinance to allow a proposed drainfield to be installed at less than the required 20 foot setback from a proposed residential structure.

Kevin Lund was in attendance and presented the application. The request is to allow the mound septic system to be 80 feet from the lake. When the property was purchased there was a location that was conforming at 150 feet from the lake but since that time a neighbor installed a shallow well which caused the septic site to be void. The only other area for a septic site is the proposed site with this application.

Krueger stated that the proposed deck is 107 feet from the lake so the home could be moved seven feet closer to the lake or a smaller deck could be built which would get the home further away from the drainfield and more into compliance with the 20 foot setback requirement.

Grob asked Mr. Johnson asked what the intent of the 20 foot setback was from a mound system. He wondered if it was the active area of the mound drainfield or the footprint of all materials involved.

Johnson interpreted the intent as to prevent the affluent, if there ever was a blowout of the mound, from doing damage to the structure. The slope that is existing on this property slopes away from the home site. He didn't see an issue with the setbacks proposed.

Christenson asked Mr. Johnson would like to see the house or deck moved forward so that the setback would be seventeen feet instead of ten.

Johnson answered that was a good idea. He also asked the applicant if the proposed home that is being moved in could be a two bedroom home instead of a three bedroom. If the drainfield was downsized from a three bedroom system to a two bedroom system it could open up an area for an alternate drainfield site.

Kevin stated that he would be in favor of that.

Krueger asked Mr. Buitenwerf if the applicant agreeing to a two bedroom home instead of a three bedroom verbally was good enough or if he wanted something in writing.

Buitenwerf stated the best way to handle that situation would be to place a condition on the application stating the home could only be a two bedroom home rather than the initial request of a three bedroom home.

Grob asked if the size of the mound is reduced, what the new setback of the drainfield to the lake would be.

Johnson answered that the setback would be the same. The width wouldn't change but rather the length. Thirteen feet would be removed from the length if the home was reduced from ta three bedroom to a two bedroom home. It would still be seventeen feet from the house.

Grob didn't understand how it wouldn't improve the setback from the lake. In his eyes instead of the setback being 80 it would be at 93.

Johnson noted that the system is at an angle so it could improve the setback a little but the not entire thirteen feet.

Grob stated that the State requirement is 75 feet setback from the lake. The proposal is for more than the state requirements and any additional space that could be obtained by decreasing the size of the mound only makes the setback better.

Kruger stated that by downsizing the drainfield maybe the system could be turned in orientation so it runs parallel with the road which would get it even further away from the lake.

Grob thought the downward slope and orientation that is proposed is very desirable and wouldn't be in favor of changing that.

Johnson answered that the design is correct in the way it sits on the slope.

Krueger opened the floor for public comments.

David Hacker, owner of Backhoe Pete, made public comment. He is the designer and will be the installer of the septic system. He stated that because of the topography of the lot, turning the drainfield to allow a greater distance from the lake is not an option. He didn't feel it was wise to cut the system back from a three bedroom to a system sized for two. It will gain thirteen feet but he likes to error on the side of a bigger system because if the system in ten years needs to be added onto the area has already been used and the soils disturbed so it isn't guaranteed who it will work. He didn't see the sense in dropping it down when the difference is only thirteen feet.

Johnson thought that there could be a site for an alternate drainfield as well.

Hacker answered that he could get an alternate site but it gets into a low area. With a mound system, the same site could be reused. The old mound could be removed, the area cleaned out and a new one installed. He did numerous soil borings on the site and had Mr. Navratil, Environmental Specialist for Hubbard County, was on site when the soils were being done.

Bob Reschke an adjacent property owner made public comment. He is concerned regarding this request. He lives in Illinois but has been here for many years. Park Rapids has been like a second home to him. He first vacationed here in 1974. In 1987, he purchased lots 29 and 30. He walked the lots with people who were familiar with the land prior to purchasing them to make sure that they were able to be built on. He has strived to be a good neighbor and steward to the land and waters, respecting and protecting the environment. In 1988, he purchased a cabin and follow all of the necessary ordinance requirements for a septic system. In 2003-2004, he decided to build a year round home on lot 29, again all necessary ordinance requirements were

followed. This will be a permeant home after retirement. Mr. Lund purchased this property in 1999. When the water level rises there are numerous lot, including this one that rise to the point where the water is to the edge of the road. He knows this because he walks this road over the years. This Board is the expert in the field but the setback of the septic not meeting the requirements of the ordinance is a huge concern. Currently setback according to the drawing is 80 feet when it should be 150. That is only 53% of the requirement. In addition the septic to the house setback is also only at 50%. He didn't know if there were any alternatives but the lake water and the environment are major concerns. He wondered how many others will follow suit asking for the same thing. The ordinance that was in place when he built his home should be the same ordinances that are in place now. The other concern he has is how close to the lake the owner is proposing to build a house. He considers this a bluff and that was what he was told when he was building his home. The house is going to be only 15 feet from bluff or edge of the hill. He is concerned about ground deterioration and something happening in the future. He knows there is a three foot eave but doesn't know if that eave goes all the way around the house. If that is the case then the home will not meet the ten foot property line setback either. It would only be nine feet. He implored the Board to maintain the environmental standards set forth with the ordinances that were in place.

Krueger didn't see a bluff on the property when they were on site.

Reschke stated that he wasn't an expert. He is only going off of what he was told when he was building his home and he was informed that it was a bluff. He wanted to originally build a home with a walk out basement and he was told he couldn't. He didn't know what the technical definition of a bluff was. He isn't an expert but depends on the Board to handle things in a just matter. Even if it isn't a bluff, his concerns still are there being that close to the edge of the hill and disturbing the ground.

Krueger informed the applicant that what happened previously with his home wasn't pertinent to this request.

Dan Kittilson made public comment. He stated that he hasn't been before the Board in quite some time which has been deliberate. He lives on Little Sand Lake which is the number one water quality lake in Hubbard County. It has been the number one lake since the lakes started being tested. His biggest concern is the distance of the septic system from the lake. He felt the Board was more concerned about the septic getting into the house than they were about it running into the lake. The state distance from the septic system to the lake is 75 feet but Hubbard County has the setback at 150 feet. Hubbard County has some of the clearest, cleanest lakes in the State and felt that could be one of the reasons. He urged the Board to consider the lake and the water quality. The lake is what is important. Protecting the lakes is what is important. That is the Board's job. This is the number one lake in Hubbard County and is probably one of the highest lakes in Minnesota. He isn't concerned about the distance from the house to the septic system but rather the septic system to the lake. Mr. Buitenwerf is recommending denial of this application in his staff report and he encouraged the Board to do the same.

The public comment portion of the meeting was closed.

Kevin commented that when he purchased the lot, he was told it was a buildable lot. A neighbor on an adjacent lot installed a shallow well which then made the area on his property that did allow for a 150 foot setback unusable. It was out of his control.

Grob asked what the total area of the lot was. He could read the width of the lot but it was odd shaped and hard to determine what the total square foot was.

Kevin wasn't sure off the top of his head what that number was. He knew it was 1.7 acres.

Grob felt that the most practical difficulty that Mr. Lund faces is the placement of Mr. Reschke's well. If the well had not been located right on the property line there would have been an area for a septic system to be located at a conforming setback with no difficulty. He asked if there was any alternate well site on his property. He asked for a reason that the well was placed so close to the property line.

Reschke stated that the well and septic system were approved by permit. The well had to be 50 feet from his drainfield that was the best place for it to be placed.

Krueger questioned that since he owned two lots.

Reschke answered that both lots have their own individual well and septic systems.

Krueger agree with Mr. Gob that this was the cause and created a practical difficulty for Mr. Lund.

Johnson retracted his suggestion regarding downsizing the septic system down to a two bedroom system. He agreed with Mr. Hacker since the home is already a three bedroom cabin and will be moved in as such. The use is already there so the system should reflect the numbers of bedrooms that could be used.

Grob asked the Mr. Reschke if there was a well, septic and homes on each his lots.

Reschke answered affirmatively. He again stated that both times he followed all of the proper ordinances to make sure things were right.

Grob asked if a common well could be utilized.

Reschke stated that wasn't the plan.

Christenson asked the applicant who told him it was a buildable lot.

Kevin stated that his realtor was the one that told him it was buildable. He was young and didn't know any better.

Reschke stated that there are a lot of lots in this plat that are non-buildable.

Grob again asked the neighbor why a common well couldn't be used. That would clear up the area on the applicant's lot for a septic system that could be located at the 150 foot setback from the lake.

Bob stated that he wouldn't want to do that. There was no need for him to do that. That well has been there for years and he followed the proper channels to have it installed.

Grob was trying to make the point that the well is the prime practical difficulty that prevents Mr. Lund from building potentially on a lot that is conforming in area and frontage.

Christenson asked Mr. Johnson if the septic system is installed for a three bedroom home then would there be room for an alternate site.

Johnson stated that there would be a partial alternate site available.

Grob felt that if the mound failed it could be removed and all of the materials replaced.

Johnson moved to approve the variance application as presented.

Krueger 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 (X)

   The septic will be beyond the State's setback rule.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X)

   The lot meets all of the setbacks except for the septic so it is reasonable to want to build a home on this lot. This is zoned residential.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X)

   The lot lacks adequate depth and much of the lot depth is taken up by the road right-of-way easement. A well on the neighboring property to the east also creates a difficulty in placing a septic system drainfield in the northeast corner of the lot where the greatest depth is present.

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

   The difficulty was created by the developer of the plat when the lot was created in 1978 and then also by the landowner of the neighboring property to the east when a well was placed along the shared property line that thus prevented the northeast corner of the property (where the greatest lot depth is present) from being used as a potential drainfield site.

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X)

   The locality consists of single family seasonal and year-round residential structures located on similar substandard size lots in this same plat. The proposed single family home would fit in with these surrounding land uses.

6. Does the stated practical difficulty involve more than economic considerations? Yes (X)

   Economics are not cited by the applicant as a difficulty. Instead, the difficulty is the lack of depth to the lot and the well located on the adjacent property to the east that prevents the most favorable area on the lot for a drainfield from being used for placement of such.

The motion carried unanimously.

Variance Application 18-V-14 by Bruce Krabbenhoft: Part of Government Lot 8, Section 12, Township 139. Range 34, Hubbard Township on Big Stony Lake. Parcel: 14.12.02000. Applicant is requesting a variance from Sections 501.2 and 707.2 of the Shoreland Management Ordinance to make an unimproved lot that does not comply with the minimum lot size requirements into an improved lot with a residential dwelling unit connected to a well and septic system.

Bruce Krabbenhoft was in attendance and presented the application. He is looking to build a home on this lot. There is room for a septic system and an alternate site. The well is already installed as well as electric. The issue is with the width of the lot.

Krueger asked if the privy would be removed once the septic system was installed.

Bruce stated that yes it would be removed as well as all the other excess buildings except the garage.

The floor was opened for public comment:

Karen Ames made public comment. She has owned the lot she lives on for 42 years. Mr. Krabbenhoft hasn't yet purchased the property. The well is a sand point well. There are at least two different variances that have been granted on Big Stony Lake where the owners have greatly exceeded what was approved. She is concerned that once this variance is granted to build on this lot a precedence will be established where others on the lake can build on small lots. She owns two lots and were told that in order to build 150 feet was needed. She isn't in favor of the intended use. This isn't going to be a permanent home. It is just going to be a secondary home. She doesn't understand why ordinances are in place if they can be changed and have different setbacks and rules. She also didn't believe that the setback and building site staked out is truly 150 feet from the lake. She walks that property all the time and didn't think there was enough area from the lot lines or from the lake to build a home.

Krueger stated that the setback on the lake is 100 feet. He also stated that if there were people on the lake that had overbuilt on what was allowed by variance the Environmental Services office needed to be informed so they could follow up.

The public comment portion of the meeting was closed.

Bruce commented that this will be a permanent home. Currently he lives on about 50 acres and are semi-retired. His current lot will probably be a lot more work than they will want to have. He rides horses and does barrel racing currently. They leave for part of the winter for his activities but this would be a permanent home.

Johnson asked Mr. Buitenwerf if this application was approved if additional variance would be needed for sidewalks or patios.

Buitenwerf answered that the request is develop the lot with a residential structure. As long as the ordinance requirements are met it could be done by permit.

Grob asked if this needs to be handled any differently since it is an illegal nonconforming lot.

Buitenwerf answered that because the lot can be improved with the house meeting all setbacks as well as two septic sites that also meet all setback which is the primary intent of the development of such lots.

Grob commented that because this is not a completely conforming lot, he thought it would be consistent with the ordinance to allow only 15% impervious surface. That would limit future buildings and expectations. He thought that it would be reasonable compensation given the size of the lot.

Krueger felt that the intent of the ordinance, which is clearly states, is a 25% impervious surface threshold.

Grob countered by looking at research and people that are knowledgeable about lakes they would rather see it at 15%.

Krueger felt that because the lot is smaller it also makes the area that is allowed less as well.

Johnson moved to approve the variance application as presented and adopt the findings of fact as recommended in the July 2014 Planning Commission / Board of Adjustment 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? Yes (X)

   The application shows that the lot can be developed with a residential structure and two drainfield sites that meet all setback requirements – which is the primary intent of the ordinance in the criteria it contains for developing lots created during this time. The lot will also comply with the 25% impervious surface area requirement.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X)

   The proposed house and standard septic system are reasonable uses of the property given the fact that both are able to meet all setback requirements in the ordinance.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X)

   The lot was illegally created back in the 1970s as it is only 100' wide and 30,927 sq. ft. in size instead of the 150' width and 40,000 sq. ft. minimum lot size requirements that were in place at the time the lot was created. The properties on either side of the lot are improved nonconforming lots of similar size and dimension, and owned by other parties so there is no possibility of gaining additional land to increase the size of this lot.

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

   The applicant did not own the property at the time the lot was created which is the practical difficulty because Section 707.2, item 2.B of the shoreland ordinance requires a variance in

order to develop an unimproved lot into an improved lot when the lot was not created in compliance with the official controls in place at that time.

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X)

The locality consists of single family seasonal and year-round residential structures so the proposed development of this lot with a single family residential structure and accompanying septic system will not change the essential character, but rather maintain it.

6. Does the stated practical difficulty involve more than economic considerations? Yes (X)

Economics are not cited by the applicant as a difficulty. The difficulty is the fact that the lot was illegally created in the 1970s and does not comply with the minimum lot size requirements in place at that time.

The motion carried unanimously.

Variance Application 19-V-14 by Richard Burquist: Lots 4, 5, 6 and the West 12 feet of Lot 3, Kansas City Park, Section 13, Township 140, Range 34, Henrietta Township on Lake Belletaine. Parcels: 13.24.02410, 13.43.00310, and 13.43.00400. Applicant is requesting a variance from Section 902 of the Shoreland Management Ordinance to exceed the permittable volume of earthen movement to be moved on a steep slope in the shore impact zone for a retaining wall project.

Robert Murphy, Richard Burquist and Richard Ohm, authorized agent, were in attendance and presented the application. There is a piece of sheet metal that when the structure was remodeled was about eight inches away from the corner of the home but over the years the earth has moved that to where it is only about an inch away and touching the building in some places. The request is for a retaining wall to hold the earth back from the home.

There was no public comment made.

Christenson moved to approve the application and adopt the findings of fact as presented in the July 2014 Planning Commission / Board of Adjustment 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? Yes (X)

The residence is a nonconforming structure. Installing the retaining wall to stabilize the slope and keep it from pushing into and through the house and creating an unstable slope and possibly exposing soil to erosion is in harmony with the ordinance intent vs. not allowing the retaining wall which will likely result in the slope not only slumping and damaging the house, but also exposing soil and causing erosion.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X)

Installing the retaining wall will allow the slope and house to both be preserved – both of which are reasonable uses of the property.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X)

The house was originally created before the shoreland ordinance took effect and placed at the base of this steep slope with the slope's toe being removed in order to site the house.

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

The structure was constructed in this location and the slope's toe was excavated by someone or something other than the landowner as the house was built before the shoreland ordinance was enacted and it was later added onto in the late 1990s by a different landowner.

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X)

The locality consists of single family seasonal and year-round residential structures – many of which contain retaining wall systems used to manage topographic issues on their lots because of the steep topography along this portion of the lake.

6. Does the stated practical difficulty involve more than economic considerations? Yes (X)

Economics are not cited by the applicant as a difficulty. The difficulty, as previously stated, is that the house was constructed and the toe of the slope was excavated prior to the shoreland ordinance taking effect.

The motion carried unanimously.

Variance Application 20-V-14 by New Stream Real Estate LLC: Part of Government Lot 10, Section 1, Township 145, Range 32, Farden Township on Wolf Lake and Mud Lake. Parcel: 07.01.02920. Part 1: Applicants are requesting an after-the-fact variance from Section 502.1 of the Shoreland Management Ordinance (SMO) for a residential structure that does not meet the required 150 foot ordinary high water mark setback from Mud Lake. Part 2: If Part 1 is approved, applicant is requesting a variance from Section 502.1 of the SMO for three proposed deck additions to the structure involved in Part 1. Part 3: Applicant is requesting a variance from Section 501.1 of the SMO to exceed the allowed residential dwelling unit density on the lot by having four dwelling units on a lot sized for one dwelling unit.

Israel Moe, authorized agent, was in attendance and presented the application. He gave the Board some additional history on the property. The previous owner was granted a variance by Hubbard County on 3/27/2002 (Variance 50-V-02). In this variance the owner was permitted to build a structure with a footprint of 32' x 70' subject to the following removal of the following structures: 3 mobile homes, an 8' x 10' fish cleaning house, and a lakeside cabin (18' x 20') all of which have been removed from the property. After the variance approval, the previous owner built the home that is approximately 40' x 100', with a 16' x 40' bump out, and a 40' x 40' attached garage. The structure that was constructed was much larger than what was approved by variance 50-V-02. He also never finished installing the septic drainfields on the property. He did update all of the sewer tanks but never installed the drainfields or put the alarms on the holding tanks for the cabins. New Stream Real Estates LLC is the current owner of the property

as well as the lender to the previous owner. They have foreclosed on the property. There is a prospective buyer for the property based on the decisions made tonight. They want to be able to keep the home as is and keep three of the five existing cabins as guest houses. The other two would become accessory structures where the bedrooms and all plumbing would be removed. This property used to operate as a resort but was pre-ordinance and didn't require a conditional use permit. It has reverted back to a residential property because the resort use had ceased for more than twelve months. A letter was received by the previous owner, notifying him of the numerous violations on the property and three options as to how to bring the property back into compliance. One of which was applying for and receiving an after-the-fact variance which is what the new owner has decided to do and why they are here today.

Krueger made sure the applicant know that according to the current Ordinance, a lot of this size is only allowed one residential structure. The property currently has six and the request is to have four. That is considerably over what is allowed by the Ordinance.

Grob asked if original structure that was approved by variance included an attached garage. He wasn't able to clearly see if that was part of the original variance or not.

Moe stated that his understanding of what was approved in the previous variance was the structure and a detached garage but the previous owner instead chose to build it as an attached garage.

Johnson stated that the permit applications, taken out in 2003, were for a 32' x 60' garage, 30' x 100' residential structure. They were combined and not built separately.

Moe stated that is the reason why they are sitting in front of the Board today. The previous owner did not build what he was approved to build not what was permitted.

Johnson answered that they were permitted for 4,900 square feet and they built 6,220 square feet. They over built by 1320 square feet.

Krueger added that it isn't just over built by that much but it wasn't even supposed to be a dwelling unit to begin with.

Christenson asked what the plan or thought was for the lower level since it has no windows in it. She was concerned that it they were going to be egress windows it would disturb the more land installing them.

Moe answered that full egress windows could be installed without disrupting any ground outside because the basement is only three feet into the ground.

Krueger commented that if those rooms in the basement were turned into legal bedrooms that would add a large amount of living space to the home.

Moe answered that they are not legal bedrooms right now. There is no closets or window. He wasn't sure what the previous owner's intent was. It is a three bedroom home.

Krueger mentioned that it could easily become a five or more bedroom home.

Johnson stated that the septic system was designed for a lodge that would have 890 gallons per day water use. A three bedroom house would be only 450 gallons per day.

Moe commented that the septic system is larger than what is needed for a three bedroom home but if the new owners decided to turn a room or two into bedrooms then they would make sure the septic system was sized accordingly and accurately for the number of bedrooms in the home.

Johnson said that during the lot viewal, the Board went downstairs, the bathrooms and mechanical rooms are on each side, tight to the outside walls so it would be extremely tough to alter the structure.

Moe stated that it wasn't feasible to alter the structure. The current owner had looked into options and were told it just won't work.

Christenson asked Mr. Johnson for more clarification on what would be tough.

Johnson answered that it would be tough to alter the size of the brick building.

Moe stated the owners and potential buyers realize that this is an illegal non-conforming structure that was over built. It is a little different scenario since the original owner who created the violation is no longer involved with the ownership of the property. The potential buyers were hoping to be able to keep all five cabins and utilize the property as it sits today but in order to have some give and take it was decided that two of the cabins would be converted into accessory storage buildings instead. They felt that was an appropriate compromise.

Krueger stated that the lot size doesn't even allow for one guest cabin and the request is for three.

Moe countered that these structures are legal non-conformities. The structures at the lake were built before the Ordinance. They realize that a variance is needed which is why they are here

Krueger gave his personal opinion that either the five cabins stay and the brick home is removed or the home stays and the five cabins go.

Moe asked if it would make a difference is the current owner were willing to remove two of the lakeshore cabins from the property, basically evening out the 1300 plus square feet that the brick home was over built, instead of leaving them as accessory structures. This would bring the request under the 25% impervious surface. There would still be four residential structures on the property but it would be in compliance with the allowed square footage.

Johnson asked what it would take to turn this property back into a resort.

Buitenwerf stated that if the rental density was in compliance with the ordinance they would need to go through the conditional use permit process. A rental density calculation had not been done on the property so he couldn't say if it would first need a variance to allow a greater density.

There were no public comments made.

Moe wanted to know what the other Board members opinions of the request were. He does have the authority from the property owner to amend the request and negotiate the terms of this variance. This has been a black eye for the County for quite some time. He wants to resolve

this issue. He stated that to alter the overbuilt cabin is near impossible. The additional cabins are already existing. The owners, as well as the potential buyers are willing to look at some of the cabins being removed, allowing some of them to stay as residential structures or accessory structures. He asked what the Board felt would be a reasonable request.

Johnson stated that removing two of the structures is reasonable. The Board could deny it all together and the next person could come in and turn this property into a resort and that might be a good thing too.

Grob stated that the lot does have some difficulties since there are two lakes on both sides of the property that have two different classifications and setback requirements. The size of the home and garage that are located is almost unbelievable. The requirements for a lot like this if the natural environment rules were applied would limit the applicant to one residential structure. That means that all five of the other cabins would be nonconforming. If the rules for a recreational lake were applied for this lot, the residential home and one guest cabin would be allowed. The most he would be comfortable with approving would be the variance for the home and one guest cabin.

Christenson stated that she agreed with Mr. Grob. If more than that were approved she questioned what kind of example the Board is setting for people in the County. This was originally approved but it was approved when it was a resort and it is now residential. She understood that the potential buyers have a large family and would be great for them all to have their own cabin but the home is huge and the lot isn't large enough to handle all of these structures.

Moe asked Buitenwerf if the application was amended to request that the brick home be approved or allowed to remain as is with one guest cabin and the other four structures could remain as accessory structures could an owner later on down the road apply for a conditional use permit and turn it into resort or residential planned unit development.

Buitenwerf stated unless a condition was specifically placed on the variance that would limit that use but other than that a landowner would have the right to go through the process. The County Board has the ability to approve or deny a conditional use permit.

Moe stated that the other alternative would be to instead of applying for a variance the owner could apply for a conditional use permit.

Krueger felt that the house was a large enough that if a variance was approved to allow the brick structure to remain as it, allow the decks to be built as well as keeping one cabin for a guest cabin is enough room to host a large family.

Johnson wondered if the cabins are made to be removed what will happen when four campers show up for the week of July 4th.

Grob stated that any campers can't be closer than 100 feet.

Krueger also stated that if they were campers or tents then at least they are removable and would be at the 100 foot setback.

Moe stated that the reality is that the new owners are responsible and are looking to use the property for their family. The goal is to clean up the mess that was inherited by the current

owner. The current owner is trying to right the wrong and figure out what the best give and take is.

Mr. Moe asked for a brief recess to discuss the option of amending the variance request.

The Board took a five minute recess.

Moe wished to amend the variance request. The amended request is allow the brick structure to remain as it currently is, allow the decks in Part 2 of the original request to be built, and one guest cabin. The guest cabin they would like to keep is the cabin to East. The guest cabin has a setback of 54 feet from the ordinary high water mark. The cabin adjacent to the guest cabin would remain as an accessory structure. The two in the middle will be completely removed from the property and the western most cabin would remain as an accessory structure. Their understanding of what an accessory structure is that there would be no bedrooms, plumbing fixtures or water to the structure. They would be used for storage.

Grob asked if there was a size requirement for accessory structures.

Buitenwerf stated there wasn't a size requirement.

Christenson commented that the cabin they are proposing as a guest cabin is over the allowed 700 square feet. The drawing shows 814 square feet.

Moe clarified that the dimension of the guest cabin would be 20' x 34'. The 814 square foot calculation is including the decks and overhangs.

Johnson moved to approve the amended variance request with the condition that the guest cabin septic system be connected to the main residential structure's system. It is not allowed to have be a holding tank.

Grob asked if there was heat and bedrooms in the accessory structures.

Moe answered that the cabins have two bedrooms in them but no heat. They are seasonal in nature.

Christenson asked if a condition needed to be added so that it is clear what needs to be removed from the cabins to turn them into accessory structures.

Grob felt that would be necessary if it were approved.

Krueger felt that maybe the current holding tank should be removed which would really shut it down as a residential structure.

Johnson answered that crushing and filling the tank would be just as effective.

Grob didn't see the value to wanting to keep the other two structures if all of the bedrooms, water supply and all plumbing fixtures were removed. It doesn't make sense.

Moe stated the value is in the need for more storage. If there was a large pole barn on the property then these structures wouldn't be needed.

Krueger pointed out an area on the lot where a storage building could be built.

Grob stated that he isn't in favor of allowing any of the other cabins to remain besides the guest cabin. One of the cabins is in the shore impact zone and the other is just out of it.

Krueger thought they would have requested in their amendment a proposed site for a storage building.

Grob stated that the structures could still be slept in regardless if they have water or not.

Christenson stated that the garage on site is bigger than some people's homes so there should be plenty of room for storage.

The motion did not receive a second.

Krueger called for another motion.

Moe once again asked for a couple minutes to discuss what the proposed buyers wanted to do based on an idea that came from the Board.

The Board called for a two minute recess.

Moe felt that in order to be accommodating to the Board's and his client's wishes, he amended the request as follows: the brick sided residential home would be allowed to remain "as is" and the three proposed deck additions to be constructed, the small cabin facing Big Wolf Lake furthest to the East will be allowed as a guest cabin, the three cabins facing Big Wolf Lake in the middle of the five cabins facing Big Wolf Lake will be removed from the property and the cabin furthest to the West of these five cabins facing Big Wolf Lake will remain as an accessory structure. They would also like to ask for approval to build a 30'x40' storage building to be built in line with the front of the brick structure. With this new request over 2,000 square feet of structure would be removed out of the shore impact zone.

Grob didn't understand why they needed all of that storage space.

Moe responded that it will be needed for the boats, snowmobiles, lawnmowers etc. and leaving space in the main attached garage to house their cars in the wintertime.

Krueger felt that this amended request was cleaning up the property quite a bit.

Johnson moved to approve the amended variance request with the following condition: the guest house must be connected to the main house sewer system.

Buitenwerf stated that he needed more information on where the pole barn would be located than stating it would be to the West and in line with the home.

Krueger felt putting a distance from the lake and road right-of-way would be more specific.

Grob was leaning more towards this compromise but didn't feel that this variance request should be cluttered up with the addition of another building. The prospective buyers stated that they wouldn't be building it right away. He would rather see the come back when they are ready to build the polebarn and see a concrete plan and setbacks for this structure. That way it will be

done in real time. They will have a chance to figure out if they really need that building as well as if it needs a variance to be built in the first place. Variances need to be as detailed as possible and without a plan it is difficult to know what the setbacks could be verses what they want them to be.

Moe stated that it was the Board's suggestion to take care of that at this time instead of recommending they come back with a new request which is why they are asking for this building to be allowed.

Christenson commented that sometimes prospective buyers need to look elsewhere for a property that will better fit their needs and get what they want.

Moe countered that the current owner is trying to clean up a mess and the prospective buyers have found a property that they like and wish to move forward with purchasing.

Christenson struggled with the fact that cabins are being removed but the request is to add a storage building that is close to the same square footage as what is being removed. She was struggling with t

Moe countered that the property would be under the 25% impervious surface. If this building is built it will be just under that figure so it would be the last structure that would be allowed on the property. Compared to the neighborhood, there is a sizable amount of green space on this property.

Krueger stated that the property has been like this for quite some time and this is the time to clean it up. He asked Mr. Johnson to restate his motion.

Johnson moved to approve the amended request (i.e. : the brick sided residential home would be allowed to remain "as is" and the three proposed deck additions to be constructed, the small cabin facing Big Wolf Lake furthest to the East will be allowed as a guest cabin, the three cabins facing Big Wolf Lake in the middle of the five cabins facing Big Wolf Lake will be removed from the property and the cabin furthest to the West of these five cabins facing Big Wolf Lake will remain as an accessory structure, a 30'x40' pole building would be allowed to be built in line with the brick structure) with the following conditions: 1. the guest cabin septic system must be tied in with the main home sewer, 2. all bedrooms, water and plumbing fixtures must be removed from the accessory structure, 3. All unused septic tanks must be removed or crushed and filled.

Krueger seconded the motion.

Buitenwerf addressed the Board stating that the public notice that went out did not mention a variance for an accessory structure at less than the required ordinary high water mark setback to Mud Lake so this request would need to be tabled to allow the office to properly send out an amended notice to the neighbors.

Moe discussed this with his clients and came to the conclusion that the polebarn would be able to be built at conforming setbacks and would be done with a permit at that time. He removed that language from the amended request.

The variance application request was amended to the following: the brick sided residential home would be allowed to remain "as is" and the three proposed deck additions to be constructed, the

small cabin facing Big Wolf Lake furthest to the East will be allowed as a guest cabin, the three cabins facing Big Wolf Lake in the middle of the five cabins facing Big Wolf Lake will be removed from the property and the cabin furthest to the West of these five cabins facing Big Wolf Lake will remain as an accessory structure.

Johnson moved to approve the amended request with the following conditions: 1. the furthest east of the five cabins facing Big Wolf Lake is allowed to be a guest cottage and its septic system must be tied in to the septic system servicing the large brick sided residential house, 2.the middle three of the five cabins facing Big Wolf Lake must be removed from the property, 3. the furthest west of the five cabins facing Big Wolf Lake is allowed to function as an accessory structure and all the plumbing fixtures within it must be removed, and 4. all unused septic tanks currently connected to the four west cabins of the five cabins facing Big Wolf Lake must be either removed or crushed and filled.

Krueger 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 (X)

   Yes. This will clean up a mess by removing cabins from the shore impact zone.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X)

   The property is large enough for the main living structure and a guest cabin. There is also only one door so decks are needed for safe egress.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X)

   The property is located between two lakes that have two different classifications and setbacks. There were five cabins sitting in the shore impact zone and a home that was overbuilt and now the density is being reduced back to conformance.

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

   It was created by a previous owner. The original structures also predate the Ordinance which is what triggered the original variance in the first place.

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X)

   There are other residential structures in the locality.

6. Does the stated practical difficulty involve more than economic considerations? Yes (X)

   Economics are not cited by the applicants as a difficulty.

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?

   Yes. The applicant inherited the illegal structure and coming before the Board before doing any more work is acting in good faith.

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

   They are in the process of doing it now.

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. They were the original party that loaned the previous owner the money to purchase the property.

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

    Yes but the current applicant wasn't the owner of the property at the time.

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

    No. Not that large.

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 County is benefiting by getting three cabins out of the shore impact zone.

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 no alternative with the brick structure. it is permanent, and large and cutting it down to the permitted size isn't practical.

The motion carried unanimously.

Variance Application 21-V-14 by H. Craig and Jinx Stanwick: Lots 18, 19, and 20, Block 4, Highland Park, Section 9, Township 140, Range 33, Nevis Township on Lake Belletaine. Parcel: 21.40.03200. Applicants are requesting a variance from Sections 502.2 and 903.3 of the Shoreland Management Ordinance for less than the required 100 foot ordinary high water mark and 10 foot side lot line setbacks for a proposed driveway modification.

Jinx Stanwick was in attendance and presented the application. Currently a stormwater runoff problem that they have been trying to resolve. A survey was completed which showed that a corner of their driveway is not on their property. The request is to move the portion of the driveway that is not on their property and allow that portion of the driveway to be located less than the 10 feet setback from the property line. The second aspect of the request is to allow a turn-around area to be located at less than the 100 foot ordinary high water mark setback. It will be unsafe to back out of the driveway since there is a hill and the visibility would be very limited.

Grob asked if the intent is to have the driveway right next to the property line or what the setback would be.

Jinx stated that the request is to have the driveway right on the property line with a zero foot setback. The neighbor wouldn't grant an easement for them to utilize the existing driveway but were okay with having a zero foot setback as long as the whole driveway would be located on the correct parcel.

Johnson commented that he agreed the turnaround is necessary for safety reasons. it would be much safer to come out facing forward instead of having to back out on to the busy road.

Grob stated that the request for the turnaround would be no closer than 90 feet

Jinx stated that there is a little bit of estimate. She thought that there were areas that met the 100 foot setback and then one small area that would be within 80-90 feet from the ordinary high water mark setback.

Johnson stated that the staff report states 88 feet for the lake.

Grob agreed with Johnson that the turnaround is needed and felt that a little leeway should be given so that the applicant wouldn't need to come back before the Board if it needs to go a little closer than the mentioned 88 feet.

No public comment was made.

Grob moved to approve the variance allowing the driveway to be located right on the property line at a zero foot side lot line setback and the proposed turn-around area to be located at no less than 85 feet from the ordinary high water mark and adopt the findings of fact as presented in the July 2014 Planning Commission / Board of Adjustment 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? Yes (X)

   <u>The driveway will be located on the Stanwick property as evidenced by a survey having been done to establish the property line location and the intent of the setback is to provide a buffer to ensure the driveway is wholly located on the landowner's property and does not infringe on a neighboring property. The driveway provides access to a nonconforming structure that predates the ordinance so the landowners are limited on where the driveway can be placed as it needs to connect to the house that does not meet the ordinary high water mark setback. Topography of the lot also plays a part in where the turn-around can be located as the lot slopes toward the lake and placing a turn-around on the uphill side of the driveway would be more difficult, require greater excavation, and thus create more of a stormwater management issue than the proposed location will create.</u>

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X)

Having one's driveway located entirely on one's property is a reasonable use as is having a turn-around on the driveway to allow vehicles to safely access the township road facing traffic rather than backing into traffic up a steep slope.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X)

The existing driveway crosses onto the neighboring lot and the property consists of a steep slope that causes stormwater management issues. The house to which the driveway provides access is a legal nonconformity that predates the ordinance and does not meet the ordinary high water mark setback. The topography and house location and design provide unique circumstances on the property.

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

The topography issue was created by Mother Nature and the house and driveway were created prior to the shoreland ordinance taking effect and by someone other than the landowner.

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X)

The locality consists of single family seasonal and year-round residential structures for which driveways are a necessity and frequent accessory item. Moving part of this driveway to the east less than 50' and adding a turn-around feature that itself is a common attribute of driveways will not change the locality's character.

6. Does the stated practical difficulty involve more than economic considerations? Yes (X)

Economics are not cited by the applicants as a difficulty. The difficulty is caused by the lot's topography and the location of the legal nonconforming house.

The motion carried unanimously.

Miscellaneous:

There was no miscellaneous items to discuss.

Communications:

There were no communications.

Adjournment:

Grob moved to adjourn.

Johnson seconded the motion.

The meeting was adjourned at 10:01 pm.

Minutes respectfully submitted by:
Maria Shepherd
Recording Secretary

August 2014 Planning Commission/Board of Adjustment Meeting Minutes

Members present were: Charlene Christenson, Ken Grob, and Tom Krueger. Tim Johnson was absent. Commissioner Greg Larson was also absent as there was no Planning Commission business. Also present was Environmental Services Officer Eric Buitenwerf.

Krueger called the meeting to order at 6:00 p.m. and explained the meeting procedure to the audience.

Planning Commission:

Approval of Minutes: July 28, 2014 meeting

Motion by Grob, second by Christenson to approve the July 28, 2014 meeting minutes with no edits. The motion carried 3-0.

Old Business: None.

New Business: None.

Board of Adjustment:

Approval of Minutes: July 28, 2014 meeting

Motion by Grob, second by Christenson to approve the July 28, 2014 meeting minutes with no edits. The motion carried 3-0.

Old Business:

Variance Application 12-V-14 by David and Sandra Wingert: Lot 3, Belletaine Westview Beach, Section 13, Township 140, Range 34, Nevis Township on Lake Belletaine. Parcel: 21.52.00300. Applicants are requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance for a proposed upper, above ground level main floor addition to an existing nonconforming residential structure and a lakeside deck.

The application was not acted upon because the Wingerts submitted an indefinite time period MS 15.99 (60-Day Rule) voluntary extension form for it and requested that the application be heard again when the vacant position on the Board of Adjustment is filled.

Variance Application 15-V-14 by Jason and Dawn Danford: Lots 4-7, Block A, Minneago Beach, Section 1, Township 140, Range 33, Nevis Township on 8th Crow Wing Lake. Parcel: 21.45.00500. Applicants are requesting a variance from Sections 502.2, 503, and 902 of the Shoreland Management Ordinance for a proposed detached garage to be located at less than the required 100 foot ordinary high water mark setback and in the bluff impact zone, and to move more than the permittable volume of material in the bluff impact zone.

Jeff Mastley, Heartland Contractors, presented the application for the Danfords. He explained that the application has been amended to propose that the detached garage be moved closer lakeward toward the cabin – per the Board's suggestion at last month's meeting.

Christenson asked Mastley if he asked the Danfords if they would be willing to move the proposed garage closer to the cabin.

Mastley said the garage could be moved closer to the lake, but he did not see "why". Mastley said he did not ask the clients that question.

Grob said moving the garage closer to the cabin would gain 9' closer to the lake and reduce the amount of material to be removed from the bluff.

Mastley said it was feasible to move the garage closer to the cabin from a construction standpoint.

Grob said the only logical place for the garage is next to the house vs. the alternate locations that were considered. He favors moving the garage closer to the house so that its lakeside wall is aligned with the existing timber retaining wall located behind the cabin that would put the detached garage's ordinary high water mark setback at 86'.

No public comment on the application was made when solicited.

Christenson moved to deny the request and Grob seconded the motion.

Findings of Fact:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes ( ) No (X)

   Why or why not? There is too much disruption to the hill with the movement of material - over 330 cubic yards.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes ( ) No (X)

   Why or why not? He currently has adequate use of the property. He may not have a garage, but he has a cabin and a turn-around area.

   Christenson and Grob voted in favor of this answer. Krueger voted against it.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X) No ( )

   Why or why not? There is a bluff there that covers roughly the rear two-thirds of the property.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No ( )

   Why or why not? The bluff.

5. Will the issuance of the variance maintain the essential character of the locality? Yes ( ) No (X)

   Why or why not? Because there will be too much movement of earth in the slope.

6. Does the stated practical difficulty involve more than economic considerations? Yes (X) No ( )

   Why or why not? Economic considerations were not stated.

The motion carried unanimously.

Grob moved to approve an 86' OHW setback for the proposed detached garage so that its lakeside wall would be located where the existing timber retaining wall is located on the north side of the cabin and adopt the staff report findings of fact. Christenson seconded the motion.

Findings of Fact

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes (X) No ( )

   Why or why not? Allowing greater relief from the OHW setback in order to avoid impacting the toe of the bluff is in keeping with the ordinance intent. The area for the garage is located behind an existing cabin so the aesthetic impact to the lake will be minimal. Also, the area right next to/behind the cabin is already altered (e.g. lawn) so there isn't any natural area that will be disturbed. Instead, the natural vegetation on the bluff will be able to be maintained.

2. Without the variance, is the owner deprived of a reasonable use of the property?
   Yes (X) No ( )

   Why or why not? There currently is no garage on the property and having a garage for vehicles and storage (especially during the winter) is a reasonable use of this property.

3. Is the stated practical difficulty due to circumstances unique to this property?
   Yes (X) No ( )

   Why or why not? There is a bluff that occupies roughly the rear 2/3 of the property and whose toe is located right at the 100' OHW setback such that construction of a structure on the property of this size would require a variance from the 100' OHW setback, bluff impact zone setback, or both setbacks. We are choosing to preserve the bluff and provide a greater variance from the OHW setback than what was originally requested.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?
   Yes (X) No ( )

   Why or why not? As mentioned in the answers to question 3 above, the difficulty on this property is the fact that a bluff occupies the rear 2/3 of the lot and its toe begins at roughly the 100' OHW setback – thus resulting in the need for a variance to construct any reasonably sized structure on the lot.

5. Will the issuance of the variance maintain the essential character of the locality?
   Yes (X) No ( )

   Why or why not? The locality consists of single family seasonal and year-round residential structures that have attached or detached garages so the proposed detached garage will not harm the locality's character.

6. Does the stated practical difficulty involve more than economic considerations?
   Yes (X) No ( )

   Why or why not? Economics are not cited by the applicants as a difficulty. The difficulty is the fact that a bluff occupies all of the area on the lot that meets the structure setbacks.

The motion passed unanimously.

New Business:

Variance Application 22-V-14 by Melvin and Candace Gulsvig: Parts of Lot 17, Piney Woods, and Government Lot 4, Section 9, Township 140, Range 35, Todd Township on Portage Lake. Parcels: 27.49.01700 and 27.09.00510. Applicants are requesting a variance from Section 707.1 of the Shoreland Management Ordinance to allow an unimproved lot that does not comply with the required 100 foot minimum lot width requirement to be developed as a building site for a residential dwelling unit.

Candy Gulsvig presented the application. She said the lot is just under 95' in width and they are asking to have the lot be allowed to be built upon.

Grob asked Gulsvig to verify that it originally was an 80' width and through changes, you tried to add as much property to the lot as you could without making the adjoining lot nonconforming so there is no additional land that is able to be acquired to enlarge the lot and that there is room for two drainfield sites on the lot and that these locations will not interfere with any wells on adjacent lots. Gulsvig said these things are correct.

No public comment was made when it was solicited.

Grob and Krueger discussed if the Board ought to specify where the well must be placed on the lot. When asked, Buitenwerf said he did not feel it was necessary to specify the well location because the well and SSTS locations on the adjacent lot to the east and the ordinance setback requirements will dictate where a well and SSTS need to be placed – with the well being located toward the lakeside portion of the lot and the SSTS to the rear of the lot as it must comply with a 150' ordinary high water mark setback.

Grob moved to approve the application with the condition that any residence be constructed in the location and of the size shown in the application and adopt the staff report findings of fact. Christenson seconded the motion.

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes (X) No ( )

   Why or why not? The application shows that the lot can be developed with a residential structure and two drainfield sites that meet all setback requirements – which is the primary intent of the ordinance in the criteria it contains for developing lots created during this time. The lot will also comply with the 25% impervious surface area requirement.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X) No ( )

   Why or why not? The proposed house and standard septic system are reasonable uses of the property given the fact that both are able to meet all setback requirements in the ordinance.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X) No ( )

   Why or why not? The lot was created in 1964 before the shoreland ordinance was established. It is the easternmost lot in the plat of Piney Woods. Thus, the property to the west is also a similarly sized nonconforming lot. The property to the east already conveyed a ~19' wide strip of land to this lot in 2009 and is not able to offer any additional land or it would become nonconforming itself.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No ( )

   Why or why not? The applicant did not own the property at the time the lot was created. The lot was created seven years before the shoreland ordinance was first enacted and minimum lot size standards were established for riparian lots.

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X) No ( )

   Why or why not? The locality consists of single family seasonal and year-round residential structures so the proposed development of this lot with a single family residential structure and accompanying septic system will not change the essential character, but rather maintain it.

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

Yes (X) No ( )

Why or why not? Economics are not cited by the applicant as a difficulty. The difficulty is the fact that the lot was created in 1964 and does not comply with the minimum lot size requirements.

The motion carried unanimously.

Variance Application 23-V-14 by Ken Schiller: The North 215 feet of the NW 1/4 of the SE 1/4, Section 2, Township 140, Range 32, White Oak Township on Island Lake. Parcel: 28.02.01300. Applicant is requesting a variance from Sections 501.1 and 506 of the Shoreland Management Ordinance for a proposed guest cottage that will exceed the allowed 700 square feet footprint on a lot that does not comply with the required 300 feet minimum width.

Mr. Schiller presented his application and stated his mailing address is 5135 Goldenrod Lane, Plymouth, MN.

Schiller said he is looking to repurpose the space above his garage. He would like to use it as a guest cottage. He has a 24' x 36' space above the garage which is 764 sq. ft. He said the square footage exceeds the 700 sq. ft. allowed for a guest cottage and the lot does not comply with the 300' minimum width required to have a guest cottage. He said he has 215' of lakeshore and 11 acres. The garage is still 120' from the property to the rear (non-lakeside). The septic system is sized for a four bedroom home and the existing residential cabin has two bedrooms in it. There is space in the proposed guest cottage for two bedrooms. He currently has no plans for placing a bathroom or water in the guest cottage because there are no plans to make it winter ready.

Grob asked to confirm if the garage is legal per a 2009 permit. He cited the lot's size and dimensions and the structures' setbacks from the lake. The only reasons for needing the variance are the lot width and the current size of the garage exceeding the 700 sq. ft. footprint threshold by 68 sq. ft.

No public comment was made when solicited.

Grob moved to approve the application with a condition that if the proposed guest cottage is ever provided with water/sewer service, it must be connected to the existing SSTS servicing the cabin and adopt the staff report FOF. Christenson seconded the motion.

Findings of Fact

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes (X) No ( )

   Why or why not? The lot exceeds the minimum lot size requirement by ~40,000 sq. ft. and the RLSA requirement by ~17,400 sq. ft. and the structure is 660' from the ordinary high water mark. The guest cottage is only 68 sq. ft. over the 700 sq. ft. threshold and the extra lot size and RLSA offsets the lot's being 75' shy of the required 300' minimum lot width for a guest cottage. The guest cottage will be allowed to add water/sewer only if it can be tied into the existing SSTS and that system can be expanded as needed.

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

   Yes (X) No ( )

   Why or why not? The property exceeds the minimum lot size and residential lot suitable area standards such that having a guest cottage on this lot is reasonable for its size. The cottage is only 68 sq. ft. over the 700 sq. ft. threshold.

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

   Yes (X) No ( )

Why or why not? The lot is large, but not wide. It exceeds the minimum lot size and RLSA standards, but is ~85' shy of the required lot width. The lot size offsets the lack of width.

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

Yes (X) No ( )

Why or why not? The difficulty is the lot's width and the lot was created by someone other than the previous owner. As to the detached garage's size, while the structure was constructed by the applicant, it would be overbearing to say that a landowner cannot change his/her mind concerning plans for how the property is to be used. The owner may not have envisioned the idea of using the space as a guest cottage when the structure was constructed in 2009.

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

Yes (X) No ( )

Why or why not? The area consists of single family seasonal and year-round residential structures with few such structures on this lake as it has a low population density. The adjacent property to the north of this lot has a similar amount of structures on it that appear to be similarly sized to the structures on this lot.

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

Yes (X) No ( )

Why or why not? Economics are not cited by the applicant as the practical difficulty. As stated above in answers to previous questions, the stated difficulty involves the lot width and the structure's having been built a hare above the 700 sq. ft. threshold in 2009.

The motion carried unanimously.

Variance Application 24-V-14 by Vernon Edwards Estate: The North 400 feet of Government Lot 3, Section 3, Township 145, Range 34, Rockwood Township on Arrow Lake. Parcel: 22.03.00300. Part 1: Applicant is requesting an after-the-fact variance from Section 502.1 of the Shoreland Management Ordinance (SMO) for an accessory structure to be less than the required 150 feet ordinary high water mark (OHW) setback. Part 2: Applicant is requesting a variance from Sections 502.1 and 704 of the SMO for proposed additions to a nonconforming residential structure located in the shore impact zone. Part 3: Applicant is requesting a variance from Sections 502.1 and 903.3 of the SMO for proposed expansion of an existing driveway in an area that does not meet the required 150 foot OHW setback.

Robyn Edwards, whose mailing address is 1663 Fern Lake Road SW, Bemidji, presented the application and summarized her request. Her parents built the house roughly 60 years ago. They are hoping to do some remodeling additions to the exterior of the house and extend the driveway turnaround to provide access for Mr. Edwards who is a disabled American vet. They are also asking to keep the gazebo in the spot that it is currently located.

Krueger asked about Part 3 and what the practical difficulty is for this part.

Mrs. Edwards said her husband is a disabled vet and the proposed extension is to allow him easy access to the house. She also said the turn-around is difficult to make as it stands currently.

Krueger asked how a 4' wide sidewalk in lieu of the turn-around extension could not meet that need.

Mrs. Edwards said the other difficulty with the driveway is that it is not large enough for a turn-around. When backing up, it is very difficult to make the turn given the turn-around's current size.

Christenson said the gazebo could be moved straight back from the lake to meet the ordinary high water mark (OHW) setback if a single, small tree was removed so that the view of the lake could be maintained. She asked Edwards if Edwards had considered that.

Edwards said that she didn't feel that would work because that is where they are planning to place a pool.

Grob said he felt the gazebo should be moved back to a conforming setback. He was supportive of Part 2 of the application and said the turn-around worked fine for the County minivan during the lot viewal. He also said a 4' wide sidewalk could be installed without need of a permit to provide access for Mr. Edwards from the paved driveway to the house entrance.

Krueger said the turnaround worked fine also during the lot viewal and concurred with Grob on Part 1.

No public comment was offered when solicited.

Grob said the SSTS is failing so a condition should be placed on Part 2 that the SSTS be upgraded before permits are issued for the house.

Part 1
Christenson moved to deny Part 1 because there is ample room on the property to move the gazebo and adopt the staff report findings of fact. Krueger seconded the motion.

Findings of Fact

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes ( ) No (X)

   Why or why not? The structure is ~13' x 13' in footprint at located at a 45' 2" OHW setback. The lot meets the minimum residential lot suitable area requirement of the shoreland ordinance and therefore has ample room where this structure could be moved to a conforming setback. Allowing this structure to remain in the shore impact zone when these conditions exist on the property would not be in harmony with the rule and ordinance intent as the intent is to look for and employ a permittable alternative whenever it exists – as is the case here.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes ( ) No (X)

   Why or why not? The property has five other existing legal nonconforming structures on it – ranging from a residence to storage structures to garages. A proposed swimming pool is also shown on the application sketch. The property can also be used recreationally to access the lake and enjoy the outdoors. These are all reasonable uses of the property and the gazebo in question can be moved to a conforming location on the property, be permitted, and thus still be used so the applicant is not being deprived of the requested use.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes ( ) No (X)

   Why or why not? The application does not make any statement as to what the applicant is claiming to be the practical difficulty. There is over 40,000 sq. ft. of residential lot suitable area on the lot where this structure could be placed by permit and meet all setback requirements.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No ( )

   Why or why not? The structure was illegally constructed by a previous landowner.

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

Yes (X) No ( )

Why or why not? This is a small natural environment classified lake that only has three residences on it (including this property.) A gazebo located in the shore impact zone will not alter the area's essential character of rural residential.

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

Yes (X) No ( )

Why or why not? Economics are not cited by the applicants as a difficulty. The cited difficulty involves the applicant's spouse being disabled and the location of the gazebo relative to the residence being said to be easier for the spouse to reach and utilize the gazebo.

7. Why did the applicant fail to obtain a variance/or comply with the applicable requirements before commencing work? Did the applicant act in good faith?

Why or Why not? The applicant inherited the illegal structure when she recently acquired the property as the structure was constructed by a previous landowner.

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

Why or Why not? The applicant did not construct the structure as stated in the answer to question 7. Rather, the applicant inherited the structure when it acquired the property this year. The applicant has shown good faith and cooperated in taking steps to bring the structure into compliance by applying for an after-the-fact variance.

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

Not that we are aware of. The applicant did not construct the structure and submitted this variance application shortly after taking ownership of the property in an attempt to bring the structure into compliance.

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

No. The applicant did not construct the structure. The previous owner built it. The applicant obtained the property by being a daughter of the previous owners.

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

As previously stated, the applicant did not construct the structure. The structure was already on the property when the current landowner acquired the property. The structure was constructed by a previous landowner.

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

No. Neither of the other two residentially developed properties on the lake have a gazebo or similar type structure located in the shore impact zone like this structure.

13. Would the minimum benefits to the county appear to be far outweighed by the detriment the applicant would suffer if forced to remove the structure? Why or why not?

No. The structure is 13' x 13' in footprint and is able to be moved elsewhere on the property relatively easily. Also, there is over 40,000 sq. ft. of residential lot suitable area on the lot where this structure could be placed by permit and meet all setback requirements.

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

Yes. The burden of proof is on the landowners to show they have a practical difficulty in complying with the ordinance requirement. The landowners have not submitted anything in the application that shows a practical difficulty. A variance ought not to be granted when a permittable solution exists for the given variance request and a permittable option exists for this structure. The cost of moving the structure is minimal and the structure itself is of a size and design that is conducive to moving.

The motion carried unanimously.

Part 2
Christenson moved to approve Part 2 with a condition that the septic system must be upgraded before any building permit is issued and adopt the staff report findings of fact. Grob seconded the motion.

Findings of Fact

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes (X) No ( )

   Why or why not? Two of the three additions are being made in space already occupied by the structure – either by roof or fireplace. The third addition is only squaring off a 4' x 4' corner of the house. The structure predates the ordinance.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X) No ( )

   Why or why not? Providing a covered stairway to the basement via the 4' x 4' corner addition, extending the roofline over a proposed basement egress window where the fireplace will be removed, and enclosing the existing covered porch on the west side of the house are reasonable requests.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X) No ( )

   Why or why not? The structure was constructed in the shore impact zone before the shoreland ordinance was enacted.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No ( )

   Why or why not? The structure was constructed before the shoreland ordinance was enacted in 1971. The current owner only acquired the property this year.

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X) No ( )

   Why or why not? The area is very rural, residential in nature as this house is only one of three on the lake. These three small additions (two of which will not expand the roofline any) will not alter the area's rural residential character.

6. Does the stated practical difficulty involve more than economic considerations? Yes (X) No ( )

   Why or why not? Economics are not cited by the applicants as the practical difficulty. As stated above in answers to previous questions, the stated difficulty involves the structure's being constructed by a previous owner at a nonconforming OHW setback.

The motion carried unanimously.

Part 3
Christenson asked Edwards if her husband is wheelchair bound or able to walk.

Edwards said he is able to walk.

Krueger moved to deny Part 3 of the application.

Grob asked for Buitenwerf's thoughts on Part 3 after having viewed the property.

Buitenwerf said that after driving the vehicle during the lot viewal and using the turn-around, he concurred with Grob's and Krueger's comments concerning Part 3 of the application.

Grob seconded the motion.

Findings of Fact

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes ( ) No (X)

   Why or why not? It is in the shore impact zone and it is not needed. The applicant has not established a practical difficulty for extending the driveway further.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes ( ) No (X)

   Why or why not? For the same reasons as provided in the answer to Question 1 above.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes ( ) No (X)

   Why or why not? The applicant does not indicate any practical difficulty and there is ample turn-around and an alternative for access.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes ( ) No (X)

   Why or why not? The driveway was constructed by a previous landowner.

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X) No ( )

   Why or why not? It would not alter the locality's character.

6. Does the stated practical difficulty involve more than economic considerations? Yes (X) No ( )

   Why or why not? No economic reasons were stated and a sidewalk would be regarded as ample access.

The motion carried unanimously.

Edwards asked if the ordinance allowed the gazebo to be left in its location temporarily up to 180 days.

Buitenwerf clarified that the temporary structure ordinance language requires temporary structures to comply with all setback requirements so the gazebo will need to be moved and if placed in a permanent conforming location, it will require a building permit.

Variance Application 25-V-14 by Timothy and Theresa Duncan: Part of Government Lot 4, Section 4, Township 145, Range 32, Farden Township on Grace Lake. Parcel: 07.04.03100. Applicants are requesting a variance from Sections 502.2 and 704.7 of the Shoreland Management Ordinance for proposed additions to a legal nonconforming residential structure originally constructed per variance at less than the 100 foot ordinary high water mark setback.

Tim Duncan, whose mailing address is 51399 Wildview Lane, Bemidji, MN, presented and summarized their request. They want to make two additions to the existing residential structure to make it suitable for year-round living. One addition is to the rear to add a foyer and laundry with an attached garage (no garage present currently) and the second addition is on the lakeside of the cabin to expand the living/dining area.

Krueger asked about the SSTS that is failing.

Duncan explained that the mound can be reconstructed or placed on an alternate location toward the rear of the lot.

Grob asked Buitenwerf about the existing variance of record and wanted to verify that it would allow a new structure of any size to be built at that setback by permit. Buitenwerf confirmed that is the case.
Grob said the proposal will not impact the lake in any way because of the two ice ridges that separate the cabin from the shoreline. Christenson concurred with Grob's comments – acknowledging that the structure could be torn down and a new structure be built at the closer OHW setback that was authorized in the prior variance.

There was no public comment made when it was solicited.

Grob moved to approve the application as presented and adopt the staff report findings of fact. Christenson seconded the motion.

Findings of Fact

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes (X) No ( )

   Why or why not? A 1986 variance allowed a residence to be constructed at a 65' OHW setback. The house was built at an 80' OHW setback. Because of a regulation found in the County shoreland ordinance and not in the State Rules, a variance is required in order to modify any structure previously constructed or altered by variance. If the existing house was removed, a new house looking exactly like the one being proposed could be built by permit per the 1986 variance.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X) No ( )

   Why or why not? The existing house footprint is ~ 830 sq. ft. – which is small by today's standards – and it lacks a garage. The proposed additions that will provide an 8' x 24' lakeside porch, 16' x 24' triangular laundry, and a 24' x 24' attached garage are reasonable uses that are also reasonably scaled for the lot size.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X) No ( )

   Why or why not? As described in the answer to question 1 above, the house was constructed per a 1986 variance. The variance allowed the house to be built at a 65' OHW setback, but the house was constructed at an 80' OHW setback. Section 704.7 of the shoreland ordinance requires that a structured constructed or modified by variance obtain a variance for any subsequent alterations. While this structure could be removed from the property and the proposed structure could then be built by permit per the 1986 variance, the technicality of the Section 704.7 language and how it applies to this structure is a unique circumstance warranting granting the variance.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No ( )

Why or why not? The difficulty is the existence of the Section 704.7 ordinance language that requires the proposed additions to obtain variance approval even though the existing structure could be removed and the proposed structure built in its place by building permit per the 1986 variance.

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X) No ( )

Why or why not? The area consists of single family seasonal and year-round residential structures similar to the house on this lot. Many riparian residences have attached garages and lakeside porches such as what are proposed for this structure. Thus, the proposed additions will not alter the area's character any. Many of the other lots in the neighborhood are smaller than this lot and have a greater square footage of structure footprint on them than what is proposed with this lot.

6. Does the stated practical difficulty involve more than economic considerations? Yes (X) No ( )

Why or why not? Economics are not cited by the applicants as the practical difficulty. As stated above in answers to previous questions, the stated difficulty involves the structure's being constructed at greater than the 1986 variance allowed 65' OHW setback and Section 704.7 of the shoreland ordinance requiring a variance for any modification to a structure previously constructed/altered by a variance even though a new replacement structure could be built by permit using these proposed plans per the 1986 variance.

The motion passed unanimously.

Variance Application 26-V-14 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. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed platform that will not comply with the required 100 foot ordinary high water mark setback.

Gary Spear, whose mailing address is 15029 Partridge Street NW, Andover, MN, and Jeff Spear presented their request. They explained that they have moved the proposed platform back from the lake and reduced its size in comparison to the variance request they made last year. They are proposing 171 sq. ft. of platform that would extend into the 100' OHW setback and to reduce the amount of impervious surface area currently consisting of class 5 gravel by converting this area to lawn. They said they did not utilize the full 400 sq. ft. allowed for the existing fire pit and would like to propose that the 100 sq. ft. not used on it could be applied toward the proposed platform area. Jeff proposed to create a rain garden, say 100 sq. ft., in which to direct the stormwater from this platform and the detached garage in front of which the platform is proposed to be placed.

Krueger asked Jeff what the practical difficulty is?

Jeff said the difficulty is the small kitchen space in the cabin and their large family size.

Krueger asked why the platform couldn't be moved to either side of the proposed detached garage and why the ample room in front of the proposed detached garage that is behind the 100' OHW setback is not sufficient.

Jeff said that alternative locations do not afford a view of the lake like this location does. He said the cooking space will not work on the south side of the proposed platform because it would be in the walking path from the cabin to the garage.

Christenson said the property was nicely kept. She has two concerns. The neighbors-Mehlhops-submitted comments that the fire pit ring causes stormwater runoff issues for their lot. Christenson proposed a 15' deep

shoreline “no mow zone” buffer as an alternative to the proposed raingarden. Jeff said that is the only level area present where games (such as a bean bag toss) could be played. He said there already is a berm along the shore that keeps any stormwater runoff from entering the lake.

Grob said there already is a nearshore recreation area with a swing set and hammock, a 300 sq. ft. fire pit 30’ from the lake, a manicured lawn, and a lakeside deck on the cabin that is in the shore impact zone (SIZ). He sees there is plenty of existing recreational area on the lot in the SIZ and now they want to create more recreational area (~3-400 sq. ft.) and it is overdoing it in his opinion. He feels there is room to either side of the proposed detached garage where the platform could be placed and not encroach on the 100’ OHW setback. He proposed that the detached garage could be scaled back to accommodate a platform in front of it that could then meet the 100’ OHW setback. He said the applicants needed to compromise in some way to meet the ordinance’s intent of complying with the 100’ OHW setback.

Jeff asked to use the fire pit 100 sq. ft. area and apply it toward this platform instead of increase the size of the fire pit platform by 100 sq. ft. which they could do by permit.

Grob was not receptive to the proposal.

No public comment was made when solicited.

Christenson said this is the second time the applicants have presented this request and she was looking for them to propose more of a compromise. She said they declined the idea of a shoreline buffer. They are trying to do too much on the lot given its size and suggested that the lot might be too small for their family and “wants” now.

Discussion ensued on possible compromises. Jeff proposed foregoing two of the platform encroachments into the 100’ OHW setback in exchange for being able to keep the extension on the north side of the platform where the pizza oven is shown on the site plan sketch.

Christenson asked Buitenwerf how to handle the Mehlhop’s stormwater concerns. Buitenwerf said that if the Board felt there was an issue with stormwater runoff from the Spear lot onto the Mehlhop lot after viewing the property, then the Board should address it. If it is not an issue, then move on. Grob did not feel the fire pit is causing any stormwater problem and that if any issue exists at all, it is due to the area’s topography.

Grob moved to deny the application and adopt the staff report findings of fact. Krueger seconded the motion.

Findings of Fact

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes ( ) No (X)

   Why or why not? There is room on the lot for the proposed platform to be located to the south or north of the detached garage or on the lakeside of the proposed garage behind the 100’ OHW setback and meet all setback requirements. There is 9’ between the 100’ OHW setback and NE corner of the garage and 16’ between the 100’ OHW setback and SE corner of the garage according to the application site plan sketch.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes ( ) No (X)

   Why or why not? There is room to move the proposed platform to the south of the detached garage and construct it by permit or scale back the size of the platform and keep it on the lakeside of the garage behind the 100’ OHW setback 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, detached 314 sq. ft. fire ring platform, and a detached garage which are all part of an existing reasonable residential use.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes ( ) No (X)

Why or why not? As mentioned in the answers to questions 1 and 2 above, there is room to the south, north, and east of the proposed detached garage (behind the 100' OHW setback) where a very reasonably sized platform could be constructed by permit. The application provides no evidence of a practical difficulty due to unique circumstances on the property. The detached garage has not yet been constructed and it could be reduced in size as well to accommodate a platform behind the 100' OHW setback.

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

Yes ( ) No (X)

Why or why not? The difficulty is created by the landowner's desire to place a particularly sized platform on the lakeside exterior of the detached garage instead of to the south or north of the garage or lakeside and scaled back to comply with the 100' OHW setback where it could be installed by permit.

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

Yes (X) No ( )

Why or why not? 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 (X) No ( )

Why or why not? The application does not cite economics as a difficulty. No practical difficulty is presented in the application.

The motion carried unanimously.

Variance Application 27-V-14 by Todd and Kristin Kittleson: Outlots A and B, Liberty Ridge, Section 12, Township 140, Range 33, Nevis Township on 8th Crow Wing Lake. Parcels: 21.69.00700 and 21.69.00800. Part 1: Applicants are requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance (SMO) for proposed additions to a rental unit located in the shore impact zone. Part 2: Applicants are requesting a variance from Section 902 of the SMO to excavate more than the permittable volume of earthen material in a steep slope.

Todd Kittleson, whose mailing address is 20522 269th Ave., Nevis, MN, presented the application and summarized the request for the Board. They are asking for a 50% addition to a cabin that is 374 sq. ft. in footprint and 35' from the water and to remove more than the allowable material in a steep slope to create a parking area. The cabin will remain a two bedroom cabin with a four person maximum occupancy.

Christenson said it is reasonable given the cabin's size to add onto it.

Krueger said the property is well under the allowed rental unit density.

Grob expressed concerns about the property possibly being converted to a residential planned unit development in the future. He asked Todd if he had given thought to tearing down the cabin and building a larger, more rentable unit elsewhere at a conforming setback as there is ample space on the property to do so.

Todd said he has not considered tearing down the cabin and that he does not need a bigger cabin with more bedrooms. What he needs is a cabin near the shore on level ground for some of his older clients to use for easy access to the lake as they cannot walk 100' to the lake.

Todd said Minnesota Department of Health (MDH) requirements for bedrooms are 120 sq. ft. each. He asked if he could amend the request to include an addition to the rear of the cabin as well for purposes of complying with

MDH requirements because the proposed additions will not provide enough room to comply with this MDH requirement.

Grob asked if the bedrooms comply with MDH requirements. Todd said they do not.

Christenson asked if Todd meant that the cabin bedrooms must be enlarged if a handicap access ramp was placed on the cabin. Todd said the addition of a ramp would not require the bedrooms to be enlarged.

Grob said the application should be tabled if Todd is now asking to enlarge the cabin size to accommodate MDH requirements. The Board discussed whether to table the application to allow Todd to amend the application or not. Consensus was to table the application for a month to allow time for an amended application to be submitted for review and a second lot viewal to be conducted to view the property in light of the proposed amendment.

No public comment was offered when solicited.

Grob moved to table the request to allow the applicant time to submit a new drawing of the proposal and allow the Board an opportunity to view the property again. Christenson seconded the motion that carried unanimously.

The meeting was recessed for five minutes to allow a restroom break.

Variance Application 28-V-14 by Louis E. Shimanek Estate: Part of Government Lot 8, Section 17, and Part of Government Lot 1, Section 20, Township 140, Range 33, Nevis Township on Lake Belletaine. Parcels: 21.17.02700, and 21.20.00700. Applicant is requesting a variance from Sections 501.2, 1001, 1003 and 1006 of the Shoreland Management Ordinance and Section 4, Subdivision A.1.a.3.b of the Subdivision Ordinance to create a riparian lot that does not comply with the minimum lot width at the ordinary high water mark structure setback or the minimum residential lot suitable area requirement.

Terry Knapek, who resides in Sauk Rapids, MN, presented the application. He said he is trying to complete what Mr. Shimanek started over twenty years ago. Apparently, Mr. Shimanek never recorded deeds to effect a subdivision of the property for which he had survey work done. Knapek is trying to clean up Mr. Shimanek's estate.

Knapek said the residential lot suitable area (RLSA) is only around 280 sq. ft. below the minimum standard.

Knapek said he is just trying to complete what Louis ought to have done 20+ years ago.

Krueger asked about driveway access to proposed Parcel B. Knapek said he expects it will have a separate driveway.

Grob felt the requested deviations from the ordinance were minimal and reasonable.

Knapek said Shimanek's placement of the house on Parcel A created the problem because it was placed in the center of the two proposed lots.

No public comment was offered when solicited.

Christenson moved to approve the application as stated and adopt the staff report findings of fact. Grob seconded the motion.

Findings of Fact

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes (X) No ( )

   Why or why not? Proposed Parcel B is only 277 sq. ft. shy of the required RLSA and ~3' shy of the required 150' lot width at the 100' OHW structure setback. Both these requirements are Hubbard County regulations that are more restrictive than the State rule. The intent behind the regulations is able to be met

by there being adequate room to site a residential structure and two drainfield sites on the lot that meet all setback requirements.

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

Yes (X) No ( )

Why or why not? It is reasonable to subdivide the property into two lots when one proposed lot will be fully conforming and the second lot will only be deficient in two areas – both by minor amounts - ~3' of lot width at the 100' OHW setback and 277 sq. ft. of residential lot suitable area.

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

Yes (X) No ( )

Why or why not? The property is uniquely shaped such that both lots exceed the 40,000 sq. ft. minimum lot size by ~7000 sq. ft. each. The unique trapezoidal shape of the proposed lots as the width reduces as one goes from the lakeshore to the rear lot line causes Parcel B to not be able to meet the 150' lot width at the 100' OHW setback and the 20,000 sq. ft. RLSA.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No ( )

Why or why not? The lot was created by a party other than the current landowner.

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

Yes (X) No ( )

Why or why not? The area consists of single family seasonal and year-round residential structures. Allowing Parcel B to be created will not alter the character as the proposed lot is only 277 sq. ft. shy of the required RLSA and the lot width at the 100' OHW setback is only ~3-4' shy of the required 150' width.

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

Yes (X) No ( )

Why or why not? Economics are not cited by the applicants as the practical difficulty. The difficulty involves the lot's unique shape and there being ample depth, but not width.

The motion carried unanimously.

Variance Application 29-V-14 by Steve and Debbie Center: Lot 4, Crow Wing Park, Section 20, Township 140, Range 33, Nevis Township on 5th Crow Wing Lake. Parcel: 21.49.00400. Applicants are requesting a variance from Sections 502.2 and 704.7 of the Shoreland Management Ordinance for a proposed addition to a residential structure that does not comply with the 100 foot ordinary high water mark setback and was previously added onto by variance.

Steve and Debbie Center, whose mailing address is 23249 Ebony Lane, Nevis, MN, and Eric Munson, 314 Lake Avenue, Park Rapids, MN, their contractor, presented the application. They would like to make an addition to the cabin to make room for a music room to house a grand piano. They are not asking to increase the number of bedrooms.

Grob asked what the square footage of the original cabin was before the previous variance to add onto the cabin was utilized.

Munson said that it is difficult to tell what the square footage was because the block work under the cabin was all redone at the time the previous addition was made.

Christenson asked why the additional room is needed to accommodate the piano.

Debbie Center said the piano is squished into a corner by a closet with hard surfaces all around it and the acoustics are bad. She uses the piano for her occupation as she composes music that is sold online.

No public comment was offered when solicited.

Grob asked the Centers to describe their shoreline.

Steve Center said they have approximately a 5' buffer along the shoreline that is not mowed.

Grob asked the other board members if the buffer ought to be enlarged. The other members felt the buffer was reasonable and sufficient.

Christenson moved to approve the application with a condition that the current shoreline vegetative buffer must remain "as is" and adopt the staff report findings of fact. Krueger seconded the motion.

Findings of Fact

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes (X) No ( )

   Why or why not? The structure was constructed prior to the shoreland ordinance enactment and was previously modified by variance such that any subsequent alteration must also obtain a variance. The addition is to the side of the structure and adding to the rear of the structure is not feasible given the intended piano room use of the addition and the rear of the cabin consisting of two bedrooms and a bathroom. The applicant has proposed to place the addition in the spot that is least impactful to the lake given the cabin's floor plan.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X) No ( )

   Why or why not? A 16' x 20' addition with ah 6' x 10' covered porch is a reasonable use of the property given the existing structure is a single story and 1280 sq. ft. in size.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X) No ( )

   Why or why not? The structure was constructed prior to enactment of the shoreland ordinance and a 1981 addition per a 1972 variance means that this and any other subsequent alteration will require a variance in order to be constructed. This requirement of Section 704.7 of the shoreland ordinance is a unique circumstance.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No ( )

   Why or why not? As stated in the answers to previous questions, the difficulty is the fact that the cabin predates the ordinance and was added onto per a variance by a previous owner and Section 704.7 of the ordinance requires a variance for any subsequent modification to the structure after it has been previously modified by variance.

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X) No ( )

   Why or why not? The area consists of single family seasonal and year-round residential structures. The proposed addition will create a structure size that is still well within reason and below the average residential structure footprint size of today. The addition will be the same single-story height as the current cabin.

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

Yes (X) No ( )

Why or why not? Economics are not cited by the applicants as the practical difficulty. The difficulty is the fact the structure was constructed prior to the shoreland ordinance and was previously added onto by variance such that Section 704.7 of the shoreland ordinance requires that any subsequent modification of the structure can only occur by variance.

The motion carried unanimously.

Variance Application 30-V-14 by Dana and Jennifer Cirks: Lot 6, and part of Island Drive, Belletaine Park, Section 1, Township 140, Range 33, Nevis Township on Lake Belletaine. Parcel: 21.51.00600. 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 required 100 foot ordinary high water mark structure setback.

Dana Cirks, whose mailing address is 3822 41st Ave. S, Moorhead, MN, presented the application. He said they purchased the lot in 2005. The lot had a variance on it at that time that the previous owner had obtained. They put a well and septic system in. Since then, the Department of Natural Resources raised the OHW which pretty much eliminated his building envelope so the variance request is to build a cabin.

Krueger asked Buitenwerf if the DNR's raising of the OHW mark cancelled the previous variance.

Buitenwerf explained that the previous variance was not cancelled by the OHW mark elevation change, but the OHW change moved the required structure setback far enough back in the lot that there was no longer room to place a structure on it.

Krueger asked Buitenwerf for his recommendation. Buitenwerf said he felt the lot was best suited to the current RV trailer use or something similar because the proposed setback is only 37' from the OHW and there also being an issue with the 3' of vertical separation that is required between the lowest floor of the proposed house and the highest known water level of the lake. He said he was concerned that a large amount of fill would need to be brought in to allow the proposed house to comply with the 3' separation requirement between the house floor and OHW.

To clarify, Grob asked Cirks if the sequence of events was that Cirks purchased the lot in 2005, the DNR raised the OHW in 2006, and then Cirks installed the well and SSTS in 2007. Cirks confirmed that this timeline was correct.

Krueger asked what the SSTS was sized for in terms of bedrooms.

Cirks said the system was sized for a two bedroom home.

Krueger asked how many bedrooms were proposed in the new house.

Cirks replied that there would be two bedrooms.

Grob said the current OHW is 1428.3' above mean sea level. The actual water height in 2001 rose to 1429.77' above mean sea level – which is another foot and a half above where the OHW is located. He said it is possible that this highest water level would have been up to the foundation of where the proposed house was shown to be placed. He expressed concerns about the proposed structure's vertical separation from the highest known water level on Belletaine and felt the current use of the property with the travel trailer is the best application for the property.

Cirks said his intention was to build the location for the structure up for that reason.

Cirks said he never would have purchased the lot if the OHW had been at its current level when he purchased the property in 2005.

Christenson expressed concerns similar to Grob's about the proposed structure height relative to the highest known water level.

No public comment was given when solicited.

Cirks and the BOA discussed Cirk's options for modifying the application or submitting a new application. Buitenwerf explained those options. One option is that the Board could table the application to allow Cirks an opportunity to modify the application. Or the Board could choose to act on the application as presented tonight and if the Board were to deny the request, then Cirks could submit a new application, but it would have to be substantively different than this request. Otherwise, Cirks would have to wait a year from today's date to resubmit the exact same request – if that was something he would want to do.

Further discussion took place on options to consider alternate proposals. Cirks signed an indefinite time period 60-Day Rule extension form to provide time for him to amend his proposal in light of the items discussed.

Cirks asked if he could propose to bring fill onto the property like his neighbor did.

Buitenwerf explained that any fill that might be allowed to be brought in would need to be placed landward of the OHW and probably require a variance due to the volume of material that would be required.

Krueger asked Buitenwerf if it was okay for the travel trailer to be on the property as it currently sits.

Buitenwerf replied that the trailer is not in compliance with the required 100' OHW structure setback on the lot and will require a variance in order to be placed on the lot.

Cirks reiterated the history of his acquiring the property and making improvements to it.

Christenson moved to table the application to be heard no later than June 2015 meeting and allow the applicant time to amend the structure plan to protect it against the highest known water level and show where the highest known water level is relative to the proposed house location and provide the amount of fill that would be needed to accomplish the project. Grob seconded the motion.

The motion carried unanimously.

Variance Application 31-V-14 by Brad Bond: Part of Government Lot 5, Section 9, Township 141, Range 35, Arago Township on Hay Creek and Island Lake. Parcel: 02.09.02310. Applicant is requesting a variance from Section 502.7 of the Shoreland Management Ordinance for a proposed addition to a nonconforming structure that does not comply with the required 150 foot ordinary high water mark structure setback from Hay Creek.

Brad Bond, whose residence is 25986 Happy Hollow Road, Park Rapids, MN, presented his application. They want to rebuild their home. It currents is a two bedroom, one bathroom cabin. They have four children and having been using the old motel portion of the building for house space since they have been living there. They had storm damage roughly two months ago totaling ~$50,000 that needs to be repaired. The house portion of the building is in poor condition and is an eyesore when guests pull in and they are trying to fix the property up so it looks more respectable. The current footprint is 1752 sq. ft. He said they are requesting a 96 sq. ft. smaller footprint than what exists, but a higher structure than what exists as they are requesting a second level. He amended the proposed structure's height to 30' from the originally proposed 35' height. The corner of the proposed deck on the application drawing to the creek is actually 100' rather than the 105' shown on the application sketch.

Grob asked Buitenwerf if the department measured and marked the OHW structure setback from the creek.

Buitenwerf replied that the department had not done so.

Christenson said the structure clearly needs work as boards were rotting out. She appreciated Bond's accommodating the Board's concern by reducing the structure's proposed height 5' to 30'.

Grob said he concurred with Christenson. He said Bond is somewhat penalized because he has to comply with setbacks from Island Lake as well as Hay Creek. He also was supportive of the request because he feels Hay Creek functions more as a part of Island Lake along Bond's property because it is the mouth of the creek where it enters the lake and thus should have a 100' OHW setback instead of the existing 150' setback.

No public comment was offered when solicited.

Christenson moved to approve the application with a 30' maximum structure height and adopt the staff report findings of fact. Krueger seconded the motion.

Findings of Fact

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes (X) No ( )

   Why or why not? The structure was originally constructed before the shoreland ordinance was enacted at a nonconforming OHW setback from Hay Creek. There is a steep slope on the property that commences shortly behind this structure and runs past the rear lot line. The property is also unique in that it fronts two water bodies – Island Lake and Hay Creek – which reduces the usable area on the lot that meets both OHW setbacks. The replacement construction will be located in the same spot as the existing structure. Moving the proposed addition to another spot along the portion being kept is not real practical given the floor plan and circular driveway that surrounds the building.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X) No ( )

   Why or why not? The house was damaged by a white pine tree that landed on its roof during a storm this summer. Repairing this damage and choosing to replace the old original portion of the house with new construction is a reasonable request rather than trying to repair old construction.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X) No ( )

   Why or why not? The structure was originally constructed prior to the shoreland ordinance and then added onto by variance in 1997. It does not meet the 150' OHW setback from Hay Creek. There is not room on the property to move it further away from the lake because a steep slope exists on the rear portion of the property and this slope commences just a little bit behind the structure. An added unique feature of the property is that it fronts two water bodies – Island Lake with a 100' OHW setback and Hay Creek with a 150' OHW setback – which make it difficult to find room on the lot to place structures in compliance with the setbacks since this area is occupied by the aforementioned steep slope.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No ( )

   Why or why not? The structure was added onto by variance in 1997. Thus Section 704.7 of the shoreland ordinance requires that any subsequent alterations to the structure be authorized through a variance process. The structure originally was constructed at a nonconforming OHW setback by a previous owner. The topography of the lot is such that a slope starts to rise up steeply behind this structure toward the rear lot line. This sloped area is not conducive to placing a structure in it.

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X) No ( )

Why or why not? The structure will remain an owner's residence/office and the new construction will occupy the space currently taken up by the existing damaged wing of the structure. The surrounding properties are residential in use and this resort has been in operation for decades such that the locality's character will not be impacted by the proposed project.

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

Yes (X) No ( )

Why or why not? Economics are not cited as a difficulty in the application. The difficulty is the fact that the structure predates the shoreland ordinance and replacing the damaged portion of the building makes the most sense to allow on the existing footprint to take advantage of plumbing, electrical, and foundational items that exist as well as work the best with the floor plan of the old motel wing that will be left.

The motion carried unanimously.

Variance Application 32-V-14 by Bruce and Lorraine Patton: Lot 8, Block 1, Birch Rest, Section 12, Township 140, Range 32, White Oak Township on Williams Lake. Parcel: 28.42.00800. Applicants are requesting an after-the-fact variance from Sections 901 and 902 of the Shoreland Management Ordinance for intensive vegetative removal in the shore impact zone and on a steep slope and exceeding the permittable volume of earthen material that can be moved on a steep slope and in the shore impact zone.

Bruce and Lorraine Patton, whose residence is 175 Hillside Avenue SW, Akeley, MN, presented their application.

Krueger said he has looked at the property before and after photos and sees a significant difference between the two in terms of vegetation coverage which is a good thing. He asked if the Pattons intended to build a house on the property.

Mr. Patton replied that they eventually want to construct a house on the lot, but their immediate goal is to place a trailer further up the slope and farther away from the lake.

Grob asked if he visited the property in September, he would see the current trailer or a new modular trailer up on the top of the slope at a conforming setback without any structure between it and the lake. The Pattons confirmed that is the plan. Grob said they have done a good job of revegetating the areas where they had done the earth movement. Grob said if the variance is approved, he wants to see the road coming down to the current trailer and current trailer location fully revegetated. The Pattons said they were in agreement with that proposal. Grob felt leaving the slope alone would be better environmentally than requiring it to be restored.

Public Comment:
Michael Bates, who lives at 20335 Foxfire Drive, is a next door neighbor to the Patton lot. He said he submitted written comments on the application that he assumes he does not need to read into the record. He said he has been helping the Pattons revegetate the lot and he said he will remain committed to helping the Pattons revegetate the lot satisfactorily. He said he loves the lake and thus will help see that the Patton lot continues to be properly vegetated. He supports the variance and the Pattons' efforts to improve the lot.

Krueger asked Bates if Bates was familiar with the lot prior to Pattons' purchase of it.

Bates said he was so familiar.

Krueger asked if the road that provides access to the trailer was eroded like it is now prior to the Pattons' purchase.

Bates said there is an old road bed that runs along the lake that has been there since the beginning of Hubbard County. The next step up where the trailer is located is a new development.

Bates said he has lived on his lot for over twenty-five years. He is willing and committed to helping the Pattons finish revegetation restoration of the disturbed areas on the lot.

He said he is supportive of the variance request and the Pattons' efforts to improve the lot.

There were no further public comments so the comment period was closed.

Grob moved to approve the variance with the condition that the current trailer site and the road leading to it be revegetated by October 1, 2015 in a similar fashion to the vegetation that has already been done. Christenson seconded the motion.

Findings of Fact

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes (X) No ( )

   Why or why not? The shore zone has been restored with vegetation. Replacing the fill would probably be more disruptive. The trailer will now be placed 320' from the lake on the top of the hill.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X) No ( )

   Why or why not? The reconstruction of the fill and grading would make the lot very difficult to build on.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X) No ( )

   Why or why not? The high bluff and slope make use difficult without access to the lake.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No ( )

   Why or why not? The contour of the land required moving the fill and dirt to make it a buildable lot.

5. Will the issuance of the variance maintain the essential character of the locality? Yes (X) No ( )

   Why or why not? This small recreational development classified lake is developed with single family seasonal and year-round residences. The vegetative and grading/filling alterations will not change this character of the locality.

6. Does the stated practical difficulty involve more than economic considerations? Yes (X) No ( )

   Why or why not? Economic considerations are not listed as a practical difficulty in the application.

7. Why did the applicant fail to obtain a variance/or comply with the applicable requirements before commencing work? Did the applicant act in good faith?

   Why or Why not? The Pattons said it was because they own a bobcat skidloader and it was there. They said there were ignorant to the laws and that is on them. The Pattons said there were not aggressive enough in asking questions when they visited the Environmental Services Department. They said it is their fault.

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

   Why or Why not? No. Not originally, but they have been very cooperative after being cited for the violation.

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

   No. The Pattons said they did not obtain any other permits.

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

    Significant work was done in grading the slope. The Board does not have an actual feel for the cost and the investment.

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

    Yes. The vegetative and grading/filling alterations were completed before Environmental Services staff first viewed the property on June 4, 2014.

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

    This variance application does not involve a structure so this question is not applicable.

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?

    This question is not applicable because there is no structure involved.

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

    The applicants have corrected violations by moving the travel trailer and restoring the vegetative cover. The shore impact zone is not affected and replacing all fill would be more disruptive than leaving current conditions.

The motion carried unanimously.

Miscellaneous:

Communications:

Buitenwerf shared that the location for next month's meeting is unknown right now and will be finalized before notice of the next meeting must be placed in the paper. He said he is hopeful based on the current timeline for moving into the new courthouse spaces that we will be able to be in the new board room for the next meeting. He also explained that being able to move into the new Board room will be dependent on his being able to receive training on how to use the room's audio/visual equipment.

Grob shared that he will not be able to attend the lot viewal in September, but he will be here for the hearing.

Adjournment.

Motion by Christenson, second by Grob to adjourn the hearing at 8:36 p.m. The motion carried unanimously.

Respectfully submitted,

Eric Buitenwerf
Environmental Services Officer

September 2014 Planning Commission/Board of Adjustment Meeting Minutes

Members present were: Charlene Christenson, Ken Grob, Tim Johnson, and Tom Krueger. Greg Larson was absent as there was no Planning Commission Business. Also present was Environmental Services Officer Eric Buitenwerf.

Krueger called the meeting to order at 6:00 p.m. and explained the meeting procedure to the audience.

Planning Commission:

Approval of minutes: August 25, 2014 none.

Old Business: None.

New Business: None.

Board of Adjustment:

Approval of minutes: August 25, 2014 meeting.

Motion by Grob, second by Christenson to approve August 25, 2014 meeting minutes with no edits. The motion carried 4-0.

Old Business:

Variance Application 27-V-14 by Todd and Kristin Kittleson: Outlots A and B, Liberty Ridge, Section 12, Township 140, Range 33, Nevis Township on 8th Crow Wing Lake. Parcels: 21.69.00700 and 21.69.00800. Part 1: Applicants are requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance (SMO) for proposed additions to a rental unit located in the shore impact zone. Part 2: Applicants are requesting a variance from Section 902 of the SMO to excavate more than the permittable volume of earthen material in a steep slope.

Todd Kittleson presented the amended application. He explained that due to the fact the State of Minnesota is requiring that this structure be brought up to code, the original 50% addition would not bring this structure up to code in bedroom sizes. He is requesting double the square footage footprint of the original cabin.

Krueger commented regarding removing the 5' X 22' second up front.

Kittleson commented that it would be removed to the side of the cabin.

Krueger questioned if the door would be moved also.

Kittleson commented that it would be moved and there would be no entrance on the front of the cabin.

Johnson requested that the amended drawing be presented for public viewing and show the Board where the existing doorway is now.

Johnson questioned why they would need that deck from the corner over if the entryway was being moved.

Kittleson explained that that is why he is taking that section and moving it to the back side of the cabin.

Grob requested that the amended drawing that was produced for the application be put up on the screen for viewing. The dotted line is now in line with the house.

Kittleson replied yes and the front deck will be removed during the process and reused by moving to the backside of the existing deck. It will no longer be on the front side of the cabin.

Grob requested that Mr. Kittleson review what he is doing with the deck on this cabin.

Kittleson said he will be removing a 5' x 22' section on front or lakeside of the cabin and adding a 12' x 9' section to the rear of the 11' x 9' remaining existing deck.

Krueger requested the square footage of the current bedrooms.

Kittleson replied Minnesota Department of Health (DOH) required that for two people to be in a bedroom needs 60 square foot per person minimum requirement which is 120 square feet finished.

Krueger commented that bringing the cabin in to DOH code is a safety issue.

Kittleson commented that the closets do not count for the square footage requirements.

No public comment on the application was made when solicited.

Krueger commented that Mr. Kittleson is adding on to the bedrooms to bring this structure into compliance with the Minnesota Department of Health. This is an improvement in regard to public safety.

Christenson commented that Mr. Kittleson as a resort owner, she wishes for success, but questioned if moving the cabin cost would be a possibility.

Kittleson wants the cabin to stay where it is.

Johnson commented that if this application is denied, this cabin would stay where it is and would eventually be rebuilt at a future date and it would be better to bring this cabin up to State requirements.

Johnson motioned to approve part one of this application.

Krueger seconded.

Findings of Fact:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes (X) No ( )

   Why or why not? The property is well under its allowed rental density. The addition is not being built toward the lake. The addition will make the structure Minnesota Department of Health compliant and a 28' x 28' structure will be in harmony with other structures on this property.

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

   Yes (X) No ( )

   Why or why not? This structure is located on a flat area and very user-friendly for access to the lake and will meet Minnesota Department of Health standards for usable size. Moving it back from the current location would raise it up to a 25' elevation.

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

   Yes (X) No ( )

   Why or why not? The cabin was built before the Shoreland Ordinance was enacted. Moving the cabin away from the lake to meet setback would create a steep slope situation.

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

   Yes (X) No ( )

   Why or why not? The cabin was built undersized and before the ordinance by a previous owner.

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

   Yes (X) No ( )

   Why or why not? The locality consists of larger tracts of land on this west side of the lake with a number of the tracts to the south of this resort still being undeveloped. To the north of the property, single family seasonal and year-round residences exist. The resort has been here for many decades. The proposed addition would not change the area's character in any way.

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

   Yes (X) No ( )

   Why or why not? Economics are not cited by the applicants as the practical difficulty.

The motion carried unanimously.

Variance Application 27-V-14 Part 2: Applicants are requesting a variance from Section 902 of the SMO to excavate more than the permittable volume of earthen material in a steep slope.

Grob made a motion to approve Part 2 with a condition that a buffer be constructed 15'W x 85'L from the ordinary high water mark (OHW) and be put in place with natural vegetation – a no mow zone to prevent runoff.

Kittleson commented that putting in a buffer zone on this area would take away his play area for guests. The actual excavation on this project is well over 50' away from the shoreline and that moving the drive area behind the cabin instead of the front would put the excavation area out of the shore impact zone.

A discussion followed regarding a buffer on this site and what plants constitute a buffer. Removing the grass to replant also constitutes a situation for erosion.

Kittleson explained that they do not mow to the lake and now have ample buffers along this property.

Grob asked what the drop off to the water is?

Kittleson replied that there was very little slope, very flat.

Johnson requested that a topical map be displayed for viewing.

Kittleson showed what parts of his lakeshore have not been altered in any way with very good buffers.

Johnson expressed the concern with erosion on this site due to excavation.

Kittleson replied that there will be a retaining wall in place to help with erosion during excavation.

Grob requested the ordinary high water mark on this site.

Buitenwerf explained that it is the first contour line around the shoreline on the map.

Grob repeated his motion to approve with a condition that a buffer of 15' W x 85' L be put in.

Christenson asked if that included the cattails.

Johnson wanted to know where the walkway from the cabin to the lake was.

Johnson requested that Kittleson draw in where the parking area would be on the aerial view map.

Kittleson noted the location on the viewing map.

Johnson asked what the distance is from the OHW to the current drive.

Kittleson explained that 20', 25' to the edge of the road.

Grob motioned to approve Part 2 with a condition that a 15' X 85' vegetative buffer be maintained with the findings of fact from the staff report included.

Motion dies for lack of second.

Christenson motioned to approve Part 2 with a condition that a 10' W x 85' L vegetative buffer be maintained with the findings of fact from the staff report included.

Krueger seconded the motion.

Vote as follows:
Johnson: Nay
Grob: Nay
Christianson: Yea
Krueger:Yea
Motion did not pass.

Grob restated that the reason for the dissenting vote was that he felt the Board had been very generous with the remodel of the cabin and that a 15' buffer was within the Board's discretion to ask for.

Johnson wanted to know what type of material would be used?

Kittleson replied that class 5 gravel would be used in the parking area.

Buitenwerf explained that since there was a 2 - 2 vote with reasons given by the members voting "nay", that Part 2 of this application had been denied.

Christenson explained that by doing nothing, the road would continue as is very close to the lake.

Johnson made a motion to approve Part 2 of the application with a condition that a 5' W x 85' L vegetative buffer be maintained from the Ordinary High Water Mark in front of the proposed project area and adopt the findings of fact from the staff report.

Christenson second the motion.

Motion approved 3-1 with Grob voting Ney.

Findings of Fact:

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

   Yes (X) No ( )

   Why or why not? The excavation area is needed to safely accommodate guest vehicle parking by the cabins and the percent of slope is not significant such that erosion problems ought not to be caused by removing the slope's toe to expand the parking area. Also, a vegetative buffer is being required to be installed along the shoreline in front of this parking area as a condition of the variance to ensure that the additional impervious surface area created by the parking area enlargement does not harm the lake.

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

Yes (X) No ( )

Why or why not? The parking area enlargement is reasonable to provide enough room for guests to safely maneuver and park their vehicles.

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

Yes (X) No ( )

Why or why not? This slope poses difficulty in having enough space for a guest parking area. The cabins to be serviced by the parking area were constructed at nonconforming ordinary high water mark setbacks before the ordinance was enacted.

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

Yes (X) No ( )

Why or why not? As stated in the answer to question 3, the difficulty is caused by the slope's location and the two cabins' locations being at the base of the slope and at nonconforming ordinary high water mark setbacks.

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

Yes (X) No ( )

Why or why not? The locality consists of larger tracts of land on this west side of the lake with a number of the tracts to the south of this resort still being undeveloped. To the north of the property, single family seasonal and year-round residences exist. The resort has been here for many decades. Enlarging this existing parking area will not harm the locality's essential character.

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

Yes (X) No ( )

Why or why not? Economics are not cited by the applicants as the practical difficulty. As stated above in answers to previous questions, the difficulty is the fact that the cabins were constructed at a nonconforming OHW setback before the shoreland ordinance was enacted and the slope's location relative to the cabin locations.

New Business

Variance Application 33-V-14 by Richard Anderson: Lot 6, Block 1, Sunny Point Addition, Section 21, Township 139N, Range 33, Crow Wing Lake Township on 2nd Crow Wing Lake. Parcel 06.37.00600. Applicant is requesting a variance from Sections 502.2 and 706 of the Shoreland Management Ordinance for a proposed lakeside platform addition that

will exceed the 400 sq. ft. maximum allowed size and a proposed lakeside deck that will exceed the allowed 15% of the structure's ordinary high water mark setback and encroach on the 10' side lot line setback.

Krueger asked for a summary of what the applicant is requesting.

Anderson stated that he is requesting an increase in the deck size and a platform increase over what is allowed. He explained that he is negotiable on that there may be water runoff.

Krueger asked if the deck was over the proposed requested platform.

Anderson stated the deck will go over the platform which is currently an 8' x 8' cement patio on the back lower level of the house. He is proposing a 10' on one end and a 12' bump out on the other end of the deck.

Krueger asked what was the reason for the request?

Anderson explained that this space is used considerable in the summer and 8' is not adequate for dining chairs and table.

Christenson questioned run off, and asked that as a trade-off if Mr. Anderson would consider a trade-off of what you are over on your deck for a buffer zone installation.

Anderson answered that with nothing controlling the run off now, he would consider installing a dry well to control the run off from the patio.

Anderson questioned what type of buffer zone on the lake they were asking for.

Christenson suggested instead of grass right up to lake, using natural vegetation along the shoreline for erosion purposes.

Krueger explained that with the proposed patio extension, that left only 37' to the lake for adsorption and that a buffer zone would help.

Grob suggested that the Ordinance allows a platform to stay at 400 square feet and that the retaining wall be replaced with a permit. The applicants could go out to 14' x 28' and still meet the 400 square foot. This would allow for more grass area.

Anderson was open to this suggestion.

Krueger questioned what portion of the deck brings it into a variance situation.

Buitenwerf explained that when you exceed the 15% of that 53 ' setback which is 7.95'. He is proposing a 12' extension on part of the deck which would be 4.05' over the 15%.

No public comment on the application was made when solicited.

Grob made a motion to deny the platform application and accept the staff findings of fact.

Christenson second the motion.

Findings of Fact:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes ( ) No (X)

   Why or why not? The proposed platform expansion is excessive given its location at the top of a steep slope that runs toward the lake and the fact that a 14' x 28' lakeside platform can be built by permit – which is a very reasonable, functional size.

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

   Yes ( ) No (X)

   Why or why not? As mentioned in the answer to question 1 above, the existing lakeside platform can be expanded 6' lake ward to create a 14' x 28' platform by permit – which is a very usable platform size.

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

   Yes ( ) No (X)

   Why or why not? The application provides no practical difficulty as to why the permittable 14' x 28' size platform is not able to meet the landowner's needs. The lot is not unlike many other lake lots with nonconforming residential structures with walkout basements that do not meet the OHW structure setback.

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

   Yes ( ) No (X)

   Why or why not? There is no practical difficulty on this lot because a very functional permittable platform expansion can be made as mentioned in the answers to previous findings of fact questions. The alleged difficulty appears to be created by the landowner's desire to have a particular size platform.

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

   Yes (X) No ( )

   Why or why not? The locality consists of single family seasonal and year-round residential structures so the proposed platform expansion would not alter the locality's character as such structures often have a lakeside platform associated with them.

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

   Yes (X) No ( )

   Why or why not? Economics are not cited by the applicant as a difficulty.

The motion was denied unanimously.

Krueger asked for motions on the proposed deck addition.

Grob asked since the platform is being expanded and used for sitting why there is a need a deck wider than 8' which is allowed by the ordinance.

Anderson replied that an 8' wide deck does not accommodate a table and chair situation for dining and being their kitchen area is on the upper floor of the home, it would be nice to enjoy a meal or dinner on the deck.

Buitenwerf commented that the 53' setback includes a 2' eave on the structure. So you have to factor that in for the width of the deck so it is 7.95' allowed lakeward from the overhang.

Grob commented that this application is asking for is 10' so all that is being asked for in an addition on the bump out. The rest of the deck needs approx .5'.

Grob made a motion that the deck be approved as presented and accept the findings of fact in the staff report.

Johnson seconded the motion.

Findings of Fact:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes (X) No ( )

   Why or why not? The shoreland ordinance allows the existing platform to be extended 6' lake ward by permit. The proposed deck will be two feet further from the OHW than the 14' lake ward permittable platform that can be built beneath it so no additional impervious surface area will be created beyond what is permittable.

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

   Yes (X) No ( )

   Why or why not? Section 706 of the shoreland ordinance would allow a lakeside deck to be constructed by permit that would extend 7.95' lake ward per the stated 53' OHW structure setback in the variance application. A deck that is just shy of 8' in width is not very usable. Having a wider deck that will be located above a platform that can be built by permit and extend 2' further lake ward than the proposed deck is reasonable as the amount of impervious surface area will not be increased.

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

   Yes (X) No ( )

   Why or why not? The house is located at a 53' OHW setback per the variance application sketch. Section 706 of the SMO only allows a 7.95' lake ward deck based on this 53' setback.

However, the same section of the ordinance allows a 14' lake ward platform to be constructed beneath the proposed deck if the platform runs the 28' width of the house. This is a unique situation where the deck will be above the platform and not be any larger than the size of platform that can be built by permit so the impervious surface area will not increase.

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

   Yes (X) No ( )

   Why or why not? The structure was constructed before the shoreland ordinance was enacted at a 53' OHW nonconforming setback. Section 706 of the ordinance only allows a 7.95' lake ward deck to be constructed on this structure based on this 53' OHW setback – which is difficult because it is not a very usable width.

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

   Yes (X) No ( )

   Why or why not? The locality consists of single family seasonal and year-round residential structures that have lakeside decks as a common feature on them. Thus, the construction of a lakeside deck on this structure will not harm the locality's character in any way.

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

   Yes (X) No ( )

   Why or why not? Economics are not cited by the applicant as a difficulty. The difficulty is the fact that the structure was constructed before the shoreland ordinance was enacted and Section 706 of the ordinance only allows a 7.95' wide deck based on the structure's 53' OHW setback as shown in the variance application.

   The motion carried unanimously.

Miscellaneous:

Communications:

Buitenwerf shared that the next meeting will consist of Ordinance changes as well as Board of Adjustment business. He would like to get through it all so the process can be completed on the Ordinance by the end of the year.

Adjournment.

Motion by Christenson, second by Johnson to adjourn the hearing at 7:15 p.m. The motion carried unanimously.

Respectfully submitted,

Eric Buitenwerf

Environmental Services Officer

October 27 & 28, 2014 Planning Commission/Board of Adjustment Meeting Minutes

Members present were: Charlene Christenson, Ken Grob, Tim Johnson, Tom Krueger and Greg Larson. Also present was Environmental Services Officer Eric Buitenwerf.

Board of Adjustment:

Approval of minutes: September 23, 2014 meeting

Motion by Christenson to approve September 23, 2014 meeting minutes with no edits, second by Grob. The motion carried 4-0.

Old Business:

Variance Application 30-V-14 by Dana and Jennifer Cirks: Lot 6, and part of Island Drive, Belletaine Park, Section 1, Township 140, Range 33, Nevis Township on Lake Belletaine. Parcel: 21.51.00600. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance (SMO) for a proposed residential structure that will not comply with the required 100 foot ordinary high water mark (OHW) structure setback and from Section 902 of the SMO to bring in a quantity of fill material that exceeds permittable thresholds within the 100' OHW setback.

Dana Cirks presented the request for variance and explained that in 2005 the property was purchased after research that the variance on the property was good for the life of the property and thus the property was purchased with this in mind. In 2006, the DNR raised the OHW on the lake which eliminated the building envelope. When we started preparations to build the cabin, we were then told we would have to apply for a variance. In 2007, we received the proper permits and installed the septic system and the well for the future cabin. The requested information by the board was: 1. show how I would protect the structure against the highest water level, 2. show where the normal high water location is relative to the proposed structure, and 3. provide information on the amount of fill needed to accomplish the project. Three of the four corners of the structure are higher that the neighbor's lot elevation. The foundation will be built on concrete or concrete block to assure the minimum elevation level between the 1st floor of the cabin and highest known water level.

Krueger questioned that the deck was not on the original application?

Cirks responded that after this variance was tabled, the deck was added due to the elevation and is willing to accept whatever the board decides.

Krueger requested the distance from the deck to the OHW?

Cirks responded that it is 22' and that can be eliminated.

Johnson asked Mr. Cirks to explain the original variance on the property.

Cirks explained that the previous owner went through the process in 1989.

Johnson wanted to know what the original variance was for?

Buitenwerf explained the original variance was in 1990 and was to allow the lot to be declared buildable. There was no mention or variance sought concerning the OHW setback so the lot was buildable with a structure meeting the 100' setback.

Grob wanted to know how far the proposed deck is from the highest water elevation that occurred back in 2000 where the flags are now verses where the deck is?

Cirks explained that the deck was probably exceeding that and one corner by the garage.

Grob stated that building and your deck would actually be in the water if the water came up as high as it was in the 2000s.

Cirks replied yes.

Christenson commented that she lived on a lot like this for 10 years and bought when the water was low and had sand bags around the house for 3 years trying to save it. Have you given any thought to what you would do if the variance was granted and the water came up that high?

Cirks replied that he was born and raised in Nevis and is familiar with the lakes and water levels. If the cabin is up high enough on a foundation with concrete and use fill to slope away from the cabin, that should solve the issue.

Grob made an observation that the board would have to approve fill in the shore impact zone. You will be within 22' of the water. By approving this variance, we are setting you up to a situation that should the water level go up could be devastating.

Cirks replied that he had an investment in this property, and deeming it unbuildable would impact this investment significantly. Also he believes that the water levels will not impact this lot if built properly.

Johnson commented that he has a good plan for this structure and the elevation from the back side of that structure to the high ground. There is an alternate site for the septic. Another board had granted that this lot was buildable.

The Board asked if there was any public comment. There was none.

Johnson made a comment that this property was bought expecting to build and is being taxed the same as the neighbors as far as value.

Krueger made a comment that if this is approved, there is no way of knowing what the high water levels will be at in the future. This cabin would be sitting 37' from the water. If something should happen, people would question why this was allowed.

Grob made a comment that in 2005 the property was bought and if you had done your research, you would have realized if this lot was buildable. This OHW was made and buying this property was a very risky thing to do.

Cirks explained that he did research on the lot before he bought it and made sure the buildable site was at an elevation that could be built on. Other property owners were allowed to bring in significant amounts of fill during the 90's high water levels. This property did not have that opportunity.

Christenson made a motion to deny the variance since it is too close and accept the staff report findings of fact.

Grob seconded the motion.

The motion carried 3-1.

Findings of fact:

1 Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes ( ) No (X)

Why or why not? Per the original plat, this lot is just over half an acre in size. Only around 10,000 sq. ft. of the lot is located above the highest known water level elevation. This is insufficient room on which to site a proposed 28' x 60' house with an 8' x 60' lakeside deck in addition to the existing SSTS and a well. Also, over 200 cubic yards of material are proposed to be brought into this ~10,000 sq. ft. envelope for landscaping in addition to the ~186 Cu. yds. of material that will be needed to raise the floor of the house to an elevation that complies with Section 507.1 of the shoreland ordinance. Additionally, the requested ordinary high water mark setback is only 37' - which would place the structure significantly in the shore impact zone.

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

Yes ( ) No (X)

Why or why not? The lot can be used recreationally to enjoy the outdoors and as a means of accessing the lake for recreational purposes. A variance could also be granted from the ordinary high water mark setback to allow a lesser scale structure (such as a travel trailer) to be placed on the lot. Such a removable structure would also help if/when the lake level rises again as it could be easily removed from the lot during times of high water.

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

Yes (X) No ( )

Why or why not? The lot was platted in 1963 before the shoreland ordinance was enacted. The State of MN also raised the OHW in 2006 by 1.6' which significantly moved the 100' OHW setback further back on the lot — reducing the area that meets all setbacks on which a structure could be placed.

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

Yes(X) No( )

Why or why not? As stated in the answers to the previous questions, the difficulty is caused by a combination of the small lot size to begin with that was created by the original plat developer and the State of MN raising the OHW 1.6' in 2006.

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

Yes() No(X)

Why or why not? The proposed house would be one of the larger ones in the locality and with the lakeside deck only being 22' from the ordinary high water mark and over 200 cubic yards of fill being needed to landscape the yard and protect against high water levels (in addition to the fill needed to construct the house), it would not fit in with the area that is largely comprised of smaller houses sited on lots where the natural topography has not been altered. Placing this much fill on this lot would make it look out of place and possibly create stormwater runoff issues for adjacent lots.

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

Yes (X) No( )

Why or why not? Economics are not cited by the applicants as the practical difficulty. The difficulty is the small lot size to begin with and the OHW being raised 1.6' in 2006 by the State of MN that significantly moved the 100' OHW setback location further toward the rear of this lot.

New Business:

Variance Application 34-V-14 by Gary and Tina Riggs: Sublot E, the East half of Sublot D, and part of Outlot F, Akeley Industrial Gardens, and part of Gov't Lot 4, Section 22, Township 141, Range 32, Akeley Township on 11th Crow Wing Lake. Parcels: 29.22.00700 and 29.39.41300. Applicants are requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance (SMO) for a proposed addition to a nonconforming residential structure located in the shore impact zone that does not comply with the 50' road right-of-way (ROW) setback. The proposed addition will encroach further into the ROW setback.

Gary Riggs presented a summary explaining that the new addition would be 20' from the right of way setback and also seeking a 6' property line variance. The addition is to the back of the structure away from the lake and is connected to the city water & sewer.

Grob questioned if the current road is an easement or a platted road and the current road does not run where the easement was established and the centerline on the current road is not the actual easement?

Riggs replied not to my knowledge.

Buitenwerf reported that we do not know if the centerline of the actual road is or is not inside the exact center. There is no platted right of way here. The County Highway Department has

informed us that they would have a 66' right of way there and the centerline would be the center of the road.

Grob commented that it is established that where the building sets it is less than the 20' from the right of way. So if you took the 66' right of way and take 33' from the centerline, do they have the 20' setback for the building?

Riggs replied that it would be 20' from the right of way.

Johnson: Give me your thoughts on the elevation on this site for the addition. Riggs

replied that it looked right there on the elevation.

Grob commented that this structure meets the guidelines for the elevation. The Board

opened the meeting for public comment.

No public comments were given.

Grob motioned to approve the variance and adopt the staff report findings of fact.

Krueger second the motion.

Motion passed 4-0.

Findings of fact:

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

   Yes (X) No ( )

   Why or why not? The proposed addition is only roughly 25% of the existing structure footprint and will be located away from the lake on the non-lakeside exterior wall of the existing house. The addition will only be 1' higher than the existing structure and thus will have negligible aesthetic impact as viewed from the lake. It would be unreasonable to deny the request.

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

   Yes (X) No ( )

   Why or why not? The requested addition is a reasonable size relative to the existing structure (-25% of the footprint) and located on the side of the house opposite the lake. The structure does not meet the 100' OHW setback or the 50' ROW setback (which overlap one another) so there is no place to add onto the structure without a variance. The addition's size in order to make the structure livable and move from seasonal use to year-round use is reasonable.

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

   Yes (X) No ( )

Why or why not? The structure was constructed in the early 1980s at a nonconforming OHW setback in the shore impact zone. The lot is unique in that it is very long in the north-south direction, but only ~100' wide. County 23 bisects the lot just south of the existing structure. Thus, the 100' OHW setback and the 50' ROW setbacks overlap on the lot such that a variance would be needed for any addition made to this structure.

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

Yes(X) No( )

Why or why not? As mentioned in the answer to question 3, the difficulty on this lot is caused by the structure being located at a nonconforming OHW setback and the location of County 23 being just south of the house. There is not room on the lot to add onto the structure without a variance because the 100' OHW setback and 50' ROW setbacks overlap. The landowner did not create this unique situation of how County 23 bisects the lot.

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

Yes (X) No ( )

Why or why not? The locality consists of residential structures with a near even mixture of nonconforming structures located on the north side of County 23 and other residences located on the south side of County 23. This house is average in size compared to the other structures in the area and the proposed addition is small enough in size that it will not alter the structure's "average" status. The addition is single story like the existing structure and thus should blend in well on the lot.

6. Does the stated practical difficulty involve more than economic considerations? Yes (X) No( )

Why or why not? Economics are not cited by the applicants as the practical difficulty. As stated above in answers to previous questions, the difficulty is the fact that the structure is located between the lake and County 23 and there is no room on the lot to add onto the structure by permit because the OHW and ROW setbacks overlap.

Variance Application 35-V-14 by Steve Duer: Lot 3, Block 1, West Pine Cone, Section 35, Township 141, Range 34, Lake Emma Township on Big Sand Lake. Parcel: 16.37.50300. Applicant is requesting a variance from Sections 502.2, 503, and 704 of the Shoreland Management Ordinance (SMO) for a proposed roof alteration on a nonconforming residential structure that is located in a bluff impact zone and at a nonconforming ordinary high water mark setback.

Greg Norwood, the contractor representing Steve Duer, presented the variance request to put an addition onto this structure to change the roof line which currently has a flat roof. This roof would allow for everything to conform to 8' inside.

Krueger commented that the height of the roof would not exceed the maximum height already there.

Norwood responded that that is correct.

Krueger questioned that the square footage inside would remain the same? Norwood responded yes.

Christenson commented that there was water leakage damage inside that needed repair.

Norwood commented that there is a water stain inside caused by rubber roof, this could use a real roof where you put in a ridge beam, create a gable end and run the roof pitch over the flat addition for better drainage.

Krueger questioned if there would be anything done for the drainage in the back of the home?

Norwood responded that the back would be left the way it is, do not want to dig into that earth, but may put gutter on west side for drainage.

The Board asked for public comment.

There was none.

Christenson made a motion to approve the variance and adopt the staff report findings of fact. Grob seconded the motion.

Variance approved 4-0.

Findings of fact:

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

   Yes (X) No ( )

   Why or why not? The variance is only asking to increase the roof height over part of the residential structure an average of 6' to provide a uniform roof design

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

   Yes (X) No ( )

   Why or why not? The structure's location in a bluff impact zone requires a variance for any modification to the structure. Not allowing the roofline to be modified to provide increased roof pitch for proper stormwater shedding would deprive the owner of a reasonable use of the structure as the current roof system lacks adequate slope to properly shed rain and snow.

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

   Yes (X) No ( )

Why or why not? The structure was constructed before the shoreland ordinance was enacted and it is located in a bluff impact zone which requires a variance for any modification to the structure. These aspects of the property create the practical difficulty.

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

Yes(X) No( )

Why or why not? As stated in the answer to question 3, the difficulty is caused by the residence's location in a bluff impact zone and the structure's having been constructed before the ordinance was enacted at a nonconforming ordinary high water mark setback.

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

Yes (X) No ( )

Why or why not? The locality consists of single family seasonal and year-round residences with a commercial resort property a few lots south of this property. The roofline modification will not alter this character in any negative way.

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

Yes (X) No( )

Why or why not? Economics are not cited by the applicant as the practical difficulty. As stated above in answers to previous questions, the difficulty is the fact that the residence was constructed at a nonconforming OHW setback before the shoreland ordinance was enacted and it is located in a bluff impact zone.

Variance Application 36-V-14 by Don Goodmanson: Lot 7, except the North 26 feet thereof, Eagle Bay, Section 9, Township 139, Range 33, Hubbard Township on Long Lake. Parcel: 14.41.00700. Applicant is requesting a variance from Sections 502.2 and 801.2 of the Shoreland Management Ordinance (SMO) and Article V, Section 2.01 of the Subsurface Sewage Treatment System Ordinance for a septic system drainfield to be installed at less than the required 10' rear lot line setback.

Don Goodmanson explained that the current septic system is failing and the intent is to put in a pressurized system in the same spot that they currently have.

Grob asked if the road is a heavily traveled road?

Goodmanson replied that it is not a heavily traveled road, especially this time of the year. Grob asked if the drainfield is inside of the hedge row?

Goodmanson replied that the drainfield is inside the hedge row.

Krueger asked if the hedge row is staying?

Goodmanson replied the hedge row is staying.

Johnson commented that this is the best proposal that this homeowner can have.

The Board opened the meeting for public comments.

There were none.

Johnson made a motion to approve the variance and adopt the staff report findings of fact.

Grob seconded the motion.

Variance approved 4-0.Findings of fact:

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

Yes (X) No ( )

Why or why not? The variance will allow a standard drainfield septic system to be installed on this lot whereas the alternative is to install a holding tank which has greater potential for environmental issues to arise from its operation. The intent of the 10' lot line setback is to provide a buffer from a property line to hopefully see that the drainfield is installed on the subject property and not a neighboring property. In this case, the rear lot line corners are present so there is the ability to see that the drainfield is installed on this property. Environmentally, the system will meet the required ordinary high water mark setback and vertical separation requirement from the periodically saturated layer — which are the key items for the ordinance.

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

Yes (X) No ( )

Why or why not? Per the licensed SSTS designer/installer who designed the proposed septic system, the lot is small enough that the proposed location is the only location available in which the needed replacement drainfield could be placed. Having a standard drainfield septic system vs. a holding tank is a reasonable use of the property.

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

Yes (X) No ( )

Why or why not? The property lacks depth to be able to install the needed drainfield and meet the 10' rear lot line setback. There are no other available drainfield sites on the lot aside from the one being proposed — per the licensed SSTS designer.

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

Yes (X) No( )

Why or why not? Yes, as mentioned in answers to the above findings of fact questions, the difficulty is the size of the lot and its lack of lot depth which cause the proposed drainfield site to be the only remaining such site left on the lot.

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

Yes (X) No ( )

Why or why not? The locality consists of single family seasonal and year-round residential structures. Allowing a drainfield to go up to the rear lot line vs. 10' from the rear lot line will not alter the locality's character in any way.

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

Yes (X) No( )

Why or why not? Economics are not cited by the applicant as the practical difficulty. As stated above in answers to previous questions, the difficulty is the fact that the lot is small, lacks depth, and has no other suitable area for a drainfield.

Variance Application 37-V-14 by William Eckles: Lots 12, 13, and 14, Block A, Shorewood, Section 26, Township 141, Range 34, Lake Emma Township on Big Sand Lake. Parcel: 16.42.00700. Applicant is requesting a variance from Sections 502.2, 503, and 704 of the Shoreland Management Ordinance (SMO) for a proposed addition to a nonconforming structure located in a bluff impact zone.

Grob made an observation that it is less than a 50% expansion and 120' from the lake, the only encroachment is that it is less that 8' from the bluff zone. Seems like a reasonable request.

Krueger asked Buitenwerf if this plan was going from a 2 bedroom to a 3 bedroom and if they have filed a design for septic, do you need a condition on the variance?

Buitenwerf responded that no permit would be issued without the septic portion.

Christenson commented that the addition will not be visible from the lake and the height is not increasing.

The Board opened the meeting for public comments. There were none.

Christianson made a motion to approve the variance and adopt the staff report findings of fact.

Grob seconded the motion.

Variance approved 4-0.

Findings of fact:

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

Yes (X) No ( )

Why or why not? The proposed addition footprint is less than 50% of the existing structure's footprint and located outside of the bluff impact zone. The addition's height is the same as the current structure so there will be no increased aesthetic impact caused by the structure height. The addition will be to the rear of the structure — away from the lake and bluff impact zone — which is typically the preferred direction for an addition to a nonconforming structure.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X)

No ( )

Why or why not? Making an addition to allow for a third bedroom on a residential structure is a reasonable request — especially given the completed structure would still be under 2000 sq. ft. in footprint — which is a reasonably sized structure today for a one story home. The addition will be the same height as the house, located on the backside of the house, and as least intrusive on the BIZ and lake setback as possible for an addition to be on this structure.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X)
No ( )

Why or why not? The structure was originally constructed prior to enactment of the shoreland ordinance at a nonconforming location in a bluff impact zone. Because the structure is in a BIZ, there is no way to add onto it without a variance because of the requirement in Section 704.7 of the shoreland ordinance that any structure in a BIZ must obtain a variance in order for an addition to be made to it.

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

Yes(X) No( )

Why or why not? As stated in answers to previous findings of fact questions, the structure was constructed prior to enactment of the shoreland ordinance by a previous owner in a location that is now within a bluff impact zone. Section 704.7 of the shoreland ordinance requires that any alteration to a structure in a bluff impact zone only be made if a variance is first granted for the alteration.

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

Yes (X) No ( )

Why or why not? The locality consists of single family seasonal and year-round structures. The structures on the two adjacent lots are slightly or much larger than this proposed house

and addition. Adding a bedroom addition to this structure will not harm the locality's residential character.

6. Does the stated practical difficulty involve more than economic considerations?
Yes (X) No( )

Why or why not? Economics are not cited by the applicant as the practical difficulty. As stated above in answers to previous questions, the difficulty is the fact that the house was constructed by a previous owner at a nonconforming bluff impact zone setback before the shoreland ordinance was enacted and the ordinance requires that any alteration to such a structure be handled through a variance process.

Variance Application 38-V-14 by Sherman Fickle: Lots 10 and 11, Bubar's Addition, Section 17, Township 139, Range 33, Crow WingTownship on 3rd Crow Wing Lake. Parcel: 06.46.01000. Part 1: Applicant is requesting a variance from Sections 502.2, 503, and 704.7 of the Shoreland Management Ordinance (SMO) for a proposed lakeward addition to a nonconforming residential structure located in a bluff impact zone. Part 2: Applicant is requesting a variance from Section 801.2 of the Shoreland Management Ordinance (SMO) and Article V, Section 2.01 of the Subsurface Sewage Treatment System Ordinance for a septic system drainfield to be installed at less than the required 10' rear lot line setback.

Buitenwerf confirmed that this application has been tabled until the November meeting to give the applicant an opportunity to amend his request.

Variance Application 39-V-14 by James Alexander: Part of Government Lot 2, Section 10, Township 141, Range 34, Lake Emma Township on Pickerel Lake. Parcel: 16.10.00800. Applicant is requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance (SMO) for a proposed greater than 50% addition to a nonconforming residential structure that does not meet the ordinary high water mark structure setback.

Ben Ott of North Country Structures representing James Alexander gave a summary of the project. What exists now is a basement cabin never completed. The proposal is a second level over the existing footprint and adding a 16' x 29' addition to make it adequate for year round living.

Krueger questioned whether the porch in front would remain?

Haag replied that it would be totally changed, the roof would be gable ended to correct the water runoff.

Krueger questioned if this porch would be enlarged making it closer to the lake?

Ott replied even with the new overhang, this part of the cabin would not go closer to the lake.

Christenson wanted to know what would happen to the trees?

Ott explained that there will be two trees in the front that will not make it through this project. Possibly a third off to the right. The trees are beyond the 75' setback.

Johnson questioned if the 8' x 10' shed structure that would be voluntarily removed.

Ott explained that the 8' x 10' shed structure is currently sitting in the alternate drainfield site and should anything happen to the current drainfield, this structure would have to be removed.

Johnson asked if there was an erosion control plan for this project?

Ott explained that gutters would be installed, running the water to the back of the property. Krueger

explained that they would like the 8' x 10' building removed.

Ott replied ok.

Grob wanted to confirm that the back of the structure is 18' to 20' from the road edge.

Ott explained that the road has an easement through the property so all setbacks are met from the easements.

Christenson would like to know how this will change the parking area?

Ott explained that this project will eliminate part of the parking area, but what is left will remain more than adequate.

Christenson commented that parking now would be on the back side of the cabin and more to the east.

The Board opened the meeting for public comments.

John Griebler, 18549 Ithaca Dr., is to the west of the applicant. He would like the board's consideration for denial of the variance. Mailed letter requesting denial, since this variance does not meet the requirement of practical difficulty. Explained that the application is misleading and deficient, the survey is incorrect and was prepared by the surveyor as directed by the homeowner. Suggested that the applicant is misleading and a portion of the existing septic system is on my lot. This is not in conformance with the ordinance requirements. The 10' setback from the lot line was not met. I object to any variance that does not bring the septic into compliance with this setback. The homeowner indicates a 2 bedroom structure will be built but the plans show a much more intensive use. I perceive the applicant is creating a duplex living condition with the present cabin being enlarged by more than two times in violation to the 50% ordinance allowance. The applicant has not considered a rearward addition and that the road setback is an easement that has been surveyed. The applicant has sufficient property available to construct a reasonable dwelling behind the existing building and in conformance with the 100' setback. There is no erosion control plan in place. The foundation disturbance will essentially cause a complete rebuild of this structure. Reasonable lakeside use can be had with the present consideration. Adding a second story will encroach into the trees causing additional visibility of the cabin from the lake.

Krueger interrupted and stated that the 3 minutes were up and would he be wrapping up?

Griebler responded that in summary, sufficient evidence exists to show that public and adjacent properties including the neighborhood are harmed by the proposal. Any variance allowed should be mitigated to reduce this harm is outlined in the draft that was submitted. A serious condition for denial should be made. In no case should an expansion of use be allowed without the septic setback requirements of the ordinance being met. Any addition or alteration to the outside dimensions of the nonconforming structure that cannot met these provisions must be authorized
by variance pursuant to article 11 of this ordinance and all other provisions of the ordinance are complied with. I object strongly to that septic system being on my property.

Grob asked facing the lake which side Mr. Griebler's property was on? Griebler

responded right or to the west.

Grob questioned the visibility issue, you are closer to the lake than he is so what constitutes a visibility issue?

Griebler replied that his property is not closer to the lake but farther back. Property owners do not understand where the lot lines are because the lot line is actually at an angle to the road easement creating an illusion. When he parks his lift on the property line, it is in my sight line to the lake because of the angle.

Christenson questioned whether the septic system was put in by the previous owner when you owned that property?

Griebler replied that the system was put in before I owned the property, but was put in under cover of night when the previous owners were on their honeymoon.

Christenson questioned that Mr. Griebler did not know that he had this septic system on his property when he purchased the property and asked Buitenwerf how this could happen?

Buitenwerf explained that contractors take the property owner's word as to where the property line is, as would our inspector.

Christenson asked if you would automatically order a survey?

Buitenwerf replied no.

Krueger asked if that septic system would be compliant if part of it was on another property owner's land?

Buitenwerf stated that compliance does not take into consideration the location of the system relative to property lines.

Ott explained that this issue had been resolved through the courts and there is an easement onto his property through the court. He had to give them an 18' easement onto his property.

Krueger stated that the courts gave an easement as it currently exists to repair and to maintain it, not to expand it, not to increase the size.

Krueger stated that the issue of the septic system and where it is has been settled.

Ott explained that there is an alternate site on the property should the current septic system fail and this system would be located completely on his property.

Grob asked the number of bedrooms in the current house?

Ott explained that it currently has one bedroom, one back kitchen area, and a little room with a bunk bed.

Grob asked how many bedrooms is the current septic system sized?

Ott answered two, new plans call for one bedroom in the current lower level and the addition of one bedroom on the new addition.

Mary Griebler, 18593 Ithaca Dr., is the property on the east of this property. I have calculated over 800' of easement, which was not included in the impervious calculation. Part of the easement requirements was that any construction on or improvements to that property that would cause any changes to the topography in that wedge coming down that driveway to the lakeshore, has to be consented to in writing by me. Based on the measurements that I made the septic is too close to my well. Feel the current septic is undersized for the

proposed space. This addition is well over the 50% from 725 square feet to 2,378. Smaller lots have to be developed to protect the future of everyone who is ever going to own that home and use it. Higher elevation on that property means there is going to be more runoff, that will affect neighbors. There are 15 lake lots along Ithaca Dr. and three of the lots are smaller and two are undeveloped. These are very average size on lakeshore frontage. The proposal for a 2378 square footage is not consistent with what the other properties currently have. This proposal puts the square footage at 2.23 times the average. Heated square footage is the only public record that could be used that gives the ability to gauge the population density, the use, and the impact on the neighborhood. If this is allowed, it will change the future of every lot.

Jim Alexander explained that he had an easement for the septic system from the judge to inspect, maintain, and repair my septic system. There are several larger homes in the area. I will be retiring here.

Ott explained that we are looking at 1200 square feet on the main level including the walkout basement. We might be at 2400 or roughly under. There are others larger in the area.

Public comments were closed.

Grob expressed a concern that a well is located too close to the septic system.

Ott explained that the septic site that is in question is the alternate site not the current site.

Johnson explained that the designer is responsible for the accurate measurements from the well to the septic.

Grob asked Buitenwerf a question regarding the existing footprint to do a 50% calculation, do you include the porch?

Buitenwerf replied that the porch was included.

Krueger asked if gutters would be installed for erosion control.

Ott replied that they would be installing gutters and having the water run to the backside of the cabin and that they could also use perforated pipe so the water disperses slowly.

Johnson asked Buitenwerf if during the remodel they find that the blocks need to be replaced, do they need a new variance to do the excavation?

Buitenwerf explained that the digging around the structure during the building process is part of the building permit. As far as repair, the statute would allow any damage to be repaired so long as it does not increase in size.

Grob questioned the maximum heights of the structure?Haag explained that this structure is way under the height allowed. Christenson asked if the shed would be removed.

Ott answered that it would.

Grob expressed that there was little buffer zone on this site, please review what is your plan for the buffer?

Ott answered that the roof line was being changed, on the west side gutters will run north to south and will take commercial gutters, downspouts that will discharge on the backside. Would also be willing to add some drain tile or discharge to the other side of the road.

Christenson asked if discharged toward the road, are you going to let it go onto the road?

Ott replied that drain tile would be wise in the sandy soil so it would penetrate into the ground.

Krueger asked if Buitenwerf had any recommendations on resolving any runoff problem?

Buitenwerf suggested that with what they have proposed with directing the runoff toward the rear of the structure, a possible use of a French drain by digging a hole vertically down into the ground and putting drain tile in the hole and filling with rock for drainage.

Grob expressed an expectation that there will be significant runoff down toward the lake and suggest that we recommend a buffer zone as a condition of this variance.

Ott explained that putting in this new structure with gutters, the runoff issue is changed since there was nothing there on the existing structure for runoff.

Christenson commented that she would concur that a buffer zone would be necessary for runoff since the grass goes right up to the lake.

Krueger commented that the French drain is a good idea. Ott stated that French drains were acceptable to

them.

Christenson recommended a "no mow" zone with some vegetation to help with the runoff to the lake.

Grob explained that a 25' buffer "no mow" zone along the lake frontage would protect the lake from any runoff.

Ott stated that would be a good option for the variance.

Alexander, the homeowner, expressed that what you see is what he bought, he did not clear to the lake. This property has a nice sandy beach and he does not want to change it.

Grob explained good shoreline management practice is to have vegetation next to the water and explained to the homeowner what type of recreational area and pathway the ordinance would allow.

Grob moved to approve the application with the following conditions and adopting the staff report findings of fact:

1. A vegetative buffer zone must be created and maintained for the full width of the property from the ordinary high water mark (OHW) to 25' landward of the OHW. No

mowing is allowed in this buffer zone and low growing, deep rooted plants must be planted in it. One shoreline recreation use area and one access path may be located in this buffer zone as allowed by Section 901 of the Shoreland Management Ordinance.

2. The 8' x 10' footprint storage shed located to the east of the existing residential structure must be removed from the property.

Christenson seconded the motion.

Variance approved 4-0.

Findings of fact:

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

Yes (X) No ( )

Why or why not? The bulk of the addition is vertical instead of outward and the finished roof height will only be 21' with the structure at an 87' OHW setback. The finished footprint will be —1200 sq. ft. which is very reasonable for today's standards. Additionally, the existing accessory structure will be removed as a condition of this variance approval.

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

Yes (X) No ( )

Why or why not? The existing house is just a 725 sq. ft. basement level with a roof on it. The addition will make the structure —1200 sq. ft. per level with a total of two levels which is a very reasonable size for a house today. There is not enough depth on the lot to locate a structure in compliance with the 100' OHW setback.

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

Yes (X) No ( )

Why or why not? The lot lacks sufficient depth because of the private road running along the rear of the cabin for the cabin to be moved back to a conforming OHW setback and still meet a safe setback from the road. The house was built by permit in 1977 and apparently the shoreline has eroded since then such that the structure no longer meets the 100' OHW setback and now requires a variance in order to make the proposed addition because of the ordinance requirement in Section 704.7.

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

Yes(X) No( )

Why or why not? The difficulty is the fact that the house was built in 1977 at supposedly a conforming OHW setback by a previous owner and the shoreline has eroded enough since then that the structure is now at an 87' OHW setback and the ordinance requires a variance

to modify the structure to this degree. There is insufficient depth on the lot because of the private road location to consider moving this structure back to a conforming OHW location.

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

Yes (X) No ( )

Why or why not? The locality consists of single family seasonal and year-round residences on lots that are similarly sized and smaller in scale. The proposed addition will result in a — 1200 sq. ft. footprint home that is within the range of home sizes in the neighborhood. Thus, the remodel will not harm the locality's residential character.

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

Yes (X) No( )

Why or why not? Economics are not cited by the applicants as the practical difficulty. The difficulty, as previously stated, is the fact that the house was built in 1977 by a previous owner and the shoreline has apparently eroded such that the structure no longer meets the 100' OHW setback. Also, the road right behind the house does not allow it to be moved back any further to achieve a greater OHW setback.

Variance Application 40-V-14 by Fred and Debbie Daily: Part of Government Lot 1 and the SE 1/4 of the NE 1/4, Section 3, Township 140, Range 34, Henrietta Township on Lake Ida. Parcel: 13.03.00500. Applicants are requesting a variance from Sections 502.2 and 902 of the Shoreland Management Ordinance (SMO) for a proposed residential structure that will not meet the ordinary high water mark structure setback and to exceed the permittable volume of material that can be moved on a steep slope and in a bluff impact zone.

Ben Ott of North Country Structures presented a summary of this project. This lake has a 150' setback and a bluff. The applicant is proposing to use the one flat area on this lake property and construct a new residence. The home was designed to minimize the amount of fill and reduce the disturbance of the area.

Krueger commented that while on the site visit, he looked for another location for this structure which he did not find.

Christenson expressed that any other location for the structure would be so far back that there would be no view of the lake.

The Board opened the meeting for public comment.

Doug Kirkham, 22007 4th St. Dr., here as current neighbors. Runoff from the roof, there is a steep pathway to the lake and if the runoff gets to the pathway, we will have erosion issues. As neighbors we have been assured that this project will deal will drainage. We support this project.

Grob asked about the pathway to lake?

Kirkham expressed that he would like to see the homeowner held to the promise that the runoff issue would be addressed as part of the variance.

Tom Fogerty owns property and questioned if there is an easement for access to the property.

Krueger expressed that property line and easement issues are irrelevant with regard to this variance.

Fogerty asked if the other lots that this property owner owns will also be developed as part of this variance.

Krueger explained that does not pertain to this variance request.

Public comments were closed.

Grob commented that if the owners want any kind of connection to the lake, this probably is the only location for the structure.

Grob made a motion to approve the variance.

Johnson seconded the motion.

Variance approved 4-0.

Findings of fact:

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

   Yes ( ) No (X)

   Why or why not? The tract is 62 acres in size and there is ample acreage on the tract where the proposed residence could be sited and comply with the ordinance; however, this is the only site that is suitable for a connection to the lake which makes it reasonable.

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

   Yes ( ) No (X)

   Why or why not? As mentioned in the answer to findings of fact question 1 above, the property is 62 acres in size and this would allow reasonable use of the property on lakeshore.

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

   Yes (X) No ( )

   Why or why not? The topography of the property dictates the location that is needed and is in the natural environmental setback and is the only usable spot to be able to use the lake.

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

Yes ( ) No (X)

Why or why not? The topography dictates that there is not another acceptable place that provides any connection to the lake.

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

Yes (X) No ( )

Why or why not? The locality consists of single family year-round and seasonal structures that are located on lots ranging from just under an acres to 2-4 acres and a resort and arestaurant/bar on the east side of the lake. The proposed residence in the proposed location would not harm this mixed commercial/residential use that presently exists on the lake.

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

Yes (X) No( )

Why or why not? Economics are not cited by the applicants as the practical difficulty. The alleged difficulty involves a bluff and steep slopes that are located in the part of the property near the lake on which the applicants want to construct a house.

Variance Application 41-V-14 by Garrick and Mary Larson : Lots 8, 9, and 10, Block B, Camp Kenjocketee, Section 18, Township 142, Range 35, Clover Township on Little Mantrap Lake. Parcel: 05.37.04700. Applicants are requesting a variance from Section 902 of the Shoreland Management Ordinance (SMO) for a proposed landscaping project that will exceed the permittable volumes of material allowed to be moved within the 100' ordinary high water mark setback and on a steep slope.

Cheryl Wilkie from Flying W represented the homeowner and explained that this project was designed to keep the water from coming into the house. The back end of the house toward the driveway slopes the water right to the house and on the sides slope down. Would like to take the extra fill from behind the house and use it on the left side of the house and build some rock walls to hold the fill there to get the water runoff away from the house.

Krueger questioned if there were mold issues in the basement?

Wilkie explained that this cabin does have mold issues and stood empty for many years.

Christenson asked if this was the cabin with vegetation all the way to the steps?

Wilkie explained that they would be putting wood steps in.

The Board opened the meeting for public comment.

There was none.

Grob commented that clearly something must be done to this cabin.

Johnson asked if they had a plan for erosion during the excavating?

Wilkie responded that a silt fence would be used.

Johnson made a motion to approve the variance and accept the staff report findings of fact.

Christenson seconded the motion.

Variance approved 4-0.

Findings of fact:

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

   Yes (X) No ( )

   Why or why not? There is a steep slope on the lot with stormwater management issues affecting the existing residence such that they are creating moisture and health-related issues in the home. The purpose of a variance process on shoreland alteration projects of a certain magnitude is to allow for review to ensure the project is able to be done properly and protect the lake from negative effects. The project will segment the project area up well enough with several retaining walls and employ sufficient erosion control measures that the project poses no environmental concerns. Once completed, the character of the slope will be the same as what it is now — stormwater will simply be directed away from the house instead of toward it.

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

   Yes (X) No ( )

   Why or why not? Addressing moisture caused health issues in the house by landscaping the yard to direct runoff away from the foundation is a reasonable request to allow a reasonable use of the home which is to occupy it without endangering one's health.

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

   Yes (X) No ( )

   Why or why not? The structure was constructed prior to the ordinance enactment date on a steep slope that requires proper stormwater management and landscaping in order to avoid moisture issues in the house.

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

   Yes(X) No( )

   Why or why not? As stated in the answer to question 3, the difficulty is caused by the steep slope and the location of the house on the slope. The house was constructed by a party other than the current landowner.

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

   Yes (X) No ( )

Why or why not? The locality consists of single family seasonal and year-round residences on lots of similar size to this one. The proposed landscaping project will not change the look of the slope much from how it looks today and will not alter the locality's single family residential character.

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

Yes (X) No ( )

Why or why not? Economics are not cited by the applicants as the practical difficulty. The difficulty involves the steep slope on the lot and the home's having been sited on the slope when it was constructed by a previous owner prior to the ordinance taking effect.

Variance Application 42-V-14 by Gerald Nosbush: Parts of Outlots No. 2, 3, 4, and 5, Shady Point, and Part of Lot 1, Block 2, Shady Acres, Section 28, Township 140, Range 34, Henrietta Township on Long Lake. Parcels: 13.44.00400 and 13.59.00310. Applicant is requesting a variance from Section 502.2 of the Shoreland Management Ordinance (SMO) for proposed new replacement rental units and one lodge structure to be placed at less than the required 100' ordinary high water mark setback.

Gerald, Wanita & Lewis Nosbush were present to explain the variance request.

Wanita Nosbush explained that they would be replacing cabins 2, 3, 5, 6, 7, 8, and cabins 11 & 12 would become one unit and rebuild the lodge and removing cabin 4 & 12.

Krueger questioned the density on the property?

Buitenwerf explained that they would be under the property density by ~100 square feet.

Christenson questioned where cabin 8 would be moved back?

Wanita Nosbush explained that they would be moving up the hill somewhat and away from the boat landing.

Christenson asked if they had a footage for moving this cabin?

Wanita Nosbush said the current setback on cabin 8 is 50' and would like to make it 57' and "L" shaped around the cedar trees.

Christenson asked if cabin 7 could be moved back also?

Gerald Nosbush explained that there was not a plan to move that cabin back.

Lewis Nosbush explained that moving this cabin would make it difficult for parking using up that space.

Wanita Nosbush suggested that cabin 7 could be moved to the east and then bring it up without disturbing trees and that they would be able to get the permits early next spring for 6, 7 & 8 and do those in 2015-2016 and then in 2017 do two more. The plan would be to get the permits early next spring for 6, 7 & 8 and do those in 2015-2016 and then 2017 do two more. They have a

variance that they got in 2002 currently to rebuild cabins 2, 3, 4, 7, 8 & the lodge (11 & 12) right where they are with a 50% addition. At the time of the variance, cabins 5 & 6 were not included because they met the setback at that time.

Lewis Nosbush explained that because of erosion over the years these cabins no longer meet the setback.

Grob asked if berms would be built when rebuilding these cabins to keep out water? Gerald

Nosbush says using berms is reasonable to save run off.

Krueger made the comment that these cabins lacked handicap assessable bathrooms and the bedrooms do not meet Minnesota Health Department standards. So safety and health wise, rebuilding would be an improvement.

Grob asked if you could move cabins 5, 6, 7 & 8 back to the 100' setback and reroute the road?

Wanita Nosbush explained that under the road is the underground gas line, electric & water line which would have to be moved.

Gerald explained that these movements would also use up the alternate septic site across the road.

Christenson commented that the cabins that have been redone are very beautiful, assuming the variance was granted you would continue to be good stewards of the land?

Wanita Nosbush stated that in front of cabin 8, there is a terrible erosion problem and have talked to the Soil & Water Conservation people and talked to a environmental garden person and have done rip rap. They do leave a buffer zone to curb the runoff.

Johnson commented that the previous variances would all be void if this variance is granted?

Buitenwerf explained that if this variance application is granted that they as applicants would rescind their rights to the previous variances.

Grob asked if that needed to be made as a condition of this variance?

Buitenwerf suggested that this be made a condition of the variance.

Krueger explained that the previous variance was good for the life of the property and the variance granted today would be good for 5 years.

Wanita Nosbush explained that she did know that.

Buitenwerf explained that whatever is not done in 5 years, the applicant could then ask for an extension, which would be up to the Board and myself to approve.

Wanita Nosbush explained that with the ups and downs in the resort industry the goal would be to have it done and complete in the next 5 years but you get one or two bad years in there and that could be a huge setback for our plans. We currently have a variance to build 50% bigger on all but cabins 5 & 6 and they would have to be moved back to the 100' setback. We are within 5' or 10' of that now. There is no time limit on this variance and it is on the deed of our property. She discussed that the goal would be to get the permits early next spring for 6, 7 & 8 and do those in 2015-2016 and then 2017 do two more.

Christianson asked when they planned to remove cabin 4?

Wanita Nosbush replied that when they were done with cabin 2, 3 & 5, because the septic for 4 would be used.

Krueger asked - could we say that cabin 4 could stay until all cabins were done?

Wanita Nosbush asked if they would have to have the permit pulled the fall of 2020 to complete the variance?

Christenson commented that with what you have for the existing variance and what you want to do in this proposed variance it would be in the county's best interest to try to make this work. They are going to remove some cabins and moving back at least one cabin and the other variance would be existing up to 50%.

Grob asked when they intended to do cabin 1 getting rid of 12 and then building a new lodge?

Wanita Nosbush answered that that would be the last thing done since no revenue comes in on the lodge. So the plan is in 2015 redo cabins 6, 7 & 8 and in 2016 to 2017 redo cabin 5, 3 & 2 and then would redo 11 & 12 with the lodge last.

Krueger commented that doing the lodge last made sense.

Wanita Nosbush asked if cabin 12 would need to be removed since it is part of the current building?

Krueger suggested a stipulation that they could stay if they do not get them built in time.

Buitenwerf explained that this is new territory that the Board has not had reason to delve into before. The scope of this application is much larger than most applications so it does not necessarily fit a 5 year time line.

Gerald Nosbush asked if they could keep their original variance and as we rebuild, take cabins out, then we can keep original variance on lodge until we tear down. We void it as we use it up.

Buitenwerf explained that staff would recommend against that because we than get right back into the situation of having a complicated situation of trying to discern what is allowed and what isn't.

Grob explained that it is hard to see ahead 5 years, they have a plan that they think they can accomplish in 5 years and they have done the application. If approved would like to do it considering all that and if it is not working, they come back to the Board and ask for an extension.

Wanita Nosbush asked how often the Board has granted extensions?

Buitenwerf explained that the extension provision of the ordinance came into effect in 2011 and have not yet run into that situation.

Wanita Nosbush asked if it is then the same process?

Buitenwerf explained that an extension can be obtained by submitting that request in writing to the office and the request would need to state what your difficulty in meeting that deadline was and then I or the Board can grant an extension of 1 year with no extension after that.

Krueger asked if they would like a month to think about this decision?

Grob asked which units the current variance is on?

Wanita Nosbush responded that it was 2, 3, 4, 7, 11-12, and the lodge.

Gerald Nosbush asked if there is any way they can keep our current variance for 2, 3, 4, 7, & 8 and just seek out a variance for the new cabin 1, which would eliminate 11 & 12, lodge, and cabins 5 & 6. Is it possible to have two variances on the property? A variance just for 5 & 6 to be built where they are and for us to build a new lodge and the new cabin 1 where they are proposed on the site plan and keep in place our current variance on 2, 3, 4, 7, & 8?

Christenson commented that the lodge would be the last thing to do.

Grob asked what is the possibility that we accept the current variance if we do and the old variance applies to only 11, 12, and the lodge.?

Buitenwerf understands what is being proposed and suggests that the applicant table this application for a month to allow the application to be amended in that manner and hear the application in the amended form so that you are hearing the entire request in this new form and then the previous variances can be voided. Basically you would be incorporating in those past variances that you are wanting to into this variance, but that would be much cleaner to try to make sense of because 5 years down the road memories fade.

Grob responded that they would come back to change the variance to include everything from cabin 2 thru 8 and then stipulate the old variance on 11, 12 & lodge would remain effective until complete.

Buitenwerf responded no, what is being said is to take the pieces of the old variance and make them part of the new variance so that the old variances can be rescinded, but they become part of this application if approved. Then you are only dealing with one application and it is much cleaner, the idea is if that is the way the Board wants to go.

Krueger agreed that this would be the way to go to incorporate the old with the new and present it in a new form.

Grob expressed concern that writing this new variance to accommodate these changes could be done with Buitenwerf's help.

Buitenwerf stated that he is able to give some direction but cannot write the variance for them. Johnson suggested that they rewrite old variance to reflect no sunset clause.

Buitenwerf suggested that they solicit public comment before going into any motions. The Board opened the meeting for public comments.

Chuck Diessner, 24328 Hazelwood Dr., representing COLA, expressed concern that the Board needs to be aware that to do a rewrite, you do not create a situation where a variance is granted on certain cabins that you wouldn't grant but for the other changes being made. You would put them in a better position and get cabins 1 - 7 done and maybe look at the old variance which is more favorable to us and what we are going to get under the new, so let's sit on our hands and not do anything.

Public comment closed.

Gerald Nosbush requested that this variance be tabled until next month. Krueger motioned to table this variance.

Johnson seconded.

Buitenwerf explained that the application deadline for next month is tomorrow, October 27th and would need to have an amended application by Monday, November 2nd. Otherwise you can file a form to allow for an extension tabling longer than that.

Buitenwerf also explained that the Board should specify the reason for tabling so that the applicants and the office understand and would insure that we provide information that they are wanting to see in an amended request.

Krueger specified that the reason for tabling is to work out a plan for the old variance and a new variance and the five year deadline that would be on any new variance.

Christenson requested that they show that cabin 8 is being moved back 8' on the drawing and then that you would consider moving back cabin 7.

Buitenwerf asked the Board to please restate the motion.

Krueger made a motion to table the variance to come up with a plan for the old variance and the new variance and anything newly granted has that 5 year window on it. The reason is to have a plan in case there is any downturn in the economy and they have to be able to build something beyond the 5 years.

Buitenwerf did not understand the beyond the 5 year part. Staff does not want a hybrid that extends beyond the 5 year window.

Krueger explained that no changes would be made to the old variances on this property.

Buitenwerf explained that he would have to check with legal counsel but am not aware that you can keep pieces of an old variance and rescind the other pieces.

Grob expressed that the issue here is that the applicant is uncertain that they can meet the 5 year window on the lodge. From a Board standpoint, whatever is voted on that the old variances go away so there is no complication. Will need to find wording that will help with the “what ifs” that could arise if the time line goes beyond 5 years in the future.

Buitenwerf explained that any new variance you grant is subject to the 5 year provision in the ordinance.

Wanita expressed that a vote is in order since statutes will not allow pieces of the variances. Gerald submitted that if you cannot save part of the old variances, there is no need to table.

Wanita commented that we have two variances 90-V-02 and we have 95-V-73 which could be voided. 90-V-02 has to do with cabin 11 & 12. Cancel one and keep one.

Buitenwerf commented that we could take those setback or whatever size density variances that were authorized and the previous variances that you want to retain, mix that in the new that you

are also proposing, submit that in a new application understanding that if that new application is approved your past variances would be rescinded. You would still have those things in the variance but would have the 5 year sunset clause in them.

Christenson commented that if we were to vote exactly as presented tonight and then all was not done in 5 years according to the statutes right now they were still in place in five years they would be able to remodel up to 50%?

Buitenwerf explained that this is a commercial property and the 50% rule does not apply. Johnson

asked when the variance clock starts ticking.

Buitenwerf explained that the 5 year clock starts ticking when the motion is made and the variance is approved.

Krueger withdrew the previous motion to table.

Christenson made a motion to grant the variance as requested with the following conditions:

1. The owners of the property involved in this variance application must rescind their rights to Variance 90-V-02 and Variance 95-73 in order to obtain permits per this Variance 42-V-14.

2. Earthen berms must be placed between Cabins 2, 3, and 5 to address the stormwater runoff issues present in these areas.

3. Proposed Cabin # 8 must be constructed at a 65' ordinary high water mark setback.

Grob seconded the motion.

Variance approved 4-0.

Findings of fact:

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

   Yes(X) No()

   Why or why not? The property is 10 acres in size but it would be hard to move the structures elsewhere because of septic, water and electricity.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (X)

   No ( )

   Why or why not? The cabins need to be brought up to code and this is their business and so it is important that they be able to do that.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X)

   No ( )

   Why or why not? The placement of the septic, water and electrical lines make it difficult to move elsewhere also the road is right behind the cabins.

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

Yes(X) No()

Why or why not? The placement of the septic, water and electrical lines make it difficult to move elsewhere also the road is right behind the cabins.

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

Yes (X) No ( )

Why or why not? The locality consists of a mixture of commercial resort and single family seasonal and year-round residences. The proposal would result in new cabins being placed in approximately the same locations as the existing rental cabins. The cabins would be slightly larger and taller, but they should not alter the locality's character.

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

Yes (X) No( )

Why or why not? Economics are not cited by the applicants as the practical difficulty.

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Planning Commission

New Business:

Wildwood Retreat First Addition plat correction

Christenson commented that this is just a correction for the title.

Buitenwerf commented that they need to read the letter that Mr. Murray provided and that explains the correction.

Larson stated that Mr. Murray added an area that was not previously included along the lake. Open for public comment.

None.

Christenson made a recommendation to approve the plat correction as presented and recommend to the Commissioners that they approve it.

Grob seconded the motion. Plat correction approved 4-0.

Final Plat of Sky Manor Aero Estates 2nd Addition by Mark Hobson: Applicant is requesting to re-subdivide three existing tracts into five platted lots. Parcels: 02.58.00500, 02.58.00600, and 02.58.00700.

The preliminary plat was approved by the County Board on August 19th. No conditions were placed on the approval. The property is Torrens and clear title is in Mr. Hobson's name. The plat has been proofed by an independent surveyor and found to comply with Minnesota Statute 505 that governs plats. No new roads are involved in the plat. The application complies with the ordinance so the department recommends that a recommendation to approve the final plat application be made to the County Board.

Christenson asked what the plan was for the road?

Hobson stated that the road is private right now but has cleared the brush along the edges and has widened out the first half of the road. After more lots are sold, will put more gravel on it to bring it up to Township specs.

Buitenwerf stated that the right of way is 66' on this plat and is an easement. Mr. Hobson owns the southern half of that right of way. My recommendation is to process the plat application as presented and then it would be up to him if he is interested in this becoming a township road to work with the parties on the north side of the right of way to see if they can agree to work with the township.

The Commission opened the meeting for public comment. There was none.

Christenson made a recommendation to approve the final plat as presented and recommend to the Commissioners that they approve it.

Krueger seconded the motion.

Final plat approved 4-0.

Shoreland Management Ordinance — proposed amendments

Grob asked if the appendix A-1 & A-2 are going away? Buitenwerf

responded yes they are being deleted.

Krueger commented that the definition of Variance should be user-friendly. Why is appeal not defined in the definition?

Buitenwerf explained that the State Statute changes and you run the risk of our ordinance not being in line with the change. From an administrative standpoint and a liability stand point of the County, it is to our benefit to use the Statutory definition. The definition could be updated as the statute changes.

Larson stated that if you key your definition to what the current statute is and say what it is right now, that puts the burden on the customer knowing what the statute is. The County could update the definition as the statute changes.

Krueger commented that if someone picked up this ordinance and looks at what they want to build and finds out that they cannot build it and they do not know anything about a variance they may not know to go look on line at the State Statute. Why not put the State Statute definition in there.

Buitenwerf replied that it is because the statute changes and we are then in a constant process of trying

to catch it and then having to go through the Public Hearing Ordinance Amendment process to make those minor corrections. We could accommodate that by the definition is what is found in the State Statute which is currently as follows and then if it ever changes, we could change it without going through hearing process.

Krueger requested that we have a definition for Appeal because some homeowners do not know that that is available.

Buitenwerf replied that there is not a good definition out there when there isn't a definition listed in that section of the ordinance. You have two types of appeals, one would be appeal of a variance and one would be an appeal of an administrative decision which the latter is what you are talking about.

Larson questioned if the administrative appeal goes to the Board of Adjustment? Krueger

replied yes, and how would the general public know.

Buitenwerf explained that there is a form available on the forms page of the website and then it is also content in the variance section of the Shoreland Ordinance.

Christenson commented that the State Statute is constantly changing and we do have to adhere to what the State Statute says. Therefore, by referring to it this way, it would not have to be constantly brought before a hearing.

Grob commented that under the definition of bluff, it stays the same with removing the Appendix A illustration only?

Buitenwerf responded yes.

Grob asked why the definition of a building deleted.

Buitenwerf replied that we have a definition of a structure and they are duplicative.

Krueger questioned why the definition of Conditional Use was being taken out only using the State Statute?

Buitenwerf responded that the rationale for that one is the same as the variance rationale. Krueger

asked if this is being looked at from the customer point of view.?

Buitenwerf replied that he is aware of what they look at and what they don't look at. Most people are looking at the definition section of the ordinance to find information about what a Conditional Use is, they we look at the actual form where there is more detailed information available as to what the application is used for.

Grob commented that he might side with Krueger on this issue.

Buitenwerf commented that he doesn't disagree, but has to balance a number of factors one of which is a cost to the taxpayers to update the Ordinance when things get changed and they do change fairly often.

Grob commented on the controlled access or recreational lot definition being deleted because you in fact are deleting as this is not an option at all.

Buitenwerf replied yes that is the recommendation. They are a nightmare to administer after they are in place. The homeowners association does not maintain itself and getting to problems then of who is in charge and who do you contact to work with. The long term sustainability of them in terms of ownership is the issue.

Larson questioned if we want to remove access for non-riparian lots to the lake.

Buitenwerf commented that it is 200' wide by 400' deep minimum and that allows a certain number of watercraft - typically up to 6. For every additional watercraft above that that you wish to have a slip for, you have to increase the size of the lot based on the acreage of the lake and the length of shoreline.

Larson explained that under the current ordinance it is very limited.

Buitenwerf explained what the procedure is for a PUD under the current ordinance language. There is a means to address lake access.

Grob explained that by giving non-riparian property owners access to the lake, it is not fair to lakeshore owners and not good stewardship of the lake.

Christenson agreed.

Grob asked for the reasoning on the expansion, enlargement, or intensification definition?

Buitenwerf explained that that language is key to the nonconforming structure language that you will see in Article 7. The statute allows a nonconforming structure to be rebuilt, repaired, replaced and does not go into detail but we and legal counsel feel is needed as to finding the parameters of can it be enlarged or not. A number of counties have worked in defining definitions so that there is a clear boundary to what that statute represents.

Johnson asked about the definition of a crawlspace and the space needed for the separation from the water table also my definition of a crawlspace is anything you can crawl under?

Buitenwerf commented that it is a house on pilings or piers, or tree stumps or cinder blocks, whatever.

Johnson commented that a mobile home needed to meet the 3' water table.

Buitenwerf responded that if you have 3 vertical feet between the water table and the floor of that mobile home you meet our ordinance criteria. If you want to add a statement to 507.1 to make that clear, that would be something you could do.

Johnson commented that unfinished floors, dirt or whatever, so we called the bottom of the floor of a crawlspace the floor and that needed the 3' separation from the water table.

Buitenwerf confirmed that the distinction is if the space is enclosed or unenclosed. Johnson

questioned the 6' height on the definition of a crawlspace?

Buitenwerf replied that the height is low enough that it is not a finished height per code. Johnson

explained that a crawlspace should be anything under what the code is for living.

Buitenwerf explained that the reason 6' was chosen what because people were trying to create spaces that were livable but they weren't technically basements and so they were enlarging the size of the structure that they could build and get around the 50% addition language.

Christenson asked if you are wanting the wording enclosed added?

Buitenwerf replied that it can be added if you want it.

Christenson asked if the wording for guest cottage needed to be removed?

Krueger asked what would happen to the Hagert property if this definition was removed?

Buitenwerf explained that there was a resolution that was being worked on to resolve the issue on the Hagert property. If this ordinance draft is made effective and that item is not resolved yet, it would eliminate the dwelling and density issue on that property.

Grob commented that if we no longer have a Guest Cottage definition anymore, we will have to address how we will handle those accessory structures that one can live in and how do you control that situation.

Buitenwerf commented that Article 6 would explain that.

Krueger commented that he liked the old definition of Home occupation better than this new one.

Grob commented that we should move past the definitions to get to the ordinance itself to make sense of the definitions.

Krueger commented that you have a nice definition for Interim use and but why can't Conditional Use be defined just as nicely.

Buitenwerf explained that it is just a matter of what statute defines and the language for interim use does not have a statutory definition.

Christenson commented that on page 8 correct the word "he" to the. Grob

asked about the lot width definition, what is your intent?

Buitenwerf replied that the intent is to define it with the weird lot shapes, a lot of counties try to provide a definition as to how to measure lot width at the building setback line from the lake and that gets extremely difficult to describe effectively so that it is clear as to where the measurement is taken. This would simply say it has to be the shortest distance at any point along the side lot line so if your lines are jogging goofy you have to be 150' wide at the narrowest point on those side lot lines.

Grob commented that the current rule is that you have a 150' at the building site and if you had a pie shape or odd shape.

Krueger commented that if you allow this definition you would not be able to have a pie shape lot be buildable.

Buitenwerf responded that the issue with pie shapes it that you are necking the lot down right at the point you don't want to neck it down because you are very severely limiting septic system area. Once someone puts their driveway in, that takes up one side of the lot and then you put a detached garage on the other side, now you are greatly reduced where you septic site can be.

Grob explained that with lake lots you are going to see irregular shapes.

Buitenwerf also responded that you see people do crazy things to make 150' at the building setback line and then they neck it down on the back line to 40'and do all kinds of goofy things with the lot and come back out currently in the minimum requirement for the rear lot line which is half the required lot width at the shoreline and the 100' setback so you have 150' at the shoreline, 75' at the rear lot line and from the 100' building line and the rear lot line have all kinds of issues with structures and septic spaces.

Grob understood the point in creating new lots but there are a lot of lots either built on or not built on that point that are not that way.

Krueger explained that pie shape lots would have to be rectangular shaped. Christenson

asked if this definition should be left as is or eliminated?

Krueger replied that he would like this left as is.

Christenson asked if it could be broken out riparian or non riparian. Krueger

replied no.

Grob recommended we keep the current lot width definition and remove the riparian and non riparian as shown.

Christianson commented that there is a typo in the multiple dwelling definition "by more than one".

Krueger again objected to the use of the Minnesota statute to define Nonconformity.

Buitenwerf again advocated to keep it the same as the others using the current statute.

Grob asked why certain words were taken out of Planned unit development, planned unit development,

commercial, planned unit development, residential?

Buitenwerf said the ordinance requires a minimum of 5 units, and single family residences, duplexes, triplexes are above that threshold. Try to eliminate the confusion.

Larson asked why bed and breakfast is being removed?

Buitenwerf responded that in his opinion that should stand on its own since it is separate, not part of the planned unit development, commercial as it is covered in the Conditional Use Table.

Krueger commented that the repairs and maintenance examples are good.

Buitenwerf commented that the more specific you get, the more loop holes are created. For instance the 2' height increase roof allowed in this section currently is worded so vague that we are obligated to allow people to increase the wall height of their cabins by 2' which was not the intent. Our legal counsel is recommending that we address that section.

Johnson questioned why RV camping vehicles do not include licensing? Buitenwerf

explained that the licensing issue is covered under Sections 510 & 511. Christenson

questioned the fees for land use permits?

Buitenwerf explained that we are actually going to be issuing land use permits, not building permits and building permits represent state Building Code. What we are doing is issuing permits for structures to be used on the land.

Krueger commented that under the definition resort where it says temporary daily or weekly duration, that should be changed to transitory. The state classifies anything that is less than 30 days as transitory.

Buitenwerf replied that there is no objection to using the term transitory. Krueger

asked why decks were not included in the setback definition?

Buitenwerf explained that if decks were specified there and someone would say you did not specify a platform, a person gets into arguing technicalities so the best way to handle this is to eliminate this part of the definition.

Grob asked what is the use of the "I" under Section 401, Permitted, Condition, Special and Non-Permitted uses means.

Buitenwerf explained that is the reason for adding interim use permit, it is something that was added to statutes a few years ago to give counties more flexibility in dealing with uses that have a very short time line. Conditional use is a permit that runs with the property and you are not able to extinguish.

Grob suggested that it be defined in the upper section as done with the others. Buitenwerf agreed.

Grob commented that under Section 402.7, correct G to F.

Buitenwerf commented that under these land use things, the DNR is working on scrapping these land use things altogether and sticking to primarily environmental issues, so these could potentially go away in the future.

Grob asked if the counties would retain some of these things even if the State does not.

Buitenwerf commented that it is possible that they would but with a limited staff of 2 to cover 1000 square miles it is virtually impossible to get into home use occupation issues. Would recommend that under Section 402.9, "C" be removed.

Christenson made a motion to reconvene on Tuesday, October 28, 1014 at 5:00 p.m. Grob seconded the motion that passed unanimously.

Krueger opened the continuation of the meeting at 5:00 p.m. on Tuesday, October 28, 2014.

Grob asked why under Section 402.12.A the setback is 200' instead of 150' on a Natural Environmental Lake.

Buitenwerf reviewed that Minnesota Rule 6120.3300 subpart B reflects that requirement.

Grob questioned the deletion of Section 501.7 Minimum Width at Rear Lot Line?

Buitenwerf reviewed that based on the edit made yesterday that the original language in Section 501 be re-added, therefore, 501.7 would be not be deleted from the ordinance.

Grob wanted an explanation of getting rid of the Guest Cottage definition or explain how we handle these situations.

Buitenwerf explained that to remove the guest cottage language, you would need DNR approval because it is a deviation from the state rule. What we are proposing is to treat a guest cottage as an accessory structure and accessory use which in the table are permitted uses as accessory uses to a primary single family residence use and so it would be allowed as an accessory use and then we wouldn't have to worry about is this allowed, is this not, does it meet requirement. It would all be handled under the impervious surface threshold on all properties because if you segregate it out, we end up right back in the situation trying to discern if something is a guest cottage or not.

Grob expressed concern about eliminating this piece of the ordinance due to what would be allowed in the future in the shore impact zone.

Buitenwerf expressed that he has no concern about what is on the inside of the structure and the impact that it might have on the lake is minimal. That gets us back into now we are having to decide is this or is this not

a guest cabin and what in the draft is to get away from that.

Grob commented that what we have over something major is impervious surface and the fact that in the shore impact zone basically you are not allowed to make a structure larger.

Buitenwerf commented that anything made larger in the shore impact zone would require a variance.

Grob commented that outside the shore impact zone as long as there are 2 septic sites and do not go over impervious surface, a structure could be built with a permit.

Buitenwerf commented that the structure would have to qualify as an accessory structure, yes.

Larson asked if what our intent was to eliminate sub standard structures, instead we are allowing them to increase?

Grob commented that the only constraint you would have is not to allow expansion in the shore impact zone.

Buitenwerf reviewed that State Statute Article 6 for several years now has allowed nonconforming structures to be reconstructed without any reason. The Legislature has changed direction on that subject.

Christenson explained that since we have no one to enforce what we have and I am wondering if that is why the State did the 180 on this subject.

Larson explained how this happened at the state level.

Johnson commented that under Section 507.1 the addition of crawlspace was good, but wanted to know where trailer houses were excluded in this section.

Buitenwerf responded that they aren't. The floor of the trailer must meet separation.

Grob suggested that the floor of the mobile home would have to be 3' above the highest known water level.

Krueger asked what the purpose of "sunlight is able to reach all area beneath the boardwalk to do"?

Buitenwerf explained that having the boardwalks higher off the ground in wetlands prevents the killing of the vegetation beneath the boardwalk.

Grob questioned the reduction in days on the Temporary Structure from 180 to 120 and the reasoning for that reduction.

Buitenwerf explained that 180 days is 6 months and a little too long, when you think of the typical window that someone is camping. It would make it easier to administer the Ordinance if we had a smaller window of time.

Grob asked if other counties were scaling this down as well.

Buitenwerf answered yes, there are a number of counties that give a smaller window than what we are proposing.

Grob asked what a temporary structure was?

Buitenwerf explained that a screen tent would be an example.

Christenson asked how long you could park a trailer on a lot out of the shore impact zone?

Buitenwerf stated that the trailer has to meet setback and we do not permits trailers outside of shoreland zoning.

Johnson stated that in Section 511.1 Recreational Vehicles, you removed "setbacks established by the Board of Adjustments"?

Buitenwerf reviewed that it is an unnecessary statement since should the Board rule such, that would take precedence.

Grob reviewed that in Section 511.2, a camper would need permitting if left for more than 30 days?

Buitenwerf explained that the cost of permitting is $100.

Krueger asked if you are using a motorized RV to go south and you just need a place to park it, would you need to permit that RV?

Buitenwerf reviewed that just parking that vehicle would be allowed, but if you are using it as your primary residence it would me a land use permit. The ordinance allows intermittent use.

Grob asked if there should be a statement in Article VI Accessory Uses and Structures regarding all detected accessories including ones with living quarters shall be located in compliance?

Buitenwerf stated that if we try to put constraints on accessory uses and structures, we are right back to trying to figure out if a structure is or is not a guest cabin and that is what we are trying to get away from.

Christenson asked if we approve the Ordinance this way and found something was not working and needed to add something in it, can that be done?

Buitenwerf explained that you draft language for that change and go back through the amendment process.

Johnson question if Section 701.H conflicts with Section 702.B?

Buitenwerf saw no conflict.

Grob asked if in Section 702.B, the 180 day statement was a change from a year?

Buitenwerf replied that this is exactly as the state statute is written.

Grob reviewed Section 702.0 that is was possible if a structure was damaged in the shore impact zone and this could be required to move back away from water if space were available.

Buitenwerf stated that this too is exactly as the state statute is written.

Krueger questioned the Section 704 Nonconforming Lots of Record language in Section G, width footage?

Buitenwerf explained that this is for developing an unimproved lot. You have an improved lot as long as you get a permit for the new structure before you remove the existing and the new structure can meet setbacks - you can get a permit for it. This section pertains to an unimproved lot meaning a lot that does not have a residence that is connected to running water and a septic system.

Grob explained that it is not clear to anybody if they pick this up and read this ordinance regarding the lot widths on unimproved lots. We would like to see a definite distinction written in here regarding improved and unimproved lots.

Buitenwerf responded that he would take that into consideration. This is to contain regulations. You do not want it to contain informational content.

Christenson asked if they kept the sentence in Section 704.1 "This section applies to unimproved lots." would that satisfy this issue?

Buitenwerf agreed that the easiest way is to reinsert this sentence in 704.1. Grob

questioned in 704.2 the language change?

Buitenwerf explained that this is State Statute language.

Larson asked it this section defines common ownership?

Buitenwerf explained that standard legal criteria would be applied in those cases. Grob

questioned the statement in Section 705 regarding water use appliances?

Buitenwerf responded that if the system was designed to accommodate the maximum water use appliances as most new systems are, then adding an appliance would not constitute an upgrade. We are not going to follow the appliance salesman.

Grob requested that a correction be made on Section 901.2.F. It should state "Item E" not D. Krueger

would like to see the access path Section 901.2.E defined by lake type.

Buitenwerf commented that this section specifies "up to" and this allows one access path to the lake per standard lot.

A discussion was held.

Johnson questioned on Section 901.6 as to whether this is added or not?

Grob commented that for someone to come in and request a variance and then be required to plant or restore no less that 50% tree and shrub canopy coverage and the State and counties are moving this direction. We need to continue to work on this restoration, but for now on a case by case basis during the variance process.

Voted to remove the proposed shore impact zone revegetation draft language in Section 901 4-0.

Johnson asked for the reason to add "any newly created" in Section 1003.1?

Buitenwerf explained that was put in so that someone cannot argue that somehow what they are doing does not constitute a subdivision. It is to eliminate any chance of a loophole.

Grob questioned the removal of the Section 1005 Controlled Access & Recreational Lots?

A discussion was held.

Buitenwerf commented that State Shoreland Rule 6120.3300 speaks to controlled access lots and our ability to decide if we wish to allow them.

Johnson wanted clarification on Section 1103. Variances and Appeal would like to make sure that the appeal is up to the Board.

Buitenwerf commented that if the variance criteria has not changed, no appeal would be brought forward.

Larson commented that before once a person was denied a variance that was it, they had to appeal to district court and if they did not, they could not reapply for a different variance. State statute says the decision of the Board of Adjustment is final, but what this says is the decision of the Board of Adjustment is final but only for one year. They can come in for the after the fact appeal, get denied, go through the appellate process which delays enforcement. A year passes and they come back here and reapply. I do not think that is good, you are allowing someone to have an illegal structure. Would like to see that you cannot resubmit the same variance again.

Buitenwerf responded that we want it in there to keep people from being able to reapply with the same variance. Wearing the board down potentially.

Krueger asked if the wording of this should be changed.

Larson asked if we could remove 11.

Larson asked if this language was recommended by the model ordinance?

Buitenwerf responded that our attorney has been consulted on this and it has been recommended that the wording be retooled.

Grob asked to remove "and use permit" under Section 1104 Permits.

Buitenwerf will remove it.

Larson questioned the land use permit term?

Buitenwerf explained that building permit really should be used. Building code matters and since we do not administer the building code, we want to get away from that term and most counties use land use permit instead because what you are issuing is a permit for someone to use a piece of land in a certain way by building a house on it or a pole barn. You are really not issuing a building permit and it also gets us out of possibly risky waters due to some court cases that have been decided recently that concern the 60 day rule and there they use the term building permit and it is associated with the building code. We want to take

that liability away.

Christenson made a motion to forward a draft as edited to the County Board for consideration for public hearing.

Krueger seconded the motion.

Approved 4-0.

Miscellaneous:

The County Board asked the Planning Commission/Board of Adjustment to see if its meeting dates could be moved so that the Park Rapids City Council could use the Board room for its meetings as the Council meets on the second and fourth Tuesdays of each month in the evening. The Planning Commission members found that the 2nd Monday of the month meetings could work for next year. Buitenwerf said he would share this information with the County Board and report back to the Planning Commission on what the County Board might say or put into a motion.

Adjournment.

Grob moved to adjourn the meeting.

Johnson seconded the motion that carried unanimously.

Approved 4-0.

HUBBARD COUNTY
Planning Commission/Board of Adjustment meeting minutes
6:00 p.m. on Monday, November 23, 2014

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

Krueger started the meeting by reading the procedure by which the meeting of the Planning Commission/Board of Adjustment will be conducted to the audience.

Planning Commission:

Approval of the October 26, 2014 minutes:

Christenson moved to approve the October 26, 2014 minutes as presented.

Grob seconded the motion.

The motion carried unanimously.

Old Business: None

New Business:

Proposed Liquor License Ordinance and repeal of Ordinances 9, 16, and 24.

County Attorney Don Dearstyne, representing Hubbard In Prevention, reviewed that the purpose for changing the ordinance is to first compile all the ordinances into one to make it a little easier for people so they do not have to go to three different ordinances to come up with what the regulations are as to running a liquor establishment. What we are finding is that when we have compliance check failures and law enforcement charges them to be prosecuted by our office, it has been ineffective insuring compliance when we are going after a 18 or 19 year old clerk instead of the establishment. Our ordinance, as it is, does not address the establishment and so this proposed ordinance can incorporate 9, 16 & 24, and would have provisions for enforcement as to the establishment as well. Under the administrative penalties, section 14, the actual establishment or licensee would have a monetary fine levied against them administratively to be handled by the County Board or their designee and the establishment would have the opportunity to reduce that fine or that administrative penalty by ensuring that all their employees attend alcohol awareness within three months of the violation. Our goal is not to punish anyone. Our goal here is to ensure compliance so that our establishments are not selling to underage individuals, which reduces the number of alcohol offenses that we have and the problems that come with alcohol overindulgence by the youth. Our goal is to have 100% compliance and have no administrative penalties. There is nothing in the ordinance against the establishment as it is, only the bartender or the clerk at the liquor store.

We did make calls to the liquor establishments regarding this change and some of the feedback has been positive in that they do not want to sell to underage people and are in favor of this change to the ordinance.

We would like to recommend that Section VII, Subd. 4 "Distance from School or Church. No license shall be granted for a building within 1,000 feet of any school or within 1,000 feet of any church." be included in this new ordinance and also recommend this statement get added to Section VII Subd. 3 of the license application under the criteria.

Sheriff Cory Aukes commented that the need is there especially for establishment owners with back to back compliance failures themselves.

Krueger asked about the application procedure regarding licensing and the requirement for different licenses for different applications.

County Attorney Dearstyne explained that on sale requires one license and off sale requires a different license.

Larson asked if the process in front of the County Board would be recorded so that there could be an appeal process in place?

County Attorney Dearstyne commented that he would recommend that there is due process and that there is a clear record in the event of an appeal to district court.

Larson asked if that process needed to be stated in the ordinance?

County Attorney Dearstyne did not believe that it needed to be stated in the ordinance since we have the equipment to record the meetings.

Grob asked if there was anything new in this new ordinance that was not in the old that the establishments would now have to comply with, are we adding any additional restrictions other than the penalty?

County Attorney Dearstyne replied that he does not believe so, that the existing license on establishments would be grandfather in.

Larson agreed.

Krueger asked if it was a winery manufacturer, could they operate an event every year without a change in the ordinance?

Sheriff Aukes commented that yes they could, the only difference is that if they had a compliance check at the event and they failed, they could have their license suspended.

Grob commented that this now allows you to deal with the establishment when there is a violation, is the person who actually sells to an underage person still subject to the current law?

County Attorney Dearstyne replied that they are still subject to the current law under 340a which is the state statute and so they can be prosecuted as the need arises.

Larson commented that under Section XIV Subd.1, it talks about individual misdemeanor liability.

Sheriff Aukes gave an example where this proposed ordinance can benefit. Currently you can have the 22 year old who maybe did not get any training, they can get charged and go through the system. The establishment owner can keep them or fire them and the next person comes in with no training so they fail again. This shows us that the establishment owner does not take this seriously and is not training the staff and this will help hold the establishment accountable.

County Attorney Dearstyne explained that he reviewed our ordinance with many counties around the state and tried to take the best of all the ordinances.

Johnson asked if Section XII Subd 2 is new or is that in our old ordinance?

Sheriff Aukes responded that it is in our existing ordinance.

Krueger asked about Section XII Subd 2 on premises on site sales or hours, is there separation there.?

County Attorney Dearstyne explained that this is after the liquor establishment closes, everyone is supposed to be off premises one half hour after closing.

Larson asked if Section XVII has ever been enforced?

County Attorney Dearstyne explained that the establishments do maintain laws and are very good about that and would recommend leaving that in the ordinance to cover keg parties.

Sheriff Aukes has checked on the use of that and it has not been used in a while.

No correspondence was presented.

No public comment was given.

Grob made a motion to recommend to the County Board that they adopt the proposed Liquor License Ordinance as presented with the addition of Section VII, Subd. 4 "Distance from School or Church. No license shall be granted for a building within 1,000 feet of any school or within 1,000 feet of any church." into the new ordinance under Criterion Subd 3, Item 8 and repeal Ordinances 9, 16, and 24.

Christenson seconded the motion.

The motion carried unanimously.

There being no further Planning Commission business, the Planning Commission meeting was closed at 6:20 p.m.

Board of Adjustment:

Approval of the October 27, 2014 Minutes:

Christenson moved to approve the October 27, 2014 minutes as presented. Grob seconded the motion. The motion carried unanimously.

Old Business:

Variance Application 38-V-14 by Sherman Fickle: Lots 10 and 11, Bubar's Addition, Section 17, Township 139, Range 33, Crow WingTownship on 3rd Crow Wing Lake. Parcel: 06.46.01000. Part 1: Applicant is requesting a variance from Sections 502.2, 503, and 704.7 of the Shoreland Management Ordinance (SMO) for a proposed lakeward addition to a nonconforming residential structure located in a bluff impact zone. Part 2: Applicant is requesting a variance from Section 801.2 of the Shoreland Management Ordinance (SMO) and Article V, Section 2.01 of the Subsurface Sewage Treatment System Ordinance for a septic system drainfield to be installed at less than the required 10' rear lot line setback.

Neither Sherman Fickle nor his agent were present to answer questions.

Christenson commented that this request was due to damage, but on site, the review showed other areas of the deck that were damaged that would not be covered under this request. She would have liked to talk with the homeowner regarding all the work that was done on the lake side.

Krueger asked if the work that was done would require an after the fact variance?

Buitenwerf stated that our office has not had a chance to go out and do additional measurements to see if the threshold for a variance was exceeded with that project.

Grob asked if the SSTS plan meets all the requirements for this property?

Buitenwerf replied yes as far as what is being proposed with the bedroom sizing. The rear lot line setback cannot be met so it would need Board approval.

Johnson commented that the original roof design seemed flawed.

Christenson commented that the pillars on the side of the deck have the same damage as the pillars where he is asking to put a roof over. My question would have been, how are you going to prevent the rest of the pillars from damage?

Krueger asked if this application stated that he was going to install gutters to prevent the damage or could this be a condition?

Buitenwerf stated that the application would have to be reviewed, but did not recall that a statement was made on the application regarding gutters.

Grob stated that he is only solving a piece of the problem, but what he really needs is gutters. Now that he wants to extent the roof lakeward after he has already encroached heavily into the slope area makes this application not reasonable for approval.

Krueger asked if you could put a roof extension on this structure without going closer to the lake?

Grob commented he did not know how this could be done.

Krueger commented that if the roof goes to the posts already there, then the roof would not be going any closer to the lake.

Johnson asked if the setback is measured to the edge of the roof line?

Buitenwerf responded that the measurement is to the nearest point of the structure whatever that is.

Krueger explained that if you put a roof over an existing deck, you are not encroaching closer to the lake.

Christenson reviewed that the drawing extends the roof over the posts, making it encroach closer to the lake.

Krueger stated that the real problem is not having gutters on this structure and that if we approve this request, we can put a condition on it that would help with the water problems.

Grob explained that the water control issue on the front of the house is not well done. His premise for this request is to protect the wood structure that he has, not to control runoff. The reason for the variance request is not enough to warrant an addition to the structure lakeward.

Krueger again explained that if the roof was approved, that would allow the Board to set conditions regarding the water runoff.

Johnson wanted to include a vegetative buffer in the conditions.

Grob commented that a vegetative buffer in this case seems that it is already there on this hill. A better condition would be to have the downspouts going into a French drain for water runoff. We should also require the area to be replanted where there has been new construction work.

Christenson commented that a condition that the road be removed, he could object since he uses it to get his dock in and out. Whether we approve or not, he still has water problems that will have to be addressed.

Grob commented that we are not the ones to design his water runoff system, that is his option to come back with a well designed water control plan in order for us to approve it.

Krueger would not like to see him have to wait a year to come back to resolve this issue, but it would take a significant change in the plan to review.

No correspondence was presented.

No public comment was given.

Christenson made a motion to deny Part 1 of Variance Application 38-V-14 by Sherman Fickle and accept the Findings of Fact provided in the Environmental Services Staff Report and to approve Part 2 of Variance Application 38-V-14 by Sherman Fickle and accept the Finding of Fact provided in the Environmental Services Staff Report.

Grob seconded the motion.

Motion passed 3 to 1 with Krueger voting nay.

Part 1 Findings of Fact

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

   Yes ( ) No (X)

   Why or why not? The alleged water damage problem with the lakeside deck wooden posts and railings can be resolved by installing gutters on the lakeside-facing portion of the roof. The proposed roof addition would not cover the entire lakeside deck that has wooden posts and railings along its full extent so it is hard to believe that the proposed roof addition is strictly to solve the post/railing rot issue because the proposed roof will not cover the entire deck and thus the rot problem will persist along the rest of the deck not proposed to be covered by this roof addition. A different material could also be used for the posts/railings

that would satisfactorily address the rot issue. Allowing the structure to encroach on the 100' OHW setback when alternative solutions to the alleged problem prompting the proposed addition exist would not be in keeping with the ordinance intent.

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

Yes ( ) No (X)

Why or why not? The owner has a very nice residence, detached garage, and pole building on the lot that afford a typical residential riparian lot use and multiple related reasonable accessory uses. Denying the expansion of this house into the 100' OHW structure setback will not deny the owner of a reasonable use of the property.

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

Yes ( ) No (X)

Why or why not? The alleged difficulty is that the rainwater runoff from the roof is landing on the lakeside deck and rotting out the wooden railing and posts. This difficulty could be corrected by the installation of a gutter on the roof and posts and railings of a rot-resistant material like steel or PVC. These circumstances have to do with the structure's design and construction materials used – not aspects of the property that are unique.

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

Yes ( ) No (X)

Why or why not? The current owner made the past modifications to the structure's roof and deck that are now causing the post and railing rotting.

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

Yes (X) No ( )

Why or why not? The locality consists of single family seasonal and year-round residences whose character would not be negatively affected by the construction of this lakeside covered deck.

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

Yes (X) No ( )

Why or why not? Economics are not cited by the applicants as the practical difficulty. The alleged difficulty concerns the home's design and construction materials used.

Part 2 Findings of Fact

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

   Yes (X) No ( )

   Why or why not? The intent of the 10' lot line setback is to provide a buffer from a property line to hopefully see that the drainfield is installed on the subject property and not a neighboring property. Environmentally, the system will meet the required ordinary high water mark setback and vertical separation requirement from the periodically saturated layer – which are the key items for the ordinance.

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

   Yes (X) No ( )

   Why or why not? Having a standard drainfield septic system vs. a holding tank is a reasonable use of the property.

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

   Yes (X) No ( )

   Why or why not? The lot has a bluff on the lakeside half of it that prevents installation of the drainfield in the bluff impact zone. The location of a well on the property also limits where the drainfield can be installed and meet the required well setbacks. Also, the existing septic system tanks and lines are in locations that work best with a drainfield in this location. Moving the drainfield to another rear corner of the lot would involve significantly more work and cost and not improve the OHW setback or vertical separation of the drainfield from the periodically saturated layer so there is not any reason to do so.

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

   Yes (X) No ( )

   Why or why not? The difficulty is the lot's topography (i.e. bluff on the lakeside half) and location of an existing well.

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

   Yes (X) No ( )

Why or why not? The locality consists of single family seasonal and year-round residential structures. Allowing a drainfield to go up to the rear lot line vs. 10' from the rear lot line will not alter the locality's character in any way.

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

Yes (X) No ( )

Why or why not? Economics are not cited by the applicant as the practical difficulty. The difficulties involve the lot's topography and location of an existing well.

Facts supporting the answer to each question, above, are hereby certified to be the Findings of the Board of Adjustment. This is in accordance with Section 1103 of the Hubbard County Shoreland Management Ordinance.

New Business:

Variance Application 44-V-14 by William and Rose Davidson: Lot 4, Block 1, Holiday Acres, Section 16, Township 139, Range 33, Crow Wing Lake Township on Third Crow Wing Lake. Parcel: 06.52.00400. Applicants are requesting an after-the-fact variance from Section 502.2 of the Shoreland Management Ordinance (SMO) for a detached garage that is located over the side lot line and not in compliance with the required 10' side lot line structure setback.

William Davidson presented that this home was purchased in 2013, the garage was constructed in 2004 and discovered that it was not compliant with the lot line setback when the offer was made. There was an easement made for the property for the lot line issue to take care of the lot line setback issue.

Krueger asked why use an easement and not a property line adjustment?

Davidson explained that the bank owned the adjacent property at the time of sale but that could be done with the current owner of the adjacent property. The after-the-fact variance seemed like the quickest way to proceed.

Krueger explained that for future sale, it would be cleaner to do a property line adjustment.

Davidson did not disagree, but was going to do this process to make sure it was compliant first and then do a property line adjustment once we know everything is in compliance.

Grob commented that to clean up the after-the-fact thing is what we need to focus on right now.

Davidson mentioned that the easement states that should this garage burn to the ground, the new structure would have to meet setback.

Received correspondence from Krist Olson who is in favor of this application.

No public comment was given.

Grob made a motion to accept Variance Application 44-V-14 by William and Rose Davidson as presented and adopt the Findings of Fact as presented in the Environmental Services Staff Report. Johnson seconded the motion.

Motion passed unanimously.

Findings of Fact

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

   Yes (X) No ( )

   Why or why not? The side lot line setback is used to provide a reasonable buffer from a property line to hopefully allow for uncertainties or discrepancies in a property line's physical location so that a structure is constructed on the property of the party building it and not on a neighboring property. In this situation, an easement is already in place from the neighboring landowner allowing the garage to be partially located on the neighbor's property. The structure is over 190' from the lake ordinary high water mark per the application sketch and over 126' from the rear lot line. There are no negative environmental impacts that will occur from the granting of this variance.

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

   Yes (X) No ( )

   Why or why not? Having a garage for vehicles and storage on a residential property is a reasonable use. Since the neighbor granted an easement for the garage, it would be unreasonable to require the garage to be moved because the 10' side lot line setback is in place to guard against property line infringement issues between neighbors and in this case, the neighbor was okay with the infringement.

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

   Yes (X) No ( )

   Why or why not? The garage is misplaced and the easement provides 10' setback, situation unique due to previous owner action.

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

   Yes (X) No ( )

   Why or why not? The structure was constructed by a previous landowner and that landowner's contractor in 2004. The current landowner acquired the property in 2013.

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

   Yes (X) No ( )

   Why or why not? The lake is classified as a recreational development lake and the locality consists of single family seasonal and year-round homes. Many of these lots also have

detached garages on them – similar to this one – so the area's character will not be harmed by granting the variance. Detached garages are able to be permitted as accessory structures. The only issue is that the garage partially sits on the neighboring property. This matter has been resolved between the neighbors via the granting of an easement. The garage's sitting astride the property line is not going to change the locality's character.

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

Yes (X) No ( )

Why or why not? Economics are not cited by the applicants as a difficulty. The cited difficulty is that the garage was built over the property line by a previous landowner and the landowner's contractor who constructed the garage.

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?

Yes (X) No ( )

Why or Why not? The applicants inherited the illegal structure when they recently acquired the property in January 2013 as the structure was constructed by a previous landowner.

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

Yes ( ) No (X)

Why or Why not? The applicants did not construct the structure as stated in the answer to question 7. Rather, the applicants inherited the structure when they acquired the property in January 2013. The applicants have shown good faith and cooperated in taking steps to bring the structure into compliance by applying for an after-the-fact variance.

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

Yes ( ) No (X)

No. The applicants did not construct the structure or own the property at the time the structure was built. The applicants submitted this variance application immediately after being made aware that such was required in order to bring the structure into compliance with the ordinance.

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

Yes (X) No ( )

Yes. The applicants purchased the property in January 2013 and per the deed tax shown on the deed provided in the application, did make a substantial investment in the property.

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

Yes ( ) No (X)

As previously stated, the applicants did not construct the structure. The structure was already on the property when the current landowners acquired the property. The structure was constructed by a previous landowner.

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

Yes (X) No ( )

Yes – as mentioned in the answer to question 5 above.

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 (X) No ( )

Yes. There already is an easement in place from the neighboring property owner that allows the garage to remain in its current location. The purpose of the 10' side lot line setback is to provide a buffer against property line encroachments by structures when constructed. The easement shows that this issue for which the setback is in place to protect has been resolved between the property owners to their satisfaction so it would be extreme for the County to require this structure to be moved or removed given the cost of doing so and the fact that the easement exists.

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

Yes (X) No ( )

No. The neighbors have already settled the property line encroachment caused by the garage by agreeing upon and conveying an easement for the garage to be partly located on the neighboring property. Thus, the primary purpose for the 10' side lot line setback requirement in the ordinance has been satisfied and there is no good reason for the County to not grant the variance. There is no environmental harm caused by the garage encroaching onto the neighboring property.

Facts supporting the answer to each question, above, are hereby certified to be the Findings of the Board of Adjustment. This is in accordance with Section 1103 of the Hubbard County Shoreland Management Ordinance.

Variance Application 45-V-14 by Marshall Howe and Janet McMillen: Part of Gov't Lot 2, Section 36, Township 141, Range 34, Lake Emma Township on Little Sand Lake. Parcel: 16.36.00900. Applicants are requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance (SMO) for a proposed addition to a nonconforming structure that does not comply with the 100' ordinary high water mark setback, has already utilized the allowed 50% addition option, and was previously added onto by variance.

Marshall Howe, 21172 Glacier Drive, Park Rapids on Little Sand Lake presented the application request. The year round cabin is a non-conforming structure, about 57' from the lake. The previous owner had expanded the structure as allowable maximum under the shoreland regulations. Our proposal is to add a small addition to the rear of the house to serve as a mud room and to provide additional storage and laundry space. The size of the addition is 14 1/2' x 10', presently our doors open directly into the living space as we do not have any way of entering the house in a dirty condition without messing up the interior. We feel our plan is consistent with the spirit of the shoreland regulations because the nearest point to the lake would be 2 or 3 feet from the 100' setback on the lake. It does not increase the living capacity of the cabin and does not put any additional strain on the septic system. It is not visible from the lake and only visible to one neighbor and then barely so in the winter time.

Grob commented that the expansion is small and the home is not particularly large and saw no reason not to allow this expansion.

No correspondence was presented.

No public comment was given.

Christenson made a motion to approve Variance Application 45-V-14 by Marshall Howe and Janet McMillen as presented and adopt the Findings of Fact as presented in the Environmental Services Staff Report. Krueger seconded the motion.

Motion passed unanimously.

Findings of Fact

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

Yes (X) No ( )

Why or why not? The proposed addition is only 10' x 14' in footprint compared to the existing footprint of 1128 sq. ft. The combined square footage is still a very reasonably sized structure for the lot. The addition will be to the rear (non-lakeside) portion of the cabin and 14' high while the cabin is 26' high which is in keeping with the ordinance intent of getting things as far back from the lake as possible and not creating any negative aesthetic impacts from the lake.

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

Yes (X) No ( )

Why or why not? The requested addition is a reasonable size relative to the existing structure and located on the side of the house opposite the lake. The addition will provide the residence with a laundry room and mud room which are reasonable and standard components of a reasonable and permitted residential structure use.

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

Yes (X) No ( )

Why or why not? The structure was constructed per a 1977 variance at a nonconforming ordinary high water mark setback. Section 704.7 of the shoreland ordinance requires that the proposed addition go through a variance process because the cabin was initially placed on the lot by variance.

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

Yes (X) No ( )

Why or why not? As mentioned in the answer to question 3, the difficulty on this lot is caused by the structure being originally constructed by variance at a nonconforming ordinary high water mark setback. The landowner did not own the property at the time of the 1977 variance that authorized placing the cabin on this lot at a nonconforming setback.

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

Yes (X) No ( )

Why or why not? The locality consists of residential structures – many of which are also located at similar nonconforming ordinary high water mark setbacks. The addition of a mud room and laundry room to this cabin will not change the locality's essential character as they are typical features in a residential structure and the addition is only 10' x 14' in size and 14' high.

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

Yes (X) No ( )

Why or why not? Economics are not cited by the applicants as the practical difficulty. The difficulty is caused by the previous variance that was granted for a reduced ordinary high water mark setback and the latter addition of Section 704.7 to the ordinance that requires a variance for any modification to a structure previously constructed or modified by variance.

Facts supporting the answer to each question, above, are hereby certified to be the Findings of the Board of Adjustment. This is in accordance with Section 1103 of the Hubbard County Shoreland Management Ordinance.

Miscellaneous:

For the record, the Variance Application 43-V-14 by Richard and Nancy Mueller has been removed from the agenda and is being processed by permit.

December 2, 2014 at the next County Board meeting at noon is when the Shoreland Ordinance amendment will be heard at a public hearing.

Reviewed the agenda for December.

County Board would like us to look at dates for 2015 PC/BOA meetings. The Board is trying to accommodate the Park Rapids City Council that meets the second and fourth Tuesdays of each month so the second meeting conflicts with our date that we have reserved for our meetings with long agendas that go past 10 p.m. Christenson made a motion that we would prefer to keep it “as is” because that works the best for all of us and if the Board will not accommodate us in that matter, we could make the first Monday work. We are a County board and are employed by the County Commissioners and we should have precedence. Johnson seconded the motion. The motion passed unanimously.

Adjournment:

With no further business, Krueger made a motion to adjourn the meeting. Johnson seconded the motion. The motion carried unanimously. Krueger adjourned the meeting.

Respectfully submitted by,

Barbara Barth

Recording Secretary

HUBBARD COUNTY
Planning Commission/Board of Adjustment meeting minutes
6:00 p.m. on Monday, December 22, 2014

Chairman Tom Krueger opened the meeting with the following members present: Ken Grob, Tim Johnson, Charlene Christenson and Ted Van Kempen. Also present was Environmental Services Officer Eric Buitenwerf. Commissioner Greg Larson was absent.

Krueger started the meeting by reading the procedure by which the meeting of the Planning Commission/Board of Adjustment will be conducted to the audience.

Planning Commission:

Approval of the November 24, 2014 Minutes:

Grob moved to approve the November 24, 2014 minutes as presented.

Christenson seconded the motion.

The motion carried unanimously.

Old Business: None

New Business:

Preliminary Plat of Wright Estates by Rick and Joanne Wright: Applicants are requesting to create one ~3.52 acre platted lot. Part of the SW ¼ of the SW ¼ in Section 22, Township 140, Range 35, Parcel: 27.22.01300.

Buitenwerf reviewed that he had received a email from Bridget Chard, the Todd Township Planner, and indicated that the Todd Township Board took the Wright application up and the board did not approve it. They instead voted to deny the preliminary plat application due to some procedural items in that the pre application process with the township had not taken place and they had some other questions that they wanted to have answered prior to their approving it. Due to the way the statute is written, the County is in need of ensuring that the township zoning approval is granted prior to the county's granting zoning approval so it is the department's recommendation that we visit with the applicants on the few options available. The first would be to deny the application based on the lack of township preliminary approval. The second option would be to table it and utilize the 60 day rule 120 day window to extend our review to the January or February meeting, whichever would allow the township action to occur. The third option would be if the applicants are so willing they could sign our Indefinite extension form for the 60 day rule that would allow us not to be concerned with a specific time line that we have to meet. Then we can sit down with Todd Township, the applicants and ourselves and make sure that the township issues can be addressed and then get the process back on track to where the township approval can be granted and then allow our consideration of the application to occur.

Rick and Joan Wright questioned why the township had not approved their application?

Krueger explained that it sounded like procedures were not followed at the township level and that needed to be done before this Board could act on this application.

Rick Wright asked what he needed to do to get this done?

Buitenwerf explained that Bridget Chard of Todd Township would like to arrange a meeting after the holidays to explain what the township criteria is that applies to this proposal and that would allow you to make sure that you understand what information the township is in need of to move the application forward. You will need to obtain preliminary plat approval from the township in order for the County to take action on this preliminary plat application.

Krueger explained the 60 day rule that the County must follow and asked if the Wrights would like to file for an extension.

Wright said that they would.

Krueger opened the discussion for public comment.

No public comment was given.

Buitenwerf indicated that the applicants chose to sign the Indefinite extension form to continue this process with the township board.

Christenson moved to postpone this application.

Grob seconded the motion.

Passed unanimously.

Conditional Use Permit 4-CU-14 by Nathan Turnquist: Part of the SE 1/4 of the NE 1/4, Section 20, Township 140, Range 34, Henrietta Township by Mud and Long Lakes. Parcel: 13.20.00310. Applicant is requesting a conditional use permit for a retail shop per Section 401 of the Shoreland Management Ordinance.

Nathan Turnquist presented a summary of his intention to sell cars and do some consignment for others.

Krueger asked how many vehicles he would have on this site?

Turnquist replied that he would have from 20 to 25 vehicles and a couple of RVs on the property at a time.

Christenson asked if those vehicles included all terrain and boats?

Turnquist replied that number was just the cars.

Christenson asked on the site where would the all terrain vehicles be located?

Turnquist explained that where the sign is on the east side, no motorized vehicles are put there. The boats are mixed around the site.

Johnson asked if the vehicles would be as designated on the map?

Turnquist stated that the cars would be in the black area.

Krueger asked if this would be a year-round business?

Turnquist replied that it would be other than about two months off in the winter.

Christenson asked for the number on the cars?

Turnquist replied that this lot can hold up to 45 cars.

Christenson asked about how many RVs at one time?

Turnquist said he has had three at one time.

Krueger asked for a number of cars?

Turnquist replied 30.

Krueger asked if they would be enlarging the structure on this property?

Turnquist said he had no plans to do so, but would like to build a garage on this property.

Krueger opened the discussion for public comments.

No public comments were given.

Christenson was still looking for a number on the vehicles on this property.

Turnquist replied that he would have no more that ten recreational items that would include travel trailers, boats, and four wheelers.

Grob asked if this space could handle this many?

Turnquist replied that is has been done already.

Johnson asked if all cars would be in the block on the diagram.

Turnquist replied that yes that area would be all cars and would like to have up to fifteen recreational vehicles.

Johnson asked what would you have outside of those blocks.

Turnquist replied that RVs would be put outside of these blocks and also travel trailers.

Johnson asked about boats and ATVs.

Turnquist said that he places them next to the building to keep an eye on them.

Krueger asked if the number was 30 motorized vehicles and ten other recreational vehicles including ATVs, boats and so on.

Turnquist replied that he was comfortable with those numbers.

Grob suggested that the motion should include the conditions.

Grob made a motion to accept the application for this Conditional Use Permit for recommendation to the County Commissioners with the four conditions listed in the staff report (shown below) and accept the staff findings of fact.

1. This conditional use permit (CUP) is for the operation of the entire premises as one retail shop use venture. As such, any land, that through subdivision or addition to the property to which the CUP is granted, is added or subtracted, is/are not granted or allowed the right to

operate in accordance with the CUP without first applying for and obtaining the necessary CUP from the County.

2. The subsurface sewage treatment system (SSTS) that is to service the business office structure must be installed and receive a certificate of compliance by July 1, 2015.
3. No more than **30** motorized vehicles and 10 all-terrain vehicles, boats, scooters, trailers, travel trailers, and/or other motorized or non-motorized items available for sale can be located on the property at any given time.
4. Smaller motorized items such as ATVs, boats, and scooters that are for sale can only be located in the area labeled "Items for sale" on attached Exhibit A (the application's site plan sketch). Vehicles for sale can only be located in the area labeled "Vehicle Parking for sale units" on Exhibit A. Non-motorized items such as trailers and travel trailers for sale can only be located in the area labeled "non motor items for sale" on Exhibit A. Customer vehicles can only be located in the area labeled "Customer parking" on Exhibit A. The only structure allowed on the property is the business office located in the area labeled "Retail Shop" on Exhibit A. Said structure cannot be enlarged.

Christenson seconded the motion.

Findings of fact:

1. Is the requested use consistent with public health, safety, and welfare?

YES (X) NO ( )

Why or why not? The use is located on a non-riparian lot that is at least 425' from Mud Lake and Long Lake. The property is situated along Highway 34 in an area that has been historically comprised of a mixture of commercial and residential uses. The property has a history of having been used for commercial ventures – as evidenced by a conditional use permit that was issued in 2004 to allow recreational vehicles to be sold on it. No vegetation is proposed to be removed from the property. An existing approach onto Highway 34 will be used to access the property and is positioned at a point where the highway is straight with a consistent grade such that sight lines are good. Thus, the proposed use should not harm public health, safety, or welfare.

2. Is the requested use consistent with the goal of preventing and controlling water pollution, including sedimentation and nutrient loading?

YES (X) NO ( )

Why or why not? No modifications to the property's topography or vegetative cover are proposed. Highway 34 and County Road 107 separate the property from Long Lake so no stormwater runoff from the property will make its way into the lake. Soils in this area are sandy and well drained. The property is ~425' from Mud Lake and there is a good vegetative buffer comprised of dense tree cover between the property and lake. The surface area occupied by the items for sale should not cause any sedimentation or nutrient loading of either lake or exceed the property's ability to have stormwater infiltrate the soil on the property so that it does not runoff outside of the property's boundaries.

3. Will the requested use not adversely affect the site's existing topography, drainage features, and vegetative cover?

YES (X) NO ( )

Why or why not? As mentioned in the answer to question 2 above, no alterations to the topography, drainage features, or vegetative cover on the property are proposed with this use. The placement of the various items for sale on the designated parts of the property should not harm any of these three items as the soil is sandy and well drained enough that stormwater ought to readily absorb into the ground during above freezing temperatures and the lot is relatively flat such that it should not generate much for stormwater during spring snow melt.

4. Is the requested use's site location reasonable in relation to any floodplain and/or floodway of rivers or tributaries?

YES (X) NO ( )

Why or why not? There are no FEMA designated floodplains in Hubbard County and there are no rivers or tributaries nor any associated floodways nearby.

5 Has the erosion potential of the site based upon the degree and direction of slope, soil type, and existing vegetative cover been adequately addressed for the requested use?

YES (X) NO ( )

Why or why not? As mentioned in answers to previous questions, no modifications to the property's topography or vegetative cover are proposed as part of this retail shop use. The property is relatively level with a gradual slope toward Mud Lake that is guarded by a dense forested vegetative buffer that separates the property from the lake. The sandy, well drained soils on the property should be able to absorb any stormwater runoff generated from the impervious surface area created by items placed on the property for sale, the driveway and parking area, and office structure.

6. Is the site in harmony with existing and proposed access roads?

YES (X) NO ( )

Why or why not? There is an existing shared driveway and approach onto Highway 34 that this property uses along with the neighboring property to the west. The highway approach has good sight lines in both directions and is located along a straight stretch with a consistent grade so there should not be any safety hazards created by vehicles accessing the property via this

approach. Highway 34 is a main traffic corridor through the county and thus ought to be able to support the traffic generated by this use of the property.

7. Is the requested use compatible with adjacent land uses?

YES (X) NO ( )

Why or why not? The property has historically been used in a commercial manner as evidenced by a 2004 conditional use permit having been issued to allow recreational vehicle sales on the property. The neighboring property to the west has a seasonal flea market use on it along with a residential use to the northwest of this property. The property to the east is residential and the property to the south on the opposite side of Highway 34 has a commercial business on it with a church located to its west. The area is a mixture of commercial and residential uses and has been over the past decades. Thus, the proposed use will not alter the area's historical mixed use character.

8. Does the requested use have a reasonable need to be in a shoreland location?

YES (X) NO ( )

Why or why not? The property is located on a stretch of Highway 34 that contains a number of commercial businesses. The shoreland ordinance allows such uses to be in shoreland areas via a conditional use permit. In this location, with the area historically being a commercial corridor along Highway 34, it is reasonable for this use to be in a shoreland location. The area feels more like a commercial highway corridor than a rural shoreland zone.

9. Is the amount of liquid waste to be generated reasonable and the proposed sewage disposal system adequate to accommodate such?

YES (X) NO ( )

Why or why not? The only waste generated from the property will be from a sink and toilet in a bathroom located in the office that will be used by employees and customers. Due to the frozen soil conditions at time of application, it was not possible to have a septic design submitted to upgrade the existing failing septic system, but Env. Services Department staff feels there is sufficient soil and room on the property to locate a new replacement drainfield that there should not be a problem handling the small amount of waste the use will generate.

10. Will the visibility of structures and other facilities as viewed from public waters comply with Section 901 of the Ordinance?

YES (X) NO ( )

Why or why not? The existing office and accessory shed on the property are at least 425' from the nearest lake and thus are well outside of the 150' and 100' ordinary high water mark structure setbacks such that Section 901 of the ordinance is not applicable to this property because it is a nonriparian lot located so far from the two lakes.

11. Is the site adequate for water supply and on-site sewage treatment systems?

YES (X) NO ( )

Why or why not? The only water needs are for a bathroom in the office and possibly washing vehicles and other items on display for sale outside. As mentioned in answers to previous questions, the County feels there is adequate soil conditions and room to accommodate the placement of a new septic system to replace the existing failing system.

12. Are the affected public waters suited to and able to safely accommodate the types, uses, and numbers of watercraft that the use will generate?

YES (X) NO ( )

Why or why not? The proposed use does not involve any proposed watercraft use of either Mud or Long Lakes. The property is a nonriparian lot that does not have frontage on either lake or legal access to either.

Motion passed unanimously.

There being no further Planning Commission business, the Planning Commission meeting was closed.

Board of Adjustment:

Approval of the November 24, 2014 Minutes:

Grob moved to approve the November 24, 2014 minutes as presented.

Krueger seconded the motion.

The motion carried unanimously.

Old Business: None

New Business:

Variance Application 46-V-14 by Dennis and Gwen Block: Lots 1 & 2, Block 2 and Lots 1-7, Block 3, Sabin's Park; Part of Gov't Lot 2, Section 36, Township 141, Range 34, and Part of Section 25, Township 141, Range 34, Lake Emma Township on Little Sand Lake. Parcels: 16.36.00700, 16.39.01000, 16.39.01200, 16.39.01300, and 16.39.01400. Part 1: Applicants are requesting a variance from Section 501.2 of the Shoreland Management Ordinance (SMO) to create two lots (each having two residential structures) that would not comply with the

duplex/guest cottage lot size criteria. Part 2: Applicants are requesting a variance from Section 501.9 of the SMO to create a lot that would not comply with the minimum residential lot suitable area requirement.

Galen Johnson, representing Dennis and Gwen Block, presented a proposal to split the property into four lots. This property was purchased in 1990 and was an old resort. They have used it for the last twenty years as a family retreat. The main structure was built in 1994. Four of the old cabins remain and we are asking for a property split to remarket the property. The property has been up for sale for two years as a whole with no luck to sell it.

Krueger commented that lots 1 & 2 have two units on them which is duplex sizing over what the ordinance would allow.

Grob asked about the square footage on the easement of lot 4?

Galen Johnson explained that all the septics were done by a licensed septic inspector and the size of septic was done for the size of the 3 bedroom cabin. The system on lot 4 has failed and the sizing does include an alternate site.

Tim Johnson asked if a thorough evaluation was done because of freeze-up?

Galen Johnson explained that the inspector was able to do a complete inspection on the proposed lots 1, 2, & 3, but lot 3 where the main structure is, the tank and the drainfield at the tank site all passed but could not find the end of the drainfield and that is where this letter regarding frost came into play. So when we did the preliminary survey we included the second site because of the unknown.

Grob expressed a concern that the easement on lot 2 which makes lot 3 larger than it has to be based on incomplete information on the septic system.

Galen Johnson explained that there is a party interested in purchasing lot 3 and wants to close in March. There is no way to complete the septic piece of this due to frost before March. That is why we threw the extra land on lot 3 to cover any septic issues that could arise in the future.

Grob commented that in doing this, it makes it problematic for lot 2 in regard to total RLSA.

Christenson question if the property owner would be willing the remove one of the structures on each lot to make these lots more compliant since the RLSA is very low.

Galen Johnson acknowledged that would be a possibility.

Grob explained that removing one cabin on each lot would remove the duplex sizing issue and make this a single lot split. Lot 1 easily meets all the requirements in terms of square footage and RLSA and lot 2 the same way except it would be a short on the RLSA. The real complication with this is you are asking for duplex lots which include a couple of cabins which are most likely going to go anyway.

Galen Johnson expressed that if that was what was needed to get these lots split, removing two cabins was not an issue.

Johnson asked if the buildings would have to meet setback.

Grob explained that any new structures would have to meet setback but there is no control over existing.

Van Kempen commented that lot 2 is easy; one structure is basically storage and assuming that the existing cabins are going to be used. On lot 1 the existing structures could stay, but if a new structure was constructed in the future, then the old would have to go.

Grob expressed a concern that these lots if split need to be single residential lots for future needs since they are undersized.

Krueger opened the discussion for public comment.

No public comments were given.

Galen Johnson asked about amending the application?

Krueger explained that he could amend the application to be single residential lots.

Galen Johnson expressed that he could recommend that to the sellers, but could not at this time make that request.

Galen Johnson made a verbal request to remove one cabin on each lot.

Christenson made a motion to approve the amended application to allow the lots to be created on the condition that lot 1 and lot 2 are each only allowed one single family residence on them. The land owners have the choice of which structure is to be removed and that structure that is chosen must be removed by the time the lot is sold.

Krueger seconded the motion.

Findings of fact:

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

   Yes (X) No ( )

   Why or why not? The square footage of all the four lots meets the single family requirement and there are only minor variations in the RLSA on two of them.

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

   Yes (X) No ( )

   Why or why not? The owner is no longer able to care for this property and they have been unsuccessful selling as a whole unit so they are breaking it up.

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

   Yes (X) No ( )

Why or why not? The only two variations from ordinance is the RLSA on lot 3 and on lot 2 and those are driven by the unique character of the Sand River and Little Sand Lake and the requirement for an easement for the septic system from lot 4.

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

Yes (X) No ( )

Why or why not? The property had been used as a resort and now the landowner wishes to divide it out to sell and single family units.

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

Yes (X) No ( )

Why or why not? The surrounding homes are also single family dwellings.

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

Yes (X) No ( )

Why or why not? It has to do with topography with the wetlands on lot 4 and the river and lake configuration for lot 2.

The motion carried unanimously.

Variance Application 47-V-14 by Dana and Jennifer Cirks: Lot 6, and part of Island Drive, Belletaine Park, Section 1, Township 140, Range 33, Nevis Township on Lake Belletaine. Parcel: 21.51.00600. Applicants are requesting a variance from Sections 502.2 and 801.2 of the Shoreland Management Ordinance (SMO) for a proposed residential structure that will not comply with the required 100 foot ordinary high water mark (OHW) structure setback, 20' drainfield setback, or 10' septic tank setback.

Dana Cirks presented a summary of the application. The lot was purchased in 2005 after doing some research that the lot was a buildable lot and there was a variance in place. Things were done to the lot with the intent to build, the septic was installed in 2007, the well was installed in 2007 and the electrical service. This was all done in the building envelope based on the original variance. Since that time, the DNR raised the OHW about a foot and a half, therefore the 100' setback from the lake is unattainable with the gradual elevation of the lot. My new plan is to move

the structure back towards the drainfield. Originally I was well outside the 20' setback requirement but now with the movement of the structure back, I am encroaching to a 10' setback. Moving to this location gets me back from the OHW and back from the highest recorded water level. This was a concern.

Krueger explained that the structure is now 50' back from the OHW.

Dana Cirks indicated that the actual new structure would be 44' to 45' actual feet from the corner of the new structure.

Christenson commented you have done a good job working with the Board to move the structure back. Even if the proposed deck should go under water at some time if the water rises, I have no problem leaving the deck on this structure.

Johnson expressed that he agrees with the owner on encroaching with the septic is the only alternative and will not cause any harm to it.

Krueger opened the discussion for public comments.

No public comments were given.

Johnson made a motion to approve this variance application as presented and adopt the staff findings of fact.

Christenson seconded the motion.

Findings of fact:

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

   Yes (X) No ( )

   Why or why not? This is a unique piece of property given how the DNR's raising of the OHW in 2006 brought the OHW so far into the lot. The proposed house will be just outside the shore impact zone and built to comply with the 3' vertical separation from the highest known water level requirement. It would be sited on the highest part of the lot and has been moved as close to the septic system components as possible to maximize the OHW setback. Given the small lot size, the applicants have "squeezed" the proposed house back from the OHW as far as is reasonable.

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

   Yes (X) No ( )

   Why or why not? Without the variance, the landowners would not be able to place any structure on the lot due to the location of the 100' OHW setback. Being able to construct a single family residence on a riparian lot is a reasonable use of the property given that such a use is a permitted use in the Use Table of Section 401 of the shoreland ordinance.

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

Yes (X) No ( )

Why or why not? The lot was platted in 1963 before the shoreland ordinance was enacted. The State of MN also raised the OHW in 2006 by 1.6' which significantly moved the 100' OHW setback further back on the lot such that there is no spot on the lot where a house could be placed that would meet setbacks.

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

Yes (X) No ( )

Why or why not? As stated in the answers to the previous questions, the difficulty is caused by a combination of the small lot size to begin with that was created by the original plat developer and the State of MN raising the OHW 1.6' in 2006.

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

Yes (X) No ( )

Why or why not? The locality consists of single family residences that are year-round and seasonal in use and located at similar OHW setbacks to what is proposed in this application. The proposed structure is of a scale that is similar to the size of homes found on the surrounding lots. For these reasons, the variance will maintain the locality's essential character.

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

Yes (X) No ( )

Why or why not? Economics are not cited by the applicants as the sole practical difficulty. The difficulty is the small lot size to begin with and the OHW being raised 1.6' in 2006 by the State of MN that significantly moved the 100' OHW setback location further toward the rear of this lot such that no structure can be placed on the lot without a variance from one or more setbacks.

The motion carried unanimously.

Variance Application 48-V-14 by Todd Payne: Part of the SW ¼ and Part of the SW ¼ of the SE ¼, Section 14, Township 140, Range 35. Parcel: 27.14.04100. Applicant is requesting a variance from Section 4, Subd. A.1.a.2 of the Subdivision Ordinance to create a tract that will not comply with the required 5 acre minimum lot size or the public road frontage/easement access requirement.

Todd Payne presented the application as the owner of the Smokey Hills Outdoors Store. He explained that he has plenty of acres there for some of the things we are doing, there is a lot that is adjacent to the store that is at a better level to be able to do additional buildings, storage, retail business in the future than the remainder of my land that goes back and drops down a hill behind the store. The 3 ½ acres to the west of our store became available which is less than the 5 acre minimum for lot size. Since I own the adjoining 24 acres, it would become part of that larger lot. The City of Park Rapids will be annexing this property and they are willing to include this 3 ½ acres as well.

Krueger asked if the current property is part of the City?

Payne responded that it is.

Christenson asked if this was added to his property, would this become one lot?

Buitenwerf explained he cannot say if the property would have one parcel number or two since that is there for tax purposes and not for zoning. From a zoning standpoint, what is being proposed would be combined into a single tract.

Grob commented that if this application is approved, it would be with a condition that the City of Park Rapids will annex this additional property.

Payne questioned the process forward.

Buitenwerf explained that the City would probably not issue a letter of intent to annex and complicating matters they are without a city planner at this time. Before this could be recorded, it would require approval from the County Subdivision Ordinance, so if this variance is granted, then the next step would be to go through the administrative subdivision application process and the only way that could be acted upon would be to approve it on the condition that annexation would take place. My recommendation as to how to handle this would be to approve on that condition and I would then approve the subdivision application with that condition as well and if for some reason that annexation did not happen, then the County could exercise its ability to deal with the lack of compliance at that point.

Johnson asked if the property owner would grant you a temporary easement?

Payne explained that he could grant himself a temporary easement because he owns the property in between the road and the proposed property.

Van Kempen commented that if you feel comfortable that the City is going to annex it, then I would too.

Payne commented that he understands this is a nonconforming lot and could not build on it until it is annexed into the City and then get the proper City approvals.

Krueger asked if the purchase agreement came before knowing you had to go through this process?

Payne explained that before he did a purchase agreement, questions were asked, and he explained how he went before the township for their initial approval. The purchase agreement was based on being able to get the variance application, get the township approval, and administrative subdivision.

Christenson asked if the person owned more than 3 ½ acres, could they give you more to comply with the ordinance?

Payne explained that the Hawkins owned 9 acres and therefore would not have enough property to give 5 acres because that would make his property noncompliant.

Krueger opened the discussion for public comments.

No public comments were given.

Grob made a motion to approve the variance application with the condition that the City of Park Rapids annex this 3 ½ acre property, Todd Township agrees to allow the City of Park Rapids to annex this property, that this property gets combined into one lot and to accept the staff findings of fact.

Christenson seconded the motion

Findings of fact:

1. Is the variance in harmony with the general purposes and intent of the Subdivision Ordinance and consistent with the comprehensive plan?

   Yes (X) No ( )

   Why or why not? The intent is to not create a landlocked piece of property or one that is substandard in size. This lot will not be landlocked because the intent is to combine it with the adjacent parcel that is inside the Park Rapids city limits and has frontage on Highway 71. As to lot size, it will be combined with the adjacent lot owned by Mr. Payne and annexed into the city limits where its 3.2 acre size coupled with the existing 25 acre size of Mr. Payne's lot will more than exceed minimum lot size requirements within the City.

2. Is the condition causing the plight of the landowner unique to the property and is it not caused by the actions of the landowner/applicant?

   Yes (X) No ( )

   Why or why not? The uniqueness of this situation is that the boundary between the City of Park Rapids and Hubbard County jurisdictions falls right between the tract desired to be created and the property to which it is desired to be connected. Thus, there is a jurisdictional technicality that does not allow the subdivision to be processed per the County Subdivision Ordinance's normal procedure that would allow this to be done without a

variance if the property to which this tract would be connected was also located in the County's jurisdictional area.

3. Will the granting of the variance not be contrary to the public interest or damaging to the rights of other persons or to the property values in the vicinity?

Yes (X) No ( )

Why or why not? The remainder tract will still comply with the ordinance's minimum lot size and public road access requirements. The area consists of small riparian lots on the east side of Highway 71 and then a few larger commercial lots on the immediate west side of Highway 71 with much larger agricultural and forested tracts on the west side of the proposed tract. A new lot is not going to be created. The property line between two adjacent properties is simply being adjusted and the complication is simply caused by the boundary of the city limits running between the two tracts so that two jurisdictions become involved. Property values should not be harmed by the property addition to Mr. Payne's property as no new lot is being created and Mr. Hawkins' remainder tract will still meet the ordinance's minimum lot size requirements.

4. Does the property owner propose to use the property in a reasonable manner in light of the essential character of the area?

Yes (X) No ( )

Why or why not? The tract in question is proposed to be added to Mr. Payne's existing property in order to provide him with additional space to place and display items his business sells such as portable fish houses.

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

Yes (X) No ( )

Why or why not? The locality's character will not change as the minimum lot size for Hawkins' remainder tract will be met and this ~3.2 acre tract will be combined with Mr. Payne's existing 25 acre tract. The tract will be used to house items that Mr. Payne sells at his business such as portable fish houses. The tract is located off of the highway and is bordered by a large agricultural field to the west and a vacant 5 acre tract to the south so no neighbors will have their views affected.

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

Yes (X) No ( )

Why or why not? Economics are not cited by the applicants as the practical difficulty. The difficulty is the fact that two governmental jurisdictions are involved and thus a variance is required for this subdivision whereas no variance would be necessary if the property to which this tract is being connected was located in the County's jurisdiction.

The motion carried unanimously.

Variance Application 49-V-14 by Dan and Linda Kallevig: Lots 11-13, First Addition to Moccasin Acres, Section 4, Township 141, Range 35, Arago Township on Island Lake. Parcel: 02.37.40700. Part 1: Applicants are requesting an after-the-fact (ATF) variance from Section 502.2 of the Shoreland Management Ordinance (SMO) for an accessory structure to be located at less than the required 100' ordinary high water mark (OHW) setback. Part 2: Applicants are requesting an ATF variance for a vehicle driveway and parking area that do not comply with the required 100' OHW setback.

Dan and Linda Kallevig explained that they measured down to their lot line and that was 150'. Then we measured over to another spot and that was 101', but when Bryan Haugen, Environmental Specialist, came out to measure after the fact, it came out to be 93'. We had a driveway coming down so we had the building as far East as we really could without taking down trees and widening the current driveway. The way the property line comes down at an angle, it is difficult to know what angle to measure at and we made a unintentional error.

Krueger asked about the current driveway.

Dan Kallevig explained that the driveway was already there when they purchased the property in 1982.

Grob asked how much of the class 5 gravel area in front of the building was there?

Dan Kallevig said that the turnaround spot was there but anything that was changed during construction was changed closer to the building. There was nothing changed closer to the lake. In front of the building there were some trees that did have to be taken down in front of the garage door. One load of class 5 was brought in to level off the area in front of the garage.

Van Kempen asked about the property line setback and the runoff coming off the roof.

Kallevig explained that he put sewer rocks along the building and tried to break it up to go different ways. On the one side it was causing a small erosion so a little berm was built to keep the runoff from going onto the neighbor's property.

Krueger asked what the closest distance to the lake is from the front of the garage?

Kallevig said that distance is 66'.

Krueger asked about runoff to the lake off the front of the building and a shoreland buffer?

Kallevig explained that there is an open area of about 65' before we start to get into trees which is a buffer to the lake. There are 30' or 40' of trees in front of the lake.

Grob commented that looking at the original application, it is extremely lacking information. It is about a sentence and a half that defines the size of the building and location. There seems to be several things that were done here that are not consistent with good shoreline management practices or the shoreland ordinance. You put in septic lines under the building so there are several things here that are a little bit concerning as to what your intent was. As a good neighbor you built your structure to runoff a 64' long building onto your neighbor's property as well as the parking area. Your neighbor has no buffer zone at all to protect all this water from running into the lake. We need to work on a plan to mitigate the water runoff - rain gutters on the side that is close to your neighbor's property, a retaining wall or berm.

Linda Kallevig asked if a rain garden would work to solve this problem.

Grob responded that the only place that would work is across the road into that lower area.

Dan Kallevig explained that the back of the building already has a 30' berm and in working with this building during rain, a berm was put in to move the water into a grassy area. A gutter will create more of a problem with the volume of water being concentrated in one area.

Johnson agreed that the water should not be running onto your neighbor's property and a gutter to go around the back side of your structure is reasonable. Doing so by running a pipe from a gutter to go around the back side of your structure and put a culvert under the driveway that comes down diverting water into the low area. You would not have to run anything toward the lake. Also constructing a berm around that parking lot is not unreasonable to prevent runoff to the lake.

Linda Kallevig asked if there was someone they could work with in the area.

Krueger replied that there are several landscapers in the area with expertise in this area.

Krueger opened the discussion for public comments.

No public comments were given.

Krueger made a motion to approve this after the fact variance as presented with the condition that propey water control runoff is done for the building and the driveway to where it does not run onto the neighboring property and the determination of that is up to the Environmental Services Office with work to be completed by August 1, 2015.

Christenson seconded the motion.

Findings of fact.

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

Yes (X) No ( )

Why or why not? By correcting the runoff problem from this building, it brings this project into harmony with the ordinance.

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

Yes (X) No ( )

Why or why not? The structure is already built.

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

Yes (X) No ( )

Why or why not? The building was designed to accommodate the driveway.

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

Yes (X) No ( )

Why or why not? Since the driveway was already there, the building was put in so as not to create more disturbance by moving the driveway.

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

Yes (X) No ( )

Why or why not? This is a very large lot and is pretty much screened from neighbors.

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

Yes (X) No ( )

Why or why not? That was not the consideration.

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?

Yes (X) No ( )

Why or Why not? The applicant did act in good faith, took the measurement down the property line and made a mistake.

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

Yes (X) No ( )

Why or Why not? As to Part 1, the applicants obtained a permit for the structure in October 2013. As to Part 2, a permit is not required to create a driveway/parking area as long as it meets setback requirements. Given the driveway/parking area's location, it requires a variance which the applicants did not apply for prior to constructing the driveway/parking area.

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

Yes ( ) No (X)

The permit was granted by Environmental Services and there was an error in measurement.

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

Yes ( ) No ( )

Part 1 – Yes. It is a large metal pole building 40' x 64' in primary dimensions.
Part 2 – No. The area is bare dirt and the vegetation is stripped from it. The work to do these things would not have cost much money.

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

Yes (X) No ( )

Yes, both the structure and driveway/parking area were in place at the time Environmental Services staff inspected the property in September 2014.

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

Yes (X) No ( )

Many other storage buildings are on that side of the lake.

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 (X) No ( )

No the structure basically meets the required setbacks except for one small area.

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

Yes ( ) No (X)

We do not believe it serves the interests of justice, since it is harmony and mitigation measures were taken to offset the error.

The motion carried unanimously.

Variance Application 50-V-14 by Wesley and Sylvia Iijima: Part of Gov't Lot 2, Section 10, Township 140, Range 35, Todd Township on Fishhook Lake. Parcel: 27.10.00800. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance (SMO) and Article V, Section 1.0 of the Subsurface Sewage Treatment System Ordinance for a proposed SSTS that will not comply with the required 10' rear lot line and 20' house to drainfield setbacks or the 150' foot ordinary high water mark (OHW) structure setback, 20' drainfield setback, or 10' septic tank setback.

Wesley Iijima presented his application with agent Al Winterberger and explained that Kountry Care Septic had been coming out to the property since 2007 and suggested this fall that a new septic was needed.

Winterberger commented that he did a site plan for a replacement system.

Johnson commented that it was the only spot he could do it and it looked to be a good design.

Krueger opened the discussion for public comments.

No public comments.

Johnson made a motion to approve the variance application as presented and adopt the staff findings of fact.

Van Kempen seconded the motion.

Findings of fact:

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

   Yes (X) No ( )

   Why or why not? The existing SSTS is noncompliant and requires upgrading. The lot is very small and lacks depth to be able to meet all setbacks. The only location available is the one that is proposed – which will still meet the State 75' minimum OHW setback. The 4' house to drainfield setback is to the attached garage and not to the part of the house that is habitable so there is not a concern of sewage entering habitable space. The road ROW is 33' from the centerline and thus easily locatable to see that the tanks and drainfield are placed on the property and not in the ROW.

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

   Yes (X) No ( )

   Why or why not? Per the licensed SSTS designer, there is no other location for the system and having a standard SSTS vs. having to use a holding tank (which is the next alternative) is a reasonable use of the property.

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

   Yes (X) No ( )

   Why or why not? The lot is roughly 130' deep on the west side and ~70' deep on the east side. Thus, there is no way to meet the 150' OHW setback, 10' rear lot line setback, and 20' house to drainfield setback given the home's 78' OHW setback.

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

Yes (X) No ( )

Why or why not? As mentioned in the answer to question 3, the lot lacks depth and the house was constructed prior to the ordinance at a nonconforming setback by a previous owner. There is not a location on the lot for a septic system to be installed without a variance from these provisions. The landowners did not create the problem. It existed prior to their acquisition of the property in 2007.

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

Yes (X) No ( )

Why or why not? A septic system is a necessary accessory feature on any property where people are habitating structures and generating sewage. The system will be an in-ground pressure bed so it will not be visible above ground. Thus the locality's character should not be affected in any way by the septic system.

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

Yes (X) No ( )

Why or why not? Economics are not cited by the applicants as the practical difficulty. The difficulty is the lack of lot depth and placement of the house and well on the lot that limit where a new tank and drainfield can be placed.

The motion carried unanimously.

Miscellaneous:

Buitenwerf presented the 2015 Planning Commission/Board of Adjustment Calendar and the one date that needs review is the lot viewal date of December 24th. Need an alternate date since Christmas Eve may not work well.

Christenson commented that Tuesday, December 22 would work better if it works for the office.

Grob explained that he does have some issues with five of the lot viewal dates due to the State Advisory Committee, but is willing to work around those.

Grob asked what it looked like for January with regard to applications?

Buitenwerf explained that there is one application at this time and the Wright plat is possible.

Communication:

Buitenwerf reviewed the Shoreland Ordinance progress with the DNR. He met with Mr. Hoverson and Mr. Petrick, who is the planner for the DNR in St. Paul, last Friday. The DNR is willing to budge some, but not all the way so what they verbally relayed but will need to be given approval by their regional manager is that they want to keep the guest cottage language in the ordinance with one exception that they would allow us to remove the requirement for any particular minimum lot size. It is middle ground, but it would accomplish what we are after which anyone can have one but are limited in footprint and height but will require a permit. Currently if you do not meet the duplex standards, then it is an after the fact variance and that is a whole new issue. So if it is just a case of an after the fact permit, that would be an improvement. He is waiting for a letter from the DNR providing conditional approval which it will then go to the County Board on January 6th to have them set a new public hearing date on January 20th of that board meeting and pending a similar public participation like the last time which was zero. We can then get approved and take effect in late February.

A discussion was held on the specifics.

Adjournment:

Christenson made a motion to adjourn.

Johnson seconded the motion.

Motion passed unanimously.

Meeting adjourned 8:15 p.m.

Respectfully submitted,

Barbara Barth

Recording Secretary