

HUBBARD COUNTY

Planning Commission/Board of Adjustment meeting minutes

6:00 p.m. on Monday, September 28, 2015

Chairman Tim Johnson opened the meeting with the following members present: Ken Grob, Tom Krueger, Ted Van Kempen, and Charlene Christenson. Also present was Environmental Services Officer Eric Buitenwerf.

Tim Johnson 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 Minutes: No agenda at August 24, 2015 meeting.

Old Business: None

New Business:

Final Plat of Wright Estates by Ricky & Joanne Wright: Applicants are requesting final approval to create one 3.52 acre platted lot. Part of the SW1/4 of the SW1/4 in Section 22, Township 140, Range 35, Parcel 27.22.01300.

Rick and Joanne Wright were present to address any questions.

Grob asked if Todd Township had approved the final plat.

Joanne Wright answered yes.

Johnson stated that the final plat meets our Subdivision Ordinance requirements.

Johnson opened the discussion for public comment.

No public comment given.

Krueger made a motion to approve the final plat as presented and forward it to the County Board with a recommendation for final approval.

Van Kempen seconded the motion.

The motion passes unanimously 5 – 0.

Buitenwerf explained that the plat will go to the County Board at the Tuesday, October 6th, 2015 meeting.

Miscellaneous: None.

Board of Adjustment:

Approval of Minutes: August 24, 2015 meeting

Grob made a motion to approve the August 24, 2015 minutes as presented.

Christenson seconded the motion.

The motion carried unanimously 5 – 0.

Old Business: None

New Business:

Variance Application 38-V-15 by Ricky Schlee: NE1/4, Section 11, Township 145, Range 35, Fern Township. Parcel 08.11.00100. Applicant is requesting a variance from Section 4, Subd. A.1.a.2.a of the Subdivision Ordinance to create a new tract that does not abut a public, maintained road.

No one representing the applicant was present.

Christenson recommended this application be moved to the end of the meeting.

Variance Application 39-V-15 by Douglas Pidde: Part of Lot 2, Section 20, Township 139, Range 33, Crow Wing Township on 2nd Crow Wing Lake, a Recreational Development lake, and the Crow Wing River, a Tributary. Parcel 06.20.02800. Applicant is requesting a variance from Sections 502.2 and 502.7 of the Shoreland Management Ordinance for a proposed deck that will not comply with the 10' side lot line setback.

Jennifer Pidde presented the application as a request to ask for a deck on the side of our house and it is two feet from the lot line.

Christenson commented that Mr. Pidde at the lot viewal explained that he would like to look at claiming the property next to your property and this would make the setback conforming. Were you still going to pursue that option?

Pidde replied that they were not at this time.

Krueger asked if the owner of the property next to your lot knows that you are using their property.

Pidde replied that they have been there for 15 years and have not talked with the owner.

Krueger asked what the reason was for the additional 8 feet instead of the 10' x 24'.

Pidde answered that it is not big enough and would only be 10 feet out and we would like more area because it is all dirt right now.

Johnson opened the discussion for public comment.

No public comment given.

No written correspondence was received.

Johnson commented that he is not in favor of this encroachment.

Grob agreed but asked why the deck needs to be in this location and not on the other side of the house.

Pidde explained that this is off the kitchen and where they enter the home.

Grob explained that you are in the shoreland zone at about 60' from the lake and this is a very large deck, it seems that you could have a 10' X 24' deck and that would be consistent with the ordinance and what you are asking for is somewhat excessive.

Van Kempen explained that if the deck was in a different spot, the size would not be an issue. Being two feet away from the property line is the issue. It is my understanding that you just had that surveyed so you did not realize that you were encroaching on the neighbor's property.

Christenson made a motion to deny the application as presented and adopt the staff report 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 () No (X)

Why or why not? Permittable alternatives exist for where the deck can be placed (north or east sides of the cabin) and the deck is also large in size (432 sq. ft.) such that it could be scaled down to 10' x 24' to comply with the side lot line setback and still be a very functional size and shape.

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 on the lot where the proposed deck could be built by permit per Section 703 of the shoreland ordinance (north or east sides of cabin). A very reasonably sized 10' x 24' deck could also be built on the desired west side of the cabin by permit as it would then comply with the 10' side lot line setback.

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

Why or why not? The lot is 100' wide, relatively level, and upland. There is space to the north and east sides of the cabin where a deck could be placed by permit. The alleged difficulty is caused by the large size of deck proposed.

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 caused by the size of deck being proposed. At 432 sq. ft., it is very large. A 240 sq. ft. deck could be built on the desired west side of the cabin by permit as it would meet the 10' side lot line setback and still provide a very usable deck area.

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

Yes (X) No ()

Why or why not? The locality is made up of year-round and seasonal single family residential structures – many of which have decks/platforms. A deck is a typical accessory feature to a residential structure that will not change the locality's residential character.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as being the sole reason for the alleged difficulty. The application does not provide any mention of a stated practical difficulty.

The motion carried unanimously 5 – 0.

Variance Application 40-V-15 by Brian and Constance Ginter: Part of Gov. Lot 1, Section 20, Township 139, Range 33, Crow Wing Lake Township on 3rd Crow Wing Lake, a Recreational Development lake. Parcel 06.20.01200. Applicants are requesting a variance from Sections 502.2 and 904.6 of the Shoreland Management Ordinance for a proposed residence that will not comply with the 100' ordinary high water mark or the 50' road right of way setback, and will exceed 25% impervious surface area on the lot.

Brian Ginter presented the application as a proposal to upgrade the current structure which is failing us and with the addition to our family, we also would like additional space. We have decided to tear down the existing structure which is a 24' x 24' cabin and tear down the current detached garage which is 18' x 22' and also remove the outhouse. In place of that, we are proposing one structure that would be 24' x 62' with a loft which would increase the height about another 12'. A driveway will be put in using impervious surface and this is a very small lot. Some of the positive things we are doing is we are taking a garage that is within 10 feet of the property line and removing that. We will be expanding outward, but will stay within the guidelines of being over 10 feet from property lines. Where the current garage sits, it is 44 feet from the centerline of State Highway 87, the new garage will be back away from the highway. The patio that we have is closer to the lake than the current structure, but we will be removing that. We are trying to fit

everything in so it meets guidelines better. We also want to switch the driveway over to make it safer because we are on the State Highway 87 and backing out onto the highway is a safety concern. We are not going any closer to the lake.

Krueger commented on the increase in impervious surface- what are you proposing for runoff from the roof.

Ginter explained he did not know for sure what the pitch of the roof is going to be, has not met with the builder on that issue.

Christenson explained that the Environmental Services Department is recommending a 20 foot buffer along the lake if this variance is granted.

Ginter asked for clarification on a buffer.

Grob explained that a buffer comes in various styles, the simplest is a no mow zone, and basically you have to let whatever vegetation that is there grow. You are very close to the lake and might expect a mat and could be some plantings. You're proposing to get rid of structures and it is an improvement, but very clearly you are in the shore impact zone. Some level of mitigation for stormwater runoff, a buffer should be required as well as a no mow zone. The roof structure is such that you would have rain gutter across the whole front of the building facing the lake. There should be some way of controlling the down spouts which could run into rain barrels.

Ginter commented that he is ok with rain barrels and gutters, but to be honest to go 20' as a no mow zone would be right up to the cabin. Is there anything else structurally that we could do to keep the water moving away from the lake.

Johnson noted that the ice ridge did go up to the lake.

Christenson asked Buitenwerf if after the lot viewal, does your department still think it is important to do the 20' no mow zone.

Buitenwerf recommended 15 to 20 feet.

Ginter explained that we would be having growth much farther up my property than anyone else.

Grob explained that buffers can be made very attractive, low growing plants and flowers. You are allowed a walkway to the lake. There seems to be consensus that some sort of buffer and rain barrel for roof run off needs to be done.

Johnson asked if the current cabin is used year-round.

Ginter did use it year-round the first couple years and it has been winterized.

Johnson reviewed that the septic was put in 1999 and it looks like it is the last spot available on the property.

Johnson opened the discussion for public comment.

Gene Goodman, a neighbor of the Ginters who has been there for 21 years, explained that this was a year-round cabin before the Ginters. What is being proposed would be an improvement far and above what is there now. The lakeshore comes up and catches a lot of the runoff from his roof now, but 99% of the runoff that comes down there is coming off that highway. When

that highway was redone in 2002, it was requested that they slope that road so runoff would go off the other side of the highway.

Correspondence received:

Email from Stephen Fisco, Minnesota DOT, Roadway Regulations Supervisor

Public comment closed.

Christenson agreed that this would be an improvement.

Krueger also agreed, but there has to be some kind of concession on the water run off issue.

Grob made a motion to approve the variance application with the following three conditions: 1. the Minnesota Department of Transportation must approve the proposed driveway relocation, 2. a no mow zone that runs the full width of the property and extends 15' landward of the ordinary high water mark must be established and maintained indefinitely, and 3. rain barrels must be installed on the lakeside of the proposed home to capture stormwater runoff from its roof 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 lot is only ~124' deep on the east side and ~145' deep on the west side – making it impossible to meet the 100' OHW setback and the 50' road ROW setback as they overlap on this lot. The proposed house location is placed so it complies with the 20' setback from the existing drainfield on the lot which itself is moved as far back from the lake as possible and right up against the road ROW edge. The excessive impervious surface area of the proposed redevelopment is being mitigated through the stormwater management condition(s) in the motion.

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

Yes (X) No ()

Why or why not? As mentioned in the answer to question # 1, the lot lacks depth such that the OHW and road ROW setbacks overlap on the lot. A variance of some kind is needed to place anything on the lot. The existing cabin and garage are old and showing their age. Replacing them with a new structure is a reasonable use.

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

Yes (X) No ()

Why or why not? Again, as cited in the answers to the first two questions, the lot lacks the depth needed for there to be room on the lot to meet both the OHW and road ROW setbacks.

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

Yes (X) No ()

Why or why not? As mentioned in answers to the previous questions, the difficulty is caused by the lot's lack of depth and the 100' OHW and 50' road ROW setbacks overlapping 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 is currently made up of seasonal and year-round single family residential structures. The proposed new residence with attached garage will replace the existing residence and detached garage – thereby not changing 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 in the application as a difficulty. Instead, the difficulty (as previously mentioned) is the lot's lack of depth such that there is not room on the lot to meet the 100' OHW setback and 50' road ROW setback.

The motion carried unanimously 5 – 0.

Variance Application 41-V-15 by Robert and Julie Livers: Lot 1, & Part of Lot 2, Pine Haven Beach, Section 17, Township 139, Range 34, Hubbard Township on Long Lake, a Recreational Development lake. Parcel 14.38.05400. Applicants are requesting a variance from Section 702 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residence located in the shore impact zone.

Robert Livers presented the application as a property that has been in our family since 1937 and over the years we have made additions to the primary building and at this time we have a

desire to make additional changes to a previously approved variance that was granted in 1995. The footprint that we have proposed is predominately the same as was approved, but the main difference is that we want to move the front of the cabin back away from the lake 2 feet and the purpose of that is to gain us space away from two mature red pine trees that are in our front deck. The other main difference from the previous variance is that we would like to add a second story on the addition on the back end which is outside the 50 foot shore impact zone. We have an ice ridge across the entire front of the property lake side and from the front of the cabin to the west basically it falls off so all the runoff either runs to the north or away from the cabin. What falls in front of the cabin is blocked by the ice ridge. Changes would be consistent with environmental purposes due to mature pine trees on the property.

Christenson commented that it appeared just from reading that you would have room to move your cabin back but at the lot viewal, the location of the septic paints a different picture.

Grob explained that moving this cabin back toward the tank is encroaching on the setback standards so there does not seem to be an option for moving the structure back.

Van Kempen mentioned that he was concerned that during construction there may be damage to the pines in the front of the cabin.

Livers explained that the current cabin has a 16" wide footing with two rows of concrete block and so based on this new plan the building will set on that same footing so there will be no digging out by those trees.

Krueger asked if the floor plan could be changed to put the deck off to the side instead of the front.

Livers answered that the deck has been there for 30 years and they have enjoyed it for having gatherings and would like to keep that space as we have for the last 50 years.

Johnson opened the discussion for public comment.

No public comment given.

No written correspondence was received.

Johnson commented that something needs to be done with this structure and agreed with leaving the deck there because it has been there.

Grob requested clarification regarding the variance approved in 1995 for an addition about 1350 sq. ft. What is the square footage of what you are proposing on this application?

Livers responded that it was 1700 square feet with the loft; the footprint is a little smaller 1622 sq feet. One thousand, six hundred fifty-nine was what was approved on the previous variance.

Grob asked if the deck was the same size as the new one you are proposing.

Livers remarked that the deck is two feet wider because the front of the cabin will move back two feet and they are leaving the existing deck where it is.

Christenson noted that the two feet more on the deck was to fill in the space between the new cabin and the deck.

Livers agreed.

Johnson made a motion to approve the variance as presented.

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 plan presented shows moving the structure away 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 structure is in total need of replacement.

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

Yes (X) No ()

Why or why not? The current structure predates the ordinance and the lot is undersized.

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 and layout predated the ordinance and was done by previous owner.

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 year-round and seasonal residences and the proposed residential structure would fit in with the locality's character.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as the sole difficulty. The stated difficulty was the existing cabin's 22' OHW setback.

The motion carried unanimously 5 – 0.

Variance Application 42-V-15 by Willis and Martha Tacker: Lot 11, Section 29, Township 142, Range 34, Clay Township on Skunk Lake, a Natural Environment lake. Parcel 04.29.01000. Applicants are requesting a variance from Section 702 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residence that is located in the shore impact zone.

Willis Tacker presented the application as a one room cabin which has been there for 7 decades. We wish to add to the cabin a small 4' x 8' addition so that we can install a incinerate toilet. We have been interested in having a cleaner toilet than the biffy that is on the island now. We just learned about these and they use electricity to incinerate the waste that goes into them. We would like to build on to the end of the cabin this 32 square foot structure so we have enough room for this toilet.

Christenson commented that this is a very reasonable request and it will be much better for the environment than the current outhouse.

Van Kempen agreed.

Johnson opened the discussion for public comment.

No public comment given.

Correspondence received:

Fax from Sara Lassila

Public comment closed.

Johnson commented that he is in agreement and you have done a good job with your property.

Van Kempen made a motion to approve the variance 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? The addition is very reasonably sized (4' x 8' footprint) and will doubtfully be visible from the water due to the cabin's elevation above the lake and the dense vegetation between the cabin and lake. Allowing the bathroom addition to facilitate the use

of a composting toilet and lesser use of the existing privy that is 50' from the OHW is in harmony with the ordinance's intent.

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

Yes (X) No ()

Why or why not? Having an indoor bathroom vs. going outside to use an outhouse 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 cabin was built in 1948 – well before the shoreland ordinance took effect in 1971 – at a nonconforming setback. The island is not large enough for there to be any spot on it that meets the 150' OHW setback such that a structure could be built by permit. A variance is needed in order to build anything new on the island.

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 caused by the small diameter of the island not providing any room where the 150' OHW setback can be met coupled with the age of the cabin predating the ordinance.

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 is very rural, low-density residential and recreational land use. The 4' x 8' bathroom addition to a cabin located in the middle of the lake will not alter the locality's very remote feel.

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

Yes (X) No ()

Why or why not? Economics are not cited in the application as a difficulty. The difficulty is the island's small size that does not allow a structure to be built in compliance with the OHW setback – and the cabin's predating the ordinance.

The motion carried unanimously 5 – 0.

Variance Application 43-V-15 by David and Diane Roforth-Smith: Unit 13, Lots 14 – 24, Block 1, Kola Tepee Park, Section 10, Township 141, Range, 35, Arago Township on Island Lake, a

Recreational Development lake. Parcel 02.38.00900. Applicants are requesting an after-the-fact variance from Section 502.2 of the Shoreland Management Ordinance for a deck addition that does not comply with the 100' ordinary high water mark setback.

David Roforth-Smith presented the variance request as the deck was built about 17 years ago by a professional company from Park Rapids. We did not get a variance at the time and there is no documentation. We had hoped that the contractor would have got one, but that did not happen. When the County came out, there was no negative environmental impact and we believe that to be so, but we do believe there is a positive environmental impact in the fact that this is a home to a family of raccoons that have been there for some time. The only downside to that is that they constantly knock out the decorative trellis work so we are constantly repairing that. If we have to knock it down, it is going to deprive the raccoons of a home.

Grob asked if there were other options for the location of that addition to the current deck.

Roforth-Smith replied no, the only alternative is to knock it down. We do not want to do that. It has given us a lot of pleasure. It is used with a gas fire pit there and we sit and look over the lake. The only alternative would be to demolish it.

Johnson commented that in the staff report the ordinance allows a 13.73' lakeward deck. If he was to remove that 14' x14' section, would that 18'x30' existing still be in compliance or would that need a variance.

Buitenwerf answered that it is not in compliance, but it was issued a permit back in the day so we would honor that permit.

Christenson mentioned that the deck addition could be placed on either side of the cabin so are you therefore saying if this extension was taken off, it could be placed on the side of the cabin.

Buitenwerf responded that the Board is entertaining a variance request so the Board would have the option of saying that it did not like the deck extension in its current location, but would authorize it in an alternate location.

Johnson opened the discussion for public comment.

No public comment given.

No written correspondence was received.

Public comment closed.

Christenson asked how much financially was the investment in this deck.

Roforth-Smith stated he cannot answer that question since it was built 17 years ago. We had it done properly and we spent a reasonable amount of money.

Johnson commented that he is having some problems answering the findings to support for approval. One of the question is "would you be deprived of reasonable use".

Roforth-Smith responded that it was built for a hot tub.

Christenson commented that the landowner needs to understand that for us to approve this variance request, we have to be able to answer the first six questions yes and I am in agreement with Tim Johnson that you have ample space with your other deck so you are not being deprived of the use of your property.

Christenson made a motion to deny the variance application and adopt the staff report findings of fact except for the answers to questions 7, 9, & 10 which we will need to answer.

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 () No (X)

Why or why not? The original deck is 18' x 30' which is more than adequately sized. The cabin is at a 91.5' OHW setback. Section 703 of the shoreland ordinance would allow a 13.73' lakeward deck to have been built on the cabin by permit because the cabin was constructed before the ordinance was enacted. Such a deck would have 15.25' of usable depth because of the 1.5' eave overhang. This addition makes the deck extend 32' waterward of the cabin which is significantly more than the 15% waterward encroachment Section 703 allows and thus not in keeping with the ordinance's intent. The deck addition could have been placed on either side of the cabin and been functionally connected to the original deck without encroaching 14' further waterward.

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

Yes () No (X)

Why or why not? The original deck is 18' x 30' in footprint which is a very reasonably sized deck. The requested deck addition could also be placed on either side of the cabin by permit per Section 703 of the shoreland ordinance.

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

Yes () No (X)

Why or why not? The cabin is at a 91.5' OHW setback that would allow a 13.73' waterward deck. There is room on either side of the cabin to place the deck addition in compliance

with Section 703 and thus by permit. There are no unique circumstances on this property that warrant the deck addition going further waterward of the existing deck.

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 room on either side of the cabin and original deck where this deck addition could be placed by permit and comply with Section 703 of the shoreland ordinance.

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 residences – many of which have lakeside decks.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as a factor.

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? A contractor came out from Park Rapids and they assumed that the contractor had the correct paperwork.

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

Why or Why not? No. No permit was obtained for the deck when it was constructed.

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

No, not to the knowledge of the applicant.

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

No. The applicant does not know how much he had invested financially in the deck.

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

Yes. The deck was constructed approximately 17 years ago per the application and the County learned of the deck being in violation over the winter and then notified the landowners of the violation accordingly.

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

Yes, there are a number of cabins in the area that have lakeside decks.

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

No. The deck addition can be removed relatively easily and repositioned elsewhere in a location that can be permitted per Section 703 of the shoreland ordinance.

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

Yes. A deck that encroaches 32' waterward of the cabin to which it is attached is excessive. There is room to the sides of the cabin where this deck could be moved to by permit.

The motion carried unanimously 5 – 0.

Rothford-Smith requested if there was an appeal process.

Buitenwerf explained that within 30 days of the Board's decision, you have the ability to file an appeal with the district court.

Variance Application 44-V-15 by Roland Carlson: Unit 2, Lots 14-24, Block 1, Kola Teepee Park, Section 10, Township 141, Range 35, Arago Township on Island Lake, a Recreational Development lake. Parcel 02.38.00900. Applicant is requesting an after-the-fact variance from Section 502.2 of the Shoreland Management Ordinance for an accessory structure and two platforms that do not comply with the 100' ordinary high water mark setback.

Roland Carlson presented the variance request explaining that his parents bought the property in 1978 and purchased it from them in 1980. The deck to the south was built in 1982 with a few variations thrown in during the next few years, primarily because it was more private and would get us out of the wind. It is strictly a ground covering because when you walk over there with all the shade, there is a lot of mud. The decking with the good spacing in between solves the problem of an impervious deck and allows rain to come through. The sauna was built in 1993 and the same year the deck on the other side for the shower area and privacy fence the following

year. We use the sauna every night and I built it where I place it because there were two very large birch trees right behind it and tried not to disturb the root structure of these trees. Unfortunately those died and many others due to birch borers. When we are at the cabin, we use the sauna every night and have since put one in my home. I have planted on my portion of the property approximately 30 trees including pine, birch and maples. I have also planted over 40 bushes trying to screen the property. If this was built today, there would be an investment of 8 to \$10,000 in these structures.

Johnson opened the discussion for public comment.

No public comment given.

No written correspondence was received.

Public comment closed.

Johnson commented that there is a problem answering the findings in support of the request.

Christenson asked why no permit was applied for to build this.

Carlson answered he did not know it was required and it was a small structure and my understanding at the time was over 75 square feet was required to have a permit. I did not realize the nearness to the lake made a difference. The structure itself is only 64 square feet. I do not think I can move it since it is extremely heavy. The structure weights 4 to 5 tons.

Van Kempen asked that per the current ordinance is only one deck allowed.

Buitenwerf responded that one deck per dwelling unit that is correct.

Van Kempen stated that technically there are three decks here plus one on the house.

Carlson commented that the deck is not raised, but on the ground. It is there because of the mud. There is more runoff with mud than when you are using a deck. The grass is very thin there due to the shade.

Christenson made a motion to deny the variance application and adopt the staff report findings of fact except the answers to questions 7, 9, & 10 which we will need to answer.

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 () No (X)

Why or why not? There is room on the property to move the structures further from the OHW and gain greater compliance with the OHW setback.

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 several residences on it and is used by multiple families to recreate on the lake and enjoy the outdoors – all of which are reasonable uses.

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

Yes () No (X)

Why or why not? There is room on the property to move these improvements back to achieve a greater 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? As mentioned in answers to the previous questions, there is room on the property to move these structures further from the OHW.

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. Platforms and an accessory structure sauna and common accessory features to single family residential uses.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as a factor.

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? Did not think it was required.

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

Why or Why not? No. No permits were obtained for the sauna or platforms when they were constructed.

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

No, did not know it was required for such a small structure.

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

Yes. There does appear to be more than a few thousand dollars invested in the structures. Did the applicant complete the repairs/construction before the applicant was informed of the impropriety? Yes. Based on the weathering of the sauna and platforms, it appears they have been in place for several years. The Environmental Services Department became aware of them last winter and then notified the landowners of the ordinance violations.

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

No. There is not a similar sauna/fence/platforms combination in the neighborhood. This assembly is unique.

12. 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 structures can be moved further from the OHW without a great deal of work or cost and there is room to do so.

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

Yes. As mentioned previously, there is room on the property to move the structures further from the OHW and given their size and construction, it would not be much work to move them.

The motion carried unanimously 5 – 0.

Variance Application 45-V-15 by John and Nancy Ryan: Lots 6 – 9, Part of Lot 10, Block A, Shorewood, Section 26, Township 141, Range 34, Lake Emma Township on Big Sand Lake, a Recreational Development lake. Parcel 16.42.00500. Applicants are requesting a variance from Section 702 of the Shoreland Management Ordinance for proposed additions to a nonconforming residential structure located in a bluff impact zone.

John and Nancy Ryan presented the variance request as the cabin was purchased in 1986 and at the time, it was a weekend retreat for us with our family. We are living in this 100 year old log cabin about five months out of the year. Our children have since grown and we now have eight

adults and six grandchildren. This cabin that we have has one bedroom in it and a little front porch with two beds, but it is not even enclosed. There is a challenge when we get together as a family. We would like to add on a couple bedrooms and bathroom. Since there are some medical problems that we foresee in the future, we would like to make the bathroom wheelchair accessible. The kitchen needs to be totally redone and is totally unworkable. We did amend our application since as we redo the kitchen, we have to knock out a wall that our one and only bathroom is in to enlarge it. Even in doing this, the kitchen is still small and we need an area where people can take off shoes and hang their jackets and get rid of the mud on their feet. The way it is set up now you walk right into the kitchen area with no area to put shoes, coats or clothes.

John Ryan commented that the additions are going to the back side of the cabin and away from lake.

Nancy Ryan stated that the additions are not going toward the lake and it is just really one small corner of the cabin that is out of compliance.

John Ryan stated that the porch addition was put on in the 40s and the cabin itself is right on. When you go down into the basement, you can see that they put in blocks in the 40s or 50s.

Nancy Ryan explained that they have a lot of terrace walls with planting put in on the bluff and this was done to prevent erosion and this was put in 1995, 96.

Grob commented that the setback from the bluff in the ordinance is 30'. It looks as though the 30' line cuts one corner of the cabin, but 1/2 of the front meets the 30'. The encroachment is on the left hand side as we face the lake. All the additions are on the back side of this structure.

Nancy Ryan answered yes.

Johnson opened the discussion for public comment.

No public comment given.

Correspondence received:

Email, James & Janis Stephenson

Fax, Randy & Robyn Wimmer

Email, John & Nancy Scott

Email, Liz & Steve Quaday

Letter, Thomas & Barbara Kimer

Public comment closed.

Johnson commented that the bluff is heavily vegetated and shows no erosion.

Krueger stated that this seems to be a reasonable request.

Krueger made a motion to approve the variance as presented and adopt the staff report 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 addition will be made to the rear of the cabin away from the bluff impact zone and upward with a second story over part of the structure. Both these directions are in harmony with the ordinance intent of not increasing nonconformities. The addition will not be visible from the lake given the structure's location relative to the bluff.

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 located in a bluff impact zone such that a variance is needed for any addition to it. Adding living space to accommodate a large family is a reasonable use.

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

Yes (X) No ()

Why or why not? The cabin predates the shoreland ordinance and is located in a bluff impact zone.

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 is created by the cabin having been built prior to the ordinance and the area later being classified and regulated as a bluff impact zone.

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 is single family residential year-round and seasonal use. The proposed addition will not change that character as this structure will continue to be used as a single family residence.

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

Yes (X) No ()

Why or why not? Economics are not cited in the application as a difficulty. The difficulty is caused by the cabin's being constructed prior to the ordinance's enactment and located in a bluff impact zone.

The motion carried unanimously 5 – 0.

Variance Application 46-V-15 by Steve Schloeder and Joye Knutson: Unit 2, Beachwood Estates, Section 9, Township 141, Range 35, Arago Township on Island Lake, a Recreational Development lake. Parcel 02.51.00200. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed deck on a nonconforming residence located in the shore impact zone.

Steve Schloeder presented the variance request as a recent purchase and realizes that this cabin is well within 100' and is asking for a fully removable deck. This would give us an opportunity to enjoy the property. We are requesting 12'. We are on the property from mid-May to the middle of September.

Van Kempen asked what is the meaning of a removable deck.

Schloeder replied that it is fully removable. It would be dock sections setting up on sleds which would be stacked away for winter. It would be sitting on concrete blocks and beams.

Christenson noted that when the water is high, are you aware that you had water to your door at one time.

Schloeder has not seen it up to the door, but has seen it up to the fire pit. There is a natural berm in there and there is water when it rains hard.

Christenson asked if the water got that high again, would you be removing the concrete blocks.

Schloeder answered that they would be removed as well.

Christenson asked if when you purchased the property, you understood that the previous owner had used the entire footprint.

Schloeder said he was not aware of that.

Grob asked if calling this a totally removable non permanent structure, does this alter the application according to the ordinance.

Buitenwerf replied no.

Grob mentioned that the fact that it is removable does not change our view of its compliance or conformance with the ordinance.

Buitenwerf responded no, it would be a matter of if the Board felt that was a viable condition.

Grob asked if it would be put there in the summer making it most likely to be in conflict with the ordinance.

Schloeder replied of course and it would only be there 4 or 5 months.

Johnson opened the discussion for public comment.

Melanie Berg, property owner of Unit 1 that is located behind the Schloeder/Knutson Unit, commented that there were a couple of concerns regarding the proposed deck. The first concern is that this is not blocking the view of anyone else or infringing on anyone else. The other concern is any potential damage when ice out in the spring which they tried to address by having a removable deck. What they are proposing provides an increase in safety as what was there previously was a very small set of steps and small narrow platform that a number of people have fallen off.

Krueger asked if Melanie Berg is the president of the association.

Melanie answered that she is the secretary of the association, but is speaking as an individual property owner not on behalf of the association.

Krueger questioned that the current structure fills the entire envelope, for them to put a deck anywhere would that require association approval?

Melanie replied that it would.

Krueger asked if it was off to the side you would not approve it.

Melanie replied that the proposal does not infringe on anyone's view. Depending on the location, if it blocked our view, we would not approve of it.

Grob commented that the current structure is 36' from the ordinary high water mark. Building a deck by ordinance you can do a 15% of the distance between the structure and the lake.

Buitenwerf answered that the Chair was still in the process of soliciting public comment.

No public correspondence received.

Closed public comment.

Buitenwerf reported that the ordinance allows a deck to be 15% lakeward of a structure that existed prior to the ordinance. In this case, the structure was constructed by Variance in 2005-06 so that regulation would not apply. It could be used as a comparison reference and if so for

structures that predate the ordinance when it took effect in July of 1971, they are allowed that 15% waterward encroachment if there is no alternative to the sides or rear of the structure and the deck can go no closer than 30' from the ordinary high water mark.

Grob mentioned that at most if something was built on the front, it would have to be six feet or less, or you would be at the 30 foot number.

Buitenwerf stated that if that number is correct, that would have to be verified by the department.

Christenson asked how they would feel about going over to the side with a small walkway that would access the other.

Schloeder replied that they are asking for 12 feet toward the lake and of course that is the most appealing. We are open to your suggestions.

Christenson wondered if moving part of the deck to the east side, if that would be something you would consider.

Schloeder commented that there is no view of the lake from that side and asked what is it that the Board is trying to comply with.

Johnson replied that the questions is, "Is the variance in harmony with the comprehensive plan zoning ordinance and State Shoreland Management rules?".

Grob commented that the answer is no because State Management Rules would like to establish a 100' setback and if you look at the science behind it, that is where you maximize the runoff down to less than 10%. So that is the intent of the ordinance and anything you add in that 100' zone will be impervious surface that will add to runoff. The closer you get and in this case you are in the shore impact zone which is 50' and in general is supposed to be a no structure zone to prevent runoff. As far as harmony is concerned, this close to the lake and then building another 12 or 11 feet toward the lake is not in harmony with the intent of both the State and County ordinance.

Schloeder remarked that is why we are filing for the variance and that the structure would only be there one third of the time.

Grob explained that it would be there when runoff is maximum. Why couldn't you put the deck on the left side of your cabin?

Schloeder explained that the front of the cabin faces north so the west side would block the view of anyone else. The east side where that other patio door is has no view to the lake. That would be no more than a walkway to the other patio door. What we are looking for is to be able to enjoy the lake.

Grob explained that you have a yard that is relatively flat with a fire pit so there is no reason you are being restricted from enjoying the lake.

Schloeder explained that all we are able to use is a pair of steps and is that fair.

Johnson explained that you are allowed a 4' x 4' landing.

Chirstenson explained that the problem is how the previous owner used up all your space, the entire footprint.

Schloeder felt that was not his fault and would like to be able to enjoy the property. I am willing to make it fully removable for summer use only.

Grob noted that a small landing off the front where the steps are and a small entry way deck area off the sliding doors on the east side could be possible.

Schloeder asked if that is something that you would want off your cabin and enjoy.

Grob replied that it is not a matter of what people want and everybody wants more, everybody wants to be closer to the lake and everybody wants to be bigger. Our role is to protect the lakes and preserve the lakes and the science has set a 100' setback and other requirements and the structure is very nonconforming relative to those requirements. That is our responsibility; everyone who comes in here wants more.

Schloeder asked how this is affecting the lake.

Johnson commented that the question is him removing that deck seasonally - would that fit the rules.

Grob noted that in his mind it does not since it is being used in the summer.

Krueger asked about the ordinance and a temporary structure.

Buitenwerf reviewed the language of the ordinance regarding temporary structures which pertains to an RV.

Van Kempen is leaning to something simple to provide access to the deck on the east side that would provide you a view of the lake. Question what size that deck could be and maybe we restrict you on that by ordinance. Was thinking a 4' walkway across the front of the building that would provide access to the deck on the east side. Is there a restriction on the size of the deck that he could have on the east side of the house.

Buitenwerf commented that it would need to be approved by variance due to it not meeting the 100' setback.

Krueger mentioned that he is also leaning that way which would give you reasonable use of the property.

Johnson included that by staying to the side and encroaching to the lake would be in harmony to the shoreland management rules.

Schloeder asked if since they have crank out windows, we could make that walkway 6' or 8'.

Johnson replied that the walkway would not have to be right up next to the house.

Christenson since you are thinking about a walkway and deck over on the side, would this also be removable.

Krueger replied that permanent is what he was thinking.

Schloeder verbally amended their application to a 6' x 34' deck lakeside and a 10' x 12' deck on the east side of the home.

Buitenwerf reviewed the amendment as the lakeside portion of the deck that is shown on the sketch is being 24' wide parallel to shoreline and 11' deep perpendicular to the shoreline would be amended to 24' parallel by 6' perpendicular and the east portion of the deck would be 10' in an east-west direction rather than the 6' that was presented in the original application and it would maintain the 10' north to south dimension that is shown in the sketch.

Krueger made a motion to approve the variance application on the conditions that: 1. the deck be no larger than 6' deep lakeward x 34' wide parallel to the lake on the cabin's north lakeside exterior wall and no larger than 10' wide in an east-west dimension and 12' long in a north-south dimension on the east side of the cabin, and 2. written approval from the Beachwood Estates Homeowners Association for the deck must be obtained before a permit can be issued and adopt the staff findings of fact 2 – 6.

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? By not allowing the full deck he is proposing in front and now with just a walkway going around the windows so he can get to a deck using the front door.

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

Yes (X) No ()

Why or why not? A lakeside deck is a reasonable use for a cabin on a lakeshore planned unit development. Because of the previous owner's decision to build the cabin up to the unit footprint boundaries per the 2005 variance, there is not room in this unit envelope to construct a deck.

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

Yes (X) No ()

Why or why not? The cabin was built by variance at a nonconforming OHW setback on a unit envelope that was approved through a plat and conditional use permit process. The cabin occupies the entire unit envelope so the only way to add a deck/platform to the cabin is to construct/place such outside the unit envelope on the common element which is owned by the homeowners association. This 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? The difficulty was caused by the previous owner building the cabin so that it occupies the entire unit envelope and the unit footprint and location being what it is through the plat and conditional use permit for the residential planned unit development that were approved by the County. The unit does not meet the OHW setback or have room to place a deck within the unit envelope.

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 is seasonal and year-round residential properties and a resort on the south side of Hay Creek. Lakeside decks are a common accessory feature of residences and resort structures such that the proposed deck 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? Economics are not cited in the application as a difficulty. The difficulty is caused by the unit's being located at a nonconforming OHW setback and the previous owner's having occupied the entire unit envelope with the cabin that was constructed in 2005.

The motion carried in a 3 – 2 decision with Van Kempen and Grob voting nay.

Variance Application 47-V-15 by Beachwood Estates Owners Association: Common Elements, Beachwood Estates, Section 9, Township 141, Range 35, Arago Township on Hay Creek, a Tributary, and Island Lake, a Recreational Development lake. Parcel 02.51.01200. Applicants are requesting a variance from Sections 502.7 and 702 of the Shoreland Management

Ordinance for a proposed waterward addition to a nonconforming accessory structure that does not meet the 150' ordinary high water mark setback on Hay Creek.

Melanie Berg presented the variance application as the secretary of the association speaking on behalf of the board. We are making some repairs to our water line and we need to be able to connect them into our existing pump house. We have electrical and heating within the flooring of our pump house and so to tear that up creates an unreasonable expense. What we are looking for is a max 3'x3'x3' to enclose the new lines that come into the pump house and there will be a small concrete slab that surrounds the issue that we are within 80' of a tributary and 110' of Island Lake. The placement on the picture that you have up is directly under a window and we identified that location because it does not force us to move anything with our electrical and our septic.

Johnson opened the discussion for public comment.

No public comment given.

No public correspondence was received.

Closed public comment.

Grob commented that it seems very reasonable.

Johnson also commented that this is the way they have to do this.

Christenson made a motion to approve the variance application as presented 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? The addition is only 3' x 3' in footprint and 2' high and thus will not have any negative impact to the lake or aesthetic impact to parties recreating on 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 addition is needed in order to allow the PUD's water supply system to continue to operate – which is a reasonable use.

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

Yes (X) No ()

Why or why not? The pump house was existing on the property when it was converted from a resort to a residential planned unit development. It sits at a nonconforming OHW setback. Given how existing components of the well supply and other systems are situated in the structure, the only way that the necessary well system modifications can be made is to place an addition onto the 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? The pump house was constructed by a previous owner prior to the ordinance taking effect. There is not room on the property to meet both the 100' OHW lake setback and the 150' OHW creek setback. The property is not deep enough.

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 is seasonal and year-round residential properties and a resort on the south side of Hay Creek. The proposed addition is only 3' x 3' in footprint and 2' high and thus will have no noticeable effect on 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 in the application as a difficulty. The difficulty is caused by the pump house having been built at a nonconforming OHW setback by a previous owner and the property being narrow and situated between a creek and lake such that the two OHW setbacks overlap.

The Motion passed unanimously 5 – 0.

Variance Application 48-V-15 by Jerry and Amy Bergerson: Lots 3 & 4, Far Lakes Retreat, Section 1, Township 145, Range 32, Farden Township on Little Wolf Lake, a Recreational Development lake. Parcel 07.44.00200. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed SSTS that will not meet the 150' ordinary high water mark setback.

Jerry Bergerson presented the variance request as a current septic system is no longer working and he needs a place to have one that works.

Van Kempen commented that you are limited in your space where you can put this and it looks like the only spot.

Bergerson explained that he had Jeff Mellema come and draw up the plans that would work best so as a professional sewer man, I relied on his expertise.

Johnson opened the discussion for public comment.

No public comment given.

No public correspondence was received.

Closed public comment.

Krueger asked if there is a wash way over the septic system.

Bergerson explained that there will be a mound system to take care of that.

Johnson explained that in the design he will build it into the hill to have a run off.

Grob asked if this is the only alternative for this system to go.

Johnson replied that this is challenging even where it is going, but it is the spot he needs to use.

Grob made a motion to approve the variance request as presented and adopt the staff report 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 SSTS designer has cited the proposed new drainfield as far back from the OHW as possible given the lot's small size, lack of depth, and steep hill on the rear portion of the lot that precludes drainfield placement in it. The only alternative is to install a holding tank for the residence which is the least desirable option from an environmental standpoint.

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

Yes (X) No ()

Why or why not? Given the lot's lack of depth (~125' avg.) and the steep slope on the rear ½ of the lot, the only way to install a standard SSTS on the lot is by granting a variance from the OHW setback requirement. Having a standard SSTS to service the house on the lot is a reasonable use of a property with a residence on it.

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

Yes (X) No ()

Why or why not? As mentioned in the answers to the previous findings of fact questions, the difficulty involves the lot's lack of depth and the steep slope occupying the rear ½ of the lot that prevents a drainfield from being installed in 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? The lot was created by plat in 1961 – ten years before the shoreland ordinance was enacted. The steep slope was created by glaciation.

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 is seasonal and year-round residential properties. Septic systems are typical and necessary accessory features of residences. The system will be in the ground so it will not have any impact on 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 in the application as a difficulty. The difficulty involves the lot's lack of depth to where the OHW setback cannot be met and the steep slope that occupies the rear ½ of the lot and does not allow a drainfield to be placed in it.

The motion passed unanimously 5 – 0.

Variance Application 49-V-15 by John Knudson: Part of Gov. Lot 2, Section 4, Township 145, Range 32, Farden Township on Grace Lake, a Recreational Development lake. Parcel 07.04.00500. Applicant is requesting a variance from Section 702 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residence located in the shore impact zone.

John Knudson presented the request for variance as adding 6' to the east side of the residence and an addition to the south side to provide some larger bedrooms and another bathroom.

Krueger asked if this is an addition not a demo.

Knudson replied correct.

Johnson commented that the loop driveway was a potential alternate septic site.

Johnson opened the discussion for public comment.

Knudson noted that Ken Berge, the contractor, is here to answer any questions.

No public comment given.

No public correspondence was received.

Closed public comment.

Christenson expressed some concern regarding the crawl space under the addition since the residence is only four feet above the high water mark.

Grob responded that they would need to meet the three foot vertical separation. What is the condition of the soil in this area.

Johnson noted that the conditions are sandy.

Grob asked if a crawl space is needed under this addition.

Knudson responded yes.

Grob asked if this addition could be built on a slab.

Knudson commented that the existing structure has a crawl space in it and if we were to build the addition on a slab, we would need steps to get up to the existing level. We have some health issues in our family that dictate that we keep everything on one level.

Johnson asked if there has ever been any water issues.

Knudson responded that they have not had any.

Grob asked if the crawl space would be up from current ground level, would you have to build it up to get to the current level.

Berge explained that the ground penetration would not be four feet. It would be less than half of that, maybe two feet due to the slope of the ground. The goal would be to make the floor levels the same and easier for handicap access.

Grob asked if the ground would be penetrated but not four feet.

Berge answered that they would only be penetrating the ground enough to get a foundation established and it would not be any more than the current residence.

Johnson asked if the three foot separation was in the application.

Buitenwerf explained that it was not, but was noted by staff in the process of reviewing the application.

Grob noted that looking at the drawing, it looks like there are at least three steps down in the front. What is the elevation to the lake from that step?

Knudson answered that he believes it is at least three feet.

Johnson suggested that they add the three foot separation to the decision.

Christenson made a motion to approve the variance application and grant a variance from Section 507.1 of the Shoreland Management Ordinance to allow the addition to encroach on the 3' vertical separation requirement between the crawspace floor and the highest known lake water level and adopt the staff report 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 proposed addition will be made to the rear of the cabin away from the lake. Its impervious surface area will be mitigated by the condition being placed on the variance. Together, these two things are in harmony with the ordinance intent.

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

Yes (X) No ()

Why or why not? The submitted photos show existing bedrooms that are quite small and not practical. Equipping a residence with handicapped-accessible features/space is a reasonable use.

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

Yes (X) No ()

Why or why not? The cabin was built prior to the ordinance at a nonconforming 40' OHW setback.

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

Yes (X) No ()

Why or why not? The cabin was constructed prior to enactment of the shoreland ordinance at a 40' OHW setback by a previous owner. The ordinance requires a variance for any addition to a structure located in the shore impact zone.

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 is seasonal and year-round residential properties like this property. The proposed addition would make this residence one of the larger ones in the neighborhood, but it would be on the borderline of what might be considered as changing 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 in the application as a difficulty. The difficulty is caused by the cabin's having been constructed at a 40' OHW setback by a previous owner before the shoreland ordinance was enacted.

The motion passed unanimously 5 – 0.

Variance Application 50-V-15 by Trenton Simon: Part of Gov. Lot 6, Section 22, Township 141, Range 35, Arago Township on Eagle Lake, a Recreational Development lake. Parcel 02.22.01220. Applicant is requesting a variance from Section 501.2 of the Shoreland Management Ordinance and Section 4, Subd. A.1.a.3.b & Section 4, Subd. A.1.a.3.d of the Subdivision Ordinance to create a nonriparian lot that does not comply with the 80,000 sq. ft. lot area or the 40,000 sq. ft. residential lot suitable area and exceeds the four lot maximum allowed to front a public road per quarter/quarter section of land.

Trenton Simon presented the variance request as trying to split off the commercial property from my residential property. In talking with the Minnesota Department of Transportation, they are asking me to remove the driveway on the south side and part of the parking lot in the front of that building in order to add that driveway on the further south side. We did provide 75 feet on the public road, so have to choose between the 75 feet on the public road or still trying to get as much room as we can. The alternate septic site for the commercial building which is compliant is going to be further toward that corner toward the driveway. In this process, the current system on the house did fail and that current drainfield system would be pushed toward the line on that commercial property there. We have to give enough room to get the septic system in on that side.

Christenson commented that during the lot viewal you had mentioned that MnDOT would want you to take the fence down and then put the parking on the front grass. If this is retained as a commercial property, where would there be adequate parking?

Simon explained that there will be parking along the side where the garage is and then past that garage so that the parking lot goes all the way to the line toward the lakeside there.

Christenson reviewed that there would be parking along the back also.

Simon explained that the way the land lays toward the golf course, it drops down to a ditch right on the road, but toward the back it is very level.

Christenson noted that would be safer than the current parking since right now it is right next to the highway.

Grob noted that if the commercial building was to be retained as a seasonal tourist area, the parking would probably be adequate, but there is no restriction on what that commercial building could be. So potentially it could restrict what alternatives there are for a business based on parking available.

Simon explained that there is a conditional use permit for a coffee shop, deli and gift shop, my understanding a new conditional use would have to be obtained if they wanted to do something different.

Johnson opened the discussion for public comment.

No public comment given.

No public correspondence was received.

Closed public comment.

Johnson remarked that there are some old conditional use permits and asked if you would consider rescinding the campground conditional use.

Simon agreed to doing so.

Johnson made a motion to approve the variance application on the following conditions: 1. the owners must sign a rescission form for Conditional Use Permit 76-25, 2. the Minnesota Department of Transportation Highway 71 approach conditions listed in the letter from Stephen Frisco included in the application must be met, and 3. Conditional Use Permits 95-1 and 4-98 can only be acted upon on Tract A as shown in the application sketch (i.e. the non-riparian lot) and adopt the staff report findings of fact on part 2 of the application.

Krueger seconded the motion.

Findings of fact:

Part 1

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 approval of this variance will remove the legal nonconformity of the riparian commercial use.

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

Yes (X) No ()

Why or why not? The approval of this variance will allow the applicant to use the riparian lot for a residential use separate from the commercial use.

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

Yes (X) No ()

Why or why not? The commercial and residential structures pre-date the ordinance.

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 was developed 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 residential uses to the south of this property, a mixed residential/commercial use on this property, and a golf course and multiple residential dwelling property to the north. Creating a property line between the residence and business structure on this property would not cause any change to the locality's mixed use character.

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

Yes (X) No ()

Why or why not? Economics are not cited in the application as a difficulty. The application does not list any practical difficulty.

Part 2

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 four tract frontage threshold is in place to ensure safe access to public roads. The Minnesota Department of Transportation, Highway 71 road authority, provided a letter stating it would be willing to allow the proposed fifth access onto Highway 71 along this quarter/quarter section stretch of the highway if the applicants agree to the listed conditions.

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

Yes (X) No ()

Why or why not? The property is 8+ acres in size and thus able to be subdivided in a way that creates two conforming lots. If MnDOT as the road authority is okay with a fifth approach in this quarter mile stretch of road, that addresses the reason for the ordinance provision and for these reasons, the proposed use is reasonable.

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

Yes (X) No ()

Why or why not? The property is unique in that it has a historic residential and commercial use on it which the current owners would like to separate. One of the other tracts in this quarter mile stretch of road continues north into occupying all of the next ¼ mile stretch of road and then part of the ¼ mile stretch north of that. The access onto Highway 71 for this adjoining property is in the next ¼ mile to the north of the subject property. There is not an access onto Highway 71 for the adjacent tract to the north within the subject property's ¼ mile stretch of road so while there are six tracts proposed to front the highway in this ¼ mile, there will be five access points.

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 involves the historic mix of two uses on this property – residential and commercial – that now are desired to be separated by ownership and the ordinance's access management language that looks at the number of other tracts in a ¼ mile stretch of road frontage. The other tracts in said stretch are not in the owners' possession and thus are not in their control as to the number of tracts that front the road.

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 uses to the south of this property, a mixed residential/commercial use on this property, and a golf course and multiple residential dwelling property to the north. Creating a property line between the residence and business structure on this property would not cause any change to the locality's mixed use character.

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

Yes (X) No ()

Why or why not? Economics are not cited in the application as a difficulty. The difficulty involves the number of tracts that front Highway 71 in this quarter mile stretch of road which is beyond the applicants' control.

The motion passed unanimously 5 – 0.

Variance Application 51-V-15 by Dallas Hudson: Gov. Lots 2 & 3, and the NE ¼ of the SW ¼, Section 26, Township 141, Range 32, Akeley Township on Shingobee Lake, a Natural Environment lake. Parcel 01.26.00400. Applicant is requesting a variance from Section 502.1 of the Shoreland Management Ordinance for a proposed new residence that will not meet the 150' ordinary high water mark setback.

Dallas Hudson presented the variance request as the current house is in bad shape so something needs to be done. We would like to move it back as far as we can, but the road is between us and the lake and behind us we have a hill. We are trying to get it back as far as we can into the hill without destroying the hill. We have 120 acres and the rest is in Green Acres so trying to keep it wild.

Christenson commented that the staff request that if this is approved is that there would be a condition that if the property is ever subdivided, the tract on which the proposed house would be located must meet the duplex lot size requirements to mitigate the 33% reduced ordinary high water mark structure setback.

Johnson opened the discussion for public comment.

No public comment given.

No public correspondence was received.

Closed public comment.

Christenson made a motion to approve the variance application on the condition that if the property is ever subdivided, the tract on which the proposed house would be located must meet the Shoreland Management Ordinance duplex lot size requirements and adopt the staff report findings of fact.

Johnson 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 requested setback is to utilize an existing, historic building site. While the property is quite large, the steep topography at the OHW setback precludes structure placement. The condition being placed on the variance will more than mitigate the reduced OHW setback.

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

Yes (X) No ()

Why or why not? Having a residential structure on 119+ acres of land is a reasonable use as is siting the structure where a view of the lake is afforded.

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

Yes (X) No ()

Why or why not? The proposed building site is an existing building site that dates back to when it was first established under the ordinance's old natural environment residential lake classification that allowed a 100' OHW setback. The property's topography becomes very steep at the 150' OHW setback and thus precludes structure placement there.

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 involves the property being developed with the existing building site at a time when the ordinance allowed a 100' OHW setback and the property's topography that was created by glaciation.

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 low density residences and a very rural setting. The new home will replace the existing home at this location and therefore the locality's character will not change 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 in the application as a difficulty. The difficulty involves the ordinance OHW setback after the building site was created and the steep topography at the current 150' OHW setback that precludes placing a structure there.

The motion passed unanimously 5 – 0.

Variance Application 38-V-15 by Ricky Schlee: NE1/4, Section 11, Township 145, Range 35, Fern Township. Parcel 08.11.00100. Applicant is requesting a variance from Section 4, Subd. A.1.a.2.a of the Subdivision Ordinance to create a new tract that does not abut a public, maintained road.

Mr. Schlee was not present nor was a representative present on his behalf.

Christenson commented that she is not in favor of this because he does not want to obtain an easement. Essentially, if we approve the variance, we are approving a property that could be land-locked.

Johnson suggested that he is in favor of an easement on Wildfire and going toward an approval with the condition that they obtain an easement because an easement would require a variance.

Christenson agreed.

Grob recommended if we deny the application, he would then have to come back and make another variance application and he is not here to agree to a delay to do that, so I am in favor of the idea to approve with the condition of getting an easement.

Johnson made a motion to approve the variance application with the condition that the applicant obtain an easement from Hubbard County over Wildfire Road to provide contiguous access from the proposed tract to County Highway 3.

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? The condition to obtain the easement will prevent a land lock situation.

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

Yes (X) No ()

Why or why not? The property has historically be subdivided away from County 3, and this is the last lot to be subdivided.

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

Yes (X) No ()

Why or why not? Moving to subdivide in a different location would involve subdividing agricultural land and radio towers.

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 change in the ordinance prevents the subdivision to continue from the east to the west.

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

Yes (X) No ()

Why or why not? Three other similarly sized tracts are located to the east of the proposed tract. The area is rural residential in nature with low density residential, forestry, and

pasture/hay field agricultural use. The proposed tract and intended residential use would fit into the locality's character.

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

Yes (X) No ()

Why or why not? Economics were not cited by the applicant as the sole reason for requesting the variance.

The motion passed unanimously 5 -0.

Miscellaneous: None

Communications: None

Adjournment:

Christenson made a motion to adjourn.

Krueger seconded the motion.

The motion passed unanimously 5 – 0.

Adjourned 8:50 pm.

Respectfully submitted,

Barbara Barth
Recording Secretary