

## **HUBBARD COUNTY**

### **Planning Commission/Board of Adjustment meeting minutes**

6:00 p.m. on Monday, June 22, 2015

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

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

#### **Board of Adjustment:**

**Approval of Minutes:** May 26, 2015 meeting.

Grob made a motion to approve the May 26, 2015 minutes as presented.

Van Kempen seconded the motion.

The motion carried unanimously 5 – 0.

**Old Business:** None

#### **New Business:**

**Variance Application 12-V-14 by David and Sandra Wingert:** Lot Three (3), Belle Taine Westview Beach, Section 3, Township 140, Range 33, Nevis Township on Lake Belle Taine, a Recreational Development Lake. Parcel 21.52.00300. Applicants are requesting a variance from Sections 502.2 and 702 of the Shoreland Management Ordinance (SMO) for a proposed upper, above ground level main floor addition to an existing nonconforming residential structure and a lakeside deck in the Shore Impact Zone (SIZ).

Dave Wingert presented the request as a small 24' x 36' walkout basement structure with a 10' patio on the lakeshore. The existing structure exists with a cinder block foundation and a temporary roof originally built in the early 70s along with the foundations of the neighbors on either side of the home. The neighboring properties' homes were completed sometime after the foundations were built. This foundation was built intending to be finished like the other properties to add that main level on as the neighboring properties have done. When viewing from the lake, you will see all the cabins are similar. Our property is just the basement and this structure does not have any conforming bedrooms which is a concern if there were a fire or emergency. Our hope was to construct a small cabin that would go straight up on the existing foundation. We are not looking to extend it, change the drainage or change the square footage at all. The temporary roof would be removed and the walls would be built on the existing joists which were designed to carry the floor. The completed seasonal cabin would have two bedrooms, a living kitchen area, and a small bathroom. The existing basement would be used for storage and the ceiling height would remain the same. The deck would extend over the existing patio and the structure increase in elevation over the existing would be just over 12 feet. The size and look would be identical to the property to the north. There will be no alteration to the vegetation or runoff in the shore impact zone because we are going up on the same footprint. Everything would be guttered to flow out to

the lawn to keep it from going towards the lake. We are attempting to complete an existing level that was the intention to be built many years ago.

Christenson commented that since we spoke with you when this was tabled, the suggestion by Environmental Services that was of interest to me regarding the tiered area in front of the cabin as to whether that could be put back into vegetation as the properties on either side. How would you feel about doing that as part of the condition for the variance?

Wingert is open to the suggestion, but would like to research the cost. Our intention was to come up with some kind of plantings to go in front of all the terracing to soften it and to make it look more natural.

Grob asked if there is any reason or logic as to why it was terraced like that.

Wingert replied that the prior owners terraced it so they did not have to mow the steep slope.

Grob question the current patio in the front of the home, where does the water run to?

Wingert indicated that the photos show that gutters come straight down into the rock on the terrace. We would like to take and gutter this all to the lawn to the south of the structure.

Johnson commented that the terrace is steep and agreed that doing something to disguise that terrace would be beneficial, but am afraid of telling someone to take it all out because it was built very well.

Wingert commented that he would be willing to try to take it out using dirt to stabilize it.

Krueger mentioned that in the minutes at the previous hearing, you indicated that you were willing to try to bring this back to natural. This is a structure that is prior to the ordinance so it can stay so my thought is that it would be better to build on top of this foundation.

Van Kempen asked if we would need to set a time line on the terracing as a condition.

Buitenwerf commented that you could give them a year or two years making sure that it encompasses a spring or fall planting window so that survivorship of whatever is planted would have a good start.

Grob asked what was allowed lakeward as far as a deck in the shore impact zone.

Buitenwerf replied that the ordinance allows a 15% lakeward deck encroachment based on the existing structure setback in cases where the structure predates the ordinance. That has been part of the unknown with this structure as to when it was built. That section of the ordinance states that it would not apply to this structure until that date is verified and also the 15% rule requires that platforms not be allowed less than 30 feet from the lake.

Johnson opened the discussion to public comment.

No public comment given.

Johnson closed public comment.

Johnson asked what the conditions would be if this variance were to be approved.

Christenson asked if October of 2017 would be a good timeframe to complete the removal of the terrace.

Wingert asked if it could be conditioned off the construction timeframe.

Grob made a comment that if they were going to remove a terrace, it should be done before the construction.

Christenson suggested that this work be done professionally or approved by Environmental Services.

Krueger mentioned that the timeframe begins when you apply for a land use permit.

Christenson asked how long you would give him to restore the vegetation after the permit was issued.

Krueger noted that it could be done six months after the cabin is done if it is in the growing season.

Christenson asked what Mr. Wingert thought about when this could be completed.

Wingert replied that not knowing how construction would be staged, my thinking is that if you could maybe get the construction done, you can work around it, but would need to check with a contractor first to see if that would work.

Grob stated that with building a deck and support posts all that integrates into the hill, not sure that building the house and then start excavating the hill is the right order. In voting against this the last time, the structure being in the shore impact zone and clearly you have the situation where there is plenty of room on the lot to move to setback. There is no practical difficulty that keeps you from reasonable use of the property without moving back. I do believe the terrace should be removed and completed at the time the addition is completed, making sure that the gutters are constructed such that the runoff is away from the lake to the south and no future expansion should be allowed on this structure. Would like this better if the deck met the 30 foot setback.

Van Kempen commented that there is already an existing patio underneath so putting a deck above does not create more impervious surface. Water would run through the deck to the patio below and drain as it is now.

Krueger agreed with Van Kempen that the runoff would be the same or better given the plan for gutters and drainage control.

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

1. Applicants must submit to the Environmental Services Department for its approval a plan to return the terraced slope between the structure and the lake to a natural state and the work must be completed within two years of the date the land use permit for the structure addition authorized by this variance is issued.
2. Rain gutters must be installed on the residential structure with down spouts directing runoff to the rear of the structure away from the lake. The gutter installation must be done to the Environmental Services Department's satisfaction.
3. No further expansion of this structure is allowed beyond what is authorized per this variance.

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 ( )

The restoration of the terrace to its natural state which is similar to what is already there on adjacent properties and maintaining the same impervious surface on the lot.

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

Yes ( X ) No ( )

The bedrooms in the existing building are non conforming and do not have egress windows causing a safety concern

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

Yes ( X ) No ( )

The exact date when the basement structure was constructed is not known. It was constructed in the early 1970s, but there is insufficient information to know if it was legally constructed before the shoreland ordinance was adopted in 1971 or if it was illegally constructed after the ordinance adoption date. The structure's being just a block basement with a roof on it and the location of the structure being in the shore impact zone are circumstances unique to the property that result in the stated difficulty of wanting to place an above-ground story to the structure, but needing a variance because the structure doesn't comply with the 100' OHW setback.

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

Yes ( X ) No ( )

The difficulty is the existing structure's being just a block foundation with a roof on it and the structure being located in the shore impact zone such that the ordinance requires a variance in order to make any modification to it. The structure was constructed by a previous landowner and the current landowner thus did nothing to cause or contribute toward the stated practical difficulty.

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

Yes ( X ) No ( )

The area consists of single family seasonal and year-round residential structures similar to the one proposed on this lot. Additionally, the residences on the adjacent properties are located at a similar OHW setback so the locality's character would be maintained if the requested variance was issued.

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

Yes ( X ) No ( )

Economics are not cited by the applicants as the practical difficulty. As stated above in answers to previous questions, the stated difficulty involves the structure's being constructed by a previous owner at a nonconforming OHW setback in the early 1970s.

Van Kempen seconded the motion.

Motion carried unanimously 5 – 0.

**Variance Application 17-V-15 by Charles and Patricia Adrian:** Part of Government Lot 2, Section 1, Township 140, Range 34, Henrietta Township on Boulder Lake, a Recreational Development Lake. Parcel 13.01.01500. Applicants are requesting a variance from Sections 502.2 and 801.2 of the Shoreland Management Ordinance (SMO) and Article V, Sec.1.01 of the Subsurface Sewage Treatment System Ordinance (SSTSO) for a proposed drainfield to be located at less than the required 150' ordinary high water mark (OHW) setback and State 75' OHW setback.

Al Winterberger, representing Charles and Patricia Adrian, presented the application request for a less than 75' setback for a new drainfield site. The current system has failed and after review of the lot, chose this site as the best site that they have. Doing my setback measurements I tried to center this in the peninsula area on both sides.

Grob commented it looked like the only spot to go, but at the site visit it was mentioned that it froze so would like to see this pressure tested from the pump line to the drainfield.

Winterberger would like to see that entire line air tested due to the frost issue, which is in the notes on the design. Did discuss with the homeowner and discussed it with the installer.

Krueger asked what is the plan if a leak is found.

Winterberger replied that if you find a leak, you make repairs. It is not a legal requirement to pressure test the line, but as I mentioned, it is a recommendation on my design.

Van Kempen commented that you have a unique situation here and this is your only alternative.

Johnson opened the discussion to public comment.

No public comment given.

Johnson closed public comment.

Van Kempen made a motion to approve the variance with the condition that the 2" line between the tanks and drainfield pass a pressure test and accept the staff findings of fact.

Findings of fact:

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

Yes ( X ) No ( )

Why or why not? The property is a unique peninsula that extends out into the lake and is narrow such that it is not possible to meet the OHW setback from all sides. The proposed drainfield has been placed equidistant between the sides of the property to maximize the OHW setback and toward the rear of the lot for that reason as well. A standard drainfield is much preferred to a holding tank which is the next option to consider.

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

Yes ( X ) No ( )

Why or why not? Having a standard septic system to service one's home is a reasonable request. The home predates the ordinance.

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

Yes ( X ) No ( )

Why or why not? The property is a unique, narrow peninsula that extends out into the lake. It is narrow enough that it is not even 150' wide along most of its length and thus incapable of meeting the 150' OHW setback from both sides for a drainfield.

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 answers to the above questions, the difficulty is caused by the unique narrow peninsular shape of the property and the fact that the residence on it predates the ordinance. There is not room on the lot to comply with all setbacks as it is narrow enough that not even one 150' OHW setback from one side of the peninsula can be met.

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

Yes ( X ) No ( )

Why or why not? The locality's character consists of single family seasonal and year-round homes. A septic system is a standard accessory feature of a residence and as it is located below ground, it will not affect the locality's residential character in any way.

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

Yes (X) No ( )

Why or why not? The difficulty is caused by the narrowness of the peninsular lot on which this home is located that does not allow the OHW setback to be met from any side.

Economics were not cited as a difficulty in the application.

Christenson seconded the motion.

Motion carried unanimously 5 – 0.

**Variance Application 18-V-15 by Thomas Straiton:** Lots 8 & 9, Crow Wing Park, Section 19, Township 140, Range 33, Nevis Township on 5<sup>th</sup> Crow Wing Lake, a Recreational Development Lake. Parcel 21.49.00800. Part 1: Applicant is requesting a variance from Section 502.2 of the Shoreland Management Ordinance (SMO) for an after-the-fact variance for a residential structure that does not comply with the required 20' road right of way (ROW) setback. Part 2: Applicant is requesting a variance from Section 506 of the SMO to allow an existing nonconforming structure that does not comply with the 100' ordinary high water mark (OHW) setback and exceeds the 700 square foot maximum allowed footprint to be a guest cottage on a lot that does not comply with the required 20,000 square foot residential lot suitable area (RLSA).

Jeff Tolle, speaking on behalf of Thomas Straiton and Colleen Kellen, presented the variance being requested. As part one, when a home was built in 2014 with permit it was attached to an existing garage. Unknowingly we did not have a true survey. In the current survey, it shows that the garage is in the road right of way. So to abide by the new survey, we are requesting a variance to allow the structure to remain as is which is 10 feet from the road right of way. The second part of the variance request - we are four to five feet from the side setback and within the 100' setback so it is a nonconforming structure at 88'. We tore off the existing entry way that was not permitted and we tore out the non-permitted patio to resolve violations on the property. The old cabin is 1186 square feet which was torn down to 1100 and is still 400 square feet over the 700 square foot requirement for a guest cabin. We are in compliance with the 20,000 RLSA by 448 feet according to our new survey.

Christenson asked if anything was added to the garage on the road side when the home was attached.

Tolle replied no.

Johnson stated that in reviewing the original garage permit, it did not look like anyone was trying to get away with anything. The setback was 21' on the plan submitted to the County.

Tolle commented that it is unclear if they were measuring from the center of the road.

Christenson asked if this is a dead end road.

Tolle replied yes.

Grob commented that the owners applied for a garage permit and they are responsible for making sure that what is put on that permit application is correct. When you are investing in a new cabin and you know there is a setback requirement, it is hard to understand how you can't recognize

that the drawing at 21' is not correct. It is not hard to pace off from the middle of the road to find pretty quickly where the right of way would be and that you are not making it. That was not picked up by anyone before you went ahead with the house. This should have been corrected.

Van Kempen mentioned that the garage was permitted in 1993 so it has been 22 years and there has not been a issue with it during those 22 years. My concern is on the opposite side of the road at some point in the future that could be developed and then the garage being this close to the road right of way could be an issue. It does not seem possible that the township road would be re-aligned to give you that 20' setback. It does not make sense that a 20'/10' mistake should have been made.

Krueger expressed that this is a difficult one since it has been there since 1993.

Christenson commented that to bring this into compliance, a portion of the garage would have to be removed and that makes the garage nonfunctional to house a vehicle.

Tolle explained that the garage was 26', so you can get a truck in it and the hitch is close to the door. The other end at one point in time was a hot tub room and an office space. That was torn out and a utility room was put in it. As the contractor, I was unaware that I was hooking on to an illegal structure. Did check to make sure it was permitted.

Thomas Straiton asked when the road setback was started. Is this a new rule and was it in effect in 1993?

Buitenwerf explained that the road right of way setback has been in the ordinance since 1991 and would have to go back to see if it was there in 1971 when the ordinance was first adopted.

Straiton explained that they did not get a notification of anything before that garage was built.

Grob commented that the original permit stated that the garage would be built 20' back from the road right of way. So someone had to realize at that point that the garage should have been built at the 21' as indicated on the permit.

Christenson asked if anyone from the township visited you regarding the garage being in the road right of way.

Straiton said no they hadn't.

Krueger asked if the garage was built by the homeowner or a contractor.

Straiton replied that it had been built by a contractor.

Johnson explained that moving to part two of this application there is a document that the older structure was to be removed once the new house was finished.

Tolle explained that the original plan was to build the new cabin and the old cabin would be torn down and a new one would be built at the 100 foot setback 700 square feet total. Mr. Straiton would like to keep the original cabin as long as he can and it does not meet the 700 square foot limit, but the cost to move back and build new would be \$105,000. They are trying to buy some time and keep what they have and are looking for suggestions.

Straiton explained that the original cabin was built in the early 60s and was not completely finished inside until the 70s. We added 10' on the back and talked to the township about it and came to the County for the permit. At the time it was built, I was told the setback from the lake



was 50'. In 1996 we had a new septic system installed and this has been our summer home for many years and would like to retire to in the summer time. Would be willing to take the east side addition off to keep this where it is.

Tolle explained that taking that addition off could be done.

Grob asked if this old cabin met the 100 foot setback, the side lot setback and the 700 square feet, would this be allowed under the new ordinance.

Buitenwerf replied yes with a permit.

Christenson asked if you tore off that addition to this cabin what would that bring the square footage down to.

Tolle stated that even with the addition removed this would still be nonconforming.

Christenson asked that since there is a new cabin, why not stay there.

Straiton explained that there are two lots there and the kids are building the new cabin for their retirement.

Johnson opened the discussion to public comment.

Karl Luomala explained that the garage was built by Nevis Lumber.

Johnson closed public comment.

Van Kempen commented that under the ordinance, this old cabin could stay and be used for storage, but the plumbing would have to be removed.

Christenson asked if Mr. Straiton had agreed to remove the old cabin when the permit for the new was taken out.

Straiton replied that he had not agreed to that.

Tolle interrupted that as the builder he was aware of that and had discussed it with Environmental Services. This was all communicated to this family and agreed upon at that time.

Grob commented that the new septic system was constructed with that in mind.

Christenson made a motion to approve Part 1 of the application as presented.

**Finding of Fact Part 1:**

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 portion of the structure that does not meet the ROW setback has been in place since 1993. None of the five property owners beyond this structure on this dead-end road have complained about its setback during the structure's life. The structure is set back 10' from the ROW and the traffic volume and speed on this road is satisfactorily safeguarded by a 10' ROW setback. The structure complies with the 100' OHW setback.

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 on a residence is a reasonable property use (especially during the winter). As the structure was enlarged on the south side 36' x 40' in 2014 with the addition of residential space to the garage, it is not feasible to move the structure further from the ROW. It also is not feasible to require the north 10' of the garage to be removed as that would render the garage too small to be used as such.

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

Yes ( X ) No ( )

Why or why not? The land owner acted in good faith once the permit was issued and got the contractor.

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 builder which was confirmed by the neighbor.

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

Yes (X ) No ( )

Why or why not? The locality's character consists of single family seasonal and year-round homes. A 10' ROW setback instead of the required 20' setback on a dead end road with only five homes beyond this one on the road will not change the locality's character.

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

Yes (X ) No ( )

Why or why not? The difficulty is the garage was built in 1993, the attached home was built in 2014, and the property was not surveyed until after these events. Economics were not cited as a difficulty in the application.

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? The applicant acted in good faith and thought he was legal when the garage was built. There was a lack of communication between the homeowner and the County.

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

Yes (X) No ( )

Why or Why not? Yes. Permits were obtained when the garage was constructed in 1993 and also when the house addition was made to the garage in 2014.

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

Yes (X) No ( )

Why or Why not? The applicant did not.

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

Yes. A 36' x 40' home addition was made to this original garage in 2014. The likely value of the home/garage structure is \$450,000.

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

Yes. The structure was finished before it was determined that it did not meet the road ROW setback.

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

Yes. The area consists of single family year-round and seasonal residences that are of a similar size and OHW setback to this structure. This structure appears to be the closest to the ROW as the other neighboring structures seem to comply with the ROW setback.

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. The cost of altering the structure by moving it ~10' to the south or removing the portion of the garage encroaching on the 20' ROW setback would outweigh the benefit the County would gain – which is an added 10' ROW setback on a dead end road where vehicle speeds are slow and only five houses lie beyond this property on the road.

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

No. The garage is 10' from the ROW edge. It is not in the ROW. The property sits on a dead end road and there are only five lots further down the road – none of whose owners have objected to this garage since it was built in 1993. Traffic speeds are slow enough that sight lines and width along the road are not negatively affected by the structure being at 10' instead of 20' from the ROW. The cost of moving the structure since the 2014 addition was made or removing the portion of the structure encroaching on the ROW setback would greatly exceed the gain the County and neighbors would realize from gaining an additional 10' in ROW setback for sight lines and vehicle/passenger safety should there ever be a chance of a vehicle running into this structure.

Krueger seconded the motion.

Motion carried unanimously 5 – 0.

Grob made a motion to deny Part 2 of the application and accept the staff report findings of fact.

Findings of fact Part 2:

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 guest cottage exceeds the allowed square footage for such by 486 sq. ft. and is 4' from the side lot line and 86' from the ordinary high water mark. A new separate residence was constructed on the lot in 2014 and the applicants were made aware at that time that there could only be one residential structure on this lot. The new residence could have been built larger to provide more living space square footage that met the OHW setback.

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 brand new 36' x 40' house addition to a garage built in 1993 on the lot that provides ample living space. The lot also has a well and septic system and can be used to access the lake recreationally as well as enjoy the outdoors and scenery – which are all reasonable uses of the property.

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

Yes ( ) No ( X )

Why or why not? The structure could be moved back a little bit to a conforming location and reduced in size to bring it into compliance with the 700 sq. ft. threshold. Many lots have nonconforming structures such as this one on them. The lot is level and lacking obstructions to being able to move the structure. Thus, no circumstances unique to the property were observed during the lot viewal.

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 applicants presented information to the County as the new residence was being built on the lot showing that they were aware that two residences that both exceeded 700 sq. ft. could not be co-located on the lot. The applicants built a new residence attached to the existing garage in 2014 and could have either built it to comply with the guest cottage size provisions or built it large enough to accommodate living space needs such that this older structure would not be needed as a guest cottage. The landowner created the difficulty.

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

Yes ( ) No ( X )

Why or why not? The locality's character consists of single family seasonal and year-round homes – with one home per lot. Allowing two full size homes on this lot would exceed the dwelling unit density of the neighborhood and thus not maintain its character.

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

Yes ( X ) No ( )

Why or why not? Economics were not cited as a difficulty in the application. The application makes no claim as to any practical difficulty existing.

Christenson seconded the motion.

Motion passed unanimously 5 – 0.

**Variance Application 19-V-15 by Thomas Vanderwal:** Lot 13, Block One (1) Welle's Channel Shores, Section 15, Township 140, Range 35, Todd Township on Fishhook Lake, a Recreational Development Lake. Parcel 27.45.01300. Applicant is requesting a variance from Section 502.2 of the Shoreland Management Ordinance (SMO) for a proposed waterward addition and lakeside deck replacement on a residential structure built after the SMO was enacted that does not comply with the required 100' ordinary high water mark (OHW) structure setback.

Tom Vanderwal explained that the addition is 4' x 8' for adding on to what should have been done when the house was built for a stairwell to enter the basement level from the main level. The addition is an entry and two or three steps down and then you enter the basement. Behind the chimney, there is an old laundry room that is 54" x 7 ½ feet that will be the stairwell down to the platform. After consulting with several contractors, we will need 11' to descend 8'. Our current stairwell did not meet code and was extremely steep. This is the plan we came up with to keep the impact on the inside of the house to a minimum.

Sue Vanderwal commented that with the way it was built, there is no deck there and the water drains down there rotting everything.

Van Kempen asked if the roof line would be extended with the addition.

Tom Vanderwal explained that there were two ways of doing it, one by extending it or trying to make a dimension that looks the same as the current gable. There will be a valley there and if need be we will put a down spout to run the water to the west. Not quite sure what is going to work best. The deck will have two steps down but would like to raise the other deck to make them both level.

Christianson asked if you are going to raise the deck, then there would be a step up from the garage.

Sue Vanderwal explained that there are two steps going to the deck from the garage currently.

Johnson opened the discussion to public comment.

No public comment given.

Johnson closed public comment.

Christenson made a motion to approve the application as presented and accept the staff report findings of fact.

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 house is ~375' from the main shoreline of the lake and the addition is only 32 sq. ft. in size. The addition will not encroach closer to the OHW than the existing structure and then, the setback is to the harbor and not the actual lake.

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

Yes ( X ) No ( )

Why or why not? A previous owner built the structure and deck too close to the OHW in the harbor. Rebuilding the existing lakeside deck and making a 4' x 8' addition to allow stairwell access to the basement are reasonable uses of the home/property.

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

Yes ( X ) No ( )

Why or why not? There is a large, long harbor on the lot that runs ~300' back into the lot from the lake's shoreline. Few properties have such a harbor.

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 harbor creates the practical difficulty and the previous owner who constructed the house and deck too close to the harbor also contributed to it. The applicant recently purchased the property in June 2014 – well after the harbor and house were on the lot.

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

Yes ( X ) No ( )

Why or why not? The locality's character consists of single family seasonal and year-round homes. The deck already exists and the proposed addition has the same footprint as a sheet of plywood and will not extend any closer lakeward than the existing structure.

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

Yes ( X ) No ( )

Why or why not? Economics were not cited as a difficulty in the application. The difficulty is caused by the harbor having been constructed a long time ago and a previous owner having constructed the house not at the required 100' setback from the OHW in the harbor.

Grob seconded the motion.

The motion carried unanimously 5 - 0.

**Variance Application 20-V-15 by Eric and Kathleen Gibson:** Part of Government Lot 1, Section 36, Township 141, Range 34, Lake Emma Township on Little Sand Lake, a Recreational Development Lake. Parcel 16.36.00120. Applicants are requesting a variance from Section 902 of the Shoreland Management Ordinance (SMO) to move earthen material in the bluff impact zone (BIZ).

Kathleen Gibson explained that they had purchased the property about a year ago and noticed that the retaining wall that holds the pathway down to the lake is failing and rotting. We would like to replace that path with large boulders which would require moving in a large amount of dirt to ease out that bottom area. We would like it to look like it belongs there which is the reason we chose the boulders. We will be hiring someone to do the work.

Christenson commented that after viewing the project, it seems it would be more environmentally friendly. In walking down by the lake, there seems to be ample grass so there will not be as much run off into the lake.

Johnson pointed out that the contractors plan was to back slope this trail back to the bank.

Krueger mention that while this is under construction would there be a process in place to prevent erosion.

Gibson replied that this would be a three day project and will be laying down mat for the vegetation and grass to grow along the path and is using a quick growing grass to prevent erosion.

Johnson noted that the contractor assured us of his warranty that he is not gone until the vegetation is established.

Van Kempen stated that this seems like a reasonable request. The contractor seemed knowledgeable about erosion and vegetation with the guarantee.

Johnson opened the discussion to public comment.

Clair Schwalm, a neighbor, spoke regarding the retaining wall that he believes has been there for 30 years and is showing signs of deterioration and if it remains as it is, there will be no choice but to repair this retaining wall. It would be a lot easier to repair it now before the hill collapses. In a conversation with the contractor, I had expressed the concern about how far from up on top this erosion could take place during construction. At the top it is possible to put a little swale in there so it will run down where there are ferns and they are tough. That will be a good safety net and we also talked about draining the parking area that is behind the house so that it will go through the woods instead of taking a natural run to the lake. The run off down the path is going to be localized. As a neighbor, I am in favor of this project.

Johnson closed public comment.

Van Kempen made a motion to approve the application as presented and adopt the staff report findings of fact.

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 existing retaining wall is in need of repair and the proposed project seeks to maintain the stability of the access path by improving the grade and slopes involved and stabilizing the paths down slope face through a mixture of vegetation and rock. Preventing erosion and maintaining the slope's integrity is in-line with the ordinance's intent.

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

Yes ( X ) No ( )

Why or why not? The ordinance allows an access path to the lake and repairing the retaining system used to hold the path's down slope face is a reasonable request and use of the property.



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

Yes ( X ) No ( )

Why or why not? This path is located in a bluff and transects the slope across the grade – which is the desired means of placing a path in a bluff. The ordinance requires a variance for any earthen material movement 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 bluff and ordinance language were not created by the landowner and the access path was created by a previous landowner.

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

Yes ( X ) No ( )

Why or why not? The locality's character consists of single family seasonal and year-round homes. Access paths are a common accessory feature on residential riparian lots. Thus, the proposed repair work to the down slope face of the access path will not harm the locality's essential residential character.

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

Yes ( X ) No ( )

Why or why not? The difficulty is caused by the path being located in a bluff and the ordinance requiring a variance for any earthen material movement in a bluff impact zone. The current retaining wall is in need of repair and denying the variance would jeopardize the slope's integrity as the wooden retaining system will continue to deteriorate. Economics were not cited as a difficulty in the application.

Krueger seconded the motion.

The motion carried unanimously 5 – 0.

### **Planning Commission:**

**Approval of Minutes:** May 26, 2015 meeting.

Christenson made a motion to approve the minutes as presented.

Grob seconded the motion.

The motion carried unanimously 5 – 0.

**Old Business:** None

**New Business:** None

**Miscellaneous:**

**Communications:**

Buitenwerf reviewed that the Wright Estates Plat that received preliminary approval is stalled waiting to hear what is going to happen with the final plat. There have been some issues with turnover with the surveyor that did the work.

Buitenwerf explained that the Section 702 amendments that were made in February regarding nonconforming structures need some refinements in light of it having been out there for several months. We are seeing some things that exist and the need to tighten up some loopholes that we did not realize the language created. We are working with legal counsel on proposed new language. We will be presenting that to the County Board some time this summer for consideration.

**Adjournment:**

Grob made a motion to adjourn the meeting.

Van Kempen seconded the motion.

The motion carried unanimously 5 – 0.

Meeting adjourned 7:35 p.m.

Respectfully submitted,

Barbara Barth  
Recording Secretary