

HUBBARD COUNTY

Planning Commission/Board of Adjustment meeting minutes

6:00 p.m. on Monday, September 26, 2016

Chairman Ted VanKempen opened the meeting with the following members present: Ken Grob, Tom Krueger, Tim Johnson, and Cal Johannsen, ex-officio Planning Commission member. Also present was Environmental Services Officer Eric Buitenwerf.

VanKempen started the meeting by reading the procedure by which the meeting of the Planning Commission/Board of Adjustment will be conducted to the audience.

Board of Adjustment:

Approval of Minutes: August 22, 2016 meeting.

Krueger made a motion to approve the minutes as presented. Grob seconded the motion that carried unanimously 4 - 0.

Old Business: None

New Business:

Variance Application 35-V-16 by John and Cheri Carey: Lot 11, Franora, Section 4, Township 145, Range 32, Farden Township on Grace Lake, a recreational development lake. Parcel 07.37.01500. Applicants are requesting a variance from Section 702 of the Shoreland Management Ordinance to tear down part of a legal nonconforming residence located in the shore impact zone to construct a larger replacement structure.

John and Cheri Carey, 51264 Wildview Lane, Bemidji, MN, presented the variance application to tear down part of a legal nonconforming residence located in the shore impact zone to construct a larger replacement structure.

Krueger asked if the structure would be built further back.

Carey replied when we originally applied for the variance, we were under the impression that the entire house was within the shore impact zone. We didn't realize that we were capable of moving the entire structure back and be able to expand.

Krueger asked if they were still seeking a variance.

Carey replied after applying for the variance, and doing construction on house Part 2, we have come to the conclusion a variance may not be necessary. A simpler solution would be to tear down the entire structure.

Krueger noted the entire structure would be torn down and rebuilt outside of the shore impact zone.

Carey replied yes.

VanKempen asked Buitenwerf to explain the shore impact zone ordinance.

Buitenwerf replied the Shoreland Management Ordinance, in nonconforming structures Section 702, allows legal nonconforming structures that are outside of the shore impact zone to be reconstructed. It allows them to be enlarged if the additions do not cause any of the nonconforming aspects of the structure to be increased. Existing structures in the shore impact zone can be moved and reconstructed outside of the shore impact zone thus making the nonconforming lakeward setback more conforming by doing so. As long as all of the additional setbacks are able to be maintained or improved upon, the land use permit can be issued to allow the construction to occur.

Grob noted if they intend to tear down the structure and move it back, they did not need a variance. They only need a land use permit. Is that correct?

Buitenwerf replied the easiest way would be for them to withdraw the variance application. Secure the land use permit before they start demolition and reconstruction. Once demolition starts, the grandfathered rights of the structure would cease.

Carey asked if the permit that they recently purchased would apply to this.

Buitenwerf replied no. That permit was to alter the structure. You would need to issue a permit for a new structure. The fee for the permit would be \$50.00. We would also need to go out and do a measurement of the structure and the setbacks for documentation purposes for comparison after completion of the project. To answer Grob's question, one option would be for them to officially withdraw the variance application and for the Board to recognize the withdrawal. The second option would be for the Board to take action on the variance.

VanKempen mentioned if you would like to withdraw your variance application, you would need to state it, and we would recognize it.

Carey asked if there was anything that they may need to know as far as construction goes. I know we need to be 20' from the septic.

Johnson replied the septic has a 10' setback and asked Eric, if they continued the variance process, would they need a variance every time they wanted to do construction to the property?

Buitenwerf replied if they were to ask for the proposal to be acted upon and it was approved, the request is for the structure to be reconstructed at a 45' setback from the lake, the first 5' would be in the shore impact zone. Thus, any subsequent additions or alterations to the structure would need a variance. Reason being, the structure is partly in the shore impact zone. If you move the structure outside of the shore impact zone, you would be able to obtain permits for later work that you wish to do, assuming it meets the setback requirements, or any other ordinance requirements at that time.

Carey asked if they could construct a deck lakeward off of the structure.

Buitenwerf explained the structure predates the ordinance, there is a section concerning decks and platforms that are allowed on structures. Even though you would be rebuilding the structure, it would still be a nonconformity that began prior to the ordinance. That section allows a deck or platform to extend 15% lakeward of the structure setback.

Carey asked if a variance would be needed to be obtained to allow that. Or would it be included in the building permit?

Buitenwerf replied it would be part of the land use permit.

John Carey asked if he could withdraw the variance application and move forward with the land use permit.

VanKempen responded the Board recognizes the withdrawal of the variance application.

Variance Application 36-V-16 by Daniel Solt and Debra Ruberto-Solt: Lot 12, Block 1, Little Sand Lake Addition in the SW NE, Section 36, Township 141, Range 34, Lake Emma Township on Little Sand Lake, a recreational development lake. Parcel 16.84.01200. Applicants are requesting a variance from Section 704 of the Shoreland Management Ordinance to convert an unimproved lot lacking one of the two required septic system drainfield sites into an improved lot.

Daniel Solt and Debra Ruberto-Solt, 21112 Glacier Drive, Park Rapids, MN, presented the variance application to convert an unimproved lot lacking one of the two required septic system drainfield sites into an improved lot. We would like to remove the existing cabin and build a new cabin at the 100' setback. We would like to have a 10' deck.

Grob asked for clarification on the variance request. Is it for the deck?

VanKempen replied no. The variance application is for the septic drainfield.

VanKempen asked for public comment.

No written correspondence was submitted.

No public comment was given.

VanKempen closed public comment.

Krueger commented removing the existing cabin and going back to the 100' setback is in line with the intent of the ordinance.

Johnson noted during the on-site lot view, there appeared to be suitable septic sites. Although, they did not meet the definition of a standard site. I believe you have options for a second septic site.

Grob made a motion to approve the variance application with the following condition and adopt the staff report findings of fact with a few additions to the answers to questions 1 and 2.

Condition:

1. The existing unimproved cabin must be removed.

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? Moving the structure back is in the intent of the Shoreland Management Rules

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

Yes (X) No ()

Why or why not? The desire to rebuild is a reasonable request and done at the maximum setback possible even though the second site is not available, there are potential areas so as a result, I believe it is in harmony with the comprehensive plan. The problem was created from the subdivision by the State of Minnesota. The lot currently has a rustic residence on it that is being used. The lot can also be used to enjoy the outdoors, access the lake for recreation, and camping – all of which are reasonable uses.

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

Yes (X) No ()

Why or why not? The lot was created by a Department of Natural Resources plat in 1988 that the State exempted from having to meet its own minimum lot size requirements. The lots in the plat were created around the spacing of existing lease cabins and thus insufficient room existed on this lot to meet the minimum lot size requirements and particularly the requirement that there be two standard septic system drainfield sites available on the lot that meet all setback requirements.

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

Yes (X) No ()

Why or why not? The lot was created by plat by the State of Minnesota in 1988. The State exempted itself from its own minimum lot size requirements when creating the plat so that is why the lot does not meet minimum lot size requirements. Had the State followed its own shoreland rules, this lot would be sized/shaped to have two drainfield sites and this application would not be needed.

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 similarly sized lake lots with small residences on them and a large tract of State land behind the lots. Structures on the two adjoining lots are of a similar size to what is proposed with one being situated at about the same OHW setback as is proposed on this lot and the other being at a setback similar to the existing rustic cabin on this lot.

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 the fact that the lot was created by the State of Minnesota out of compliance with its own minimum lot size requirements and there is insufficient room for two standard septic system drainfield sites on the lot that meet all setback requirements.

The motion carried unanimously 4 – 0.

Variance Application 37-V-16 by Jason Welter: Part of Gov. Lot 10, Section 12, Township 140, Range 33, Nevis Township on Eighth Crow Wing Lake, a recreational development lake. Parcel 21.12.02600. Applicant is requesting a variance from Sections 502.2 and 503 of the Shoreland Management Ordinance for a proposed lake ward addition to a lakeside deck on a nonconforming residence that does not meet the 100' ordinary high water mark setback and is located in a bluff impact zone.

Jason Welter, 567 131st Avenue N. Champlin, MN, presented the variance application for a proposed lakeward addition to a lakeside deck on a nonconforming residence that does not meet the 100' ordinary high water mark setback and is located in a bluff impact zone. We would like to add a 5' by 20' addition to the deck.

Grob asked Buitenwerf about the possible fire-pit violation.

Buitenwerf responded that during the lot viewal a paver-stone brick parking area or platform to the north side of the cabin, as well as a fire-pit platform ring, in the bluff impact zone were observed that we do not have record of. Variances have not been granted and permits have not been issued. We would like to have information as to when they were placed.

Welter replied the fire-pit and pavers were there when we purchased the property. The parking pavers were installed when we built the cabin in 2008. The contractor said he contacted the office and inquired about the pavers, as there was an existing driveway in place where the pavers are.

VanKempen asked for public comment.

No written correspondence was submitted.

No public comment was given.

VanKempen closed public comment.

Grob clarified that we have yet to establish if the pavers and fire-pit are in violation. Therefore, at this point I do not feel as though we can proceed acting upon the variance application.

Johnson asked Buitenwerf if a permit is necessary to pave an existing driveway.

Buitenwerf responded as long as the driveway complied with the ordinance, a permit would not be needed. In this case, if that would be viewed as a driveway, it would be in the bluff impact zone. We would need to determine, if there was an existing driveway, how large it was and the space it occupied. We would then compare it to the space the paved area now occupies to see if it was enlarged any.

Krueger asked Buitenwerf if the fire-pit is in violation, would it need an after-the-fact variance?

Buitenwerf responded, at this time, based upon what Mr. Welter is saying, we need to take that into consideration as well as research other avenues of information that we have available. Then we can determine if it is in violation or not. We need to establish if it was there prior to 1991 when the bluff impact zone was added to the ordinance.

Grob commented he did not think we could act on the variance with possible violations. We either need to add after-the-fact or be corrected before we can approve another variance.

Buitenwerf commented this is a difficult situation. I would view the additional seating area as potentially offsetting the need for the deck to be enlarged. There is other space nearby where seating and recreational space already exists. I would find they are somewhat connected in terms of the deck expansion.

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

Grob seconded the motion.

Findings of Fact:

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

Yes () No (X)

Why or why not? The existing paver stones to the side of the cabin seems to be ample seating areas. It is not in harmony with the intent of the comprehensive plan of 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 a seating area to the north of the cabin, an existing deck, plus the fire-pit area.

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

Yes () No (X)

Why or why not? It is difficult to enlarge a deck when ample areas of seating and deck are available.

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 previous answers, the structure was constructed prior to the ordinance by a previous owner. It sits in a bluff impact zone and does not meet 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 variance will only allow the deck to increase from 6' 6" in depth to 11' in depth which is in keeping with the locality's character as other structures in the area also have lakeside decks.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as the sole difficulty. The difficulty is the fact that the structure and existing deck are located in a bluff impact zone and do not meet the 100' OHW setback.

The motion was split. Grob and VanKempen voting aye. Johnson and Krueger voting nay. Johnson stated his reasons for voting nay were that he did not feel the deck expansion would hurt anything and he does not think the fire pit platform issue should affect the Board's decision-making on the requested deck expansion.

Krueger made a motion to table the variance application. This will give the applicant a chance to work with the Environmental Services Office to clear up any possible violations with the fire-pit.

Johnson seconded the motion.

The motion carried unanimously 4 – 0.

Variance Application 38-V-16 by Glenn and Joyce Koch: Part of Lot 2 and Lot 3, Perry's Sunset Beach, Section 7, Township 140, Range 32, White Oak Township on Eighth Crow Wing Lake, a recreational development lake. Parcel 28.38.00200. Applicants are requesting a variance from Section 506.2 of the Shoreland Management Ordinance for a proposed guest cottage above a detached garage that will exceed the 700 sq. ft. maximum allowed structure footprint and 25' maximum allowed structure height.

Glenn and Joyce Koch, 6808 630th Street, Wheaton, MN, presented the variance application for a proposed guest cottage above a detached garage that will exceed the 700 sq. ft. maximum allowed structure footprint and 25' maximum allowed structure height. We are retiring in the next three years and would like to build a house and garage. During that time, we would like to build it in two stages. We are asking to build the garage as the first stage. The additional square footage that we are asking for is needed for storage of outdoor equipment and recreational equipment. The interior stairs also require the additional needed square footage. Installing a heated floor would be difficult at a later time. The existing cabin is rodent infested and has mold issues. It will be demolished. After retirement, we will construct the house. The building plans are already in place.

Grob asked Buitenwerf if building the guest quarters over the garage at this time would be an issue in the future since the garage will eventually be attached to the house.

Buitenwerf replied no.

Grob asked if they intend to occupy both the guest quarters above the garage and the existing cabin.

Koch replied yes. They could still use it. Mainly during the summer months.

VanKempen asked if the existing cabin would be removed.

Koch replied yes. The cabin would be removed along with a carport, bunkhouse and outhouse.

VanKempen asked for public comment.

No written correspondence was submitted.

No public comment was given.

VanKempen closed public comment.

Johnson asked Buitenwerf if proposing a condition of removing the cabin would be appropriate.

Buitenwerf responded if the Board would be inclined to approve the request, the Department would recommend a specific timeline by which the existing structure would need to be removed.

Krueger commented the finished product meets the intent of the ordinance.

Krueger made a motion to approve the variance application with the following conditions and findings of fact.

Condition:

1. The existing cabin must be torn down within one year of the date a land use permit is issued for the new house.

Johnson seconded the motion.

Findings of Fact:

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

Yes (X) No ()

Why or why not? The final product at the end of phase two will meet all of the requirements 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? The house is old and needs replaced.

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

Yes (X) No ()

Why or why not? The cabin is old and needs replaced and to have more livable space when they retire.

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

Yes (X) No ()

Why or why not? They purchased it this way. The existing cabin was built pre-ordinance.

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 mainly residential structures.

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

Yes (X) No ()

Why or why not? The alleged difficulty appears to involve some time-related considerations.

The motion carried unanimously 4 – 0.

Variance Application 39-V-16 by Jeff and Linda Reinhart: Part of Gov. Lot 1, Section 9, Township 139, Range 34, Hubbard Township on Long Lake, a recreational development lake. Parcel 14.09.00600. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance for an after-the-fact variance for a deck that is located in the shore impact zone and does not meet the 100' ordinary high water mark setback.

Jeff and Linda Reinhart, 14841 Circle Pines Drive, Park Rapids, MN, presented the after-the-fact variance application for a deck that is located in the shore impact zone and does not meet the 100' ordinary high water mark setback. We are seeking an after-the-fact permit for the previously existing nonconforming platform structure that was constructed in 2009, two homeowners ago. We believe the platform was initially constructed to connect the smaller retaining wall, in the bluff impact zone, to a safety railing, at the edge of a 12' retaining wall.

Grob asked for some insight into the history as to why this is an after-the-fact requirement.

Reinhart replied they acquired the property in April of 2015. At that time, the information from the realtor, of the previous owner, was the structure and retaining wall had been approved. To our knowledge, this was created two homeowners ago in 2009. This item came into play when we were interested in another project on our property. We invited the zoning department out to give us information as to what we could and could not do. Through the process of measuring and viewing the shoreland area we were informed of a variance on the property.

Linda Reinhardt mentioned that they had talked to both of their neighbors and they believe the platform is really protecting the retaining wall that is there, which was approved by permit. Our realtor went through the archives to see if he could find out any information as to when the structure was built and who built it. Nobody will say who did it.

VanKempen asked for public comment.

No written correspondence was submitted.

No public comment was given.

VanKempen closed public comment.

Krueger asked if the lower platform still had the concrete.

Reinhart replied the construction is the same as the day they purchased the property. Nothing has changed.

Krueger asked what size the boardwalk is on the lower level. What is the need for a platform at that level?

Reinhart replied I believe that platform in question was approved. To my understanding, the piece in question right now is the upper portion.

Buitenwerf replied the lower platform was buried. The concrete pad extends to the north behind the rock rip rap. It was basically an archeological unearthing.

VanKempen agreed that we are just looking into the upper level.

Grob asked if there was dirt under the platform

Reinhart responded yes. I believe so.

Grob mentioned if the platform wasn't there, it could be reseeded with vegetation. The bluff is pretty consistent and not eroded.

Reinhart commented that the ground is 99% sand in that area. The reason the old retaining wall crumbled was due to the sand and the steep slope.

Grob mentioned you could easily build a small berm, at the top of the crest, to divert the water into a different direction.

Reinhart replied the run-off would jeopardize the retaining wall.

Johnson asked what type of documentation you have showing the Environmental Services Office was out to the property on five different occasions.

Reinhart explained he found documentation showing five visits to the property since 2009. We are unclear as to the exact number of visits and which department they were from.

Johnson remarked these situations arise without county-wide zoning.

Reinhart asked if they could make alterations, to possibly construct a berm, to mitigate the issues.

Grob responded the impact of removing the existing structure would cause massive erosion. Adding a little berm would divert the water into vegetated areas. The whole premise for the deck is to protect the retaining wall. Without it, there are other options to protect the retaining wall.

Reinhart asked how we assure safety, at the edge, of the retaining wall.

Grob replied a fence or along the edge would be appropriate.

Krueger mentioned, during the lot view, he noticed the dirt across the stairs. As we walked up, it appeared the runoff originated from the house. A possible condition to approving the variance would be adding gutters to the house.

Reinhardt agreed.

Johnson commented he agreed with the findings of fact.

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

1. Gutters must be installed and maintained on the north side of the house's roof.
2. A 5' deep vegetative buffer must be installed and maintained upslope of the deck involved in the variance application between the sidewalk providing access to the dock and the north property line.
3. An earthen berm must be constructed and maintained immediately upslope of the deck involved in the variance application that directs stormwater runoff to the south of the deck and into existing native vegetation located in this area.

4. Gutters must be installed and maintained on both sides of the shed that is located north of the house.
5. The above-listed conditions 1-4 must be completed within one year from the date of this variance approval.

Johnson seconded the motion.

Findings of Fact:

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

Yes (X) No ()

 Why or why not? The intent is to prevent the runoff, from the home, into the lake.
2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes (X) No ()

 Why or why not? Removing the deck would be removing an existing safety barrier.
3. Is the stated practical difficulty due to circumstances unique to this property?

Yes (X) No ()

 Why or why not? The lot has a steep bank. A retaining wall is needed to protect from erosion.
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes (X) No ()

 Why or why not? It was previously created by multiple owners.
5. Will the issuance of the variance maintain the essential character of the locality?

Yes (X) No ()

 Why or why not? All of the other residences have walkways and stairways.
6. Does the stated practical difficulty involve more than economic considerations?

Yes (X) No ()

 Why or why not? Economics are not cited in the application as the sole difficulty.
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, the applicant quickly applied for the after-the-fact variance when they learned one was needed.
8. Did the applicant attempt to comply with the law by obtaining the proper permits?

Why or Why not? Not applicable. The applicants acquired the property after the deck was constructed.

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

The applicants acquired the property on April 10, 2015 and the application includes materials showing the platform existed at the time of purchase.

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

Yes. In terms of purchasing the property, it is substantial.

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

The applicants purchased the property after the deck was constructed and in existence.

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

Yes. The applicant showed photos of neighboring retaining walls.

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. Removing the structure would create safety and erosion issues.

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

No. It was installed by other previous owners. We were able to mitigate erosion problems with conditions.

The motion carried unanimously 4 – 0.

Variance Application 40-V-16 by Gerard Nosbush: Part of Lot 1, Block 2 of Shady Acres. Part of Outlots No. 2 - 5 of Shady Point, Section 28, Township 140, Range 34, Henrietta Township on Long Lake, a recreational development lake. Parcels 13.59.00310, 13.59.00600, and 13.44.00400. Applicant is requesting a variance from Section 701 of the Shoreland Management Ordinance to make some structural alterations, expansions and additions to a nonconforming use.

Gerald Nosbush, 17915 Dayspring Drive, Park Rapids, MN, presented the variance application to make some structural alterations, expansions and additions to a nonconforming use. We would like to build a 30' X 40' log cabin for my son, relocate an 18' x 31' wood shed sixteen feet away from its current location, and construct a 32' X 90' storage building.

VanKempen asked if it was an existing resort.

Nosbush replied yes.

Krueger asked if the driveway was going to be located on Dayspring Drive.

Nosbush replied yes.

Grob asked if the driveway would be on the existing property.

Nosbush replied yes.

VanKempen asked for public comment.

No written correspondence was submitted.

No public comment was given.

VanKempen closed public comment.

Grob commented that the construction of the proposed residence is over 600 feet from the lake. Everything appears to be in order.

Grob made a motion to approve the variance application with the following condition and adopt the staff report findings of fact.

Condition:

1. The second owners' residence approved in this application must stay such and cannot become a rental unit.

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 four structures involved in the application are 350-650' from the OHW and will meet all setbacks. Dense wooded vegetation will provide screening of the structures so that they do not present any aesthetic impact to the lake or nearby properties. The property is 10.75 acres in size and is thus able to support the proposed structures and movement of the existing wood shed.

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

Yes (X) No ()

Why or why not? Moving a wood shed 16' that is hundreds of feet away from the OHW is a reasonable use. A large storage building for a resort of this size to house its equipment is a reasonable use. Having a second owner's residence for the son of the couple who own the resort when he operates the resort with them is a reasonable use of the property as well.

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

Yes (X) No ()

Why or why not? The difficulty is caused by the resort use of the property being a legal nonconforming use and the Shoreland Ordinance requiring a variance for any expansion of the use and structural alteration of structures that are a part of the use.

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 fact that the resort use of the property is a legal nonconforming use and the ordinance requires a variance for any expansion of the use or alteration of structures involved in the use. The owners purchased the resort when it had already been in existence for a number of years. The ordinance language requiring a variance for the proposed projects is not the work of the owners.

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

Yes (X) No ()

Why or why not? The proposed structures and movement of one of them will maintain and contribute to the resort use of the property. The resort predates the ordinance and thus the development near it largely occurred after it was here first. Large tracts of unimproved property lie to the south and east of the resort and ought not to be affected negatively by what is proposed.

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 the fact that the resort use is a legal nonconforming use and the Shoreland Ordinance requires a variance whenever expansion of the use is proposed by placing structures where none previously existing.

The motion carried unanimously 4 – 0.

Variance Application 41-V-16 by Morris and Lynne Erickson: Part of Gov. Lots 4 and 5, Section 11, Township 141, Range 34, Lake Emma Township on Stocking Lake, a natural environment lake. Parcel 16.11.00922. Applicants are requesting a variance from Section 502.1 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residence located in a shore impact zone. The addition will not comply with the 20' road right-of-way setback.

Morris and Lynne Erickson, 19785 Intrepid Road, Park Rapids, MN, presented the variance application along with contractor John Schrader.

Schrader explained we are wanting to construct an addition to the existing structure - most of which is inside the shore impact zone. The new addition is completely outside of the shore impact zone. One corner of the addition would encroach approximately one foot into the road right-of-way.

VanKempen asked for public comment.

No written correspondence was submitted.

No public comment was given.

VanKempen closed public comment.

Johnson commented the area was flat and well vegetated.

Krueger asked if the septic tank would be relocated with the proper setbacks.

Schrader replied yes.

Johnson made a motion to approve the variance 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 lot is very uniquely shaped – being wide, but not very deep – and the residence is tucked into the west corner of the property where there is no room to meet the OHW setback and a township road runs right behind the house. The proposed addition will itself be located outside of the shore impact zone and thus a bit further from the lake than the existing house. There is nowhere else to go with the proposed garage.

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

Yes (X) No ()

Why or why not? Having an attached garage here in northern Minnesota given our winters is a reasonable use of the property. Because of the property's very unique shape, a detached garage would need to be several hundred feet away from the house in order to meet setback which would not be practical.

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

Yes (X) No ()

Why or why not? As mentioned above, the lot is very uniquely shaped – being much wider than deep and the residence is crammed into the west corner of the lot where a township road runs right behind the house and itself does not meet the 150' OHW setback.

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

Yes (X) No ()

Why or why not? The landowner did not create the lot and the residence was built prior to the ordinance.

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

Yes (X) No ()

Why or why not? The existing house with the attached garage is still very reasonable in size and will be the same size or smaller than nearby homes.

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 structure's having been constructed at a nonconforming OHW setback before the ordinance took effect and the township road running right behind the house. The only direction that an addition can go is to the east as proposed in the application.

The motion carried unanimously 4 – 0.

Variance Application 42-V-16 by Woodrow Duranske: Part of Gov. Lot 4, Section 30, Township 143, Range 32, Lakeport Township on Kabekona Lake, a recreational development lake. Parcel 19.30.01200. Applicant is requesting a variance from Sections 503 and 702 of the Shoreland Management Ordinance for a proposed enlargement of a guest cottage located in a bluff impact zone.

Jason Strom, Spitzack Builders, Inc., 8332 State Hwy 371 NW, Walker, MN, representing the application for Woodrow Duranske, 35074 Mohawk Drive, Laporte, MN. Applicant is requesting a variance for a proposed enlargement of a guest cottage located in the bluff impact zone. We would like to put two bump-outs on an existing cabin. Neither bump-out would increase the footprint of the cabin. It would be similar to a bay window. One would be used as a closet, the other as a sink.

Grob asked if a well and septic system was going to be installed.

Schrader replied yes. We have already submitted a septic design for the property. The cabin will be serviced by the existing home. The cabin will have a separate septic system.

Grob asked if the unimproved cabin predated the ordinance.

Buitenwerf replied it was presented as a guest cabin.

VanKempen asked for public comment.

No written correspondence was submitted.

No public comment was given.

VanKempen closed public comment.

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

Krueger seconded the motion.

Findings of Fact:

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

Yes (X) No ()

Why or why not? The proposed project involves a 2' x 5' bump-out and a 2' x 4' bump-out on a 460 sq. ft. guest cottage located in a bluff impact zone. The two bump-outs' impact to the environment and bluff will be negligible. The guest cottage will still be well in compliance with the 700 sq. ft. maximum allowed footprint.

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

Yes (X) No ()

Why or why not? Adding 18 sq. ft. of usable space to a 460 sq. ft. guest cottage that predates the ordinance is a reasonable use.

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

Yes (X) No ()

Why or why not? The guest cottage was constructed prior to the ordinance and is located in a bluff impact zone. The ordinance requires a variance for any enlargement of a structure in a bluff impact zone.

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

Yes (X) No ()

Why or why not? The structure was created by a previous owner prior to the shoreland ordinance existing. The State created the bluff impact zone regulations that now require a variance for the proposed additions.

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

Yes (X) No ()

Why or why not? The two bump-outs will not even be noticeable to adjoining landowners or folks recreating on the lake.

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 that the guest cottage was constructed prior to the ordinance and it is located in a bluff impact zone.

The motion carried unanimously 4 – 0.

Closed Board of Adjustment meeting at 7:40 p.m.

(Planning Commission ex-officio member Cal Johannsen left the meeting prior to the start of the Planning Commission business due to his need to attend another meeting.)

Planning Commission:

Approval of Minutes: August 22, 2016 meeting.

Grob made a motion to approve the minutes as presented. Johnson seconded the motion that carried unanimously.

Old Business: Subdivision Ordinance review

VanKempen read through the draft of the Subdivision Ordinance proposed changes. Grob asked about last month's discussion, limiting the number of easements that could come off of public roads to go to backlots. Do we want to consider that? It was not included in the draft.

Buitenwerf replied he did not feel there was consensus from the Planning Commission to do so.

VanKempen commented he thought part of that was covered with the maximum of four lots per $\frac{1}{4}$ section of land.

Grob explained there would be 120' left over. You could still have twelve lots accessing that section of land.

VanKempen suggested limiting the number of driveway accesses per $\frac{1}{4}$ $\frac{1}{4}$.

Grob asked if we were limiting development, if we were to allow only one easement to a backlot per $\frac{1}{4}$ $\frac{1}{4}$?

Johnson replied yes. I believe in doing so, we would be limiting development.

VanKempen asked for public comment.

Kevin Lindow, Lindow Surveying and Mapping, 1301 Park Avenue South, Park Rapids, MN, suggested different subdivision options available if you have a $\frac{1}{4}$ $\frac{1}{4}$ section of land with a road that splits down the middle.

Johnson explained those options may be available, with an easement, with the new proposal. We will be making a decision as to whether it will go through the office or if it needs to go in front of the PC/BOA.

Lindow commented in most cases where customers would want to subdivide into multiple parcels, he would suggest platting.

Grob asked Buitenwerf if he thought there was a need to put restrictions to a number easements per $\frac{1}{4}$ $\frac{1}{4}$ section to limit the amount of access.

Buitenwerf responded he would need to contact our attorney to see if the Subdivision Ordinance could address it or not.

VanKempen asked if in Section 4. Subdivision A. General Requirements. 1.a 2.c allows four lots to be created on either side of the road.

Grob replied yes.

VanKempen proceeded reading through the Subdivision Ordinance proposed changes.

Lindow suggested changing the wording on Section 4, Subdivision A.1.A.2.b striking the word "shall" and replacing it with the word "may".

VanKempen agreed.

VanKempen proceeded reading through Section 5. Minor Subdivisions in the Subdivision Ordinance proposed draft. He paused to ask if the five acre lot requirement should be decreased in Subdivision C.1.b. We are allowing less than a two acre lot in the shoreland zone, but we are requiring a five acre lot in the minor subdivision. It does not seem right to limit the subdivision to five acres as they are outside of shoreland.

Johnson agreed with VanKempen.

Buitenwerf commented over the years we have seen one and two lot plats that have to go through the entire platting process. It seems rather excessive to put landowners through the time and cost. My thought would be to allow a certain number of lots less than five acres to be created through an abridged process.

Lindow commented several counties east of Hubbard County allow 2 ¼ or 2 ½ acre minimum lot size.

Grob asked why would we want to change this from five acre to 2 ½ acre.

VanKempen replied it would simplify the minor subdivisions.

Grob asked if 5 acres is the minimum for a plat.

Buitenwerf replied minimum lot size for a plat is 2 ¼ acres unless you are in a township which has its own land use ordinance. In which case, we would allow a smaller lot size if it is commercially zoned. As far as the minor subdivisions, some counties allow it to be approved by staff. Others need to be approved by the Planning Commission.

Buitenwerf gave multiple examples on how the property can be divided utilizing primary and secondary options according to the size they needed.

VanKempen commented he liked the idea that wetlands cannot be included in the 2 ½ acre minor subdivisions.

Buitenwerf explained including or excluding wetlands could involve a delineation, creating more costs.

Johnson asked if it would have to meet RLSA to be subdivided.

Buitenwerf replied it depended if you apply RLSA to the ordinance. Platted lots require RLSA.

VanKempen asked how the Board felt about less than five acre lots.

Grob commented leaving it at the five acre minimum.

VanKempen proceeded reading through Section 5, Minor Subdivisions, Subdivision C. General Requirements, 1.c in the Subdivision Ordinance draft. Road right-of-way easement sizes were discussed. Determining which size to use, 33' or 66' easements.

Buitenwerf commented, I value and appreciate what you are trying to achieve there, but from an administration point of view, it would be a giant nightmare. Some townships do not know what their road requirements are. I would suggest leaving it at what the respective townships already have.

Lindow gave multiple examples on why a 33' easement would be sufficient.

Grob recommended a 66' easement be placed.

VanKempen commented a 33' easement would be sufficient.

VanKempen returned to reading through Section 5, Minor Subdivisions, Subdivision D. Minor Subdivision Procedures, and ESO recommends Planning Commission level approval.

Buitenwerf clarified this is a template to roughly fit our situation. You may adjust it as needed. I would suggest focusing on the basic framework as how you want things handled. If you want staff only to sign off on them, or do you want them to go to the Planning Commission and County Board? That would be my recommendation. From a legal stand point, our attorney has advised Administrative Subdivisions to go through Planning Commission approval level. I suggest leaving it at the Planning Commission level.

Grob noted the Board's consensus is to re-write Subdivision D to reflect the Planning Commission is the final approval.

Buitenwerf asked for clarification on the lot sizes for subdivisions. Administrative Subdivisions allow up to two tracts less than 5 acres, but no smaller than the platted lot minimum standards.

The Planning Commission decided to make the following edits to the working Subdivision Ordinance amendment draft:

1. Administrative subdivisions – allow up to two lots each smaller than five acres in size, but at least meeting the platted lot size requirements to be made per application.
2. Minor subdivisions – keep a five acre minimum and give final approval authority to the Planning Commission.
3. Minor subdivisions – access easements to lots can be 33' wide unless five or more lots are being created that solely have access to a public road via an access easement – in which case the easement must be at least 66' wide.

New Business: None

Miscellaneous:

Communications:

Adjournment:

Krueger made the motion to adjourn.

Grob seconded the motion.

The motion passed unanimously 4 – 0.

The meeting adjourned at 9:02 p.m.

Respectfully submitted,

Veronica Andres

Recording Secretary