

HUBBARD COUNTY

Planning Commission/Board of Adjustment meeting minutes

6:00 p.m. on Monday, August 24, 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.

Board of Adjustment:

Approval of Minutes: July 27, 2015 meeting.

Johnson made a motion to approve the July 27, 2015 minutes as presented.

Krueger seconded the motion.

The motion carried unanimously 5 – 0.

Old Business: None

New Business:

Variance Application 28-V-15 by Michael and Debra Cziok: Part of Gov. Lot 1, Section 35, Township 141, Range 34, Lake Emma Township on Big Sand Lake, a Recreational Development Lake. Parcel 16.35.00200. Applicants are requesting a variance from Section 702 of the Shoreland Management Ordinance for a proposed height increase through remodeling of a nonconforming structure in the bluff impact zone.

Mike Cziok presented that the variance request is for the story and a half part of the house and the part to the north will not be touched at all. The upper bedroom and closet areas are in need of remodeling. The stairway is in a dangerous condition and not in compliance with residential building codes MN R311.7. There are no egress windows and in measuring the ceiling height, it goes from 5'10" to a maximum of 6'. In the past 26 years, we have come up in the winter and in using the heat, it has created ice dams and this damages the first floor ceilings. This is not a year-round facility and it is denying us the reasonable use to retire on this property. We will not be adding additional bedrooms and will not be going outside the existing footprint. The second story wall lakeside should be moved forward over the first floor to stack it and go up, but we wish to maintain the essential character of this structure and leave that wall in that place. To establish reasonable use of the property, the ordinance calls for the structure to be moved back. This is not a movable structure and a tear down and rebuild creates many problems and practical difficulties unique to the property. Excavators, backhoes and large skid steers operating in the bluff impact zone would be required. This would not be an approach that would be favorable to soil stability on the trees and vegetation. The unique double bluff on this property could result in negative environmental impacts with strict compliance to the ordinance. With the variance approval, a significant environmental improvement to the property could be obtained with a strong water management system. Directly after the Board of Adjustment lot review, my wife and I met with a landscaper with Touch of Eden Landscaping who supports the remodel as a best practices approach. We discussed concerns about soil stabilization by increasing the number of trees,

shrubs, flowers and groundcover on the bluff; he has excellent ideas and is designing a storm water management system for us. He would gutter the remodel, reclaim the rainwater into a cistern and then with the energy from two AAA batteries, a drip system would distribute the cistern water to drip systems throughout the bluff so the plantings would survive in this western exposure. This would result in increased protection of both the bluff and the lake quality.

Krueger asked if the tank that caught the water would irrigate it down.

Cziok explained that there would be a timer on it and it would be sensitive to the requirements of individual plantings.

Grob made the comment that there is no change in footprint or impervious surface so that this does make sense.

Johnson opened discussion for public comment.

No public comment given.

Christenson commented that these are landowners that are very conscious of the land, trying to keep the house footprint within good bounds but also the property itself.

Johnson is in agreement.

Christenson moved to approve the variance 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 structure was constructed prior to enactment of the shoreland ordinance. It sits 87'+ from the ordinary high water mark per the application sketch and is 12' 2" from the bluff crest instead of the required 30'. The structure's impervious surface area is not increasing. The only change is the structure's height is increasing by 6' 7". This is a reasonable request. Requiring the structure to be moved to a conforming location would be unreasonable.

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

Yes (X) No ()

Why or why not? Increasing the 2nd floor ceiling height so occupants have a full, code-compliant interior ceiling height and a safe height in the stairway leading to the 2nd floor is a reasonable request. The structure's size is not increasing and thus its impervious surface

area is staying the same. The only change will be to the structure's height which will still be over 10' below the 35' maximum structure height allowed by the ordinance.

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 ordinance at a nonconforming OHW setback in what was later labeled and regulated as a bluff impact zone. The structure is at an 87'+ OHW setback and 12' 2" bluff crest setback per the application sketch.

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 landowners acquired the property in 1989. The structure was constructed pre-ordinance (i.e. before July 1971) and it was subsequently added onto by another landowner and permit in 1985.

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 consists of single family seasonal and year-round homes. The ordinance allows structures to be up to 35' in height and this remodel will cause the structure to be under 25' in height.

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

Yes (X) No ()

Why or why not? Economics were not cited as a difficulty in the application. The difficulties are the structure having been built pre-ordinance at a nonconforming OHW and bluff impact zone setback.

Motion carried unanimously 5 – 0.

Variance Application 29-V-15 by Scott Anderson and Dave Washburn: Part of Gov. Lot 2, Section 18, Township 144, Range 35, Lake Hattie Township on Big LaSalle Lake, a Recreational Development Lake. Parcel 18.18.00700. Applicants are requesting a variance from Sections 503 and 903.3 of the Shoreland Management Ordinance for a proposed driveway that would not comply with the 10' side lot line setback and would be located in a bluff impact zone.

Tom Olson, representing Scott Anderson and Dave Washburn, reviewed the variance request as a shared driveway proposal. In doing this, there would not be as much erosion and land excavation when using one driveway verses two.

Grob commented that they have picked the most gentle and friendly access, the driveway would meander across the property line and does not meet the 10 foot setback.

Van Kempen stated that having a shared driveway makes sense.

Johnson opened discussion for public comment.

No public comment given.

Olson asked if a joint easement document is required between the two property owners.

Buitenwerf commented that one option that the ordinance allows without need of a variance is to have the driveway centerline surveyed and an easement prepared that would be recorded that would lock in the location of that driveway. When that is done, there is not a requirement for the driveway to meet the 10 foot setback. When there is not an easement in place, the requirement is that they meet the setback or obtain a variance as you are requesting now.

Johnson asked if you will be doing the work now and what kind of experience do you have.

Olson stated that he had worked for Itasca County for years maintaining roads.

Grob commented that a survey is not required, but an easement is recommended.

Grob made a motion to approve the variance request as submitted 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? It is more protective of the bluff to have a shared driveway running through it than a separate driveway for each tract. There are conforming building sites near the lake that can only be reached by placing a driveway through this bluff that occupies the middle portion of these tracts that are very large (i.e. 13+ and 34+ acres). The driveway has been well sited in a natural draw that results in the least amount of impact to the bluff. Without a variance, the landowners would not be able to access the two potential building sites.

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 above, the potential building sites on these two lots near the lake cannot be accessed without traversing this bluff. The landowners are asking to share a driveway through the bluff rather than build two separate driveways – which is a reasonable proposal. Having a driveway to access legal building sites to enjoy a view of the lake and proximity to it for ease of recreational enjoyment 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 bluff on these two properties is much larger than is often seen on lakeshore property – and it cuts the two tracts in half making it impossible to access the building sites on the lakeside portion of the bluff without placing a driveway through the bluff.

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 was not created by the landowners nor were the bluff regulations in the shoreland ordinance created by the landowners. The bluff was created thousands of years ago when the glaciers retreated from this area.

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 consists of single family seasonal and year-round homes. A driveway is a standard accessory feature of a residential use lot.

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

Yes (X) No ()

Why or why not? Economics were not cited as a difficulty in the application. The difficulty is the presence of a very large bluff that completely bisects these two tracts.

Motion carried unanimously 5 – 0.

Variance Application 30-V-15 by William Kathman: Outlot A, Island View, Section 3, Township 139, Range 33, Crow Wing Township on 3rd Crow Wing Lake, a Recreational Development Lake. Parcel 06.51.00100. Applicant is requesting a variance from Section 903 of the Shoreland Management Ordinance for a private watercraft approach road within the 100' ordinary high water mark setback and the shore impact zone.

Bill Kathman presented a summary of the variance request as a driveway to regain access to this lot and boat dock that I have had for over 26 years. The cause was created by the township putting up some barriers to control erosion.

Grob requested clarification on what he was looking for in terms of a driveway such as size or dimensions and location.

Kathman explained that it would be down at the bottom of the hill just preceding the poles and cables. Somewhere where those last two posts are located. He will be working with the township on what is the best location.

Grob commented that the location would be somewhere between the 2nd and 3rd post along the line at the bottom of the hill.

Kathman stated that he will be working with the township since they are the ones that will remove the cable and posts.

Van Kempen wanted clarification regarding not wanting a boat access but wanting access to your lot.

Kathman explained that he has been the only active user of this lot.

Christenson stated that as a 1/15 owner of this lot, did the township supervisors give you any indication that you would have to also get support from the other owners.

Kathman replied that he did not.

Krueger asked if you have made any attempt to get support from the other owners.

Kathman replied that he did not as the only active user of this lot and knew it would be tough to get contact with other owners.

Krueger commented that there is some confusion in the fact that there are 15 owners and only one is applying for the variance.

Kathman stated that he not an attorney and was told that any one of the 15 could apply.

Johnson asked how many other people use that.

Kathman answered that there is one other full dock and one pontoon with a small fishing boat there and they have only been there in the last two or three years.

Johnson asked how many owners would you say that is.

Kathman believed there were three, I would have been the third and there is a little stub dock.

Johnson asked if in the future the other 14 owners decided to use it.

Kathman answered that again he is not an attorney and assumed they can put docks there if they want to put a dock there. This is the only accessible piece to the water on this particular lot.

Van Kempen asked if in the photo...this is your dock.

Kathman replied that it is.

Van Kempen commented that you would be looking for a driveway that would start at the road and go straight to the dock.

Kathman replied that he does not care where the driveway is, it is to just get access to this piece of ground. It is not strictly to get to my dock. It is to get down off of the road.

Van Kempen asked if it would be used to get the dock in and out.

Kathman responded that this is an old steel dock and is not sure how he would get it out. The posts were put in after he had the dock pulled out.

Johnson asked if when you have used this in the past, in all these years have you ever had any complaints when you have left your truck out there.

Kathman replied none until last fall.

Christenson mentioned that if the barriers were put up after your dock was pulled out, how did you put the dock in this year?

Kathman explained that he has two young men that come and take care of my lawn, we use about a 10 foot steel pole and they just lift it up to put it in.

Christenson asked what was causing the gravel to erode.

Kathman explained that it has to have come off of the road over the years; the water comes down the hill. It is a rather steep hill to the South, and leans toward the lake.

Christenson asked Mr. Kathman to show where he drove in prior to the barriers, did you use the same spot all the time.?

Kathman responded that he drove in at different points.

Christenson asked if he used the four wheeler path that was there.

Kathman replied yes.

Van Kempen asked if this they would be allowed a 20' recreation area.

Buitenwerf explained that the outlot in the entire plat was done in 1973, which is after the Shoreland Ordinance was adopted. At that time, there were no provisions concerning access lots so there could be as many docks as the owners wanted to place on the property. The ordinance would allow a recreational use area as any other riparian lot.

Krueger asked if it would be workable if the driveway was a little bit farther away.

Kathman responded that the location is irrelevant and all that is needed is access.

Van Kempen asked how many years have you been putting your dock in and out.

Kathman answered that it has been 20 years with my personal dock. When the property was purchased in 1986, I bought into half of a dock that was existing there.

Johnson opened discussion for public comment.

Dr. Noel Christman, a family member and part owner at 15099 Chokecherry Drive across from Outlot A, with the Board's approval would like to check that some letters were received in view of a problem with the email system at the courthouse.

Buitenwerf responded that we did receive them all, but can pull the file and list them if you like.

Dr. Christman responded that would like to hear the names.

Letters were received from: Julie Stover and Tom Wilmer

Rosa Stolzenberg

Chris Perius

Patricia Christman

Dr. Christman requested that two additional letters be entered into the record.

Jeff and Sue Blair, 14738 Crow Point Trail, Nevis, MN.

Land and lakeshore owners on 3rd Crow Wing Lake. Our concern with regard to the above variance is the erosion of Chokecherry Drive on the land Outlot A. A small area has been accessed with motorized vehicles of all types, which has destroyed the natural vegetation that existed and caused an erosion problem where dirt put on Chokecherry Drive now ends up in the lake. Several years ago the DNR rebuilt the 3rd Crow Wing lake public access and that design there are a series of retention basins to filter run off before it enters the lake. As a participant in the Healthy Lakes and Rivers Initiative, I note that allowing this new private watercraft approach road in the high water mark setback seems to go against the goals of protecting our lakes and rivers in the State of Minnesota.

Jerry Streigle, 15099 Chokecherry Drive, Nevis, MN.

This letter is to address six considerations with regard to the variance application. Is this variance in harmony with the intent of a comprehensive plan, zoning ordinance, and shoreland management rules: No for the following reasons:

1. Section 903.1 states that documentation must be provided by a qualified individual that all roads and parking areas designed and constructed to minimize and control erosion to public waters.
2. Section 903.9 states that conditional use permit 401 failure of the applicant to meet the balance of the paragraph's conditions with requirements noted in paragraphs 1 thru 4 have not been met with regard to stormwater management. Furthermore, this road will become an unmonitored public access. The site is adjacent to Chokecherry Drive; it is a wide open area just off the road, less than 30 feet from the lake.
3. There are no structures on the site. It would be very attractive to any boater wanting the convenience of avoiding the monitoring activity at the 3rd Crow Wing public access. This would increase the risk of introduction of invasive species. This monitored public access is conveniently located within a half mile of the Outlot A site that we are talking about here. A half a mile away, there is a boat launching facility.
4. Without the variance is the owner deprived of a reasonable use of the property, Mr. Streigle states no, none of the owners in this area are deprived of a reasonable use of this property as was observed during the site visit. Mr. Kathman currently has his dock and boat in the area and has not been restricted from putting his dock and boat in the lake. This is in response to an understanding of an answer that he lost his dock and boat at the monitored launch. If it is a steel dock, I guess that is not probably the case.
5. Is there a practical difficulty due to circumstances unique to this property? As stated there is no difficulty accessing by foot. That cable barrier has an opening to foot access 20 feet or 25 feet from the barrier down to the waterfront location of the docks. That is really not an undue hardship to walk those 20 feet.
6. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? No, there is no practical difficulty, the guard rail was installed by Crow Wing Township roads to prevent motor

vehicles and to prevent continued erosion caused by motor vehicles, there is no impediment to foot traffic going down to use the lake.

Thank you.

Patricia Marsh Christman, one of the fifteen property owners, commented that the question was asked, how many people use it. We have had our property there since 1972 and we have a lot there as well. We used it frequently until someone stole the dock and then we were unable to use it at that time. It is not just for boating. Many people who are owners go there for bird watching and for unblocked view of the stars on a dark night. We walk canoes down there and kayaks. There are a lot of ways we use it.

Another question you asked is has anyone ever complained about the cars that are parked down there. The answer is yes, in fact that is how Crow Wing Township got involved. In August of last year, we met with them and said that we were not happy with the erosion that was occurring because of motorized vehicles that were there. We worked with the Crow Wing Township Board Roads Division and their solution was to put the barriers up there so that people would not use motorized vehicles and in fact at the meeting, the minutes from the meeting August of 2014, they were going to put a sign up that said "No Motorized Vehicles" and I do not know what ever happened to that sign, but it never made it up. Their view was that you cannot be driving there because of the erosion.

The third thing that I really want to bring to your attention is the question was asked at the site visit, why do you want this road and as you recall Mr. Kathman's answer was "for convenience sake only". I do not think for convenience sake is enough of a reason to have damage to the nesting sites of cormorants, the nesting sites of the turtles, and bass spawning areas. Environmental concerns need to be considered. Thank you for considering my comments.

Pam Parisian commented that she is here on behalf of my husband to read a letter that was not able to be submitted as follows:

My name is Paul Howes, my wife and I own a home on 15265 Chokecherry Drive, regarding the petition for variance. I am not opposed to the placement of access road as long as it is under the guidance of Environmental Services and it is constructed in a way including grade and vegetation which does not result in erosion. I am; however, concerned about the fact that this lot is a shared property whereas most variance hearing involve the surrounding neighbors there are 13 lots that share equal ownership in this Outlot A. I wanted it to be sure that it is understood that at any approval of a variance for construction of the road by Bill Kathman does not infer that he has anymore right to this property for placement of a dock or boat lift on this property than the rest of the owners. I am concerned that previous lot sales involving this property may have come with the misconception that they are entitled to have their own dock on this property. This property certainly would not support 13 different docks. Access and use of this property is to be shared both now and in the future. Furthermore it is to be known that liability is also shared on this property, thus an injury occurring on someone else's dock or lift could result in liability for all the owners.

Tom Wilmar, the husband of Julie Stover, commented that as one of the four or five users of location in general, relation to the drawing, excessive erosion has been caused by multiple years of automotive and ATV usage. At the end of Chokecherry Drive, there is an ATV trail and it gets a

large amount of traffic on the roadside, a nice little sandy hill is very inviting for the use of an ATV if someone wants to have a little fun. Eliminating the access for everyone would be very helpful in eliminating the erosion. We want to make the property boring so we do not invite any illegal usage which is also a major contributing factor to the erosion issue. In speaking with Crow Wing Township on the pylon removal, they are placed incorrectly and need to be moved to the top of the hill where now the only ATV access point. Anything in between the large post is still wide enough for ATVs to get through to cause addition erosion. If there was some cable in between there, we would be able eliminate access mostly by illegal activities. This would be carry-on only access. Do not know how many of the owners have been contacted or what legal criteria Mr. Kathman would have to meet, I think there are only about four people actually got the document regarding this 15 people and there is an adjacent property owner. Thank you for your time.

Johnson closed public comment.

Johnson asked would Kathman inherit any more property rights if he was granted this variance.

Buitenwerf replied no, the variance, if approved, would a property right for all the owners.

Christenson commented that she spoke with the Crow Wing Township Chairman, Randy Avenson, via phone and asked him to attend the meeting tonight but he was out of town. He gave me the impression that if we approve this variance, the town board would not put the driveway in without approval of the majority of the property owners. Would like to hear some more from the township.

Johnson made a comment that there is a letter with the application that the Crow Wing Township Board is in favor of Mr. Kathman's variance request and is signed by Randy Avenson and Mark Frank of the board.

Christenson replied that in speaking with Randy Avenson about that, he said that he would not put that driveway in without majority owners approval so am a little confused.

Johnson asked if they should wait for additional information from the township board or go ahead with the letter with the application.

Buitenwerf responded that it is entirely up to this board.

Krueger responded that with this confusion, he would like to act once this has been cleared up.

Christenson commented that they are currently working on this road and that that whole area was eroded away and in the last years they had seeded and they are addressing the whole erosion issue with the road.

Van Kempen asked how far you are from this access lot.

Kathman replied quarter to one third of a mile, past the top of the hill.

Van Kempen commented without an access you would have to park on the road verses parking in a driveway on the lot.

Kathman commented that he had spoken with Randy Avenson several times and no mention was made about concerns about other owners and that is why he drafted the letter.

Johnson expressed that he is going by what he was given in the application.

Grob commented that he also tried to contact the township with no response, after listening to all the conversation maybe have a different perspective. I think there was this perception that there would be a super highway down off the road that you could drive a cattle truck down. The application was unclear, what I think I have heard is that there are ways that we would like to close off where the current ATV track goes down due to erosion. Mr. Kathman only wants to be able to have an area where he can park that is not on the road. What he is asking for is a six foot wide in between the two posts down to the left, where there is not much of a bank there and with vegetation to prevent runoff. If the application was clearer, it would resolve much of the comments that I heard. It is reasonable to be able to drive an ATV down and park it. The area being requested would result in natural restoration of the sandy vegetation removal that has been torn out over the years. If you place those conditions of where, size and the condition that township board would have to approve that, we could go ahead and leave it up to the township.

Johnson asked if four wheeler access would work.

Kathman replies absolutely. The placement is irrelevant to me; all I am asking for is access. The township said that they would work with me.

Krueger asked about the cable.

Kathman explained that as he understood it, that was where the last section going down to the lake was put in incorrectly. It should have never been done that way.

Grob explained that one of the ways to get more input from the township or an alternative approach would be to propose approval with three conditions. 1. Cable is extended to close off the current ATV path. 2. Access would be between the second and third post. 3. Final approval on a condition that a majority of the property owners are in agreement.

Kathman commented that if the third condition is placed on it, you have effectively denied the variance because trying to convince 8 of 15 owners to vote positive would be difficult.

Grob responded that in trying to read all the letters and respond to most of the owners' concerns are the vegetation erosion that is already there. The conditions that we are proposing I think will cover most of the owners' concerns and you will get support from them.

Kathman responded that if this is the way you go you are effectively denying the variance.

Krueger mentioned that he belongs to a homeowners association and everything that is done to the common ground is by vote. You have 15 owners; surely you will get 8 of them to agree because that is the will of the owners.

Johnson made the comment that in his view his access should not be taken away from after using for 27 years. It is the environmentally friendly thing to do but letting him continue to use that without doing too much damage.

Grob made a motion to approve the variance with the following three conditions:

1. The existing post and cable guard rail system along the township road must be extended to the southwest so as to block off the current ATV trail access point located on the west edge of the posts and cable system.
2. Crow Wing Lake Township approval of the proposed driveway approach must be obtained based on a majority of the Outlot A landowners approving of and asking the Township to be able to construct said approach.
3. The driveway approach cannot exceed six feet in width and it must be located between the second and third posts from the northeast end of the Township post and cable guard rail system where the system runs along the township road.

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 approach ought to greatly reduce the amount of erosion taking place on the property caused by the steep slope of the current access arrangement. The outlot lies almost entirely within the shore impact zone so there is no way to construct an access road on the lot without a variance for such. Allowing the landowners to have an access to the lot so that it can be used for its intended purpose is reasonable.

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

Yes (X) No ()

Why or why not? Having a property owned by multiple owners for the purpose of lake access where the owners would not have an approach to access said property would be unreasonable. Having a means of accessing one's property 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 difficulty is due to the steep slope on the outlot relative to the township road and the small size of the lot (specifically its depth) that does not allow many conducive locations for an approach and none that would be able to meet the 100' OHW setback because the outlot itself is not 100' deep.

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 above, the difficulty is caused by the shape of the outlot that was created by plat in 1972 along with the topography of the lot and steep slope condition where it abuts the township road.

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 consists of single family seasonal and year-round homes. This outlot has existed since 1972 and an approach driveway on it rather than the existing ATV two track rutted approach 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 were not cited as a difficulty in the application. The difficulty is due to the outlot's lack of depth such that the 100' OHW setback cannot be met.

The motion passed 4 – 1, with Van Kempen voting nay.

Variance Application 31-V-15 by Joann Elavsky Whitaker: Part of the N1/2 of the SE1/4, Section 11, Township 141, Range 32, Big Bass Lake, a Recreational Development Lake. Parcel 01.11.00900. Applicant is requesting a variance from Section 4, Subd., A.1.a.3.c of the Subdivision Ordinance to create a lot that would not abut a public road right-of-way.

Don Elavsky, representing his mother, presented the variance application in that this is a 49 acre parcel and would like to break out the cabin for her estate plan. The property is being accessed by Iroquois Drive at the present time. That does not meet the legal requirements for an easement; it is not a public road. We are asking to have a new easement on the west side of the two 40s to the north which belong to my son. That would be the easement to County Road 23.

Johnson opened discussion for public comment.

No public comment given.

Van Kempen commented that this is straight-forward and seems reasonable.

Grob mentioned that this road crosses through a couple times on one piece of property and then another that you may want to consider the variance is only valid as long as there are two parcels of land involved. If it were split up into several more in the future, that easement for that road could be problematic.

Elavsky commented that there are no plans to divide the property any further. My mother's estate planning has it going to family.

Johnson asked if Elavsky disagrees with making the condition that this easement stays with these two pieces of property.

Elavsky replies no.

Christenson made a motion to approve the variance application with the condition that this variance only applies to the two proposed tracts in the application and not to any other subdivision layout of the property or number of tracts 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 proposed two tracts meet and exceed the minimum lot size requirements. The property is ½ mile from the nearest public road in a rural, low population density area. A 33' wide ingress and egress easement to provide access to the two proposed tracts has been prepared and will be conveyed to each tract – thereby meeting the ordinance intent of not creating a landlocked property.

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

Yes (X) No ()

Why or why not? Being able to ask to subdivide ones property that is 47+ acres in size into two tracts is a reasonable use request – particularly when the ordinance's legal access requirements can be addressed through the provision of a 33' access easement over upland terrain.

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

Yes (X) No ()

Why or why not? The property is ½ mile from the nearest public road and the landowner does not own contiguous land that abuts a public road. It is located in an interesting area where there are not any public roads between the section in which this tract is located and the adjacent section to the east. If such a road existed, it would run along the east side of this tract.

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 landowner had no say over whether or not the township constructed a road between the sections and along the east side of this tract such that it would front a public road. It is unique that there is a two mile span (east to west) without a north-south public road such that this property is a ½ mile from the nearest public road to the north when it typically would have a public road running along its east side as it is located on the east side of a section.

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 consists of low-density residential and agricultural properties. Allowing this 47+ acre tract to be subdivided into two tracts that both meet and exceed the minimum lot size requirements will not alter the locality's low-density rural, residential character.

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

Yes (X) No ()

Why or why not? Economics were not cited as a difficulty in the application. The difficulty, as described in the above answers, is that no township road exists between the sections in this part of the township such that the nearest public road to this property is ½ mile to the north.

The motion passes unanimously 5 – 0.

Variance Application 32-V-15 by Victor and Debora Olson: Parts of the SE1/4 of the SE1/4 and Gov. Lot 8, Section 27, Township 141, Range 33, Spider Lake, a Recreational Development Lake. Parcels 20.27.01220, 20.27.02710, and 20.38.01310. Applicants are requesting a variance from Sections 501.2, 1001, 1003 and 1005 of the Shoreland Management Ordinance and Section 4, Subd. A.1.a.3.b of the Subdivision Ordinance to create a non-riparian lot that will not comply with the required minimum.

Victor Olson presented the variance request to create a non-conforming, non-riparian lot in order to provide space for an alternate drainfield and garage site to serve a nonconforming riparian lot across the road that does not have adequate space for an alternate drainfield or a garage. The request is reasonable to have a garage site and by statute, I have to have an alternate drainfield site. There is no space for either one of those on the current lakeside lot. The time is good now to do it while I am still alive and have control over all parcels that will benefit anything in the future.

Christenson commented that the department recommends that we put a condition on that Tract A cannot have anything other than the proposed garage and drainfield and will all be in the same ownership as Lot 4, would you agree to this condition?

Olson stated that he would support that.

Johnson opened discussion for public comment.

No public comment given.

Christenson made a motion to approve the variance application with the condition that Tract A cannot have anything other than the proposed detached garage and drainfield sites placed on it (i.e. no residential dwelling allowed on it) and it must always be in the same ownership as Lot 4, Miller's Lakeview (parcel 20.36.00400) 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 purpose of the proposed nonconforming Tract A is to provide room for a septic system and garage to be used by owners of Lot 4, Miller's Lakeview, which is a

riparian lot on the other side of the road that is nonconforming in size and consists largely of a bluff impact zone. With the condition being placed on the variance that Tract A must always be in the same ownership as Lot 4, the ordinance's intent will be met of providing adequate room for a proper septic system to service Lot 4. The other condition being placed on the variance that no residential dwelling can be placed on this lot further supports the ordinance's intent of not creating a nonconforming lot that would be put to a full residential dwelling unit use.

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

Yes (X) No ()

Why or why not? Lot 4, Miller's Lakeview, lacks room for a garage or subsequent SSTS. Providing room for these two things on proposed Tract A that is right across the road from Lot 4 and treating this Tract A essentially as part of Lot 4 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 tract is not large enough to be subdivided into two conforming tracts. The uniqueness is that this property is in the same ownership as the nonconforming riparian lots on the other side of the road that lack room for a detached garage or alternate drainfield site because of a bluff impact zone. This ownership allows for the opportunity to create Tract A to provide more room for Lot 4, Miller's Lakeview to have a standard SSTS instead of a holding tank – which is preferable from an environmental standpoint.

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

Yes (X) No ()

Why or why not? Miller's Lakeview was platted in 1959 – well before the ordinance took effect in 1971. The bluff on Lot 4, Miller's Lakeview, was also not created by the landowner.

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 consists of single family seasonal and year-round homes. Conditions are being placed on the variance that require Tract A to always be conveyed with Lot 4 (i.e. be in the same ownership) and disallow Tract A from being used for the placement of any residential dwelling unit on it.

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

Yes (X) No ()

Why or why not? Economics were not cited as a difficulty in the application. The difficulty is the small size of Lot 4, Miller's Lakeview, and the need for it to have additional area to provide for a detached garage and alternate drainfield site.

The motion passed unanimously 5 - 0.

Variance Application 33-V-15 by Steven and Amy Hankey: Lot 3, Block 1, Hazel Park, Section 9, Township 140, Range 33, Nevis Township on Lake Belletaine, a Recreational Development Lake. Parcel 21.57.00300. Applicants are requesting a variance from Section 702 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residential structure located in the shore impact zone.

Steve Hankey presented the variance request as a follow-up to the May 26th hearing when they had submitted a variance request for an addition. We would like to convert to a retirement home. In a year and a half, they would like to relocate and use the existing structure that we have now. The objective would be to get one building on one floor and to get one additional bathroom, a workable kitchen and a dining area. The current situation is about 1000 square feet with two small bedrooms, one small bathroom and an "L" shaped as a combination of a kitchen and a living room. The take away from the last time we were here was concerns about the setback and the size, so we have reduced the size of the addition from 800 square feet down to 500 square feet and that would be consistent with the cabins in the area adjacent to us. The immediate adjacent cabin to the west is Tony and Lori Hicksler in favor of the plan and they are at about 1544 square feet with a lot about half of the size. Two cabins down from us to the east are the Abrahamsons with 744 square feet times two. The Skappers just received their variance a couple of years ago down on a smaller lot than ours for over 2,000 square feet and across the bay directly both Mary Moe and Sue Anderson got about 1900 and 1700 square feet. The size of what we are proposing is modest and it would be consistent with what is in the area on the bay of the lake.

The setback was one of the other issues that we had talked about before. On the original plan we were coming out directly to the west of the original structure. The setback is now double what it was before. We are as far back as we could build and still be connected to the cabin. We have gone back to make the lakeside wall of the addition parallel with the backside wall of the cabin. The orientation of the existing structure is a little bit high because it is over on the eastern side of the lot. There is only a 30 foot stretch between us and Ron and Joann Abrahamson who have also been in favor of the proposal. There is a thirty foot stretch between the Abrahamsons and us and in that stretch there is a septic tank. There is a 20 foot stretch of the existing structure and yet even with the addition of 26 feet, we have well over 100 feet between us and the Hicks on the western side. They also approve of the plan.

The goal again is to have a minimal addition of a bathroom, kitchen and a place to have breakfast so we can retire up here.

Krueger commented that the existing deck that is 13 feet from the lake which is coming out of a walkout basement.

Hankey stated that it was built in 1952 by a resort owner and stored large fishing boats there and it appears that it might have been a garage door at one time.

Krueger asked if that is livable space down stairs.

Hankey replied that he would not call it livable.

Krueger commented that if the board happened to be leaning in your direction, it that something that could be removed.

Hankey noted that it is not even a permanent structure right now; it is just built on top of a concrete slab.

Van Kempen mentioned that there is no roof over that basement door, but did notice that in the drawings there is a roof over that. Will there be a roof?

Hankey replied that there would be a roof over the top window and a small shed roof over the bottom.

Van Kempen remarked that would be in a sense building closer to the lake.

Hankey explained that it could be a piece that could be used to catch water because right now everything is running straight down. The objective would be to have something to stop the water from splashing against the house. There is nothing to mitigate any of the water runoff. So that is something that should be addressed.

Krueger asked if you were allowed two decks.

Buitenwerf said you are allowed one, but with a variance application there could be a potential to authorize a second.

Krueger mentioned that if this basement deck was removed, maybe we could have some kind of plantings or mow zone on the shoreline because currently there is nothing to mitigate the runoff.

Hankey commented that they have not used any chemicals, but the previous owners did have grass there. We would not be opposed to plantings. It is difficult to get something to grow because of the lack of sunshine.

Grob noted that he keeps looking for some way to mitigate the runoff on the existing house, it is hard to tell if rain barrels would work.

Hankey explained that on the lot by the bird feeders, the previous homeowners had that set up so that even the runoff that was coming from the eave troughs would feed right down to the lake. We have let Mother Nature plug those up and did not try to release them.

Grob asked if there were eaves there now.

Hankey stated there are eaves on the back side, which would be the south side of the house, but there is nothing on the front of the house right now, but there could be and the water could be harvested.

Grob asked if you had gutters on the front and downspouts, where could you run the water to avoid the impact on the lake.

Hankey explained that you could run it out to the yard on the west side easily. On the other side of the house, there is a septic that runs between us and the neighbor so that would be run from the cabin to the property line about 30 feet.

Christenson expressed as was talked about at the last hearing, what is the reasoning for not putting the addition all behind the current structure.

Hankey noted that there are three reasons and the number one issue would be that we would have to excavate the natural slope and move that to put in the building. That building would be inside where the natural hill would have been, so we felt we would be disrupting the natural runoff. The new part of the house would be right in the area where the water would be running off so you would not have any of that pooling area for it to filter down in. Our immediate neighbors to the east just recently had an addition on their neighbor's cabin to the east and felt that was intrusive into their privacy. If we build 20 to 30 feet from their other property line, that would limit their privacy as well. The third point is if you build it in a salt block shape, you would have a larger roof mass and all the water coming down into the bottom of the hill. With a ranch style house, the water would be more evenly distributed.

Johnson opened discussion for public comment.

No public comment given.

Grob commented that they had done the best that they could do in terms of setback, connect with the old cabin and the previous comments that were made. Short of building completely new, tearing down, I think they have done the best that they can.

Christenson asked what is under the deck on the lakeside.

Hankey explained that there are two tracks of pavers, almost like a driveway.

Christenson asked if the deck was removed, would there still be those rows of pavers.

Hankey would be willing to remove them.

Krueger made a motion to approve the variance with the following three conditions:

1. The existing lakeside deck on the current cabin must be removed.
2. Rain gutters must be installed on the entire cabin roof after the addition is constructed and the gutter downspouts can only discharge into rain barrels that must also be installed.
3. The existing paver paths beneath the existing lakeside deck must be removed and the area where the lakeside deck and pavers are currently located must be restored to natural grass vegetation.

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? Making an addition that begins in the back of the building and removing part of the encroachment towards the lake of that deck, restoring that to its natural condition and also controlling rain water better than what they have right now.

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

Yes (X) No ()

Why or why not? Right now there is a very small living area with no expansion of bedrooms, just making the living area bigger.

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

Yes (X) No ()

Why or why not? The structure pre-dates the ordinance 1952.

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 build in 1952, long before the current owners.

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

Yes (X) No ()

Why or why not? It will be made a little bit better because the front deck will be removed and controlling erosion a little better.

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 alleged difficulty involves the existing cabin's having been built prior to enactment of the shoreland ordinance at a nonconforming OHW setback in the shore impact zone on a steep slope.

The motion passed unanimously 5 - 0.

Variance Application 34-V-15 by Rev. Douglas and Deborah Ellis: Part of Gov. Lot 2, Section 11, Township 145, Range 32, Farden Township on Midge Lake, a Recreational Development Lake. Parcel 07.11.01400 Applicants are requesting a variance from Section 704 of the Shoreland Management Ordinance to develop an unimproved lot that does not have the two required standard septic system drainfield sites.

Douglas and Deborah Ellis presented the variance request asking for a variance on the septic site requirement to be allowed to use the property to build a home. One of the sites is close to the requirement with 17 inches on one end and 11 inches on the other end verses the 12 inches of topsoil required. The second site is only allowing for six inches of topsoil. We are asking for a variance to allow us to use one of the sites and recognizing the second as acceptable.

Krueger asked if requiring a filter on that system would be appropriate to increase the lifetime on it.

Johnson replied that he does feel a filter is very important and is a cheap addition to a septic system.

Ellis commented that he did not understand.

Johnson explained that it is an effluent filter.

Ellis noted that he has no objection to the use of this filter.

Johnson asked if the house met all the Ordinance requirements.

Grob asked if the house would meet the 3 foot groundwater separation.

Ellis replied that it did.

Christenson asked what kind of foundation would be used.

Ellis explained that it would be a crawl space. It is a modular home and cannot be put on a slab. They have to build a block wall and because of the water table in that area, it can only go down about a foot and the crawl space is 48 inches.

Johnson opened discussion for public comment.

No public comment given.

Johnson moved to approve the variance application with a recommendation that an effluent filter be installed on the septic system 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? Mitigating conditions are being placed on the variance to offset the lot's deficiencies in being able to meet the SSTS criteria for developing an unimproved lot of record into an improved lot. By keeping the size of structures on the lot to a certain limit, the likelihood that the SSTS sites will last longer increases due to a limited number of bedrooms allowed in the house and the corresponding maximum average daily flow of sewage into the system. The two proposed septic drainfield sites will still meet the 75' OHW setback required in the State Shoreland Rules and one of the two sites can accommodate a standard SSTS.

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

Yes (X) No ()

Why or why not? Placing a reasonable sized residence on this lot that is scaled according to what the lot can handle is a reasonable use. The proper scale is able to be ensured through the condition placed on the variance that limits the square footage of structures and impervious surface area allowed on the lot.

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

Yes (X) No ()

Why or why not? The difficulty involves a wetland that occupies the rear half of the lot which prevents two septic drainfield sites from being present in compliance with the 150' OHW setback and the lot's lacking elevation above the lake such that two drainfield sites are not present that both comply with the 12" of vertical separation from the periodically saturated layer requirement.

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 many years ago by a party other than the landowner. The difficulty also involves the wetland that occupies that back half of the lot and the lot's lacking elevation above the lake which causes there to not be two standard septic system sites that meet at least a foot of vertical separation above the periodically saturated layer in the soil.

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 consists of single family seasonal and year-round homes. Allowing a residential structure to be placed on this lot given the conditions being placed on the variance to ensure that the structure and lot's development is reasonable given the lot's limitations will see that that locality's character is maintained and not harmed.

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

Yes (X) No ()

Why or why not? Economics were not cited as a difficulty in the application. The difficulty involves the lot's lacking height to meet the septic system vertical separation from the

periodically saturated layer requirement and the presence of a wetland on the back half of the lot.

The motion passed unanimously 5 - 0.

Variance Application 35-V-15 by Charles Stuenke: Lot 13, Block 3, Mantrap Point, Section 18, Township 142, Range 35, Clover Township on Little Mantrap Lake, a Recreational Development Lake. Parcel 05.40.02200. Applicant is requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed accessory structure that will not comply with the required 20' road right-of-way setback.

Wayne Koop and Jim Crabben, representing Charles Stuenke, presented the variance request as a 10 foot variance from the roadway to where his building will be which does not meet the 20 foot setback requirement.

Christenson commented that in looking at the drawing, my thought was that the shed could be taken back a little bit, but in viewing the lot, there is no other place to put this. What about the electrical box service.

Crabben explained that the electrical box out on the road, the wiring from it runs straight down the road and then straight down his driveway. So the building would not be on top at all.

Christenson asked if there was a setback from electrical company on that.

Crabben did not think so.

Johnson opened discussion for public comment.

No public comment was given.

Johnson agreed that there were no options in going smaller.

Krueger mentioned that there is very little traffic on this road.

Crabben explained that it is a cul-de-sac.

Van Kempen made a motion to approve the variance application 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 garage is being built away from the lake and is a reasonable need in this climate. The road is buffered by a berm and vegetation.

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

Yes (X) No ()

Why or why not? A garage 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 way the land slopes there is no other place to put this.

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

Yes (X) No ()

Why or why not? Mother Nature and the glaciers.

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 consists of single family seasonal and year-round homes. A detached garage accessory structure is a standard accessory feature of a residence and ought to maintain 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 as a difficulty in the application.

The motion passed unanimously 5 – 0.

Variance Application 36-V-15 by Mae Benjamin and Richard Coulter: Part of Lot 17, Piney Woods, and Gov. Lot 4, Section 9, Township 140, Range 35, Todd Township on Portage Lake, a Recreational Development Lake. Parcels 27.09.00510 and 27.49.01700. Applicants are requesting a variance from Section 704 of the Shoreland Management Ordinance to develop an unimproved lot that does not comply with the required 100' minimum lot width into an improved lot.

Richard Coulter, Mae Benjamin and Bernie Gartner presented the variance request as a request from a previous variance on the property to not change square footage, but to move the structure off the original foot print about 10 foot to the west. One question we do have is that it is under the minimum width in lot size. The front of our property is 90 something and the back is 106.3 and so I do not know what it is at the 100 foot mark.

Grob explained that the requirement is 100 foot at the shoreline.

Benjamin stated that they keep hearing the width and we thought it was the 100 foot setback.

Grob explained the requirements are the 100 foot setback and minimum lot width is 100 feet at the shoreline. The building site must also be 100 feet wide.

Buitenwerf replied that is correct. In addition, the septic systems must meet all setback requirements.

Krueger mentioned that it meets all the setback requirements so it is not problem with this application.

Johnson expressed one concern that it looked like a big hole there and a runoff situation with the neighbors' lots. Would like to see that no more runoff is occurring than what is naturally happening now.

Johnson opened discussion for public comment.

No public comment given.

Grob asked if there are two proposed septic sites.

Buitenwerf noted that there are two on the site plan.

Grob commented that they are just slightly altering the location of what we had approved before.

Christenson made a motion to approve the variance application as presented 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 ()

Why or why not? The application shows that the lot can be developed with a residential structure, an accessory 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 () No ()

Why or why not? The proposed house, accessory structure, and standard septic system are reasonable uses of the property given the fact that they all are able to meet all setback requirements in the ordinance.

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

Yes () 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 () No ()

Why or why not? The applicants 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, an accessory structure, and an 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 applicants 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 passed unanimously 5 – 0..

Variance Application 37-V-15 by Jeanette and Dennis Herkal: Lots 13-24, 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 703 of the Shoreland Management Ordinance for a lakeside deck that extends beyond the 15% of the structure's ordinary high watermark (OHW) setback that is allowed and the 30' OHW setback maximum OHW encroachment allowed.

Dennis and Jeanette Herkel presented the application for variance in that a permit was issued 25 years ago for a deck and over the years the deck deteriorated and four years ago in 2011, we tore out the deteriorated material and repaired the decking and railing along with some of the joist supports. We created an area where we could put some furniture and in doing so, we extended the deck by 3 feet. The basic part of the deck is the same 10 x 18 feet. If I knew then what I know now, I would have gotten all the approvals that were necessary. We would like to leave it as is.

Christenson commented that in looking at the neighborhood this was within keeping of what the other cabins currently have. There was no erosion damage as a result of this deck.

Krueger expressed that the reason for the variance is a wing on the side of the deck.

Johnson opened discussion for public comment.

No public comment given.

Christenson made a motion to approve the variance application as presented and adopt the staff report findings of fact 1 through 6, 8, & 11 through 14.

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 deck is not very large (10' x 18'), it encroaches on the 30' OHW setback by only a few feet, and its aesthetic and impervious surface area impacts are being mitigated by placing a condition on the variance that requires a no mow zone to be established in front of the deck to screen it from view from the lake and provide a vegetative buffer to offset the deck's impervious surface area being greater than what the ordinance allows.

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

Yes (X) No ()

Why or why not? A 10' deep x 18' wide lakeside deck is a reasonable use of a cabin on the lake to allow sufficient room to accommodate typical items placed on such a deck like a table and chairs.

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

Yes (X) No ()

Why or why not? The cabin predates the ordinance and Section 703 would only allow a 5.85' deep deck to be placed waterward of the cabin's eave – which is not large enough to be usable.

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 ordinance and the application states that the property's shoreline has eroded over the years such that the cabin likely had a greater OHW setback in previous years that would have allowed a deck of greater depth to possibly have been constructed by permit when the deck was reconstructed in 2011 (according to the application).

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. Thus, this deck will not harm or change the locality's character in a negative way as evidenced by the fact that it has been in place for four years and no neighbors have complained about it.

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. The difficulties are the cabin's having been built prior to the ordinance and the shoreline in front of the cabin having eroded over the years.

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? Landowner admits he just built it and now regrets not getting a permit.

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 per the landowner.

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

No. The deck is 10' x 18' in size and sits a few feet off of the ground. It probably cost less than \$1000 to build which is a figure that is not substantial.

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 in 2011 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 nonconforming cabins in the area that do not meet the OHW setback and have lakeside decks of similar size.

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?

It is a bit of a wash in this case. By placing a condition on the variance requiring a no mow zone in front of the deck along the shoreline in exchange for allowing the deck to remain, the County feels that a fair compromise is being made.

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

No. A variance of some kind from the OHW setback would be appropriate for a lakeside deck on this cabin because the permitted deck depth of 5.85' is not practical and the applicants state that they have lost a fair amount of shoreline over the years which is the

basis for determining the deck depth allowed by permit. Also, the no mow zone mitigative condition offsets the deck's aesthetic impact when viewed from the lake and its impervious surface area.

The motion passed unanimously 5 - 0.

Planning Commission:

Approval of Minutes: No minutes at the July 27, 2015 meeting

Old Business: None

New Business: None

Adjournment:

Grob made a motion to adjourn.

Van Kempen seconded the motion.

Motion carried unanimously 5 - 0.

Meeting adjourned 8:13 p.m.

Respectfully submitted,

Barbara Barth
Recording Secretary