

HUBBARD COUNTY

Planning Commission/Board of Adjustment meeting minutes

6:00 p.m. on Monday, February 23, 2015

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

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: January 26, 2015 meeting.

Ken Grob made a motion to approve the January 26, 2015 minutes as presented. Tom Krueger seconded the motion. The motion carried unanimously. 4-0

Old Business:

Preliminary Plat of Wright Estates by Rick and Joanne Wright: Applicants are requesting to create one ~3.52 acre platted lot. Part of the SW ¼ of the SW ¼ in Section 22, Township 140, Range 35, Parcel: 27.22.01300.

Rick and Joanne Wright, applicants, and Bryce Thompson with Arro Land Surveying were present to answer questions.

Grob asked what was the status of the residual 1 ½ acres that is not part of this plat, but also belongs to the Wrights.

Thompson responded the 1 1/2 acres will be deeded to the Beckers who own the adjoining land to the north.

Grob asked why Todd Township found it necessary to have an easement since that will be integrated with a large agricultural parcel.

Thompson responded that he felt it was a backup plan on the township's part so that if that piece ever were separated, it would not be landlocked.

Opened discussion to public comment.

No public comment was given.

Closed public comment.

Buitenwerf presented an email from Todd Township regarding the conditions of its approval of the preliminary plat application.

Krueger made a motion to make a recommendation to the County Board to approve the preliminary plat as presented.

Van Kempen seconded the motion.

The motion carried unanimously 4-0.

New Business:

Group home use in Shoreland Management Ordinance - review and recommendation requested by County Board

County Commissioner Matt Dotta explained that this could be tabled if not removed. He explained that the County Board did not have a clear definition in that what was thought to be a group home really is foster care and the licenses are different. The new ordinance changes in the Shoreland Ordinance talked about not allowing a group home under certain conditions on certain types of lakes, but the State is pushing for adult foster care in homes. The County Board did not feel comfortable with that and followed protocol to allow this body to look at and make a recommendation. No action by this Commission is necessary since the definitions have been cleared up. He will request the County Board rescind its recommendation that this Commission review this issue.

Grob wanted an explanation on the issue that the current statement says 7 to 16 group home persons and there is nothing stated from one to six. Has that been resolved?

Dotta responded that it should be looked at by the Social Services Director to see if there is an example of one to six person group home, and if so, how does this proposed ordinance affect that.

Buitenwerf suggested that this issue be tabled per Commissioner Dotta's information anticipating that the Commission will not need to take action on this based on what the County Board learned.

Grob made a motion to table this until further direction is received by the Board of Commissioners.

Van Kempen seconded the motion.

The motion carried unanimously 4-0.

Planning Commission meeting closed at 6:12 p.m.

Board of Adjustment:

Approval of Minutes: January 26, 2015 meeting.

Krueger made a motion to approve the January 26, 2015 minutes as presented.

Van Kempen seconded the motion.

The motion carried unanimously 4–0.

Old Business: None

New Business:

Variance Application: 1-V-15 by Bradley and Randi Newton: Lots 27, 28, and 29 of Doran's Long Lake Division, Section 4, Township 139, Range 34, Hubbard Township on Long Lake (a Recreational Development lake). Parcel 14.42.01300. Applicants are requesting a variance from Section 507.4 of the Shoreland Management Ordinance (SMO) to exceed the 50% unobstructed view requirement for fences in the area between the ordinary high water mark (OHW) and OHW structure setback.

Bradley and Randi Newton presented a description of the request for a privacy fence is because of the way the property lines are drawn there is a close proximity to the buildings literally having one property line extend into another property and for 20 years have tried to make it more of a privacy situation using shrubs and trees and cannot keep up with the deer. Looking for privacy.

Krueger asked if the way the fence is now is ok.

Newton commented that the fence as it is now is a legal fence, but said wants a privacy fence not a 50% view fence.

Grob asked if the fence was on the side with the neighbor to the south and noted that there were no windows on that side of the house, why do you feel compelled to have a complete privacy fence or any fence at all. Any future home on this property, with the size of this property, could be built in such a way as to have no conflict with the neighbor.

Newton explained that it is just privacy in between the two yards.

Krueger asked if dogs were coming over on your yard and could you use chain link fencing?

Newton replied that he does not like chain link fencing.

Van Kempen asked if in using one inch boards and one inch gaps, the 50% could be met.

Buitenwerf responded that it did meet the requirements of the ordinance.

Grob explained that a fence like this is not the norm of neighbors on lakes. Most neighbors do not feel compelled to put up a fence like that. It has the impact of cutting off the view of the lake for neighbors.

Newton explained that they had always had an agreement with the neighbor regarding their two dogs. One day, my dog went onto the neighbor's property and there was a lot of swearing. They store stuff on that side of the building that I do not want to look at and they rent their cabin out which results in more activity and noise.

Opened discussion to public comment.

Steven Brown explained that he was the owner of the property right next to the Newtons. As the fence stands now, it is at 50%. Every one of the horizontal boards is 3 1/2" by 6" long times 3. That is board feet of lumber that is not technically 50% see through. His side is finished so no matter what you do, I will be viewing the horizontal boards too. This decreases my property value. I do not have a large piece of property and I do use a crawl space on that side of the property for storage. With the fence in place, I cannot store a ladder since the fence is four feet from my building. By the shoreline we do store canoes and things that we use at the lake.

Public comments closed.

Grob asked when Mr. Brown's house was built.

Brown commented that they had owned this house for 20 years.

Grob explained that it was built across the property line 20 or 30 years ago. The history is that the home was built on the Newton's property before your time and at some point in time somebody must have agreed to change the property line such that the 10' setback was not met.

Van Kempen asked about the interpretation of the 50% unobstructed view, if that fence was 7 1/2' high and they were allowed an 8' high fence would that extra space be counted in the 50%.

Buitenwerf explained that he would have to verify through legal counsel, but as it is worded in the ordinance, "unobstructed view through the fence" so I would take that to be the maximum area occupied by the fence so that you would not go the 8' to calculate the percentage.

Johnson commented that they did view the survey markers and that the fence was inches on the Newton property.

Newton asked a question on the 50%, there seems to be questioning that if those boards are narrower and go every other one and will I then end up back here.

Buitenwerf explained that all that was needed to meet the requirement is the 50% see through criteria in the Ordinance.

Krueger made a motion to deny the variance application as presented and accept the findings of fact in the staff report.

Grob seconded the motion.

Findings of fact:

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

Yes () No (X)

Why or why not? The application does not show a valid practical difficulty for why a 100% opaque fence is needed along this portion of the fence. The landowners' request for a

complete privacy fence has not met the burden of proof that there is a need for such that outweighs the neighboring property owner's ability to not have an obstructed view that a 100% opaque fence would create.

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

Yes () No (X)

Why or why not? There is an existing garage on the lot and there had been a mobile home residence with a septic system on the lot for the past two decades. A new residential structure can be constructed on this lot by permit and the lot can also be used for recreational enjoyment and accessing the lake for fishing and recreation.

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

Yes () No (X)

Why or why not? There are many riparian lots on this lake and others where the lots are developed with nonconforming residential structures that do not meet the ordinary high water mark setback and/or are close to or astride side lot lines. Having neighboring structures on neighboring lots that are nonconforming in terms of one or more setbacks is a common issue on riparian lots – especially Long Lake – and is not a circumstance unique to 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 difficulty is the location of the neighboring house on the adjacent lot to the south of this lot. The neighboring house is at a nonconforming OHW setback and located close to the property line. These two factors are cited as the rationale for needing a 100% opaque privacy fence within the 100' OHW setback.

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 and having the portion of the fence between the ordinary high water mark (OHW) and the 100' OHW setback would not alter the locality's essential residential use character.

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

Yes (X) No ()

Why or why not? The difficulty cited in the application is the proximity of the neighboring house to this lot's south property line. Economics were not cited as a difficulty.

Motion carried unanimously 4 – 0.

Variance Application: 2-V-15 by Peter and Elizabeth Stahnke: Part of the Southwest Quarter of the Southeast Quarter (SW1/4 of SE1/4) and Part of Government Lot 2, Section 6, Township 141, Range 33, Mantrap Township on Big Mantrap Lake (a Recreational Development lake). Parcels 20.06.00700 and 20.06.02900. Applicants are requesting a variance from Sections 507.2, 502.7, and 704.7 of the Shoreland Management Ordinance for proposed modifications to a nonconforming residence that was constructed per a variance at a nonconforming ordinary high water mark setback.

Peter Stahnke reviewed the plans to do a 2nd story addition to the house, an addition to the east side of the house as well as a garage addition to use as living space.

Krueger asked what the height of the new structure would be.

Stahnke answered that 29 feet would be the total height.

Krueger reviewed that the front deck would voluntarily be removed.

Stahnke answered "that is correct".

Grob reviewed that the septic system is for a three bedroom home and with the additions the total would remain three bedrooms. There is space over the garage; would that be used as bedrooms?

Stahnke indicated that the space is only large enough for crawl space and would only be used as storage.

Van Kempen noted that the lot slopes back to the house.

Grob asked about the pond, is it connected to the creek.

Stahnke explained that this is a man-made pond with a PVC pipe for overflow.

Krueger stated that he did not think that run off was an issue.

Stahnke stated that the house would be guttered.

Opened discussion for public comment.

No public comments given.

Closed public comment.

Grob made a motion that we approve the variance request as submitted and adopt the staff findings of fact as presented.

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 first floor additions are going to the south toward the harbor and east which is the one side of the house that doesn't face the water. The second story addition will not affect the structure's OHW setbacks. The structure was originally allowed to be constructed here per a 1981 variance. The rest of the property is mostly wetland or a steep slope that may meet bluff criteria in one or more areas and is thus not conducive to there being other potential building sites. Given the scope of the proposed project, it makes the most sense to allow the existing structure to be remodeled as proposed.

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

Yes (X) No ()

Why or why not? Enlarging an existing residence originally constructed per a variance to provide more room for occupants is a reasonable use of the property.

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

Yes (X) No ()

Why or why not? The house was originally constructed per a variance in 1985. It is situated on a peninsula of sorts that is surrounded on three sides by water – the lake, the tributary, and the harbor. This peninsula is narrow enough that there isn't room to site a structure and meet all the setbacks. The rest of the property is mostly wetland or consists of a steep slope that may meet bluff criteria.

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

Yes (X) No ()

Why or why not? As stated in the answers to the previous questions, the difficulty is the structure's originally having been built per variance and the ordinance's requirement that subsequent modifications to such structures must also be authorized by variance. The other difficulties are the narrowness of this peninsula that doesn't allow a structure to be sited in a way that complies with all setbacks, the large expanse of wetlands on the property, and the equally significant area comprised of a steep slope that may meet bluff criteria in one or more sections.

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. The proposed remodel will create a larger residential structure and thus maintain the locality's residential character.

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

Yes (X) No ()

Why or why not? Economics are not cited by the application as a difficulty. The difficulties involve the narrowness of this peninsula, the large expanse of wetlands on the lot, and the large area comprised of a steep slope and possible bluff that make this location probably the only viable site for a structure.

Motion carried unanimously 4–0.

Variance Application: 3-V-15 by Greg Mazzuco: Part of Government Lot 7, Section 12, Township 141, Range 34, Lake Emma Township on Upper Bottle Lake (a Recreational Development lake). Parcel 16.12.01100. Applicant is requesting an after-the-fact variance from Sections 502.2 and 503 of the Shoreland Management Ordinance for a fire pit and platform that do not comply with the 100' ordinary high water mark setback and are located in a bluff impact zone.

Greg Mazzuco reviewed that he has a fire pit and stone patio around it that went in about 5 years ago. At the time, he did not realize that it was an issue until recently so I am requesting the variance to leave as is.

Grob asked if this was installed by a contractor.

Mazzuco stated that it was installed by me and my brother.

Grob questioned why a permit was not obtained.

Mazzuco stated that it never occurred to him that it was infringing on the high water setback given where it is.

Krueger asked about the construction, was sand or cement used in the platform.

Mazzuco explained that cement was used.

Krueger commented that looking at the site map and also at the site visit it was noted that there is plenty of room to meet setback.

Mazzuco stated that there is room, but the only place that it could go and be set back properly would be over towards the existing foundation structure which would then be obstructing view to the lake from the west to the south. It is a less than ideal location because of the obstruction visually.

Grob asked what the foundation structure is and if it was from a living structure that had burned down or something?

Mazzuco replied that it is and that it is about five feet high so that would obstruct the view if the fire pit were placed there.

Grob asked what this is being used for.

Mazzuco replied that it is being used for storage.

Grob commented that you would have to move this back about 13' to get 30' from the bluff, which if you did that it would get you the 100' from the ordinary high water mark.

Buitenwerf displayed a photo of the structure in question.

Krueger asked if the structure would be fixed up at some time.

Mazzuco replied that they would be building on that foundation in the future and that there is a variance on it.

Van Kempen asked if the septic system and drainfield was behind the house.

Mazzuco explained that the drainfield is behind the house, but the tank and pump station are immediately to the east of where the fire pit is.

Van Kempen commented that this pit could be moved the 13 feet needed to comply and commented that if the fire pit was moved toward that structure slightly, the crown of the bluff worked away from where that was and it was not quite the 13' needed and it did not look like that much to move.

Grob commented if you moved it lateral over, it looks to be in line and still would make the 30' from the bluff without obstructing view.

Van Kempen stated that it would be hard to support the findings for approval because the fact that it was built without a permit is not a reason to approve it.

Grob asked about the foliage on the bluff.

Van Kempen stated it is mostly pine trees.

Grob requested the photo of the fire pit and stated that there is a reasonable buffer on the hillside. Will moving this fire pit cause run off to the lake?

Mazzuco stated that the fire pit in its current location does not impact the run off to the lake.

Krueger commented that in looking at this, the question is was there a substantial investment in the property. This does not seem to be the case.

Mazzuco commented that it was a lot of work to move something like this; my concern is that the environmental concern is higher moving this. It seems more destructive to move this than to leave it where is currently is.

Grob stated that it is not clear whether it would or would not make the situation worse relative to run off to the lake unless we reviewed it arbitrarily. We do not want to promote non-conformance and since there is not a large financial investment, that makes me lean toward denying the variance.

Van Kempen commented that he sees no need to move it.

Opened discussion for public comment.

No public comments given.

Closed public comment.

Grob made a motion to deny the variance and accept the staff findings of fact with the Board filling in the answers to findings of fact questions 7, 8, and 12.

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?

i.

Yes () No (X)

Why or why not? There is room on the property where this fire pit/platform can be placed and comply with all setback requirements so that it can be permitted and not need a variance. Placing this impervious surface in the bluff impact zone and within the 100' OHW setback when permissible locations exist for it would not be in harmony with the ordinance.

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

Yes () No (X)

Why or why not? There is room on the property to move the fire pit/platform to a conforming location. Thus, the landowner is not denied the ability to have a fire pit/platform.

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

Yes () No (X)

Why or why not? The lot is ~430' deep on the north side, ~575' deep on the south side, and at least 150' wide. It is also flat, high, and dry for close to 300' behind the bluff impact zone. There are plenty of places in this suitable area where a ~16' diameter platform/fire pit can be placed by permit.

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

Yes () No (X)

Why or why not? The landowner created the difficulty by placing the platform in the bluff impact zone. As mentioned in the answer to question 3 above, there is ample suitable space on the lot to meet setbacks with such a platform and thus construct it by permit. There appears to be room on the lakeside of the residence to place this platform at a conforming location so that the lake could still be viewed and enjoyed when using the fire pit/platform.

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

Yes (X) No ()

Why or why not? The locality consists of single family seasonal and year-round residences for which fire pits and platforms are common accessory features. Thus, this fire pit/platform would not harm the locality's essential residential character.

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

Yes (X) No ()

Why or why not? The application does not cite economics as a practical difficulty, but rather that removing the platform would damage the bluff impact zone and that there are not any other suitable locations that the landowner feels would work for him.

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

Yes (X) No ()

Why or Why not? Yes, he was not aware of the fact that the fire pit and the paver stones were considered to be a structure.

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

Yes () No (X)

Why or Why not? No, he did not comply but was not aware of the fact that this was a structure in the shoreland zone.

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

Yes () No (X)

No, none needed.

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

Yes () No (X)

No. This is a ~16' diameter paver stone platform that did not cost more than a few thousand dollars probably to install and it can be moved to a conforming location on the property and continue to be used.

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

Yes (X) No ()

Yes. The fire pit/platform was in place when Environmental Services staff conducted a site visit on August 5, 2014. The applicant was informed of the impropriety via a letter dated October 23, 2014.

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

(Yes () No (X)

No, none were observed.

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

(Yes () No (X)

No. This platform is relatively small and easily moved to a conforming location on the property. The applicant has not proven a practical difficulty. The detriment will be minor as it will just involve moving the platform to another location on the property.

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

Yes (X) No ()

Yes. There are conforming locations on the property to which the fire pit/platform could be relocated by permit. When such an option exists and the landowner has not shown a reason why the platform must be located at a nonconforming setback in the bluff impact zone, justice is served by requiring the platform to be brought into compliance with the ordinance.

Motion carried 3 – 1 with Van Kempen voting nay.

Miscellaneous: None

Communications:

Buitenwerf presented a copy of the new Shoreland Ordinance which will take effect Wednesday of this week when it is published in the Northwoods Press.

Buitenwerf reviewed that there is only one application for variance for the March meeting and therefore that applicant will be notified that this application will be tabled until the April meeting.

Grob asked for clarification on the Group Home language that the Board of Commissioners had requested they review.

Buitenwerf explained that this was discussion that was outside of their action on the amendment.

Adjournment:

Grob made a motion to adjourn.

Van Kempen seconded the motion.

Motion carried unanimously 4-0.

Meeting adjourned at 7:04 p.m.

Respectfully submitted,

Barbara Barth
Recording Secretary