

HUBBARD COUNTY

Planning Commission/Board of Adjustment meeting minutes

6:00 p.m. on Tuesday, May 23, 2016

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

Van Kempen 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 April 25, 2016 meeting.

Old Business: None

New Business: None

Miscellaneous: None

Board of Adjustment:

Approval of Minutes: April 25, 2016 meeting.

Christenson made a motion to approve the April 25, 2016 minutes. Johnson seconded the motion.

The motion carried unanimously 5 - 0.

Old Business:

Variance Application 26-V-15 by John Masek: Part of Government Lot 4, Section 6, Township 141, Range 33, Mantrap Township on Big Mantrap Lake, a recreational development lake. Parcel 20.06.02400. Applicant is requesting a variance from Section 502.2 of the Shoreland Management Ordinance to place an accessory structure at less than the required 10' side lot line setback.

John Masek, 27922 Island View Drive, Park Rapids, explained that this is a side lot line setback variance to build a shed on the lot line to avoid a large white oak tree that I cannot bring myself to cut down.

Van Kempen asked where the door leading into this proposed building would be.

Masek replied it will be on the east side facing the lake. The elevation on the back side of the building is higher than the road and does not lend itself to having the door on that side.

Grob indicated that the original variance application had it on the short end.

Masek explained that the building design remained the same - just moved back approximately 12 feet to accommodate the Itasca Mantrap 25' easement from the power line. The drawings originally were submitted by Menahga Pole Buildings and at the time he submitted the quote, it

was not necessarily a final indication of where the door would be located. I do intend to have both the 30" man door and the overhead door facing the lake.

Johnson remarked that in the previous application, the building was at zero setback from the north line which would be the easement road coming in.

Masek commented that is labeled an easement, but there is no road.

Johnson asked if there was any personal property there.

Masek explained that he had purchased that 35 feet so the building could be moved further away from the Itasca Mantrap easement.

Johnson commented that it has been changed to abut the neighbor's property.

Masek replied yes, per recommendation from the staff that came out and viewed the property when I filed the original variance application last summer. It was at the Board's suggestion that I build on the lot line to get even further away from the street. Originally I had applied to build five feet from the side lot line as opposed to the standard 10 feet. It was after the lot viewal that I go all the way to the lot line to be even further away from this oak and less likely to disrupt its root system.

Krueger noted the oak tree canopy diameter shown on the variance application drawing. Do you have any concerns about limbs breaking off?

Masek explained that that is an accepted risk in this area; it is a metal pole building and there is no concerned.

Van Kempen mentioned that because of the way it is sitting, it is touching the side property line. My thought is that if you were to just turn it 90 degrees so that you are 24 feet on the lake side verses 36. That would give you your required lot setback on the side line plus the back line. In last year's paperwork, the power company was willing to go down from the 25' easement to a 15' easement. So if you were to rotate your building 90 degrees, you could have the garage door on the lake side and be on the narrow side of the building. It would meet all setbacks and not need a variance at all.

Masek commented that this proposal is not what he wants. This is the design and plan that I came up with. The layout of the property, elevations, where my access is and where the road is lends itself to this design.

Grob remarked that you have setback 17 feet from your property line, why did you not consider moving it back to the 10 feet setback. You could shift it a little bit to the left and still miss the tree and meet the setbacks. We are trying to find a solution because with all your property it does not make sense that you should build on the property line. Right now a relative owns the property next door, but in the future if that were to change, we must think ahead to what might be and it seems to me you could have moved it back another 7 feet and a little bit to the left and still preserve your tree. We are trying to look for options because building right on the property line is inconsistent with the County ordinance and with the intent so that it does not encroach on the neighbor's lot.

Masek responded that in respect to being able to service the building, it is a metal pole building which by my understanding should requires little or no maintenance for those 50 years that you mentioned. The issue of moving it even further back which is to the west, the road is back there

and want to keep a good distance away from the road. I did not expect it to be a difficulty of the neighbor. I could have gone closer to the lake, but had hoped the Board of Adjustment would grant me some leeway away from the water as opposed to closer to the water. Much thought and planning went into this twice now, this is what I am proposing and this is what I am asking for approval. This is the plan we came up with and the neighbor did send a letter expressing that he has no problem with this proposal and this property has been in our family for 65 years and do not anticipate it changing hands in my lifetime.

VanKempen asked for public comment.

No public comment given.

Written correspondence from Dennis Ulm, 835 East Grant Dr, Des Plaines, IL 60016 in support of the variance request.

VanKempen closed public comment.

Krueger explained that this is right on the property line. The issue does come down the line when the neighbor wants to build and getting along with a neighbor. He could rotate the building and have plenty of room to meet all setbacks.

Johnson stated that he would not be in favor of granting this variance because it can meet all the setbacks.

Christenson mentioned that she was in agreement with the rest of the Board.

Johnson made a motion to deny the variance application as presented and adopt the staff report findings of fact.

Van Kempen seconded the motion.

Findings of fact:

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

Yes () No (X)

Why or why not? The lot is 75' wide at the proposed building site and the proposed structure is 36.5' long – leaving 38.5' with which to meet the two 10' side lot line setbacks. The lot is flat upland and has no physical obstructions in the proposed building area that would prevent the structure from being placed so that all setbacks are met. It would not be in keeping with the ordinance's intent to allow a structure to be placed at less than a required setback when the only cited reason for doing so is a single tree that may blow down in a windstorm or die of disease at any point in time.

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

Yes () No (X)

Why or why not? As mentioned in the answer to question 1 above, the lot is 75' wide. The proposed structure is 36.5' long. This leaves plenty of room to meet the two 10' side lot line setbacks. The structure can be placed on the lot by permit as all the setbacks can be met.

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

Yes () No (X)

Why or why not? As stated in the answer to question 1, the lot is 75' wide. The proposed structure is 36.5' long. This leaves 38.5' which allows for 18.5' to spare in siting the structure so the two 10' side lot line setbacks are met. The lot is flat and upland soil so there are no topographic or hydrologic impediments that would limit where a structure could be placed.

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

Yes () No (X)

Why or why not? The difficulty is caused by the landowner's desire to save a single large White Oak tree that is situated right in the middle of the rear of the lot where the structure is proposed to be located.

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. There are other accessory structures in the area of similar metal siding construction and size.

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 alleged difficulty involves a single large White Oak tree.

The motion passed 5 – 0.

Variance Application 10-V-16 by Steven Oxley: Part of Gov. Lot 7, Section 25, Township 144, Range 32, Hart Lake Township on Steamboat Lake, a recreational development lake. Parcel 10.25.01600. Applicant is requesting a variance from: Part 1. Section 501.2 of the Shoreland Management Ordinance (SMO) for two proposed lots to have less than the required 150' minimum lot width at the 100' ordinary high water mark (OHW) setback and be allowed a 50' OHW structure setback from the harbor located on the property. Part 2. Section 4, Subd. A.1.a.3.c of the Subdivision Ordinance to create two tracts that will not comply with the requirement that all new shoreland tracts must have at least 75' of frontage on a public road. (Note: underlined text indicates amendment made to original application.)

Steve Oxley, 11204 Xylon Avenue, Champlin, MN reviewed that what is being proposed is to split the lots. Need a variance on the west of the high water mark, one property is ok and the other one is not. Need a 75' on the back of the lot from a public road. The one lot the road turns but the driveway of the neighbor's keeps going so do not know, think the corner of my property is not his property. Basically the neighbor's entrance to his property runs along the back side my property. Will need a 50' setback from the lagoon or will not be able to split the property.

Christenson asked what information was received on whether you could fill the lagoon.

Oxley replied that the DNR was contacted about 15 years ago and they said no. Just recently the Environmental Services Office talked to the DNR and they said it is considered a waterway and no way can be filled. If it were a wetland, we would not have this 50' issue. The only way to use it as a waterway is to dredge it every two years. Last year this was dry. Over a period of time it will fill in.

VanKempen explained that if this was left alone over time, the opening would fill in and create separation from the lake.

VanKempen asked for public comment.

Written comment from Bill Busher, 41542 Pinewood Lane, Laporte, MN 56461 in opposition to the variance request.

Craig Nordhous, 5480 Falcon Avenue, Monticello, MN, co-owner, mentioned that he helped clean out the lagoon seven years ago because of what is filling in naturally. We know that that happens so that's a potential that makes these properties able to split. We know that just by course of nature, it does seal off and separate.

Written comment from Bill Busher, 41542 Pinewood Lane, Laporte, MN 56461 in opposition to the variance request.

Written correspondence from Daniel Stephan, 41544 Pinewood Lane, Laporte, MN 56461 in opposition to the variance request.

VanKempen closed public comment.

Krueger asked if the road that goes by your property is public.

Oxley replied that he believes it is.

Christenson noted that the DNR has allowed other counties such as Cass County to amend their Shoreland Ordinances to allow an ordinary high water structure setback from manmade harbors that is half the required OHW structure setback so that a 50' setback would be acceptable.

Grob maintained that both the lots that are being split meet all the other requirements.

Buitenwerf explained that the tracts with the 100' setback do not comply with the 20,000 square foot residential lot suitable area requirement. The west tract for sure does not meet the 150' minimum lot width requirement at the 100' setback line. The east tract also does not meet the 150' lot width at the 100' setback line and for both that would be due to the lagoon.

Grob observed that both lots do meet the 150' width at the lake. The shapes of the lots do not allow 150' at the buildable area. If we were to approve this variance and allow 50' setbacks from the inlet, do we have to do anything to define the parameters of that inlet.

Buitenwerf recommended that if you are going to make a motion to approve in that way that you would specify that it is a 50' setback from the lagoon as shown on the certificate of survey submitted in the application.

Johnson commented that it was all nice and high ground, no lowland in the back. It is all good usable property and there would be plenty of room for structures using that 50' structure setback from the lagoon.

Grob made a motion to approve the variance application and allow a 50' ordinary high water mark structure setback from the lagoon as shown on the variance application certificate of survey and adopt the staff report findings of fact.

Christenson seconded the motion.

Findings of fact:

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

Yes (X) No ()

Why or why not? The harbor was man-made and has filled in so much that it is not usable. Depending on beaver activity and the lake water level, the harbor either is connected to the lake by open water or is separated by dry ground at its opening. The rear of the harbor is roughly 92' from the actual lakeshore so a 50' OHW setback from the harbor results in a 140-150' OHW setback from the actual lakeshore. The applicant was willing to fill in the harbor, but there are too many legal hoops to jump through to do so that make it not worth it and cost-prohibitive. The two lots will still meet the 20,000 sq. ft. residential lot suitable area requirement if a 50' OHW setback from the harbor is allowed – which makes sense and is fair. Two SSTS drainfield sites exist on the tract. An easement over the existing road that has been in place for decades and which provides access to roughly two dozen other properties keeps the two tracts from being landlocked.

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

Yes (X) No ()

Why or why not? The harbor was dug by a previous owner. It is a technicality of the original DNR public waters excavation permit conditions that the harbor is considered public waters since it vacillates between having an open water connection to the lake and its opening closed off by dry land. The rear of the harbor is ~92' from the actual shoreline. A 100' OHW setback from the harbor would be impractical and unfair to apply. A 50' OHW setback from the harbor is reasonable as that would place a structure 140-150' from the actual shoreline. An easement to the property over a well-developed private road that services ~24 other lots and has been in place for decades provides legal access to the property. For these reasons, the proposed subdivision of the property is reasonable.

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

Yes (X) No ()

Why or why not? As mentioned above, it is a technicality of the DNR permit to create the harbor that says it is still public waters even though the harbor currently is nonfunctional due to its having filled in over time. The applicant was willing to fill the harbor in, but the legal hoops to jump through to do so were too severe. The harbor is ~92' deep from the lakeshore. Requiring a 100' OHW structure setback from the rear of the harbor would put a building site almost 200' from the actual shoreline instead of the standard 100' OHW setback...which would be unreasonable. The lot is trapezoidal in shape – getting more narrow toward its rear (non-lakeside). The two lots exceed the 40,000 sq. ft. minimum lot area by 6,807 sq. ft. and 3,413 sq. ft. With a 50' OHW harbor setback, the two proposed tracts also comply with the 20,000 sq. ft. RLSA requirement and only the west tract doesn't

comply with the 150' lot width requirement at the OHW structure setback – and then the deficiency is only 18'. The lot was created over three decades ago and is one of two dozen lots in this area of the lake that have access to a public road via a private roadway that is roughly one mile long. This roadway is a dead-end. The road has been in place for decades. The property is also on a point on the lake and located within a government lot that abuts the County line – making the prospect of getting a public road near this lot more difficult and unlikely.

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 part of a subdivision and access road that were created over three decades ago. The ordinance provision that lots front a public road was only recently adopted in 2015. The lot is located on a point which is the reason for its unique trapezoidal shape and the lot rear being narrower than the shoreline width. The harbor was created by a previous owner and it is a condition of the DNR harbor permit that requires it to now be considered public waters even though it vacillates between being separated from the lake by dry ground and having an open water connection. Geography, the lot's developer, the previous owner's harbor creation, and the ordinance caused the practical difficulty here.

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. There are roughly two dozen residential lots and homes along this private road and in this neighborhood. Most of the lots are substandard in size so if anything, these two lots will improve the locality's character by their being fully or almost fully in compliance with the ordinance lot size requirements. The 50' OHW harbor setback will still have structures being built on these two lots that are 140-150' from the actual lakeshore and thus almost 1/3 the OHW setback distance further from the actual lakeshore than the 100' OHW setback.

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 lot's unique shape; the unique harbor location, depth, and DNR permit requirement that it be considered public waters even though it is largely filled in and not functional; its unique location on a point and in a government lot that abuts the County line; and the nearest public road being ~ ¾ mile away from this lot.

The motion passed unanimously 5 – 0.

New Business:

Variance Application 12-V-16 by Nancy Watt Ramsey: Part of Gov. Lot 6, Section 1, Township 145, Range 32, Farden Township on Mud Lake, a natural environment lake. Parcel 07.01.00900. Applicant is requesting a variance from Section 4, Subd. A.1.a.3.c of the Subdivision Ordinance to create two tracts that will not comply with the requirement that all new shoreland tracts must have at least 75' of frontage on a public road.

Neil and Nancy Ramsey, 7197 Little Wolf Road, Cass Lake, MN, submitted that we are asking for a variance to build a home on this site of land that does not meet the requirement for a public road. We own a house next door that was built in 1996 and have used this very same road and maintain it. We have complied with all the requirements thus far as residents along this road. We would like you to approve this site for another house.

Christenson remarked that in a previous variance we were looking into the future. We have to approve or not approve things looking down the road. My concern is since there is no written easement, is that somewhere down the road 20 years from now this could be a problem. Have you explored getting a written document giving you easement through the little piece on private property.

Neil Ramsey explained that when we built that home, we worked with the bank and asked a local attorney as to an easement and if we needed to do anything. We were told that we would be wasting our money because that road has been in there over 40 years. The attorney called it prescriptive right and that road cannot be closed whether it is private or not and that was acceptable to the bank.

Christenson asked if the portion that is privately owned is known to you.

Neil Ramsey answered that they do know each other and are in agreement about using the road.

Christenson explained a problem that could be anticipated is that the property could be sold and the new owner would not want that easement through there.

Neil Ramsey replied that from his understanding with prescriptive right, once a road has been in place for 15 years, that is undisputable. That cannot be retracted or closed. That is my best understanding.

Krueger noted that Tracts A and B are intended to be one lot and Tracts C and B to be a second lot. Is this going to be recorded as Tract A, Tract B, Tract C? Could that be an issue in the future when selling?

Buitenwerf commented that the survey was done several years prior and they wished to use that for the application and I was ok with that because they made the annotation on the survey that you see what the combined sign that is highlighted in yellow indicated Tracts A and B would be a single tract.

Krueger asked if in the future you would see any problem with that.

Buitenwerf replied no.

VanKempen asked for public comment.

No public comment was given.

No written correspondence received.

VanKempen closed public comment.

Grob explained that a good share of this road is going across tax-forfeited land and the County wants easements recorded.

Buitenwerf explained that he could not make a positional statement on behalf of the Land Commissioner as to his preferences.

Grob asked if it was becoming common.

Buitenwerf replied that it is a common request of the County Board for the County to grant easement to people for legal access to their property when it is required through tax-forfeited land.

Christenson commented that in her role on the township board, she has an understanding of prescriptive easements; however, that does not mean that someone cannot protest that. We had that happen in our township and we had been maintaining that particular road. I would caution to approve a variance without that condition.

VanKempen remarked that he also has a history of this issue; couple of roads come to mind. One was on a lake; it was a half mile on County land. They required the homeowners on the lake to get an easement so they could use that stretch of road. My fear is that this could happen on this piece of property in the future.

Nancy Ramsey stated that you have set a precedent to approve an existing house and the fact that it was approved for 20 years. Therefore, you have established the precedence.

Krueger explained that this application is for a new house and a new lot. The County ordinance requires that there be frontage on a publicly maintained road.

VanKempen asked if they were to approve something creating a new lot with a new owner and the new owner ends up hitting a kid on a bicycle without an easement. Would the County have some liability?

Buitenwerf asked if you are referring to the tax-forfeited land.

VanKempen replied no, the private.

Buitenwerf answered that your guess is as good as mine; there is always an attorney willing to try to go after anybody.

Christenson commented that the ordinance has been updated since the house was built and we are a different board so we try to make decisions individually not how it was before. We must work with what we have now in the ordinance.

Grob mentioned that it has come down to the fact that one way or another for us to approve this request, we would like you to have easements both across the tax-forfeited land and the private land. So our choices are to either deny your request until you can get easements and then come back to apply again or approve this application with the condition that the second home could not be built until these easements are in place. The consensus is that you should have easements for both of these properties.

Neil Ramsey explained that we are all treading around a legal area, but I was thinking of an attorney that we originally contacted at the bank. That attorney said that the established right of way to that property is irrevocable because of all the years it has been there. Maybe there are two different opinions legally about that. The danger for us is, we're giving up our original prescriptive right that we have now. The attorneys that we've talked to said that's irrevocable and that nobody can take that away from us. Not that it belongs to Nancy but, that it belongs to that property. So I'm just saying before you make a decision that this is setting precedence for all the

things that you do in the future. At least talk to your County Attorney and see his interpretation of prescriptive right. Would that be reasonable?

Grob mentioned that there is one other factor to consider. You may have prescriptive right, but the current existing County Ordinance requires if you split that into two lots, then you have to have seventy five feet for each of those lots on a public road. Whether prescriptive right to get to that location you don't meet that requirement and ruling to forego that on the basis that you would have legal right to get to your property. It doesn't come down to the prescriptive right. It comes down to that aspect of our ordinance. We are compelled to follow a set of rules. One of which includes practical difficulty. There isn't any practical difficulty that would encompass a denial, unless you meet those requirements.

Neil Ramsey explained things can be complicated. For a point of clarification, are you asking that we would get a permit from the County for only us? I know our neighbor does not want everyone going through there due to mischief. But he would probably give it to us.

Van Kempen responded, I think the way it would work is that the easement that you received from your neighbor and the County would be attached to the property. This would allow future landowners of the property to have legal easement to the property.

Grob noted that a forest road or road through public land would already be open to the public. Putting an easement or not would still allow people to pass through. An easement wouldn't necessarily change the right for someone to drive up to your property.

Neil Ramsey acknowledges that he does understand that. We have a concern that if you put this in the application, the neighbor would have to be convinced since he wants the first part of the property.

Christenson stated that this is the problem. You have already informed us that he has given you permission and now if you request written permission, are you unsure if the permission exists? Is that correct?

Neil Ramsey stated that he does not think so. I believe my neighbor understands the prescriptive rights to that property for several years and assumed that everyone knew what everyone was doing.

Nancy Ramsey explained that they had been friends for over fifty years.

Krueger stated that prescriptive right has not just one aspect to it of fifteen years, but has two other aspects to it. That is why some of those cases were challenged.

Neil Ramsey stated that we are talking in a general conversation. We are talking in general terms. This has never been an issue between us and our neighbor.

Grob explained that the Cass Line Road does legally go farther and the number that was quoted by the Land Commissioner was that if it just went thirty more feet, you could actually build a little spur off of there and never have to cross that private land and that could be an alternative for you.

Neil Ramsey acknowledged that he didn't know that. Thank you.

Christenson explained that we are not doubting what you're saying or the friendship. We thought the township that we have prescriptive easement to that we were threatened with a lawsuit. I cannot vote for this unless we have a condition for easement.

Grob noted that he is in agreement. Should we approve the variance with that condition or just deny it?

Christianson asked what the Environmental Services Officer thinks would be a good solution.

Buitenwerf explained that you can approve with a condition at your will, but the department would caution against going that direction because whatever easement conditions you might place may not be able to be met once the Ramseys would approach either the County or this other private landowner. We could be in a situation of having to come back any way because of slight disparities so staff would advise against going that route for that reason.

VanKempen asked if we have the option of having this tabled until the applicants obtain easement.

Buitenwerf explained that given the 60 Day Rule timeline, that would only be possible if the applicants were to sign the Indefinite Timeline Extension Request Form. The County only has the ability to extend up to 120 days from the date of application and this easement process would take longer than that timeframe.

VanKempen repeated that if this was to be tabled, they should go the indefinite route.

Christenson asked if they understand what is being discussed.

VanKempen explained that we have come down to two choices for the Board. We can outright deny this application or you can table this request indefinitely and once you acquire easements across the County land and the private tract, we can then address the application.

Neil Ramsey explained that it looks like this application should be tabled to give us the time we need to get this paperwork done.

Nancy Ramsey asked if this could not be done in the 120 day time frame.

VanKempen explained that this easement would have to be surveyed so that there is a legal description on the easements as far as where the road is.

Grob noted that this is the most favorable option if it does take longer, but if you opted for something less and the time expired, you then have to start the process all over.

Neil Ramsey stated that this creates a problem, but this is sound advice so we will table this and I can go to work and see how it goes. That would preserve the work we have done so far.

VanKempen asked who they would speak with at the County level to get easement across County land.

Buitenwerf explained that that would be Mark Lohmeier, the Land Commissioner. If we are going this direction, my recommendation is to present the Indefinite Timeline Extension Form to the Ramseys and see if they can read and sign it. Once it is signed, the Board can make a motion to honor their request to allow them time to pursue those easements.

The Ramseys then signed the extension form.

VanKempen made a motion to table this variance application based on the applicants signing the extension form.

Krueger seconded the motion.

The motion passed unanimously 5 – 0.

Variance Application 13-V-16 by Steven Flann: Lot 2, Block 3, Pickerel Lake Addition, Section 16, Township 141, Range 34, Lake Emma Township on Pickerel Lake, a recreational development lake. Parcel 16.85.01700. Applicant is requesting a variance from Section 702.A.3 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residence located in the bluff impact zone.

Steven Flann, 18610 98th Street SE, Lake Lillian, MN, is requesting a 12' x 24' addition to an existing cabin and a six foot deck on the east side of the cabin. We would like to add a bathroom to the cabin and it will involve putting a sewer system in and also drilling a well.

Christenson asked for an explanation as to what you are planning to do with the current outhouse.

Flann stated that the edge of the outhouse on the south side is sitting at the 100 foot mark from the lake. Would I need a permit to move it?

Buitenwerf explained that the privy was permitted in 1994 so it would require a permit to be moved and would need to meet all setback requirements.

Flann stated that he would not object to moving it back and to the east to meet all setbacks. As you saw when you were up there, the room is limited to drive around in so that is a concern of mine and it would be nice to enter the cabin where the privy currently sits.

Grob asked if the privy is moved back, does that require a permit.

Buitenwerf replied that if he moved the privy and converts it to a storage shed, it would require a permit.

Johnson asked if the privy would be converted to a tool shed.

Flann replied yes.

Christenson commented that the proposed addition is not lake side and a bathroom is a necessity.

VanKempen asked for public comment.

No public comment given.

No written correspondence received.

VanKempen closed public comment.

VanKempen noted that this is a unique situation here being all downhill on this property, no running water and a bathroom seems reasonable.

Flann explained that his running water is "running to the neighbors."

Krueger made a motion to approve the application and adopt the staff report findings of fact.

VanKempen seconded the motion.

Findings of fact:

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

Yes (X) No ()

Why or why not? The addition is to the rear of the cabin away from the lake and there is no other direction to go with an addition because the cabin sits atop a bluff that quickly slopes off away from the cabin in all directions. There is room to place a standard septic system on the lot to service the proposed bathroom addition. The addition will be shorter than the existing cabin so it will not be visible from the lake. The addition is 1/3 the size of the existing cabin so it will not change the locale's character negatively.

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

Yes (X) No ()

Why or why not? The cabin sits atop a bluff that drops off in every direction except for a little flat area to the south and southeast of the cabin where the addition is proposed to be placed. The cabin currently does not have indoor plumbing and the request is to add a bathroom – which is a very reasonable request. The scope of the addition relative to the existing cabin footprint is reasonable and the overall cabin footprint after the addition will still be reasonable and comparable to the footprints of other residences in the neighborhood.

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

Yes (X) No ()

Why or why not? The lot is only .42 acres in size and almost entirely occupied by a bluff. The cabin sits atop the hill. There is no room to move the cabin further from the lake as it would then be on the backside of the bluff and the lake would not be visible from the cabin. The addition is proposed to be placed in the only available flat spot on the lot. The lot was created prior to enactment of the shoreland ordinance and is only 141' deep on the west side, 212' deep on the east side, and just a few feet over 100' wide.

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 topography left by the glaciers and the lot size and dimensions that were created by the developer of the plat many years before the applicant owned 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 single family year-round and seasonal residences. The addition is 1/3 the size of the existing cabin which itself is only 20' x 31' and 17' high (a very modest side). The addition will be to the rear of the cabin so it will not be visible from the lake. After the addition, the cabin will still be similarly sized to other cabins in the neighborhood.

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 fact the cabin predates the ordinance and is located in a bluff impact zone. Most of the property is in a bluff. The lot was created prior to the ordinance's enactment. There is not room to move the cabin further from the lake. All these things lead to the need for a variance to do anything to the cabin.

The motion carried unanimously 5 – 0.

Variance Application 14-V-16 by Theresia Leyh: Lot 1, Block 5, Island Lake Shores, Section 3, Township 139, Range 33, Crow Wing Lake Township on Island Lake, a recreational development lake. Parcel 06.58.01000. Applicant is requesting a variance from Section 903.2 of the Shoreland Management Ordinance to create a private watercraft access ramp.

Delmar Leyh, 25426 Chokecherry Lane, Nevis, MN 56467, explained that at the present time, we own 350' of shoreline. We would like to take and cut the shoreline down two and one half feet which would be twelve feet wide with two and one half feet on the side to slope in. Over the years since we bought this property, the shoreline has slowly risen from the ice ridge.

Grob commented that the drawing showed you are requesting a 15' wide section.

Leyh agreed that it was a 15' wide slope down to 12 feet and the 12 feet in the middle would be the lowest portion of it.

Grob then questioned the 2.5' on each side?

Leyh said it would slope down 2 ½ feet in the front and it comes back 8 feet back into the property.

Grob then explained that his math adds up to 17' if you add the numbers.

Leyh acknowledged the mistake and adjusts the measurements to 1.5' on each side.

Christenson requested that he explain for the record again why you're requesting this?

Leyh answered that it's the handicap of getting the boat lift out. Over the years, the bank increases causing difficulties getting the boat lift in.

Christenson explained that they travel up and down the county looking at lots for the lot reviews and numerous lots have substantial bluffs and people have found ways to get their boat lift up (myself included). One of the things that we've done is combined with some neighbors. And we have utilized their help. Have you explored that option?

Leyh replied that his neighbors aren't available when it is time for removal and age is an issue.

Krueger commented that while observing the site that it is possible that wood or metal planks and a 4x4 under the trailer would help assist them in this issue.

Leyh explained that removing the boat lift is not the problem. Installing the boat lift is the problem.

Krueger asked how that was a problem?

Leyh replied that getting it over the ridge requires you to be in the lake. He's unable to pull it from the shore.

Krueger asked why aren't you able to push it until it's in the water.

Leyh replied that he isn't capable of doing so.

Krueger suggested several young individuals that can be hired to do those types of jobs.

Leyh responded if you give me the money to hire them, then I'd be willing to hire them.

VanKempen asked for public comment.

No public comment given.

Written correspondence was received from Darrin Hoverson, Department of Natural Resources, in opposition to this variance request.

Written correspondence was received from Sandra J Cook, 25413 Chokecherry Lane, Nevis, MN 56467, in favor of this variance request.

VanKempen closed public comment.

Leyh commented that prior to this, two of his neighbors have applied and they got permits for the same thing.

Buitenwerf replied that he is not aware of these alleged permits and if they were truly issued.

Grob mentioned that he appreciated the concerns the Leyhs have about spending money to hire help with the installation. On the other hand, making a 15 foot wide cut 8 feet long will definitely end up with you getting erosion and so anytime the lake comes up at all, it will erode back into your launch area. You're basically carving up half of your shoreline and making a ramp out of it. Our main concern and obligation is to keep erosion and runoff from going into the lake. There are other options in terms of ramps, etc. that could be used.

Leyh replied that viewing the photo, you can see massive erosion has already happened to the bank so he does not think it would cause any more erosion.

Christenson explained that anyone living at a lake in Hubbard County will be facing these same issues at some point and cannot justify this. People with much steeper areas are finding ways to deal with it.

VanKempen made a motion to deny the variance application and adopt the staff report findings of fact.

Christenson seconded the motion.

Findings of fact:

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

Yes () No (X)

Why or why not? The proposed project area is already experiencing shoreline erosion problems because the native emergent vegetation in the lake that is in front of the shoreline along the rest of the property has been removed. There are other means of placing a boat lift in front of this property that do not require excavation of earthen material along the shoreline that would further contribute to erosion and loss of shoreline. A few boards could be temporarily placed at the shore to function as ramps when the lift is taken in and out and the public access is only one mile away from the property by which a lake service provider could place and remove a boat lift for this property.

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

Yes () No (X)

Why or why not? As mentioned in the answer to question 1, there are other options available to achieve the applicants' stated desired outcome that do not require the installation of a private watercraft access ramp on this property. Removing more earthen material in this portion of shoreline that is already experiencing shoreline erosion because the natural emergent vegetation in front of it has been removed would further exacerbate the shoreline's erosion potential which would not be a reasonable use of the property. The property is being used and can continue to be used to enjoy the outdoors by camping on it and using it to access the lake for recreation, hunting, and fishing.

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

Yes () No (X)

Why or why not? The land in the proposed project area is very flat and therefore the most conducive to easy installation of a boat lift, dock, etc. of any types of topography along a lake shoreline. Many lots have similar flat areas along the shoreline. There is roughly a 1' vertical drop where the lot meets the lake that can be overcome with a few boards to create a ramp for taking a boat lift in and out of the lake twice a year.

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

Yes () No (X)

Why or why not? The difficulty is created by the landowner's desire to excavate a slope back into the lot from the shoreline instead of placing a couple boards in the water twice a year to facilitate easier installation and removal of a boat lift. The project area is one of the most conducive lots to boat lift installation and removal that we have seen.

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. The project scope/size is not large enough and the project type is not significant enough to change/harm the locality's character...unless the ramp would be used to allow other watercraft beyond those the landowner owns to launch/retrieve at this ramp. Were this to

occur, the variance would significantly alter the locality's character and the answer to this question would be "no".

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. That said, the application does not state any practical difficulty. The applicants have not met the burden of proof to show a practical difficulty exists.

The motion passed unanimously 5 – 0.

Miscellaneous:

Communications:

Adjournment:

Johnson made the motion to adjourn.

Christenson seconded the motion.

The motion passed unanimously 5 – 0.

The meeting adjourned at 7:20 pm.

Respectfully submitted,

Barbara Barth

Recording Secretary