

HUBBARD COUNTY

Planning Commission/Board of Adjustment Meeting Minutes

6:00 p.m. on Monday, August 28, 2017

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

Grob 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: July 24, 2017 meeting.

VanKempen made a motion to approve the minutes as presented.

Johnson seconded the motion that carried unanimously 5 – 0.

Old Business: None.

New Business: None.

Board of Adjustment:

Approval of Minutes: July 24, 2017 meeting.

VanKempen made a motion to approve the minutes as presented.

Krueger seconded the motion that carried unanimously 5 - 0.

Old Business:

Variance Application 27-V-17 by Duane and Cheryl Schommer: Lot 3, Block 1, Pineoak Shores, Section 14, Township 139, Range 35, Straight River Township on Moran Lake, a natural environment lake. Parcel 25.40.00300. Applicants are requesting a variance from Sections 507.2 and 902 of the Shoreland Management Ordinance for a mobility path to access the lake that exceeds the 4' maximum allowed width for such and will require excavating more than the permissible volume of earthen material in the shore impact zone and a steep slope.

Grob noted the Schommers were at the Board of Adjustment meeting in July. The Board was not favorable to the full extent of the changes proposed and the application was tabled for them to consider alternate approaches for the path and the ATV.

Duane and Cheryl Schommer, 13608 Blue Heron Trail, Menahga, MN, presented the variance application. We provided another estimate for the side where the existing path is and another estimate on the chair lift. It still exceeds our financial capabilities.

Grob asked to explain the new proposal.

Cheryl Schommer responded we would like to put the path where you suggested last month. It would be 70' of concrete reinforced with wire and a pad at the bottom. An estimate was supposed to be submitted.

Grob responded I have it. I just cannot see it well.

Cheryl Schommer replied the path will be on the side where the Board suggested. He will excavate the dirt from the existing path and put in concrete with a pad at the bottom. I have not seen the new proposal.

Grob asked if the new proposal is to build a platform at the bottom of the hill.

Cheryl Schommer replied yes. Large enough for him to turn around.

Krueger noted when we were out there the second time, we noticed a fair amount of erosion with the rock. Are you planning on putting that into pavement?

Duane Schommer responded yes.

Krueger asked have you had any feedback from the neighbors on that side.

Duane Schommer responded I spoke with Shane Mahowald and he said he has no problems with it.

Krueger remarked the reason I asked is because it looks as though it goes across the boundary.

Duane Schommer replied there is a pipe in the woods, on the right hand side, and we are at least 10' from the side lot line.

VanKempen remarked if it the pipe that I saw, it was only a couple feet from the lot line.

Duane Schommer replied okay a couple feet then.

VanKempen asked when was the lot purchased.

Duane Schommer responded 2005 or 2006.

VanKempen asked did the path exist at the time of purchase.

Duane Schommer replied yes.

VanKempen commented the reason I asked is, per the ordinance, the path is to be 10' off of the property line with a maximum width of 4'.

Duane Schommer replied we want a 6' path. When I spoke with Shane Mahowald, he said he has no problem with the location. In fact, he gave me his card to let him know the decision of the meeting.

Petersen asked if the proposal is to change the entire path to concrete.

Duane Schommer replied no - Only the 75' that is proposed in the estimate.

Johnson asked are you going to stay with the same contour as the hill or are you cutting into the hill?

Cheryl Schommer replied he was going to make it more of an angle so it is not so steep.

Duane Schommer commented as you can see, the sugar sand erodes every time it rains. I believe putting the concrete in there helps save it from erosion.

Grob asked why can't you use the existing path that is there, and park the ATV at the crest of the hill, and utilize a chair lift?

Duane Schommer replied the chair lift is over \$50,000.

Grob commented the chair lift is for 150'.

Cheryl Schommer explained the new estimate for 50' is still \$54,000. The gentleman told me the distance is not going to make a difference in cost. They will still be coming out, and the materials being used along with hiring an electrician are the factors. He is the only one in the entire state.

Grob stated he is charging the same whether you do 10 sections, 15' long or only 3 sections.

Cheryl Schommer replied correct. That is what he told me. It was only going to be about \$10,000 less which is pretty high and out of our league.

Andrew Burton, Septic Solutions, 45242 S. Shell Lake Road, Osage, MN, presented the variance application with the Schommers.

Burton explained we moved everything over to the opposite side, and have the same exact turnaround right at the base. There are possibly two trees that may need to be removed. The grade of the existing path will need to be smoothed out to make it accessible to his ATV. We will provide rip-rap to maintain erosion.

Petersen noted you are wanting to cut into the slope of the hill; therefore, you will need to retain on each side. Is that your plan?

Burton responded there will be about 30' that will need to be held back for erosion control with the rip-rap through the slope. We are going to make the slope more gradual.

VanKempen remarked my concern is if the area of the current path, down towards the lake, is entirely on your property and if it meets the 10' side lot line setback.

Duane Schommer responded it is on our property.

VanKempen asked if has been surveyed.

Duane Schommer replied no.

Cheryl Schommer commented it was surveyed when we bought it.

Duane Schommer explained it was surveyed when we bought it. You can see the post with the tape on it and the other post is located by the electrical box.

Grob asked if Shane Mahowald recognized the posts as the property line.

Cheryl Schommer replied yes. He is the one that showed us where they were at.

Duane Schommer commented their property is odd shaped. It is narrow and then wide through the front. Kind of like a piece of pie.

Johnson asked Burton if he is comfortable with the setback.

Burton replied as far as setbacks, I assumed the existing path was inside the setback. I have not measured from the posts to verify.

Grob noted you are asking for a 6' wide path.

Burton responded yes. A concrete path approximately 75'.

Grob asked what the cost is for putting in the concrete and the turnaround area.

Burton responded the cost is \$7170. This includes the site work, concrete path and rip rap.

Krueger noted at times we have approved accessory structures for disabled people, and we place a condition on the structure so that when the property is no longer owned by the disabled, it would need to be removed. Can we do something like that?

Buitenwerf replied you could ask for this to be restored to prior conditions if they were to ever sell the property. Although, it would be a lot of cost and work. Making sure that it happens would be another issue.

Grob asked for public comment.

No public comment was given.

No written correspondence was submitted.

Grob closed public comment.

Petersen asked Buitenwerf if the retaining work of the property needs to meet the 10' setback.

Buitenwerf responded the path would need to meet the 10' setback. We have not seen the detail in what is being presented in the plan that pertains to the retaining wall. If it is a significant retaining wall, it may be required to meet the 10' setback as well to ensure that it would be entirely on the property.

Grob asked for clarification on the platform area.

Burton replied it would be a flat area of 20' x 14' with a two percent slope to shed rain water.

Grob asked what is the construction material?

Burton replied concrete.

Grob asked for clarification on the retaining structure.

Burton responded we plan on using natural rock to hold erosion back.

Grob asked how high would the retaining wall be?

Burton responded 4' tall.

Grob noted it seems to me the bank is steeper than that. Is it steeper where the current dock is?

Duane Schommer responded it is steeper on the other side.

Grob noted you are cutting in 14'.

Burton replied I believe I put 5' on the site plan. It is not a retaining wall that is nearly vertical. It will retain most of the slope. I will cut it so it looks natural.

Grob asked if will be rocks piled up. Will you need to slant it back?

Burton responded it will be slanted at a 1:1 grade with a 45 degree slope.

Grob noted there is more construction than just digging out the bank. It seems an excessive amount to disrupt the shoreline on a natural environment lake. Allowing a concrete path all the way down to the lake with a concrete platform seems to be excessive. I believe there are other alternatives. Are you totally incapable of walking down a few steps?

Duane Schommer replied yes. I am not supposed to be as I have Agent Orange and congestive heart failure. I am a disabled veteran.

Grob noted I do not see anywhere in the documentation that your physical condition is such that the doctor says you cannot walk steps.

Duane Schommer responded according to the Veterans Administration I am 100% disabled and I cannot climb the hill.

Cheryl Schommer commented he has chronic artery disease as well. It is more than just the heart.

Grob remarked I do not think you answered the question. Are you incapable of walking up and down the steps?

Duane Schommer replied yes.

Cheryl Schommer commented he takes medication for the chest pain and he is supposed to avoid that type of climbing.

Grob remarked I have those too.

Duane Schommer responded I did not wish this disease upon myself. I got it when I was on tour in Vietnam.

Johnson asked if elevation on the map was 4'.

Grob asked what is the contour level of the red line. Does it indicate 14'?

Buitenwerf replied yes.

Johnson noted it goes from 1410' to 1406'. There is only 4' down there. I wanted to mention that the entire property is mowed down by the lake.

Duane Schommer responded my son mows it.

Johnson asked if the difficulty had to be unique to the property or unique to the situation.

Buitenwerf responded it pertains to the property.

Johnson made a motion to approve the variance application with the following condition:

1. The mobility access path to the lake must be 10' from the property line.

2. A no mow zone of 0' – 75' landward from the ordinary high water mark the entire width of the lot, except for the access path, must be created and indefinitely maintained.

3. The existing lakeside stair system and dock must be moved to the new mobility access path location.

Kruger seconded the motion.

Findings of Fact:

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

Yes (X) No ()

Why or why not? The condition of the buffer zone will keep the path in harmony.

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

Yes (X) No ()

Why or why not? The hill is too steep.

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

Yes (X) No ()

Why or why not? There is a 29% slope with ~14' of rise that runs the full width of the lot along the shoreline. The slope is made up of very erodible sugar sand.

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 slope and structure location was there when it was purchased.

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

Yes (X) No ()

Why or why not? Improving the shore impact zone with a no mow zone.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as the sole difficulty.

The motion passed 4 – 1 with Grob voting nay.

Variance Application 28-V-17 by Shawn Gray: Lots 1 – 3, Block 2, Kola-Teepee Park, Section 10, Township 141, Range 35, Arago Township on Hay Creek, a tributary. Parcels 02.38.01000 and 02.38.01200. Applicant is requesting a variance from – Part 1: Section 904.6 of Shoreland Management Ordinance (SMO) to exceed the maximum 25% impervious surface area allowed on a lot. Part 2: Applicant is requesting a variance from Section 701 of the SMO to expand the legal nonconforming restaurant/bar use by enlarging the customer parking lot area.

Grob noted the application was discussed at the previous meeting. It was deferred with the requirement that the applicant provide a stormwater plan approval from the Hubbard County Highway Department and Arago Township approval pertaining to the entrances and exits of the parking lot.

Brian and Kathy Gray, 15803 County 40, Park Rapids, MN, presented the variance application. We received a letter from Environmental Services Office requesting the detailed drawing of the parking lot. It will have the exact measurements of everything. You also have the letter of approval from both the Hubbard County Highway Department and Arago Township. The first motion of the proposal to exceed the impervious surface for the parking lot is to promote the safety of the patrons and the drivers on County Road 89. We have been continually analyzing ways to improve the business and customer experience. We are attempting to use business property that is zoned commercial to create a parking lot to alleviate the safety concerns that we all have. You can see from the County Engineer's letters that he is concurring with the proposal and suggestions. In the previous meeting, we had a neighbor concerned with stormwater runoff. That is why the stormwater retention area was created. According to the County Engineer, he feels that it is an adequate retention area for the surface area that we are proposing. Upon your meeting on Thursday, Bill was still concerned about the green area to the right. That water has always flowed down because it goes that direction. If it would make things appeal differently to any of our neighbors, we would certainly take the level of the approved area for the pressure mound and continue it level to the township road. We could then slope everything from our property line towards the groundwater retention area. We do not have a problem with that if it is something that would be acceptable. The green area would be sloped towards the groundwater retention line. There was a 22' x 38' building that was removed and remains a green area. If the Board of Adjustment would like to put that on our plan we would not have a problem with it. We are trying to accommodate everyone's concerns. I believe we all understand the reason for the parking lot is congestion, not just from our restaurant, but the other one up the road. You have people parking down the road and people parking up and down the road. We have serious concerns that we are trying to alleviate. We did not create the situation. This is something that we inherited. This bar/restaurant has been in business for at least 40 years. We are simply taking the problem at hand and trying to alleviate it before we have any serious accidents. This will not change Foxy's at all. This does not change our operation. It is strictly an issue of health and human safety. This parking lot would benefit the people of Hubbard County.

Grob asked what the actual dimensions are of the parking lot. I cannot find them with the latest drawing.

Gray replied the area is 50' x 100'. Each square represents 10'.

Grob clarified it is 100' x 50'.

Gray replied yes. Part of the 100' is because of the new pressure mound. It will be approximately 40'.

Grob asked how many parking spots are you adding with the entire parking area.

Gray replied 10 cars would take up 90' of the 100'. Originally the parking lot would have had vehicles parked on both sides. Now with the groundwater retention area, that is not possible. We could run a couple boat and trailer combinations lengthways. As far as pulling over against the property line, you would only have nine or ten parking areas. There is approximately 20'-30' of green space where vehicles could park.

Grob asked what is the estimated number of vehicles.

Gray responded 15 vehicles.

Grob asked if the entrance off of County 89 would be wide open. Are you going to have a fence that will limit the access to a certain width?

Gray responded we will have a fence approximately 20'. The rest will be entrance and exit. There may be people that do not want to utilize the township road.

Grob commented I am asking about County 89.

Gray responded yes there will be a fence extending from the fence that is there already. Just as it was when you were on the lot viewal. It will allow for a couple more parking spots there. The rest will be open.

Grob commented the reason I ask is because I understand the Highway Department said okay with the retention pond. The township was vague about working with them to make sure that the exits and entrances are consistent with the ordinances.

Gray commented their concern was that the exit ramp onto the township road would be far enough up from the County 89 intersection. This way a vehicle with a boat could pull out and down the township road to meet County 89 without blocking the roadway to the township road. We assured them that we would make that possible.

Grob noted the exit would be such that a person could pull out and turn left towards the stop sign. A vehicle with a boat trailer could be lined up with the stop sign and a vehicle turning the corner would not run into them.

Gray responded correct.

Grob asked if the township has stated that is what you needed to do.

Gray replied yes. In the letter, they said that they would work with us to make sure that applicable entrances and exits applications were taken care of.

Grob asked if the Highway Department made any comments about the exit onto County 89.

Gray responded no. First of all, I had the County Engineer there first to make sure they were on board with what was going on. They came out and informed us that we would need a variance to process the request. Because of the way the road slopes, they did not feel as though there would be any visibility problems on that road exiting or entering from County 89. The County Engineer was out about 10 days ago, witnessed the way it is at this point, and they had no troubles with it.

Grob commented they have no visibility or requirements on having a designated entrance/exit. You can have a fairly large area that people can pull off into. Is there anything in the ordinance pertaining to requirements for entrances and exits out of a parking lot?

Buitenwerf responded no.

VanKempen noted during the lot viewal it appeared the exit is too close to the intersection to actually pull a vehicle out.

Gray responded we have talked to the Town Board and told them that we will put the exit exactly where they want it.

VanKempen asked where will the snow removal be put?

Gray responded I would assume we would place it in the green area.

VanKempen remarked you would not want it on the drainfield. I would like to see the parking lot towards Inlet Circle to be considerably lower to accommodate historical rainfall and flooding.

Gray responded if there were to be historical rain that would fill up the retention area, it would flood the parking lot and flow into the green area. Realistically speaking, if we were to have that much rainfall, Hubbard County and everybody else around here has way more problems with water than one little parking lot at Foxy's.

VanKempen remarked the calculation that I saw was 1.7" of rainfall would fill the retention area.

Gray responded I have not seen that kind of calculation. I do not know where that came from. I asked Mr. Girtz if groundwater runoff and storms is calculated in smaller areas like this and he said they calculate that in downtown Park Rapids. Generally speaking, not in these areas. I have to go with the County Engineer that has been here a long time. He is careful making sure Hubbard County does not have any liability aspects. He seems to think everything is fine and that is what we are going with. If we have a substantial rainfall, with or without the parking lot, rainwater will go everywhere.

Grob remarked I do not think his letter reflects any detailed water management calculations. It states he is okay with the storm retention pond as it is as long as if it fills up it will not spill over the road.

Gray responded the area, whichever way we take it from, if we take it all the way from the property line to the groundwater retention area, it will be below center line on County Road 89. It would flow across the parking lot rather than go across County 89.

Krueger asked on a busy night, how many cars do you have parked there?

Gray replied it varies from two to who knows.

Krueger asked what is the most you have seen?

Gray replied we have had 103 cars there. It was at our annual party. That is not a normal thing. We typically have 5 to 30 cars daily. On the weekend it could triple. We are trying to reduce the clutter on County 89.

Krueger noted with those numbers we are not reducing it much.

Gray responded that was a very unusual situation. A typical situation would be 20 – 30 vehicles. If you put 15 – 20 parking lots into the area, it will substantially reduce the clutter on County 89. The other concern that we have when parking in the road and walking to your car may not be a good situation. This is not an economic agenda that we are driving. This is where we are taking a problem that we inherited and we are trying to solve it before we have a problem.

Grob remarked you have no intent to do any restriction for parking on County 89. You are just adding your parking space. If you increase the activities, we are still going to have all of those people parking on County 89 and you are not going to solve the safety issue. It seems to me the real solution ultimately here is if the parking lot can handle your capacity and restrict parking on County 89. That would be the safety issue. You have other parking besides this parking lot. You have at least room for 6 or 8 cars in front of the building and the open area between Foxy's and the trailer. I would think if you wanted to improve this we should be working towards eliminating any parking on County 89. That is the problem we are trying to solve.

Gray responded this is certainly a step in the right direction. If you can park however many number of cars off of the road, you have already taken care of a lot of the problem.

Grob noted with the capacity of the septic system at about 40 patrons, you should have no trouble parking the cars for that number of patrons in the parking lot.

Gray replied you do not have 40 patrons coming and staying overnight. They come and go throughout the day. You could have cars parked here and there. You cannot solve it with "x" amount of spots. Plus you have a fairly amount of traffic going up to the other restaurant. We are trying to do our part to resolve the issue that we did not create.

Johnson commented reviewing the topography it appears the water has historically flowed from that lot into the other lot. If you look at all of the green space around Foxy's, it is the high spot. Everything drains to the one spot between Foxy's and the neighbor to the east.

Gray responded it is traditionally a low spot. Mother Nature will send water there. We are trying to help send it the other way. We cannot be in charge of 100 year storms.

Grob commented it looks as though there was a lot of natural vegetation area which must have held some of the water. That is gone now.

Gray replied there was also the building with the impervious surface that we removed.

VanKempen commented without restricting parking on County 89, I feel that all we are doing is increasing their parking capacity.

Gray responded we have no way of knowing that. We do know that if people are parked ten cars along the side and they have a parking place right up by the building, I would think they are going to park in the parking lot. Our customers have always come and parked along the road. That has been the expected thing for many years. If we create a parking lot, they are going to come and most of the will go into the parking lot. It is an expected commercial use of a piece of property that can be used for that. It is a piece of property that we purchased from Hubbard County to make use of.

Krueger asked looking at the current photo, where these cars are currently parked, is that considered off the highway?

Grob replied that is off the highway.

Krueger responded it appears you can get 20 cars in there. If your typical load is 35, you should have room.

Gray commented if you have a 40 patron restaurant, then you create 35 parking places. The area next to the trailer house is not very easy to park vehicles. There is area along the front, but along the trailer house it is limited.

Grob noted looking at the map, where the last car is parked, is that where the entrance would be to the new parking lot?

Gray replied yes.

Grob remarked traditionally people park like those cars. Only the overflow would go out onto County 89. You have approximately 12 -14 parking spots that are traditionally used. The parking lot is nearly doubling your parking capacity.

Gray responded by extending the fence to the last car you get two parking stalls. Allowing them to come into the new parking lot would perhaps get another 10. If you do not create a place to park a truck and a boat, where do you think they are going to park? They will be parking on County 89. This will allow us to have parking for a vehicle like that.

Grob asked for public comment.

Public comment was given by Bill Wessels, 12741 Inlet Circle, Park Rapids, MN. I live next door to Foxy's. I saw you gentlemen at the site visit. I tried to point out that a portion

of the green area was a nice funnel right down to my property. This is a neighborhood. Hopefully neighbors try to look after each other instead of dump on each other. If this green area is where you are going to put your snow, all of that snow is coming from that whole lot to that area.

Grob interrupted and commented not to debate with the applicant. State your issue and they can respond.

Wessels responded I am sorry. As far as the lay of the land, he filled in the other side. It used to be a natural flow. We never got their water. I have lived there over 30 years. We do not need the water or their snow melt. You have seen my driveway. It is low and I do not need their water on it for half of the year. This is what is going to happen unless he runs all of it to the other side. I do not want his water. It is as simple as that. This water flowage is ridiculous.

Grob noted you have lived there a long time.

Wessels replied yes.

Grob commented are you contending this whole area has never flowed over to the buffer area?

Wessels replied no. They were always on the same level. It never flowed towards my place.

Grob asked it never went into the buffer area in between? If you went out there now, they filled in part of the parking lot? There is a ditch down there. Has that big ravine always been there?

Wessels replied no. He filled in the other half of the lot. The only low area is where it goes down to my lot.

Grob asked if the big ditch was there before.

Wessels replied no. If they are going to fill it in and slope it off to the retention area, I do not have any problems with that.

Gray responded that was the proposal at the beginning of the meeting. We could bring the level of the pressure mound the same level as the township road. We would take it from the property line and bring all the water back towards the holding area.

Wessels remarked I just want to know that I am not going to be getting your water.

Gray responded we are willing to do that. That is not a problem.

Wessels clarified you are going to berm it up all the way to my property line and the flow will go towards the holding area.

Gray responded correct.

Public comment was given by Darlene Kramer, 12847 Inlet Circle, Park Rapids, MN, who commented I live on the township road and I have major concerns about the water flow for me being able to get to my home. After the last meeting, the remaining area of the lot was filled. I did not know that there was permission to do so. I was at the township meeting where the driveway was discussed. I do not know what the new ordinances are that they have about driveways, but I want to make sure that they are followed. They said at the meeting they had changed their township ordinances. I too have concerns in where the water is going. All of the water did flow where the old house was. I am worried that I am not going to be able to get to my house.

Grob asked where do you live on Inlet Circle?

Kramer replied 12847 Inlet Circle.

Grob asked would it show up on the drawing?

Kramer replied I own 5 lots on the creek and the property across the street.

Public comment was given by Cory Williams, (Shawn Gray's business partner), Park Rapids, MN. Brian and Shawn were both out of town and I was the one that went to the Arago Township meeting. I wanted to clarify a few things. As far as the driveway was concerned, they told us that we required to have a permit. They were not real interested in where the driveways were placed as long as they were safe. When I asked them specifically where they wanted us to put the driveway, they mentioned there will be a permit required and there is now information in writing that will be dictated to us. The new ordinance will tell us where the driveway goes. As far as the parking lot, I wanted to be sure that we are clear. The parking right in front of the bar along County 89, from what I have seen over the last 5 years, there hasn't really been a problem. The problem is on our busy nights, like Taco Tuesday or on Saturday. The issue is the extra customers - the 10, 15 to 20 cars that we get on a regular basis. The reason we feel the importance of the parking lot is that we are wanting to restrict the parking on County 89. We do not feel the parking right in front of the bar is an issue. We will restrict the parking area on County 89.

No written correspondence was submitted.

Grob closed public comment.

Grob noted it has been brought to our attention that there have been some fairly large crowds, loud music and some neighbor complaints from a recent event. The concerns that we are hearing from the Board is that this parking lot is merely going to provide opportunity for a lot more activity and noise. It is not clear to me with your current nonconforming, but legal situation for the bar/restaurant that outdoor music is not allowed activity. I would like comment from the Environmental Services Office regarding this. What is the baseline condition in which the bar/restaurant can operate?

Buitenwerf responded the restaurant/bar use is a legal nonconforming use that is currently allowed to operate in the confines of that structure. At the July meeting, there

was a statement made by Shawn Gray that there were no outdoor music events taking place on the property. Receiving the information that we did, that there was an outdoor music event held a few weekends back, would indicate that the use is expanded to the outdoor space of the property which would require a variance in order for that to be allowed.

Grob noted for them to continue that kind of outdoor activity that would need to be added to the variance or would we have to place a condition on this approval to prevent that from happening?

Buitenwerf commented you can address it by allowing through an approval as part of this variance, otherwise currently it is not allowed. There would not be a condition that would be needed to say that it should not occur. Currently that is the default.

Grob clarified if we were to proceed to approve the parking lot as proposed, any other activities that are inconsistent would be handled through your office as part of enforcement. We would not need to put that on as a condition?

Buitenwerf replied correct.

Grob commented normally under the conditional use permit, that type of stuff would be covered. I believe the parking lot is the right thing to do. It can be a bad situation having all of the cars parked on County 89. Having the parking area, like they are proposing, to get the traffic off of County 89 is the right thing to do. I think they addressed most of the issues. I wish there was a way that we could restrict parking on County 89 or Inlet Circle. I know we cannot do that. I wish there was a way that you could take the initiative to get the County to do that. That is the problem that we are really solving. We are taking the risk of runoff to a neighbor, we are taking the risk of the stormwater retention pond not being large enough and we are adding all kinds of impervious surface. Those are all the wrong things to do next to a stream. I think we are willing to give those if there is a way to solve the safety problem. Given the activity and the size of your septic system, you should be more than adequate to cover.

Williams commented that is one of the things that we discussed with Bucky Johnson at the Arago Township meeting. He agreed the signs would help...the "no right turn" and the "no parking" signs on County 89. He said they could not require those signs to be put up. The Department of Transportation had to come out to review it. He does have a spot where he could order those signs and we could put the signs up. I just wanted to be sure to get approval before we ordered them. We just have to be sure that they are on our property.

Grob commented if we were to approve the application, on good faith we could expect you try by signage to stop parking on County 89.

Gray commented we only have control of our property. We do not have control of County 89.

Grob remarked if you park on County 89, you cannot see around the bridge or over the hill. When you try to pull out, it is not a safe condition. I am very much in favor of this on the basis of something being done on to limit the parking.

VanKempen noted I understand that the Township can allow “no parking” signs on their own township roads.

Williams said I believe we were talking about the entrance and the people going the wrong way down Inlet Circle.

VanKempen noted I do believe you are correct with the signage on the County Road. It would need to be approved by the Department of Transportation.

Williams asked if I wanted to place sign on the neighboring property, would I still need to go through the County?

VanKempen replied yes. That is still road right-of-way.

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

1. An earthen berm must be installed along the east property line so all stormwater generated on the property around the customer vehicle parking lot flows into the stormwater retention area shown on the application’s stormwater management plan.
2. Arago Township must approve the vehicle entrance onto Inlet Circle.

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? It is a grandfathered in business and we are trying to make it a safer area to allow more parking. It is in harmony as the applicant have indicated an interest in pursuing approaches to limiting the parking on County Rd. 89.

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

Yes (X) No ()

Why or why not? You are approved for 40 people. That could be as many as 40 cars. This will help to get some of the cars off of County Rd. 89.

3. Is the stated practical difficulty due to circumstances unique to this property?
Yes (X) No ()

Why or why not? It has been there 40 years and grandfathered in as a nonconforming 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? It is a grandfathered business that is there.

5. Will the issuance of the variance maintain the essential character of the locality?
Yes (X) No ()

Why or why not? It will not change it. It will improve it by trying to get the cars off of County 89.

6. Does the stated practical difficulty involve more than economic considerations?
Yes (X) No ()

Why or why not? Economic conditions were not cited in the application as being the sole difficulty.

The motion carried unanimously 5 – 0.

New Business:

Variance Application 29-V-17 by Donald Stockler and Gillian Wallace: Lot 11, Block 1, Woods 'N Shore, Section 22, Township 143, Range 34, Lake George Township on Lake George, a recreational development lake. Parcel 17.39.01100. Applicants are requesting a variance from Section 902 of the Shoreland Management Ordinance to excavate a portion of a permanent ice ridge.

Donald Stockler and Gillian Wallace, 15123 80th St. Milaca, MN, presented the application. We are here for a variance to remove a section of the ice ridge. We would like to remove 5.2 cubic yards of the ice berm in order for us to have a roll-in dock.

Grob asked how deep is the ice ridge?

Stockler responded 6' – 8'.

Grob noted it is fairly large, but not very high.

Wallace replied correct.

Grob noted this is an unimproved lot. Do you intend to build on it at some point in time?

Wallace replied yes.

Grob clarified the lot is 225' wide and over 325' deep.

Wallace replied correct.

Johnson noted it did not seem like a historic ice ridge. It was further away from the lake like it was an old shoreline and it is mainly rock. If you look at the lakeshore, there are no rocks.

VanKempen asked are you going to use the existing rocks for to keep the slope in place?

Wallace replied yes.

VanKempen clarified you will be going from the landside of the ridge to the slope of the water?

Wallace replied correct.

Grob asked what is the distance from the lakeside of the berm to the water?

Wallace responded 6' – 8'. The water is very low at this time.

Grob asked for public comment.

No public comment was given.

No written correspondence was submitted.

Grob closed public comment.

Johnson made a motion to approve the variance application with the following condition:

1. An earthen berm must be placed waterward of the ice ridge cut as shown on the Variance application site plan.

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 owners will be creating a 5" berm to prevent any runoff to the lake.

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

Yes (X) No ()

Why or why not? Being able to walk and use a rolling dock 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 rock ridge has been there forever.

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

Yes (X) No ()

Why or why not? Geologists may know the reason for the rock ridge.

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

Yes (X) No ()

Why or why not? The neighborhood is residential. This property will be residential.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as the sole difficulty.

The motion carried unanimously 5 – 0.

Variance Application 30-V-17 by Wayne and Sandra Aamoth: Lot 13, Block 3, Pine Island Estates, Section 29, Township 140, Range 34, Henrietta Township on Long Lake, a recreational development lake. Parcel 13.49.02100. Applicants are requesting a variance from Section 702 of the Shoreland Management Ordinance for a proposed alteration to a nonconforming residential structure located in a shore impact zone.

Wayne and Sandra Aamoth, 1328 S 7th Street, Fargo, ND 58103, presented the application. We would like to convert a three season porch into part of an existing kitchen. Basically expanding our kitchen within the same footprint of the existing foundation. We are not looking into any excavation. We want to bring the roofline out to the same height to the edge of the flat roof on the porch.

Johnson asked Buitenwerf if this was approved, would he need a variance to fix the foundation if he found it was out later it was in need of repairs?

Buitenwerf responded if the foundation was in need of repair, that would be allowed through the permit being issued for the project.

Grob asked if he was not changing the roofline, would he still need the variance?

Buitenwerf would allow the entire structure to be reconstructed by permit as long as it kept the same three dimensional space that it occupies at the present.

Grob asked if he was not changing the roofline, he could do everything else that he wanted to do inside?

Buitenwerf replied internal remodeling is allowed without a permit.

Grob clarified it is the roofline that is driving the variance?

Buitenwerf responded yes.

Krueger commented changing the pitch of the roof appears to be an improvement. The flat roof runs towards the lake.

VanKempen commented during the lot viewal, we commented that the structure would not be coming any closer towards the lake.

Aamoth replied we are staying within the footprint and not expanding.

Grob asked for public comment.

No public comment was given.

No written correspondence was submitted.

Grob closed public comment.

VanKempen made a motion to approve the variance application as presented 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 lot is substandard in size and the cabin predates the ordinance and is located at a 32' OHW setback. Only the roof style over the three-season porch is changing/increasing and then only by ~ 4 1/2' in additional height. The aesthetic impact of the increased height will be negligible and barely noticeable when viewed from the water. Impervious surface area will not increase and the reoriented roofline will allow for better snow shedding in the winter and the possibility of directing more rain water away from the lake than the current roof sloping toward the lake provides.

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

Yes (X) No ()

Why or why not? The cabin was constructed prior to the ordinance at a nonconforming 32' OHW setback. The ordinance requires a variance for any expansion of the structure due to its location. Raising the roof height over the porch by ~4 1/2' to allow for better snow shedding and rainfall handling vs the current roof that has a nearly flat pitch is a reasonable use of the property and this portion of the cabin.

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

Yes (X) No ()

Why or why not? The cabin was built prior to the ordinance at a 32' nonconforming OHW setback. The ordinance requires a variance for any airspace expansion of the structure due to its location. The lot is only ~135' deep. Given the scope of the proposed roof alteration, it would not be reasonable to require the cabin to be moved further from the lake in order for the roof alteration to occur.

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 answers to the preceding findings of fact questions, the difficulty is caused by the cabin's having been constructed at a nonconforming 32' OHW setback prior to the ordinance's enactment by a party other than the current owner. The ordinance requires a variance for any expansion of airspace occupied by a structure in the shore impact zone.

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

Yes (X) No ()

Why or why not? The porch footprint is only 8' x 16' and the proposed roof alteration will only result in a height increase of ~4 1/2'. The area consists of seasonal and year-round single family homes – many of which are of a similar age, lake setback, and size. The change in roofline will not have any negative effect on the views from neighboring properties or parties 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 is due to the cabin having been constructed prior to the ordinance at a nonconforming OHW setback in the shore impact zone and the ordinance's requirement that any expansion of airspace occupied by such a structure located in a shore impact zone must go through the variance process for zoning approval.

The motion carried unanimously 5 – 0.

Variance Application 31-V-17 by John and Shirley Koltes: Lot 14, Block 1, Walsh Ridge Estates, Section 6, Township 140, Range 32, White Oak Township on 8th Crow Wing Lake, a recreational development lake. Parcel 28.44.01400. Applicants are requesting a variance from Sections 901 and 902 of the Shoreland Management Ordinance to exceed the allowed 20' shoreline recreation use area width, permittable volume of earthen material that can be moved in a shore impact zone, and the allowed number of lake access paths.

John and Shirley Koltes, 21227 Firefly Trail, Akeley, MN, presented the application. We are asking for a variance for Shirley and me to get down to the lake. We are about 300' from the lakeshore. We have been traversing a hill, with about 48 steps, for the last 20 years. We would like to create a natural path through the shortest part of the hill and be able to go straight through and up the other side. In doing so, we would need to remove the current stairway. The area will be about 15' x 50'. We would move our dock if we could, but we cannot move our dock any closer to the path. We are wanting to create access for Shirley and I to continue as it is causing us grief right now. Especially when you try to bring gas tanks and other things down to the pontoon.

Shirley Koltes commented it would not be two separate paths. It would be a loop back to the original path.

John Koltes commented the landing would be natural, no concrete. It would be held back by boulders.

Shirley Koltes remarked we are trying to keep it natural looking. We will utilize the alder bushes to help with erosion. It will be nice and lake friendly. We have always tried to be environmentally conscientious. It is getting harder to get down to the lake as we get older.

Krueger commented during the lot viewal, I noticed you have 180' of lake front that levels out considerably. You would not even need what you are asking for. Why can't you put your access point there and move your dock over?

John Koltes responded I addressed that earlier. There are boulders in the lake. If I can move the boulders in the lake, I would put the dock over there.

Shirley Koltes commented some of the boulders are as big as Volkswagens. That access of the lake is deeded access to someone else. Twenty feet of that is not ours to use.

John Koltes replied it belongs to our neighbors to the south, Doug and Julie Kingsley. The whole ridge there are boulders.

Peterson asked Buitenwerf to state what the ordinance allows as far as a usage area.

Buitenwerf responded the ordinance allows a 20' wide parallel to the shoreline by 15' deep recreation area, assuming it is not in a steep slope or bluff impact zone. It would need to be vegetated at the completion of the area's creation.

VanKempen commented I would not want to drive a four-wheeler down and back up the hill. I think with what you are proposing, it would still be difficult to get in and out with an ATV. The neighboring dock that we saw is not your dock. It is your property, but the neighbor has an easement to use that area.

Koltes replied it is 20' easement.

VanKempen questioned why can't you and the neighbor share a dock?

John Koltes replied my wife and I have talked about the idea. The problem with that is the boulders in the lake. Who do we talk to about removing the boulders?

VanKempen responded when dealing in the water, you would need to contact the DNR.

Grob asked for public comment.

Public comment was given by Doug Kingsley, 21169 Firefly Trail, Akeley, MN. I am the adjacent property owner that was referenced earlier. I have an objection to the proposal. It is terribly excessive. What they are proposing is 2.5 times the allowable width for a shoreline recreational area. They are asking for two access paths down to the lake, both of which would be perpendicular to an extremely steep bank. I do not think they would hold up to ATV use without eroding and creating other additional problems. I would also like to point out the applicants are in the process of selling their property. I would question how much of this is actually related to their need.

John Koltes responded we have had our property for sale several times over the last 5 years. It has been up for sale again this year. One of the issues is the access to the lake. The property is coming off of the market this week. We plan on staying there and to sell our place in Florida.

No written correspondence was submitted.

Grob closed public comment.

Johnson commented I agree with Doug Kingsley. There are properties that should not have 4-wheeler trails. I do not think there should be a path down there.

Shirley Koltes replied we will have to move because we cannot get down there.

John Koltes noted when you were out there, I showed you several properties that have done exactly the same thing.

Johnson remarked I have seen the pictures and I have seen walk paths down. Those are different properties. I have not walked down theirs. I did walk down yours.

John Koltes replied as we look at what the others did and what was approved, they are in the same situation as we are. It was suggested by Tom Krueger that we look into a lift system. They are \$18,000 - \$24,000. I cannot afford that.

Krueger commented the ordinance allows 20' and you are asking for two and a half times that. I am sticking to my point as there is another option further across the property.

John Koltes responded we could put our dock on the easement right next to his dock.

Shirley Koltes commented we do have two paths on our lot already. We have his path and our path.

Grob remarked to make a 50' land area is inconsistent with the Shoreland Ordinance and good practices. The steep bank would be very prone to erosion. It does not seem to be the right thing to do for the lake.

John Koltes asked do you have any other alternatives besides the stairway.

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

Petersen 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 request is for 2.5 times the allowed 20' x 15' shoreline recreation use area size and for double the allowed number of access paths that would be 50% greater in width than the 4' wide access path allowed by the ordinance. All of this is proposed to occur in a very steep 29% slope that is very close to meeting the bluff criteria.

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

Yes () No (X)

Why or why not? The landowners currently have access to the lake by means of a set of stairs. Alternative means of access also exist such as replacing the stairs with a ramp switchback system or a mechanized lift that would have less impact to the slope than the proposed excavation area and dual access ramps.

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

Yes (X) No ()

Why or why not? The property has a 29% slope with 22' of rise from the shoreline landward.

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 slope on the lot was created by acts of glaciation.

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

Yes () No (X)

Why or why not? Having a shoreline recreation use area that is 2.5 times the allowed size and double the allowed number of access paths to the lake that are each 50% wider than the 4' allowed by the ordinance and all this excavation occur at the base of a 29% slope that is over 22' high would not maintain the locality's character. Such an area would be very visible by those recreating on the lake and stick out.

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 due to the significant slope along the shore on this lot.

The motion carried unanimously 5 – 0.

Variance Application 32-V-17 by Robin Cleveland: Lot 5, Block 1, Barton's Belle Estates, Section 19, Township 140, Range 33, Nevis Township on Lake Belle Taine, a recreational development lake. Parcel 21.54.00500. Applicant is requesting a variance from Section 502.2 of the Shoreland Management Ordinance for two proposed accessory structures to be placed in the shore impact zone and one of the structures to be within the 10' side lot line setback.

Robin Cleveland, 22650 County 80, Nevis, MN, presented the application. I would like to place a small storage shed and a 12' x 12' gazebo on the property. I am having difficulty getting my boat out to the lake because of the channel. I have lived there 20 years and over the last 5 or 6 years we have not had access to the lake because of the channel filling up with sand. We are unable to dredge it until after July 1st of next year. As you noticed when you came out for the lot viewal, the channel was dredged 3 weeks ago and I am still not able to get a boat through there. I would like to have a small shed over there to keep our tools there.

Grob asked why do you want a gazebo.

Cleveland replied in the back, I have had to remove 7 trees that were damaged in last year's storm. I would like an area to sit under that is shaded. We have a handicapped family member that cannot sit out in the sun for long periods of time because of medication.

Krueger commented I can see a practical difficulty of the need of the shed. What is the practical difficulty for the gazebo?

Cleveland replied we need to have a place to sit that is shaded. I have a family member that cannot be out in the sun. It is quite a distance from the area that we are using as a beach now up to my home. It is difficult to get him over the bridge. The gazebo is basically four cedar poles and a roof. Just an area to be able to sit under and enjoy the beach and lake.

Krueger commented it sounds like something a beach umbrella can handle.

Cleveland responded that could be done. I would rather have something that I do not have to constantly remove.

Grob noted there are several docks in this area. Do all of the docks have boats? Are they all not able to exit through the channel?

Cleveland responded none of them are able to go through the channel.

Grob asked how deep is the channel when it is dredged out?

Cleveland replied I am not sure.

Grob asked who dredges it?

Cleveland responded Backhoe Pete. Our neighbor gets the permits each year to have it dredged. He has to have the excavating equipment go down his land.

Grob asked if you are having it dredged, I do not understand the requirement having it dredged at least a couple feet so you have enough draft on a boat. I cannot imagine having really big boats sitting in there.

Cleveland responded I do not have a really big boat. I have a small pontoon and a small regular size boat.

Grob asked is the area not wide enough or deep enough to get your boat out?

Cleveland responded it is at the very end where the sand is building up and the water is very low.

Grob asked does he dredge that out the whole width?

Cleveland responded he does dredge it out the whole width. If you go out there in the spring, you can walk across the channel.

Grob asked do you intend to place a dock on the lake.

Cleveland responded I put a dock on the lake. My pontoon is kept there. I have a boat lift for the boat. We have to take the boat to a public access.

Petersen asked is this the first year that the dredging has not been adequate for you. Has it worked for you in past years?

Cleveland responded right now I can push my pontoon through there if I had too. I have never had a problem in the past.

Petersen commented maybe there could be more aggressive dredging to take into account where the water level is at right now.

Cleveland responded there is a limit of how much sand we can remove. It all has to be placed on the other side of the beach.

VanKempen noted this is a unique situation. I have not seen this before where you have a manmade pond between you and the lake.

Grob asked how many people are in the same situation that you are where they may need to place a dock on the lake when the lake is low?

Cleveland responded the neighbor to the right of me has other beach front property. The neighbor to the left does not use the lake.

Grob asked is that his bridge?

Cleveland responded yes. The neighbor across has all of the other lake shore to use. It is very hard to explain the situation and its difficulties.

Grob clarified the basic issue is for you to have access to the lake. Under the current conditions, you have to walk on the neighbor's property to the right or utilize the bridge and carry anything you need to access the boat.

Cleveland responded the bridge is the only access.

Grob asked for public comment.

No public comment was given.

Written correspondence was received from Richard Lundstrom, 809 Riverside Ave. N., Sartell, MN, 56377 opposed to the variance application.

Written correspondence was received from Robert Panzer, 22622 County Road 80, Nevis, MN 56467 opposed to the variance application.

Grob closed public comment.

Johnson commented I agree with Krueger, the little shed is not an issue. I believe the gazebo would block the neighbor's views. The little shed is kind of hidden and does not block any lake views.

Krueger asked Buitenwerf how can we separate the variance request?

Buitenwerf responded the most efficient way to do that would be to deny the original request and make a motion concerning approving one of the two. This way you will have separate findings of fact that reflect the two decisions.

Krueger asked could the applicant modify the application?

Buitenwerf responded I would not recommend that.

Grob asked do we need to deny the whole application and start over or can we break it up? Could we make a motion to approve the shed and do the findings of fact?

Buitenwerf responded the cleanest way is to take action on the whole original application and then entertain a motion for whatever component you are approving.

Grob noted the generally feeling is that the gazebo is inappropriate, but the shed under the conditions and constraints might not be unreasonable.

Cleveland replied the dogwoods are much taller and the gazebo is actually going to be back into the dogwoods. It does not block anybody's view from the lake.

Grob remarked there is no practical difficulty or reason for us to be contradictory to the Shoreland Ordinance which says nothing within the first 50'. In order for us to approve something, we need to go against six criteria and I do not think there is any way that the criteria would be satisfied with the gazebo. There are alternatives and it is not typical.

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

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 () No (X)

Why or why not? Allowing a shed to be placed at a 15' OHW setback when the main portion of the lot is ~225' deep and there is ample room where a shed could be placed meeting all setbacks would not be in harmony with the ordinance. Nor would allowing a gazebo to be placed in the shore impact zone for the sole purpose of providing shade when there are other portable means of providing shade such as a beach umbrella.

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

Yes () No (X)

Why or why not? There is room on the lot where the two desired structures can be placed by permit and meet all setback requirements. The lot is improved with a house and detached garage which provide reasonable uses of the property. The lot can also be used to access the lake and enjoy the outdoors – which are additional reasonable uses of the property.

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

Yes (X) No ()

Why or why not? The lot shares a man-made harbor/lagoon with three other lots that provides the lots with access to the lake. The harbor/lagoon bisects the lot and

separates its riparian shoreline that is roughly 45' deep with the balance of the lot where the house and garage are located that is ~225' deep.

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/lagoon was created by some party other than the landowner many decades ago.

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

Yes () No (X)

Why or why not? There is ample depth (~225') and width (~110') on the lot that allows the two desired structures to be placed on the lot at conforming locations by permit. Allowing these two structures to be right on the shoreline at the mouth of this harbor would stand out aesthetically as there is no vegetation to speak of on this part of the 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 motion carried unanimously 5 – 0.

Krueger made a motion to grant a variance from the 100' ordinary high water mark setback to allow the proposed 7' x 8' x 8' plastic shed accessory structure to be placed in the proposed location shown on the variance application site plan.

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? Allowing a 7' x 8' x 8' plastic to make use of the lake. It is a hardship to haul your stuff back and forth every time you wanted to use the lake.

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

Yes (X) No ()

Why or why not? You have a lake front lot and because of the manmade lagoon, you are completely cut off making it difficult to haul equipment back and forth.

3. Is the stated practical difficulty due to circumstances unique to this property?
Yes (X) No ()

Why or why not? It is very unique due to the manmade lagoon.

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/lagoon was created by some party other than the landowner many decades ago.

5. Will the issuance of the variance maintain the essential character of the locality?
Yes (X) No ()

Why or why not? We are allowing a structure that is not permanently grounded and can be relocated if the need should arise.

6. Does the stated practical difficulty involve more than economic considerations?
Yes (X) No ()

Why or why not? Economics were not cited in the application as the sole difficulty.

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

Variance Application 33-V-17 by Jason Thelen: E ½ of the SW ¼ of the SW ¼, Section 9, Township 141, Range 35, Arago Township on Hay Creek, a tributary. Parcel 02.09.00411. Applicant is requesting a variance from Section 506.2 of the Shoreland Management Ordinance for a proposed guest cottage that will exceed the 700 sq. ft. maximum allowed footprint.

Jeff and Doris Coborn, 26341 US 71, Park Rapids, MN, presented the application. The applicants are wanting to put up a garage with living quarters above it.

Grob noted the intent is to build a garage with living quarters.

Doris Coborn responded yes.

VanKempen asked Buitenwerf if the structure was at a 500' setback, would this be allowed by permit?

Buitenwerf replied if it was at a greater than 500' setback from the creek, it would be outside of the Shoreland Management Ordinances jurisdiction and would not require a permit for the structure. It would only require a permit for the septic system.

Grob clarified the setback is within 500' of a river and 1000' of a lake?

Buitenwerf responded correct.

Grob commented the request is substantially larger than what is allowed by ordinance. Guest cabins are only allowed to be 700 square feet and you are asking for something substantially larger.

Coborn responded it would not be any larger than the garage.

Grob responded we have to go by the ordinance, it says 700 sq. ft. We have to be sure that we meet the criteria for a variance. We may have a hard time answering the questions in an affirmative manner.

Grob asked for public comment.

No public comment was given.

No written correspondence was submitted.

Grob closed public comment.

Grob commented we cannot be capricious or arbitrary. In order for us to deviate from the Shoreland Management Ordinance, we have to answer six questions in an affirmative way. Something that is 160% over 700 sq.ft., when there are other alternatives, is almost impossible to answer in an affirmative way. We have to go through six findings of fact. Allowing an 1100 sq. ft. guest cabin where there is no practical difficulty that would prevent you from building that. You could always build it separately. Moving all the way back 500' would place it outside of the Shoreland Management Ordinance and there would be no requirements.

Coborn replied the reason is the road traffic. We are willing to take the deck off if that would help reduce the size.

VanKempen remarked we are seeing this more and more every month. People are requesting a guest cottage that exceeds 700 sq.ft. We have been fairly consistent on denying the applications. Most have been even smaller requests than what you are asking for.

Coborn asked what would we have to do to build it there?

VanKempen responded it would have to be 700 sq. ft.

Grob commented you could build a 700 sq. ft. guest cabin separate from the garage.

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

Petersen 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 guest cottage footprint is 160% greater than the 700 sq. ft. maximum footprint allowed and the proposed height is 1' 8" higher than the allowed 25' guest cottage height when placed over a garage. Allowing a guest cottage of this size would essentially allow a second primary residence to be placed on this lot and the ordinance does not allow two separate primary residences to be located on a lot.

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

Yes () No (X)

Why or why not? The lot is large enough that a guest cottage can be placed on it by permit if the proposed plan is scaled down to comply with the guest cottage ordinance provisions. The lot has an existing residence on it and can be used to enjoy the outdoors and access Hay Creek – all of which are 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 lot is ~218' wide and 6.7 acres in size which provides ample room for a guest cottage to be placed at a conforming location on the property by permit. The alleged difficulty is due to the landowner's desire to have a larger living area than the 700 sq. ft. allowed when no reasons have been provided showing why 700 sq. ft. is insufficient space.

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 request to exceed the 700 sq. ft. footprint and 25' height restriction has nothing to do with the lot and entirely to do with the landowner's desired size of structure.

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

Yes () No (X)

Why or why not? If the proposed guest cottage was allowed to be placed on the lot, the lot would effectively have two separate primary residential structures located on it. The lot to the west of this lot is undeveloped. The lots to the east of this lot are improved and have single family residences on them that are smaller than the existing residence on this lot. Two homes on this lot would not be in keeping with the neighborhood's character.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as the sole difficulty. The application does not state a practical difficulty.

The motion carried unanimously 5 – 0.

Variance Application 34-V-17 by Tom and Cindy Brussell: Part of Gov. Lot 5, Section 27, Township 141, Range 34, Lake Emma Township on Big Sand Lake, a recreational development lake. Parcels 16.27.02100 and 16.34.00200. Applicants are requesting an after-the-fact variance from Section 502.2 of the Shoreland Management Ordinance for a deck that does not meet the 100' ordinary high water mark setback.

Tom and Cindy Brussell, 10375 Canadians Landing, Eden Prairie, MN, presented the application. We are trying to replace an existing deck on the lakeside of our cabin. We are not looking to expand. When the builder went to pick up a permit, he was told that a variance was needed to replace the deck.

Grob asked why does he need to have a variance to replace the deck?

Buitenwerf responded the deck does not meet the 60' ordinary high water mark setback that was granted in the variance.

Grob noted the original variance for building the cabin did not include a deck.

Buitenwerf commented the variance specified a 60' ordinary high water mark setback. The structure itself was placed at that setback.

VanKempen noted the deck is definitely rotting. Is your proposal to rebuild the entire deck?

Brussell replied yes.

Grob asked what does the shoreline look like. Are there any opportunities for any mitigation?

VanKempen replied the shoreline is pretty much natural with the exception of the stairway down to the lake.

Grob noted there is not much advantage to requesting any mitigation.

Grob asked for public comment.

No public comment was given.

No written correspondence was submitted.

Grob closed public comment.

VanKempen asked can you explain why the variance allowed a 60' setback and why the deck is built at a 48' setback?

Brussell responded there is not much to explain. The contractor built the deck in front of it. I do not think he was aware of the restrictions.

Grob asked were you the owners when it was originally built in 1984?

Brussell responded yes.

Krueger asked what did the building permit specify?

Brussell responded I have no idea.

Krueger remarked I do not think the contractor would just throw on a deck for nothing.

Brussell replied he was not from this area. I'm not sure if he knew the rules and regulations of Hubbard County.

Grob remarked you had to approve the deck to be installed.

Brussell replied yes.

Grob asked you were unaware at the time that the 60' setback was to include the deck?

Brussell replied correct. We were unaware.

Grob asked do we have any documentation from the original permit?

Krueger asked is there a place on the application where it mentions a deck?

Krueger commented my reading of it as it was always addressed as a home. There was no reference to a deck. The Board members had no idea that there was going to be a deck.

Grob asked if there was a drawing provided.

Brussell responded no.

Grob commented it does not show a deck. It only shows a house.

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

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 cabin was allowed to be placed at a 60' OHW setback by variance in 1984. It appears from the record that the deck was constructed at the same time as the cabin and for whatever reason, was not included on the permit application or built in accordance with the 60' OHW setback. The deck is integral to the cabin layout/design. Not allowing a deck on at least the east side of the cabin would render the exterior entrance door on that side unsafe due to its elevation above ground level.

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

Yes (X) No ()

Why or why not? As stated in the answer to question 1, the deck is integral to the cabin design and required on the east side of the cabin in order for there to be safe egress to the exterior door on that side of the cabin. There is a sliding door on the lakeside of the cabin that opens onto the existing deck. A 12' deep deck running the width of the cabin is a reasonable request as such lakeside decks of similar size are a typical accessory feature of residences on riparian lots.

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

Yes (X) No ()

Why or why not? The cabin was allowed to be constructed at a 60' OHW setback per Variance 84-46. A variance is thus necessary to replace the deck as it is not possible to do so without a variance because the structure does not 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 ()

Why or why not? The BOA in 1984 did not mention a deck in the variance.

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

Yes (X) No ()

Why or why not? The deck has been in place since the cabin was constructed in 1985. There is no evidence of the locality's character having been harmed by the deck in these 32 years. Lakeside decks are a typical accessory feature to residences on riparian lots.

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.

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?

Why or Why not? They did act in good faith. They did not know that the deck would be a required part of the setback. It appears from the 1984 BOA discussion that they did not make it part of the setback either.

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

Why or Why not? They went through the variance process in 1984. They are going through the variance process again now.

9. Did the applicant obtain a permit from another entity that violated the law? Not that we are aware of.

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

The main portion of the deck is 12' x 34' in size. The cost of materials to construct this deck is probably on the bubble of what is considered substantial.

11. Did the applicant complete the repairs/construction before the applicant was informed of the impropriety?

Yes. The deck was in place for 32 years before it was discovered by the Environmental Services Department that the deck was constructed out of compliance with the 1984 variance and this information was communicated to the landowners.

12. Are there other similar structures in the neighborhood? Yes. The shoreline consists of residential structures with lakeside decks.

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 deck has been in place since the cabin was constructed in 1984 – 32 years ago. No one voiced any complaints to the County during this time. The house design is dependent on the deck being present and in its general layout due

to the locations of exterior doors to the cabin. Not allowing the deck to be replaced would result in a safety issue for the exterior entrance door on the east side of the cabin because it is located several feet above ground level.

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

No. The deck has been in place for 32 years without it having led to any complaints. The cabin design is dependent on the deck being of the shape that it is in order to provide safe egress through the exterior doors. The cabin was allowed to be constructed at a 60' OHW setback. Not allowing the lakeside deck to be rebuilt when it is integral to the function and safety of the home would not be in the interests of justice.

The motion carried unanimously 5 – 0.

Variance Application 35-V-17 by Dennis Boulden: Lot 22, Block 1, Radke's Addition, Section 36, Township 139, Range 34, Hubbard Township on Duck Lake, a recreational development lake. Parcel 14.55.02200. Applicant is requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed lakeside deck on a residential structure that will not meet the 100' ordinary high water mark setback.

Dennis Boulden, 21864 Duck Lake Road, Park Rapids, MN, presented the application. We would like to replace an existing 8' x 10' deck with a 12' x 28' deck. There are two doors towards the lake that we would like to encompass.

VanKempen noted it appears that the shoreline is pretty much at a natural state, except for the path going down to the dock. Currently on the lakeside of the home there are two landings of stairs and a small deck. Is this a bluff?

Buitenwerf replied yes.

VanKempen commented we measured approximately 40' from the crest of the bluff to the deck.

Grob remarked it meets the setback requirements from the bluff.

VanKempen replied yes.

Krueger noted the area, as you are facing the house, to the left of the deck, was a violation and someone had to remove paver stones. Now there is pebble stone there. Did you say you would like to have that in grass?

Boulden responded I would like to. That is what I planned.

VanKempen commented I was going to make the same comment on that area. As you stated at the lot viewal, you would like to turn that back into grass. I am looking for some type of mitigating factor. The shoreline appears to be in natural state already. If you could turn that area back into grass, that would be a mitigating factor.

Grob asked is there a block retaining wall there. Are you including removing that?

Boulden responded I planned to.

Grob remarked the whole surface would be turned into grass below it. Why is the retaining wall there? Is it the slope of the property?

Boulden responded I do not know, that is how we bought it.

Krueger remarked the previous owner placed paver stones in there. Since it was a violation, they had to remove the paver stones.

Grob remarked the retaining wall is there because they built a patio, not because of topography.

Grob asked for public comment.

No public comment was given.

No written correspondence was submitted.

Grob closed public comment.

VanKempen made a motion to approve the variance application as presented with the following condition:

1. The sand/gravel area between the house and block retaining wall next to the proposed lakeside deck must be planted to grass.

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? We have mitigated that they vegetate an area that has been impervious.

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

Yes (X) No ()

Why or why not? Having the house where you have two doors, being able to go in one and out the other is reasonable.

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

Yes (X) No ()

Why or why not? This structure was built before they bought it and they inherited the violation.

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 previous owner.

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

Yes (X) No ()

Why or why not? The area consists of single family seasonal and year-round residences. Many of these homes have lakeside decks on them. A 12' x 28' lakeside deck is a reasonable size relative to the decks on neighboring 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 motion carried unanimously 5 – 0.

Miscellaneous:

Communications:

Adjournment:

VanKempen made the motion to adjourn.

Peterson seconded the motion.

The motion passed unanimously 5 – 0.

The meeting adjourned at 9:08 p.m.

Respectfully submitted,

Veronica Andres

Recording Secretary