

HUBBARD COUNTY

Planning Commission/Board of Adjustment meeting minutes

6:00 p.m. on Monday, December 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 November 30, 2015 meeting.

Old Business: None

New Business: None

Miscellaneous: None.

Board of Adjustment:

Approval of Minutes: November 30, 2015 meeting.

Christenson made a motion to approve the November 30, 2015 minutes as presented. Grob seconded the motion.

The motion carried unanimously 5 – 0.

Old Business: None

New Business:

Variance Application 57-V-15 by James Day: Lot 12, Block 1, Pine Knoll on Kabekona, Section 30, Township 143, Range 32, Lakeport Township on Kabekona Lake, a recreational development lake. Parcel: 19.39.01000. Applicant is requesting a variance from Section 4, Subd. A.1.a.1.b of the Subdivision Ordinance and Section 704 of the Shoreland Management Ordinance to adjust the boundary line between two lots in a way that would make a nonconforming lot more nonconforming in lot width, lot area, and residential lot suitable area.

James Day presented the application as a moving of a boundary line between Lot 1 and Lot 12 to equalize both parcels and allow more room to enter the garage.

Christenson asked if currently the two lots are owned by family members.

Day explained that Lot 12 and Lot 11 are owned by me and three sisters. Each of us got 20% from our parents and I now own 40% when I purchased one of my sister's share. I also own Lot 1.

Christenson asked for an explanation of the access in the garage the way the lot line currently sits.

Day explained that the driveway has been there a long time and it comes into the middle of Lot 12 and in order for us to get into our garage which is in the corner on Lot 1, it would be helpful to have a bit more room there so the 25' that we are asking for would help.

Krueger asked if Lots 11 and 12 are required by ordinance to stay in the same ownership.

Buitenwerf replied yes.

Johnson opened the discussion for public comment.

No public comment given.

No written correspondence received.

Closed public comment.

Christenson made a comment that in looking at our notes by doing this it would make the lots more conforming and after viewing the property to be able to access the garage this would make it safer.

Van Kempen commented that by the drawing getting the road on that side to Lot 1 would make Lot 1 comparable to Lots 11 and 12 combined and plus this would eliminate the need for an easement.

Grob noted that by taking this action basically takes what is a conforming Lot 11 and 12 and making it nonconforming. Since Mr. Day is a partial owner of these lots, it is not obvious to me that there is any reason to do this because in the future they could be combined. It makes me reluctant to make what is almost a conforming lot into a less conforming lot.

Day explained that his tract is nonconforming already.

Johnson made a motion to approve this application.

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 subdividing will balance out the size between Lot 1 and Lots 12 and 11.

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

Yes (X) No ()

Why or why not? The additional property will allow a usable safe access to the garage.

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

Yes (X) No ()

Why or why not? The plat was done in the 1920s going down to the lake and was vacated and automatically split in half which makes it unique to the property.

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

Yes (X) No ()

Why or why not? The difficulty is due to the lots being nonconforming and they were created through a plat created in 1919 by a party other than the applicant.

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. Moving the side lot line between these two lots 25' will not alter the area'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 the sole difficulty.

The motion passed 4 – 1, with Grob voting nay.

Variance Application 58-V-15 by Judith Harsha: Part of Government Lot 1, Section 32, Township 141, Range 34, Lake Emma Township on Ingram Lake, a natural environment lake. Parcel: 16.32.00120. Applicant is requesting a variance from Section 506.2 of the Shoreland Management Ordinance for a proposed guest cottage that would exceed the 700 square feet maximum allowed footprint.

Judy Harsha explained that she lost her husband in January and they were in the process of building the garage. We had planned to turn the front of it into a bunk area for the kids when they came home since we only have a one bedroom mobile home. Since my husband passed away, my son John and his wife moved home to help me. They need a place with privacy. We would like to turn the garage into a small apartment for them.

Christenson wanted an explanation for the record of the other buildings on the property.

John Harsha explained that there are several buildings on the property that are old and run down. Right now we will be working on getting some of those buildings removed.

Grob commented on building removal and cleaning up the area a bit would be part of the variance.

Van Kempen asked if when the building was started, was there no plan for a guest cabin.

Judy Harsha explained that the original plan was for me to have a hobby room upstairs and the front part would have been a bunk area. The garage is 28' x 38'. The upstairs is 26' x 38' and it would make a nice living area. We both need our privacy at times.

Van Kempen commented that the garage was pretty much plumbed and wired when we were there.

Johnson opened the discussion for public comment.

No public comment given.

No written correspondence received.

Closed public comment.

Grob commented that clearly this is a fairly large lot and one could easily split it and build a guest cabin or another home. So the fact that it is being done, given that fact that it is a guest cabin and there is a variance required, it would be appropriate as a condition if in fact the larger of 14 acres are ever subdivided that the house and the garage be kept on one parcel and that parcel meets the requirements of a duplex lot as spelled out in the ordinance.

Grob made a motion to approve the variance with a condition that if the property is ever subdivided, the guest house and main house must stay together on a lot that, at a minimum, meets the duplex lot size requirement 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 property is almost 14.25 acres in size and could legally be subdivided into multiple lots which would then allow the proposed guest cottage structure to be located on one of these lots as a primary residential structure. It is preferable to maintain this large tract of land rather than require it to be subdivided to comply with an ordinance provision that does not fit a property of this size well. A condition is being placed on the variance approval to ensure that if the property is ever sold, the house and guest cottage must be located on at least a duplex size lot so that the ordinance's dwelling unit density standards are met.

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 have a second residence on a property that is 14.25 acres in size and not be limited to a 700 sq. ft. footprint for the structure is reasonable. It is reasonable as well to be able to have one's child live nearby to provide care.

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

Yes (X) No ()

Why or why not? The property is 14.25 acres in size and could be subdivided into additional lots. The guest cottage could be located on one of these lots so that it functioned as a single family residence. Doing so would not require a variance, but it would be overly burdensome to the landowner and contrary to the ordinance's intent by unnecessarily breaking up a large tract of land in order to work around an ordinance provision that is one size fits all and does not fit this property.

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

Yes (X) No ()

Why or why not? The State Shoreland Rules and County Shoreland Ordinance created the difficulty by not having language in them that provides a process for multiple residential structures to be placed on large properties without having to subdivide them so long as the structures' density on the property was in alignment with the ordinance's lot size standards.

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 low density single family year-round and seasonal residences. The proposed guest cottage is well screened from the lake by vegetation and the nearest neighboring residential structure to it is ~850' away.

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 difficulty is caused by the ordinance not having language that allows for multiple residential structures on a large tract without having to subdivide the property so long as the structures' density complies with the ordinance standards.

The motion which passed unanimously 5 – 0.

Variance Application 59-V-15 by Greg and Barbara Kalinoski: Part of SE1/4 of SE1/4, Section 7, Township 139, Range 34, Hubbard Township. Parcel: 14.07.01500. Applicant is requesting a variance from Section 4, Subd. A.1.a.2 of the Subdivision Ordinance to create one tract with less than the required 300 foot minimum average width and two tracts that do not abut a public road right-of-way.

Greg Kalinoski and Kevin Lindow presented the application to split this parcel of land that is a little over 18 acres into two parcels as shown on the survey. The Kalinoskis' intend to sell Tract A and retain the remainder parcel for recreational purposes. In an attempt to subdivide the property, they cannot meet the requirements in the Subdivision Ordinance on the minimum width on the road frontage.

Krueger asked why the property was split as indicated.

Lindow explained that it was split this way as the trail on the survey crosses an old beaver dam through a wetland and there is no other way to move the trail, so we had to keep the trail on what is called the remainder on the survey. That is the only way to access the back portion of the property to deer hunt and ski.

Grob asked do you have any plans to build a living structure or hunting camp on this property.

Kalinoski replied that they do not.

Van Kempen commented that it looked like the only way back there would be by four wheeler so he could not see anyone building back there.

Lindow commented that should they in the future ever plan to convey this parcel to the adjoining owner to the north and you put a condition on this variance that it is not ever buildable, then they cannot sell the property to someone who has an adjoining parcel with access from the north.

Johnson opened the discussion for public comment.

No public comment given.

No written correspondence received.

Closed public comment.

Johnson made a motion to approve the variance application as presented.

Christenson seconded the motion.

Lot width findings of fact

1. Is the variance in harmony with the intent of the comprehensive plan and zoning ordinance?

Yes (X) No ()

Why or why not? The lot with the structure will maintain over five acres and has been split reasonably with the two accesses.

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

Yes (X) No ()

Why or why not? The parcel is being divided by wetland which creates two reasonable uses.

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

Yes (X) No ()

Why or why not? The property is naturally divided by wetlands and has a primitive existing trail.

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 wetland was there before the 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 moderate density residential development on small acreages ranging from 1.75 acres to 18.6 acres. Seven properties currently front Birchview Road. This subdivision would create an eighth tract fronting the road which will not alter the area's character as long as the tract is used for recreational purposes only as stated in the application. The proposed 5 acre and 13.63 acre tracts would fall within the acreage range seen in surrounding properties.

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 difficulty involves the property's triangular pie shape and it's not abutting any public road.

Access findings of fact:

1. Is the variance in harmony with the intent of the comprehensive plan and zoning ordinance?

Yes (X) No ()

Why or why not? The property does have a 66' easement access to Highways 6 and 87. These two highways are within 500' of the property.

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

Yes (X) No ()

Why or why not? The property does not front a public maintained road and that is not the landowner's fault as the property was created by a developer prior to the landowner's ownership.

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

Yes (X) No ()

Why or why not? The property was created by a developer prior to this landowner's acquisition of the property or the ordinance's requirement that new tracts have 150' of frontage on a public, maintained road.

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 created by a developer prior to this landowner's acquisition of the property.

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

Yes (X) No ()

Why or why not? The area consists of moderate density residential development on small acreages ranging from 1.75 acres to 18.6 acres. Seven properties currently front Birchview Road. This subdivision would create an eighth tract fronting the road which will not alter the area's character as long as the tract is used for recreational purposes only as stated in the application. The proposed 5 acre and 13.63 acre tracts would fall within the acreage range seen in surrounding properties.

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 difficulty involves the property's triangular pie shape and it's not abutting any public road.

The motion passed unanimously 5 – 0.

Variance Application 60-V-15 by Mark and Terri Mann: Parts of Government Lots 1 and 8, Section 31, Township 143, Range 32, Lakeport Township on Kabekona Lake, a recreational development lake. Parcel: 19.31.01710. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed accessory structure to be located at less than the 10' rear lot line and 50' road right-of-way setback.

Mark and Terri Mann presented the application as a request to encroach on the road right-of-way a little bit to get a storage structure in place to store additional things. We are trying to fit this into the lot by doing the least amount of damage to the trees and we are trying to keep it away from the neighbors as best we can.

Christenson asked to explain for the record the closest neighbors' concerns and the building going on top of the driveway.

Mann talked to the adjacent neighbor about this building and how to place it and the circle driveway was there when we purchased the property and is not necessary. Would like to put a pass through on the building so you could drive through for ease of access.

Grob asked what the purpose for building the structure this size is. You already have a sizable garage where you do some of your business work.

Mann explained that he is a contractor by trade and does have a fair amount of equipment that I try to keep out of sight. I do have a Conditional Use Permit to operate my business there since 2001 and do try to keep it clean. The purpose of the size is to have the larger section with the higher walls to keep trailers and some equipment contained in and the smaller lower roof portion would be for a working shop. We do a fair amount of prefab stuff before we take it to the job site.

Krueger is not concerned about the size, it is the location since you have plenty of room to move it to the proper setback.

Mann commented that with the large Norway pines there, we were trying to place it in a way to take a minimal amount of trees out.

Krueger asked how many feet from the road right-of-way is needed to meet the ordinance.

Mann explained that he is six feet off the property line and 21 feet off the right-of-way.

Buitenwerf commented that they are seeking an 18 foot road right-of-way setback so they would have to be an additional 32 feet off to meet the 50' setback requirement.

Krueger noted there is a huge distance between the road and the existing garage.

Grob explained that the setback is from the easement line.

Johnson opened the discussion for public comment.

No public comment given.

Written correspondence received from Clifford and Sandra Mann in favor of the application.

Closed public comment.

Grob commented that he is reluctant to allow something to be built within less than the ten foot setback from the property line. Does your building have to be 96'? Could it be 92'? To build

something that is nonconforming even with your neighbor being in favor of it at this time, the future neighbor may not be. Is there any way that you could slightly move it to meet the side lot line setback.

Johnson responded that his side lot line is 12 feet which is 2 feet beyond what is required. The back property line is the one in question.

Krueger asked if there was a safety issue with something that large by the road.

Johnson commented that it is further away from the road when you are out there than what it looks like on the sketch.

Christenson said with this large of a building, we did notice that there are several other buildings in the neighborhood that are quite large also.

Van Kempen commented that the trees that will be left there could end up dying in the long run due to excavation.

Mann explained that when they take a couple trees out, there is a possibility that it could move a little bit as we set the final location. We are trying to place it to do the least amount of damage. There will not be a lot of digging. There will be some fill, but I cannot predict what will happen in the future.

Van Kempen asked if the ordinance requires a 50' setback from the right-of-way.

Buitenwerf replied correct. He is 18 feet from the edge of the right-of-way because there is an odd shape to the road right-of-way as it runs along his property so it is not a consistent width and it widens out on the north side of his property relative to the center line of the road.

Grob commented that there was no correspondence from any neighbors.

Johnson replied that there was one in favor to the west.

Johnson made a motion to approve the variance application.

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 building is being built as far back from the lake as possible and out of sight of the lake.

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

Yes (X) No ()

Why or why not? Indoor storage space is reasonable.

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

Yes (X) No ()

Why or why not? There is a larger than average highway easement because of the gradual corner.

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 road was created by others.

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

Yes (X) No ()

Why or why not? There are several structures at this distance and closer to this road.

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 motion passed 4 – 1 with Krueger voting nay.

Variance Application 61-V-15 by Phyllis Casinelli: S1/2 of Lot 4, Section 6, Township 144, Range 32, Hart Lake Township. Parcel: 10.06.00610. Applicant is requesting a variance from Section 4, Subd.A.1.a.2 of the Subdivision Ordinance to create a tract that does not comply with the 300' minimum average lot width requirement.

Phyllis Casinelli presented the application as a property that was not meant to be split up, but after my mother's death, the house and property was willed to someone else other than my brother who is living on the property right now. When I applied for a reverse mortgage, they will not approve that type of home if it has been used before.

Christenson commented that the drawing is deceiving, but after we were on site, there is ample room.

Casinelli explained that if she extends the property, it goes through the backside of the barn, the orchard, and my septic system. There is a swamp on the backside of my property.

Christenson asked if we increased the backside of the property to make 300 feet, there is no benefit to your brother's property. The house is there, septic and well is all compliant. The way that the lot line is drawn seems to make the most sense.

Casinelli commented that the property next to me is owned by three different people and the last lot is also in an "L" configuration. It is just the way things ended up.

Grob commented that there seems to be no overall benefit to move things back to meet the 300 feet. There is already an existing structure, drainfield and all that stuff so that with the fact that the 300 feet is intended to make sure there is room for septic system and so forth. That has already been accomplished with what is currently there.

Casinelli explained that her brother only wanted a small little space and did not want any more property and that she needed to meet the five acre requirement.

Johnson opened the discussion for public comment.

No public comment given.

No written correspondence received.

Closed public comment.

Johnson asked if when you asked for the certificate of survey, you gave specific instructions as to what you wanted.

Casinelli answered that she told him that she needed a survey of property and actually the property was not going to be divided at that point. I was considering splitting it up after my mother died and the mess there would be if I did not split it. When I had the land surveyed, it was specifically because I was applying for the reverse mortgage. They require a survey and they explained that because the house that was on there was being lived in by another person, it was not acceptable to approve the reverse mortgage.

Johnson mentioned that he was wondering if the surveyor - if he was told to meet the five acre requirement or if he was to follow our ordinance and meet the 300 foot.

Casinelli stated that she told him that she thought she had to have three acres and was mistaken when she learned it was five acres. The surveyor was trying to meet the five acre minimum in the ordinance. The way it is drawn up looks strange.

Christenson commented that when they were out there and saw the property line go through your barn, why was that not drawn in here.

Casinelli explained that it was drawn so small it does not look the same when you are out there.

Grob explained that it looks like there is a lot of space, but when we were there, that garage sits almost on that property line. The buildings should have been drawn on here if this is an actual paid for survey.

Casinelli agreed.

Grob asked if the surveyor actually put stakes at those various corners to this profile.

Casinelli explained that he hasn't completed it at this point and that the surveyor stated that she should go through the variance first and if it does not go through, she would have to redo everything. He did stake out four corners and the front line of my brother's property.

Krueger asked what is out there on this property.

Casinelli answered that there is an area fenced off for a dog and there is a swamp out there and my biggest concern is paying the extra taxes on a fixed income and this is my brother's concern also. When I separate that lot, the taxes are not going to go down.

Van Kempen asked if you can get to the east side of your property.

Casinelli answered not easily.

Van Kempen commented that you can look at it two ways and one is to change the back property line on the smaller tract to get to the 300 feet width requirement. You would be giving up that back side of the swamp, but also how does that gain other than meeting the ordinance.

Casinelli answered that if she absolutely has to she has no choice.

Krueger noted that if you were to draw a property line to meet the ordinance, that you cannot get back there to use it anyway so you are not really losing anything.

Grob explained it would require her brother to pay more.

Casinelli stated that he cannot pay more on a limited income and with the mortgage, insurance, and property tax that is all he can afford.

Johnson commented that he is able to answer the findings except for number four which says "Were the circumstances causing the practical difficulty created by someone or something other than the landowner?" How would I answer that when you have a reasonable way to follow the ordinance?

Krueger noted that number six is the one that he would have trouble answering.

Casinelli stated that this is driven by economics and on limited incomes this is a factor.

Grob noted that if you just expanded that area to the back to meet the 300 feet requirement and follow that lower wetland area, you could set the price for whatever you want unless you ask him to. That land is no value which would not make a significant difference.

Casinelli stated that she would have to redo her application for the reverse mortgage because the property was 20 acres and will have to cut it down, but if I take more off, the amount that I am able to get drops down.

Grob stated that the surveyor did not do a calculation to maintain the 300 foot width.

Johnson stated that you would have to add footage all the way back.

Christenson commented that it does not accomplish anything.

Christenson made a motion to approve the variance application.

Grob seconded the motion.

Findings of fact:

1. Is the variance in harmony with the intent of the comprehensive plan, and subdivision ordinance?

Yes (X) No ()

Why or why not? This does meet the five acres and within the five acres the well, septic and home are taken care of.

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

Yes (X) No ()

Why or why not? HUD has a requirement and separating a parcel for family is reasonable.

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

Yes (X) No ()

Why or why not? The drawing is deceptive and when you look at the way the surveyor has drawn the narrow portion of the lot it would go through her garage.

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

Yes (X) No ()

Why or why not? This is a HUD requirement.

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 low density rural residential homes. There are already two existing homes on this property so creating two tracts out of the current one will not create any noticeable visual change to the locality.

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

Yes (X) No ()

Why or why not? The line cannot be moved and the portion that is usable on the lot if it were moved would go through the garage.

The motion passed 4 – 1 with Krueger voting nay.

Variance Application 62-V-15 by Kathryn Hinds and Don Stallman: Parts of Government Lots 6 and 7, Section 18, Township 139, Range 32, Badoura Township on Tripp Lake, a recreational development lake. Parcel: 03.18.00850. Applicants are requesting a variance from Section 506.2

of the Shoreland Management Ordinance for a proposed guest cottage that exceeds the 700 square feet maximum allowed footprint.

Kathryn Hinds presented the application as a multi-purpose building which will be a barn that is 44' x 72' with a loft space of 20' X 72'. The main floor will be storage, automotive and woodworking shop space. The upstairs would be recreational space for children, grandchildren and sleeping space since our house is a vacation home and was built when the kids were young with three bedrooms. We have four children, they would like to have bedroom doors that shut since they have gotten older and this seems the most effective way to do that. The intent is to have sleeping space for the children.

Grob asked if they had considered building a guest building separate since you have room on the property.

Hinds responded that when they asked the children what they would like, they would like to have their rooms close enough together so that they can all be in the same area rather than splitting up and putting them in guest property. They also did indicate that they wanted any kitchen and all of that business to be together with family rather than their own kitchen area.

Grob explained that 700 square feet is more than a bunk house.

Hinds explained that they are looking for a bunk house space for now and not really looking for a guest cottage.

Grob noted that you have living area on both side of the sleeping area and that would be considered to be part of the guest cabin and you cannot separate the two.

Hinds explained that when they toured this structure on display, it has cedar or pine interior and really were not thinking of finishing it more than that. The kids bedrooms would be framed up and sheet rocked but wasn't to have a living room and recreation room unfinished.

Grob asked if the way the design is, there are a sleeping quarters and a recreational area. Would those be considered living space, considered part of a guest cabin?

Buitenwerf explained that the ordinance guest cottage section looks at the footprint of the structure and so if any portion of the structure is to be used as a guest cottage, then the ordinance looks at the footprint of that entire structure.

Johnson opened the discussion for public comment.

No public comment given.

No written correspondence received.

Closed public comment.

Grob asked how far this barn is from the lake.

Hinds replied that it is at least 150' to 200'.

Grob mentioned that they meet setback and the lot is 600+ feet wide and how many acres.

Hinds replied that it is 5.8 acres.

Grob commented that they could easily build this someplace else on the lot or they could easily split the lot and build it. If you ever end up splitting the property, it would make this over dense, and perhaps adding a condition to the variance not to subdivide in the future would be good if this is approved.

Hinds agreed that less homes on the lake is good. We definitely want to keep the property together.

Johnson asked if the condition would stay on this property for life and not follow the owner.

Buitenwerf responded yes, if acted upon.

Hinds commented that in her view the neighbors would like this and less buildings and docks would be a positive in their view.

Van Kempen expressed the concern that there are safeguards in place so that in the future the entire barn would not become a guest cottage.

Hinds expressed that in doing this project, it is far less impact on the lake than building another house.

Van Kempen asked if there is no plumbing in a building, is it considered a guest cottage.

Buitenwerf responded that the guest cottage definition does not require there be water servicing the structure. It could be a dry structure and still used as living space.

Hinds commented that they are trying to be transparent about this and can see the kids using this and will be putting a bath on a main floor of the shop with a shower. No kitchen facilities.

Krueger noted that in talking about the safeguard, the owners' willingness to put the condition on this variance is a good safeguard.

Grob noted that in looking at the drawing, they could split off 150' and move the building over about 50 feet and they would be in compliance so what do we gain. If we allow them to build it there with the condition that they never subdivide this in the future.

Grob made a motion to approve the variance application with the condition that the lot cannot be subdivided in the future.

Kruger 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 property is 5.8 acres in size, ~670' wide, and flat with no obstructions that would prevent a guest cottage from being constructed in compliance with the ordinance by permit. Combining the function is a reasonable thing to do and with the condition that the parcel cannot be subdivided in the future, it meets the intent of the ordinance.

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

Yes (X) No ()

Why or why not? When you combine the functions of a garage and living quarters, it is a reasonable request.

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

Yes (X) No ()

Why or why not? The goal of the owners and lake association on this lake is to minimize structures for less impact on the lake. The large size of the lot makes for a unique situation.

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

Yes (X) No ()

Why or why not? The County does not have a specific ordinance for this situation.

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

Yes (X) No ()

Why or why not? The proposed pole building meets all setbacks and height requirements so it can be built by permit as an accessory structure. The proposed guest cottage would be located within this pole building. Thus, the locality's low density residential character would not be harmed by the proposed guest cottage within the larger structure. There are only eight riparian lots stretched out over ~2000' of shoreline on this west side of the lake. There is no back lot development and the off-lake properties are in timber production.

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 motion passed unanimously 5 – 0.

Administrative Decision Appeal by Kyle Henning: Lots 7, 6, and part of Lot 5, Block 3, Sabins Park, Section 36, Township 141, Range 34, Lake Emma Township on Little Sand Lake, a recreational development lake. Parcel: 16.39.01400. Applicant is appealing an administrative decision made regarding Section 801.3 of the Shoreland Management Ordinance and the type of septic system that can be installed on the property.

Galen Johnson and Kyle Henning presented the request as another look at the septic location on Mr. Henning's property. The drainfield failed and the site plan was for a mound system and after having three separate septic people out there, trying to go through with what we had drawn up at the time, we believe it could be a maintenance nightmare. We have presented drawings and we have to push the septic 90' into a tank, another 60' up into a mound system, which I believe and based off of information that Kyle and I have gathered from septic installers, we could have major problems with the design of the system. So, after visiting with a couple of the guys and they looked at the existing septic that was there, they had come up with a possibility of replacing the existing drainfield, which there is a proposal in the application, that they would pull out the old system, take out a foot and half of fill, and replace it with washed sand and install the drainfield. Our biggest concern is trying to push septic 150' and not have any issues. In our area, that is a problem.

Grob stated that the current system has failed, but it has not failed in terms of hydraulics, it is not backing up in the house or seeping some place. If this system was installed properly, why should there be a separation failure now.

Tim Johnson commented that after reviewing the inspection report, there was a separation issue.

Galen Johnson explained that this system was put in 1994 or somewhere close to that date. Mr. Henning bought the property last March; there has not been an issue.

Grob asked if it met the requirements when it was installed.

Galen Johnson replied yes.

Grob commented that with these numbers for separation, would those have met the county ordinance in 1994 or 1996.

Buitenwerf replied that he would have to go back and review the Shoreland Ordinance that was active at the time to comment on that. We did not have State septic rules in place in 1994; it would have had to meet only regulations that were found in the Shoreland Ordinance at that time that would have spoken to separation requirements.

Grob asked if this is failing because of new requirements that have come along and are we dealing with an issue that we should not have had to deal with unless the hydraulics fail.

Tim Johnson explained that it has been issued a notice of noncompliance and they have one year to upgrade by a licensed inspector.

Johnson opened the discussion for public comment.

No public comment given.

No written correspondence received.

Closed public comment.

Tim Johnson noted that he did not think it is 150', the one trench on the existing system is 90' in the inspection report and there are trenches there at 40', 50', 70' and a 90'. We did not find those nor did we find the tank. Your concern is that you do not want to go downhill and back up to this proposed site, is that what you are being told.

Galen Johnson replied yes.

Tim Johnson commented that one drawing shows the tank in the low spot so it would be a gravity system.

Galen Johnson responded that the way they drew it up there would be gravity feed down to a 500 gallon lift tank 55' from the lake and then pumped up 58' into the mound system.

Tim Johnson explained that from his experience, I see no problem with the design and from the site it looks like the system will go up to the mound and have to drain back.

Krueger asked if the proposed system was a Type 1 not a Type 3.

Tim Johnson replied yes. What would trigger the Type 3 would be if they put the system over the top of the current trenches. Using that upper site is there enough of the high ground to use the undisturbed soil in between the trenches.

Galen Johnson responded that the only reason that this came into play was when we had the design done, they came up with this alternative program. So as we continued into the summer we needed to get the system upgraded by fall. We met out on site with Mr. Henning and the septic designer to go through everything and review the layout where the system was going. Mr. Henning then did some research on his own and started to question why do we have to do it this way and this is going to freeze up and this is not going to work. I put a call into the county inspector and got him out there and explained the deal, I want to understand this. He said he did not understand why you would want to do a system like this - here is another possibility, we can tear out the old drainfield, replace it with this. We got an estimate on it from two contractors and they both said it was a possibility. That is why we are back at the table again. Everything that I been educated on, I am not a septic person either, and with what Mr. Henning has for information, we all feel like that by replacing the existing system, there will be a lot less maintenance.

Tim Johnson explained that if you were to do a Type 3 system over the old drainfield, you would still have to have a lift.

Galen Johnson replied that we understand that.

Grob asked why is there a reluctance to doing it?

Galen Johnson explained that they are worried about freeze up and maintenance.

Grob asked who is telling you that you will have difficulties.

Henning answered the county inspector and two installers.

Tim Johnson commented that he disagrees with what they are saying in that you will have the same problem with none use with your Type 3 as you would have with your Type 1. We have to rule on the Environmental Services decision so Eric Buitenwerf do you have any comments.

Buitenwerf explained that first to clarify when Galen Johnson and Mr. Henning are referring to a county inspector, I do not know that our staff was out there. I believe that Mr. Winterberger who

functions as a contracted inspector for the County was out there on his own and has his own private design business. I believe he was out there in that representing his private business.

There are two components to the administrative decision appeal; the first one has to do with the setback for the drainfield from the ordinary high water mark from the lake. When this property was created through subdivision last year, as part of that subdivision approval process there is requirement to be shown that there are two Type I drainfield sites. The sketch on the screen from a licensed designer Don Umthun showed two Type I sites and the subdivision was approved based on that site evaluation. The location of the existing septic system also had a compliance inspection that Mr. Umthun performed which shows it as being 85' from the ordinary high water mark of the lake. Section 801.3 of the Shoreland Ordinance grants administrative ability to deviate from the 150' high water mark setback in cases when there is proven to be insufficient depth on a property to place a system at the required setback - be that lack of lot depth, physical things such as bluffs or wetlands. In this situation, the request to put a Type III system on the existing drainfield site at an 85' setback that would be six feet closer to the ordinary high water mark than the two Type I locations that Mr. Umthun showed in his site evaluation when the property was subdivided. My charge with the authority that the ordinance grants to my position is to maximize the setback of a drainfield from the water so when I have the option of an 85' setback or a 91' setback, I feel it would be remiss of me to allow a lesser setback when there is a 91' setback at a greater distance that is available.

The second part to this decision dealt with a Type I system verses a Type III system. A Type I septic system is a standard system that is installed in original soil, meaning soil that has not been disturbed. The reason that is important is that original soil you do a soil boring when you design a septic system and that soil boring in one spot is thus taken to be representative of the soils found in the entire drainfield area that is proposed. That soil information is then used to determine how large a septic drainfield is needed. If you have lighter soils, you will need less of a drainfield size than if you have heavier soils just due to soil's ability to take on that hydraulic volume. A Type III system is a system that is used if and when there is no Type I site available on a property. A Type I is a standard in-ground system that is able to meet the three foot vertical separation from the periodically saturated layer. A Type III system is not required to meet the three foot separation, if you go less than that, there are some additional maintenance requirements that are thus attached to it to make sure that the system is properly treating the effluent given the reduced vertical separation from that periodically saturated layer.

So the second part to the Department's decision is that since there are two Type I locations available, we would be remiss to allow a Type III system to be installed which formerly was known as an experimental system under the previous State septic rules. That being said, that was the administrative decision and I also explained to Mr. Johnson that they would always have the opportunity to apply for a variance from the ordinance requirements for setback and system type as well. That would be another route that they can pursue if they wish.

Tim Johnson asked if this went to a denial of the appeal and a design came back near the same spot that could be proven that there was undisturbed soil between trenches or something and they could put it at the 85' or further, they would have to go through a variance process to get that approved.

Buietenwerf answered correct, that would be an option available to them. So with our decision, we are simply saying that administratively with what we feel the ordinance allows us to do per the discretion given us through Section 801.3, that this would be our call. To do anything beyond that would involve the Board of Adjustment's action through a variance.

Christenson commented that she remembers when this was divided into lots. We had the discussion out there and part of the reason involved that there was an alternate site.

Tim Johnson stated that the proposed system would work and he is leaning that way.

Grob commented that there is an option down the line for a variance if there is an adequate design. Our job in this case is to decide if there is validity to the appeal as to if Environmental Services did not apply the right criteria. From everything I have heard at this point, I would say that Environmental Services has been very thorough in applying the criteria either by law and/or by policy.

Grob said I am inclined to make a motion to deny the appeal for these reasons:

Findings of Fact

1. During the variance process in December of 2014, this topic came up and that particular location was identified that there were two Type I system locations available.
2. The second point would be that I have not seen a design for a Type III replacement system and therefore some of the questions that Tim Johnson asked during this meeting have not been adequately covered.
3. Very clearly, the main criteria is that there is ample room on the lot for the construction of a Type I system which is a preferred style and the one that we would like to do.
4. In his decision, Eric has optimized the setback from the lake at 91 feet.
5. Clearly reconstructing on top of the current field is somewhat risky and unknown.

Given all these criteria, the Board of Adjustment believes the Environmental Services Office's administrative decision is appropriate.

Tim Johnson seconded the motion which passed unanimously 5 – 0.

Communication: There will be a January 2016 meeting.

Adjournment.

Grob made a motion to adjourn.

Krueger seconded the motion.

The motion carried unanimously 5 – 0.

Respectfully submitted,

Barbara Barth
Recording Secretary