

## **HUBBARD COUNTY**

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

6:00 p.m. on Monday, June 26, 2017

Chairman Ken Grob opened the meeting with the following members present: Tom Krueger, Tim Johnson, Ted VanKempen 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:** May 22, 2017 meeting.

VanKempen made a motion to approve the minutes as presented. Johnson seconded the motion that carried unanimously 4 – 0.

**Old Business:** None.

#### **New Business:**

**Minor Subdivision Application by Mark Warisch:** SE ¼ of the SE ¼, less the South 380' of the West 660', Section 16, Township 145, Range 33, Helga Township, Parcel 11.16.01110. Applicant is requesting to subdivide a 31.76 acre property into 6 tracts.

No applicant present.

VanKempen commented he is familiar with the property. It is an open field at the corner of Highway 71 and County 9. The applicant has met all of the standards in the ordinance for the minor subdivision. I do not see any issues approving the application.

Johnson asked VanKempen if he knows the historical topography of the property. Are there any wetlands on the property?

VanKempen replied over the last few years it has been hayed. It is basically a large open field except where the home is located.

Grob asked for public comment.

No written correspondence was submitted.

No public comment was given.

Grob closed public comment.

VankKempen made a motion to approve the minor subdivision application.

Johnson seconded the motion.

The motion carried unanimously 4 – 0.

**Minor Subdivision Application by Jeremy Hadrava:** Part of the East half of the NW ¼, Section 33, Township 145, Range 32, Farden Township. Parcel 07.33.00200. Applicant is requesting a minor subdivision to create two tracts by further subdividing a property that was previously subdivided by administrative subdivision within the last five years.

Jeremy Hadrava, 46784 County 45, Laporte, MN, presented the minor subdivision application. I have 15 acres, two 7.7 acres lots and I adjusted the property line to accommodate a gentlemen that purchased a 5.71 acre tract a little over a year ago. I was initially planning on keeping the ten acres as it abuts the 20 acres that I own west of there. Since then I have had several people approach me to purchase the property. Therefore, I chose to go through the minor subdivision process to divide the property in order to sell it.

VanKempen asked if both lots will be accessible to Selby Drive.

Hadrava replied yes. They will both have frontage to Selby Drive. I have provided all of the septic information for both properties as well. All of the homes in the area have mound systems. The 5 acre lot I sold this spring installed a mound system.

VanKempen questioned the easement from 470<sup>th</sup> Street. It does not appear to go through both tracts.

Hadrava explained the easement is for the road. In the future if the road ever gets brought up to township standards. I am unaware of why it was never carried through. It was only on the two lots. I do not know why the easement was never recorded.

VanKempen asked if was going to be an issue for the owners of Tract B to get to their property.

Hadrava responded no. The easement is meant to widen the road, if they ever wanted to widen the one side, it would meet township road standards.

Grob asked if the road physically runs all the way down to Tract 7.

Hadrava replied yes. It runs down to a cul-de-sac.

Grob asked if the road is problematic.

Hadrava explained the easement starts at 470<sup>th</sup> Street and extends down to the cul-de-sac with a 66' radius.

VanKempen clarified the easement on the certificate of survey.

Grob asked for public comment.

No written correspondence was submitted.

No public comment was given.

Grob closed public comment.

VanKempen made a motion to approve the minor subdivision application.

Johnson seconded the motion.

The motion carried unanimously 4 – 0.

**Minor Subdivision Application by Gerald and Janey Weaver:** Part of Gov. Lot 1 and the SE ¼, Section 8, Township 140, Range 34, NE ¼ of the NE ¼, Section 17, Township 140, Range 34, Henrietta Township, Parcels 13.08.00100 and 13.17.00410. Applicants are requesting a minor subdivision to create two tracts by further subdividing a property that was previously subdivided into four tracts within the last five years.

Kevin Lindow, Lindow Surveying and Mapping, LLC. , 1301 Park Avenue S., Park Rapids, MN, presented the minor subdivision application. This property has been subdivided into four tracts within the last five years and we are now looking to subdivide a 10 acre tract.

Grob asked what the reason is for the 10 acre subdivision. What is the intent of the remaining 88 acres?

Lindow responded the remaining 88 acres would be agricultural land.

Krueger asked what the two exceptions are on the certificate of survey legal descriptions.

Lindow replied Tracts 3, 5 and 6 were in the previously created parcels subdivided within the last 5 years.

VanKempen commented the application appears to meet all of the minor subdivision criteria.

Grob asked for public comment.

No written correspondence was submitted.

No public comment was given.

Grob closed public comment.

Grob noted the Helga Township zoning administrator indicated they were in agreement of the minor subdivision.

Krueger made a motion to approve the minor subdivision application.

VanKempen seconded the motion.

The motion carried unanimously 4 – 0.

**Board of Adjustment:**

**Approval of Minutes:** May 22, 2017 meeting.

VanKempen made a motion to approve the minutes as presented.

Johnson seconded the motion that carried unanimously 4 - 0.

**Old Business:**

**Variance Application 45-V-16 by Paul and Carolyn Filas:** Lot 8, Block 1, Lakewood, Section 8, Township 141, Range 33, Mantrap Township on West Crooked Lake, a natural environment lake. Parcel 20.58.00800. Applicants are requesting a variance from – Part 1: Section 502.1 of the Shoreland Management Ordinance (SMO) to construct a proposed residential structure at less than the required 150' ordinary high water mark setback. Part 2: Section 902 of the SMO to excavate in a bluff impact zone to install an SSTS.

Buitenwerf commented the wetland on the property is below the ordinary high water mark. The 150' setback applies from the wetland as well. Last year, when the application was first heard, the Board of Adjustment directed the applicant to amend the proposal in a way that would allow the proposed structure to meet the 150' setback from the ordinary high water mark of the main lake itself and allow deviation from the setback requirement from the wetland.

Paul Filas, 6340 Ridgestone Drive, Billings, MT, presented the variance application. We would like to build a 20' x 32' structure that is set 150' back from the lake. We originally wanted to build a bigger place but the Board of Adjustment had concerns of space as the area is tight. We decided to build a smaller place so it would be 150' back from the lake instead of 115' from the lake. I think the Board of Adjustment members walked the shoreline last time I applied but I was not sure if they walked it this time.

Grob noted the current proposed structure is 150' from the lake, 20' x 32' structure, and 45' from the wetland.

Krueger asked if the stakes that were in the ground when they viewed the lot on Thursday, June 22 were they moved to the 150' water mark setback.

Filas replied yes they were moved to the 150' setback.

Krueger commented someone with a rolling device at the property said the 150' setback was off by 18'. I do not know how accurate he is.

Filas responded I moved the stakes back from the original spot to the 150' mark. I was measuring off a 150' marker that has been on his property for a long time.

Krueger asked Filas if he has requested help from the Environmental Services Department to measure it out.

Filas replied I would definitely be 150' back before building. Do you think the measurement is incorrect?

Krueger stated he did not actually measure himself. This information is from a neighboring owner.

Filas stated I measured it with a 200' tape and measured from the top of the shoreline.

Johnson noted the 150' setback can be met with the new proposal.

Filas replied yes, wherever the 150' setback mark is I will meet.

Johnson asked Buitenwerf if the variance would be created over the small breach where the tree tipped over and created the wetland that is now attached.

Buitenwerf responded that the ordinary high watermark extends a great distance into the wetland because of the breach. The setback is from the ordinary high as located in the wetland. If the board entertains approval of the request, Buitenwerf would recommend putting in parameters in place that clarify the setback relief is from the wetland and not to the shoreline.

Johnson clarified that a distance should still be kept from the edge of the wetland.

Buitenwerf replied no. The Board should be clear in the motion, if approved, that I could not become a general rule to allow 45' setback from the lake.

VanKempen asked Buitenwerf if Environmental Services staff measured the 150' ordinary high water mark setback at the property last year or this year.

Buitenwerf responded staff was out there last year to measure the bluff and possibly the 150' setback but I am not absolutely certain.

VanKempen replied I remember there being a stake on the property last year that showed Filas encroached on the 150' mark.

Filas commented the 150' mark has been there since it was first surveyed but then the tree fell and basically created new lakeshore which cause everything to change. I just want to build 150' back from the original lake.

Grob stated this is a complicated geographical situation and unique septic system. Can you describe what your intent is for the septic system?

Filas replied there would be a holding tank down by the cabin that would be pumped up to a filling station which would be pumped up to another tank up on the hill and then pumped into the septic system.

Grob replied he understands the first lift is about 48'. How much is the lift to the second?

Johnson clarified it was total of 48' with the two lifts.

Grob asked if that is a viable system.

Johnson said yes, I read the septic design and agree with the designer's location. In fact that is about the only location for it because the other areas go beyond the 12% slope that

mounds are not allowed to be at. This is designed for a mound and mounds are sized 35'x63'. With the tank and the two mounds we are looking at 5000 sq. ft. of land to use.

Johnson asked Buitenwerf if Filas needs to get relief of the excavation in the bluff impact zone. Is that for excavation for the line from the tank up to the septic site?

Buitenwerf answered primarily, yes.

Johnson asked if horizontal boring line would that be considered excavation if it did nothing to the vegetation on top.

Buitenwerf said he would have to check because the language on that is not clear, it does not come up very often.

Johnson clarified that there is also an option to run the pipe on top of the ground.

Buitenwerf replied the Environmental Services Department prefer that not occur because if you have a ruptured line that is under pressure leaking sewage from it, it is less likely to be damaged if it is buried.

Johnson proposed, if the board leans that way, they make it a condition of the horizontal boring line so there is no excavation of the bluff.

VanKempen asked if the second lift station on the design would be on the bluff.

Johnson replied it could be but I don't know exactly because I didn't think about that on the lot. That is a buried tank. I believe that bluff impact zone is to stop cutting a wedge out to a lake.

VanKempen responded I am also concerned about erosion when installing the lift tank.

Grob asked if Buitenwerf found the septic information.

Buitenwerf responded yes, but it does not speak to directional boring. What I was remembering was former language we had concerning geothermal systems in bluff impact zones that disallowed boring but that would not apply to septic systems.

Grob asked for public comment.

Public comment was given by Andy Forseman, a neighbor to the North. I measured it and it seems to be approximately off by 15 - 16 feet closer to the lake which is not a problem if Filas meets setback. My question is if you do a lot viewal and the stakes are not at the right spot, and I think I asked you guys three different times if you wanted to personally measure it so we could show you that it was off because I measured it three different times. It changes where the cabin ends up cutting into the bluff as well so I thought that was part of the bluff variance, is actually where the cabin ends up. We were out there and you guys clearly saw where it was, imagine it moving off the lake 16 - 18 feet it gets into that bluff even for the excavation of the cabin. So we did a lot viewal but the stakes were not correct and seems kind of pointless.

VanKempen replied that I was recalling the stakes from last year that the staff put out there and I thought that was closer to the lake than what your finding was. I think if this is approved tonight we will be requiring the staff go out there and mark 150' setback.

Forseman answered that is okay with me. Basically I just wanted to make sure, that's why I was out here. It is not as it sits and that's about it. Is it a two part variance for the building with the building getting into the bluff and the building getting too close to the wetland because the wetland is considered part of the lake shore, correct Eric? Am I hearing you correct when you say the wetland is connected to the lake shore?

Buitenwerf responded there is an open water connection of the wetland to the lake.

Forseman remarked generally that carries a 150 foot setback from that wetland.

Buitenwerf replied from the portions of the wetland that would be below the ordinary high watermark.

No written correspondence was submitted.

Grob closed public comment.

Kruger commented this is a unique property in that simply having a tree fall over created a practical difficulty for the landowner to meet the 150' setback. I am leaning towards approval with some conditions.

Johnson stated the same as what Krueger was saying but the lot is also very comparable in market value to the neighboring lots that will have close lake shore view and use.

Forseman explained it is still buildable on multiple other parts of the property so the variance granting is out of preference not necessity. There are plenty of building spots on that property. It is not like that's the only spot to build. Filas can still build within roughly 400 feet of the lake and still have access, that doesn't change a thing. You can build your house as large as you can without having to get any variances whatsoever.

Grob replied that has been noted in the Environmental Services staff report.

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

- 1 Applicant must contact the Environmental Services Department and have it measure and flag the 150' ordinary high water mark (OHW) structure setback from the lake.
2. The SSTS pressurized line must be horizontally bored through the bluff impact zone (BIZ) (no surface excavation in the BIZ is allowed) and the second lift tank must be placed within the 1498' elevation contour located at the top of the bluff.
3. The 150' OHW structure setback from the lake's main shoreline must be met by the proposed structure. The variance being granted is for the proposed 45' OHW

structure setback from the OHW location within the nearshore wetland on the property as shown on the application site plan sketch.

Johnson seconded the motion that passed 3 – 1 with Grob voting nay.

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? Keeping a 150' ordinary high water mark setback on a natural environment lake. The hardship is due to the tree falling over.

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

Yes (X) No ( )

Why or why not? With the tree falling over there is limited building area.

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

Yes (X) No ( )

Why or why not? With the tree falling over it causes topography issues. The septic needs to be placed several hundred feet away from the cabin.

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

Yes (X) No ( )

Why or why not? Nature caused the tree to fall over.

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

Yes (X) No ( )

Why or why not? This was platted with the intent of a residential home being placed on the property.

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 3 – 1 with Grob voting nay.



## **New Business:**

**Variance Application 11-V-17 by Harry and Toni Napier:** Lot 8, Block 3, Kola Tepee Park, Section 10, Township 141, Range 35, Arago Township on Eagle Lake, a recreational development lake. Parcel 02.38.03000. Applicants are requesting a variance from Section 704 of the Shoreland Management Ordinance to convert an unimproved lot that does not meet the minimum 100' lot width or two standard septic sites into an improved lot.

Harry and Toni Napier, 31608 Glory Way Drive, Omega, MN, presented the variance application. We bought the property with the intent of putting a camper on it for recreational use and to put a septic holding tank in order to meet the minimum requirements and have it pumped regularly. Environmental Services came out and measured from a small wetland ordinary high water mark and I think I am within that range right now as far as setbacks. We are going to add a tank and 1000 gallon shallow tank.

Grob clarified your intent initially is to put a holding tank in and also asking for approval of future construction.

Napier replied for small real estate, 18' x 25' or 18' x 30' building put on for storage of my boat in the winter time and small living quarters in the summer time.

VanKempen noted currently you have a camper out there.

Napier answered I do.

VanKempen stated obviously without a septic tank out there do you have some other means of collecting that.

Napier replied I have two portable holding tanks that I haul back and forth.

VanKempen asked if there is currently a well on the property.

Napier said there is not.

VanKempen responded you will be putting one of those in I assume.

Napier answered next year, we are trying to do everything out of pocket.

Grob asked in phase one would you be doing a well and holding tank both.

Napier replied holding tank first, I have system set up that I can haul water into for supplying water and then have the 1000 gallon holding tank.

Grob asked if a well would be drilled.

Napier responded we would get the septic in first and the well would come next year.

Grob clarified when you do the structure.

Napier said within the next five years I want to do a structure.

Grob asked you would not do the well until then.

Napier answered probably not unless I can afford it.

Grob stated I was not there for the viewal, describe the water supply you now use.

Napier replied I actually have a 275 gallon tank for supplying water and I have an electric pump.

Grob asked you actually go fill it up from some place.

Napier answered I actually get it from my house, I have really good water from my house. Then I just gradually feed it into that tank.

VanKempen asked that was all contained in that trailer.

Napier replied correct.

Johnson asked where all the four-wheelers, trailers, boat trailers and lawn mowers would be parked.

Napier replied I am actually wanting to remove a couple more trees and park everything at the top, right at the entry way of the property.

Grob mentioned there is a lot of foliage between where you have the trailer and the lake. Is it your intent to have a walkway to the lake and have a dock?

Napier responded there is a wetland to the left, it probably runs 25' into the property. I have a path through there to the lake now.

Grob clarified you do intend to put a dock in and a boat.

Napier replied correct.

Grob asked how will you pull that boat lift and dock out.

Napier replied I will have to float it out and store it at my home.

Grob asked if the wetland is where you walk across.

Napier replied yes that is the wetland. I filed for a permit to clean up 25' of that.

VanKempen asked if the permit was filed with the DNR.

Napier replied correct, in Bemidji.

VanKempen asked if they granted it.

Napier responded not yet. I have not heard back from them as they wanted to go and inspect.

Grob asked 25' through the wetland or through the foliage.

Napier replied it is actually an area that is higher down by the lake. I might not be able to do 25', I may only be able to do 15'. It depends on what they determine.

VanKempen mentioned there is a stretch of high ground on the right hand side of the lot. There is an actual trail that goes down. When you get to the end of the trail there are some bulrushes.

Grob commented you are only allowed a walkway of 4' down to the lake. Then you can have a recreational area by the lake.

Napier replied I just want a walkway. It is mostly ferns through that area.

Grob asked for public comment.

Written correspondence was received from Dr. Lon and Jan Krieg, 26312 Inlet Trail, Park Rapids, MN 56470 opposed to the variance application.

Written correspondence was received from Terry and Judie Bradford, 26366 Inlet Trail, Park Rapids, MN 56470 opposed to the variance application.

Written correspondence was received from James and Terry Johnson, 13010 Inlet Circle, Park Rapids, MN 56470 opposed to the variance application.

Written correspondence was received Mike and Janine Weideman, 26567 Inlet Trail, Park Rapids, MN 56470 opposed to the variance application.

Written correspondence was received from David Fastenow, 26565 Inlet Trail, Park Rapids, MN 56470 opposed to the variance application.

No public comment was given.

Grob closed public comment.

VanKempen commented this is a narrow lot. I can understand wanting a holding tank. I see in the application you have paperwork with a company to pump the septic tank monthly. For me, having a camper on the lot seems reasonable. The small lot was created before the ordinance. A lot for a camper and access to the lake is reasonable. My issue would be with a future building.

Napier responded I would be happy with the camper and holding tank.

Krueger remarked I feel the same. I am okay with a camper but not a building.

Grob noted the Shoreland Management Ordinance requires two septic system sites and suppose to have a minimum of 100'. Fifty feet seems to be an excessive variance from it. Personally I think it is a spot for a camper period. But if you are going to have a camper there you will need to have septic. A holding tank makes sense. No other construction what so ever do I see reasonable for this lot.

VanKempen noted the only thing I can think about is a small storage shed as Johnson mentioned earlier for lawn mowers and such.

VanKempen asked Buitenwerf for clarification if a permit would be possible for a storage shed in the future. If we do not approve something today will another variance be needed?

Buitenwerf responded not necessarily. It would depend on what type of condition you place if you entertain a motion to approve the application. If you leave it open ended as requested, they would be allowed to construct the proposed stick-built structure at a future point in time. They would also have accessory structures as well if they meet all of the setback requirements. If you put conditions on the motion to approve it would restrict that then they may not be able to do those things unless you specifically allow only certain types and sizes of structures to be placed on the lot.

Grob asked Buitenwerf if there is a square foot limit on storage sheds that are placed closer to the lake.

Buitenwerf replied our ordinance does not allow any accessory structure within the OHW setback. Other counties do have a provision to allow small structures less than 50 square feet.

Grob asked if the accessory structure would be back behind the 100' setback.

Napier replied correct.

Grob stated under the assumption we would approve the variance approval with a condition that only a travel trailer would be allowed to be placed on the lot and a small storage structure less than 80 sq. ft. meeting all setback requirements. The landowner must comply with documentation that the holding tank is serviced per requirements.

Krueger mentioned during the lot viewal there is a platform that does not meet the 10' setback from the property line. Does that need to be addressed?

Buitenwerf responded it would depend on the outcome. If you grant them the ability to retain a trailer, the Environmental Services Department would work with the land owners to bring that and any other items into compliance.

VanKempen commented I like the wording that Grob suggested except I would say 80 sq. ft. or less as far as the storage building is concerned.

Johnson asked if there was a restriction on the size of the trailer.

Grob replied no.

Napier remarked the trailer on there now is 386 sq. ft.

Grob asked would that be sufficient long term for you.

Napier responded very comfortable.

Grob asked should we round the travel trailer off to 400 sq. ft.

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

Conditions:

1. The only residential dwelling unit allowed on the lot is a single travel trailer not to exceed 400 sq. ft. in size.
2. The only accessory structure allowed on the lot is a single storage shed not to exceed 80 sq. ft. in size.
3. No future dwelling units other than the single travel trailer authorized in Condition 1 are allowed on the lot.

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 camper trailer will meet all setback requirements as will the proposed holding tank. The conditions placed on the variance will ensure that it be in harmony with the ordinance intent by limiting the lot's development to what is reasonable given its small 50' x 257' size and high water table.

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

Yes (X) No ( )

Why or why not? The lot is a legal nonconforming lot created by plat in 1926. It is half the required width in order to be made an improved lot by permit. Thus, the camper trailer and holding tank being allowed to be placed on the lot (and nothing more) is a reasonable use of the lot given its limitations and size relative to the ordinance criteria for development of unimproved lots.

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

Yes (X) No ( )

Why or why not? The property is a legal nonconforming lot created in 1926 – 45 years before the Shoreland Management Ordinance was enacted. The lot is only 50' wide x 257' deep and the OHW creeps a distance into the lot in a horseshoe shape which eats up more of the lot depth than on neighboring lots. The lot also has a high water table at 37" below the surface per the SSTS holding tank design.

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

Yes (X) No ( )

Why or why not? The lot was created by plat in 1926 as previously stated. The difficulties associated with the lot's development of the proposed camper trailer and holding tank are due to the lot's dimensions, high water table, and how the shoreline has an inverted horseshoe shape on this lot that eats into the lot depth and available space where a trailer and holding tank can be placed. There are no existing

improvements on the lot that are dictating where the proposed camper and holding tank can be placed. Thus, the difficulties are entirely due to the lot dimensions and high water table that are all beyond the landowners' control.

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

Why or why not? The neighborhood is largely comprised of seasonal recreational properties with a few single family homes scattered about. The lot sizes range from the original 50' wide platted lots to lots that have been enlarged over the years by combining the platted lots into larger 100-150' wide lots. Many of the lots are unimproved. Allowing a camper trailer to be placed on the property that will see seasonal use will maintain the largely seasonal and non-stick built single family residence character of the area.

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 small lot size, high water table, and unique horseshoe indented shoreline that causes the OHW setback to encroach further into this lot than on neighboring lots.

The motion carried unanimously 4 – 0.

**Variance Application 12-V-17 by Gerald & Kathy Olsen:** East 275' of Gov. Lot 3 and Gov. Lot 2, Section 19, Township 141, Range 34, Lake Emma Township on Potato Lake, a recreational development lake. Parcel 16.19.00710. Part 1. Applicants are requesting an after-the-fact variance from Section 502.7 of the Shoreland Management Ordinance (SMO) to allow a residential structure to be located at less than the required 150' ordinary high water mark setback from the creek. Part 2. If Part 1 is approved, applicants are requesting a variance from Section 702 of the SMO for a waterward addition to a nonconforming residential structure.

Gerald and Kathy Olsen, 745 31<sup>st</sup> Ave. E. Apt. # 204, West Fargo, ND, presented the variance application. I purchased the cabin in February 2016. I am in the process of requesting an addition. When I had Environmental Services Department assist me and the contractor we found the house sits at 142' from Rice Creek. In November 1999 the cabin was approved with adequate distance. I am requesting the after-the-fact variance.

Part 1 – after-the-fact residential structure.

Grob noted that makes this a nonconforming legal structure.

VanKempen clarified you did not build the structure. Is that correct?

Olsen replied correct. It was built in 2000. The building permit was issued in November 1999. I purchased the house in 2016. It is a two bedroom, 28'x42'.

Grob asked if there was any history as to why it was built at 142' instead of 150'.

Olsen responded Laird and Ira Hefta did the inspection at the time. It apparently came out at 155'. He added a couple feet and thought it came out to 159'. Looking at the 1999 building permit you can see how it curves. It just depends on where you are at that time. It was all woods and brush but we were not there.

Grob asked if there was any indication of the creek bed changing.

Olsen replied Rice Creek is very small. In the spring it comes up about a foot. Right now it is barely running. I cannot say that it has really moved. I have been there 17 years a couple lots over and it has not moved.

Grob asked for public comment.

No written correspondence was submitted.

No public comment was given.

Grob closed public comment.

Grob made a motion to approve Part 1 of the variance and adopt the staff report findings of fact.

VanKempen seconded the motion.

Findings 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 residence is 200' from the lake OHW and only 8' shy of the 150' creek OHW setback due to a bend in the creek and what likely was an honest measurement mistake when the residence was constructed in 1999. The distance of the creek bend where the 150' setback is not met by this '8' is ~25' long. On either side of the bend, the creek setback is more than met by the structure.

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

Yes (X) No ( )

Why or why not? The residence has existed in this location since 1999 when it was built. It is a single story slab on grade design that is not conducive to being moved so

that it complies with the 150' OHW setback. The residence more than meets the 100' lake OHW setback. The portion of the creek from which the residence does not meet the 150' OHW setback is roughly 25' long. On either side of this bend in the creek, the structure meets the 150' OHW setback.

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

Yes (X) No ( )

Why or why not? The property is unique in that it has three points from which an OHW setback must be met. There is the 100' OHW setback from Potato Lake on this lot's shoreline. Then there is the 100' OHW setback that must be met from the man-made harbor located on the adjoining property to the east of this lot. Lastly, there is the 150' OHW setback from the creek that runs along the west side of this lot and then cuts through the south 90' of its SW corner. The residence meets all setback requirements aside from a ~25' stretch in the creek where the bend exists and the residence is 8' shy of the required 150' OHW setback.

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

Yes (X) No ( )

Why or why not? The previous landowner stated on the 1999 building permit that was issued for this structure that the structure would be built in conformance with both the lake and creek OHW setbacks. The previous landowner wrote on the permit application form and accompanying permit application sketch that the residence would be 155' from the creek OHW. The current landowner is different than the owner who constructed the structure in 1999.

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

Yes (X) No ( )

Why or why not? The locality consists of a five lot plat to the immediate east of this lot. The lots in the plat are all improved and have single family residences on them that meet the 100' OHW setback. To the west of the lot lies a large 16.5 acre tract with a single family residence on it. Further to the west, six residential riparian lots exist that have single family residences on them that were formerly cabins that were part of an old resort. The requested variance will not cause the locality's residential character to be harmed.

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

Yes (X) No ( )

Why or why not? Economic considerations were not cited in the application as a difficulty. The difficulty is caused by the unique situation of a structure on this lot



having to meet OHW setbacks from the creek on the west, the lake on the south, and the man-made harbor on the neighboring lot to the east. Additionally, the natural vegetation that exists on the lot likely contributed to the error made in 1999 when measuring the 150' creek setback for the structure's location.

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? **(Note: Ask the applicant this question during the hearing. The following info is the department's best guess/understanding of what may have been contributing factors to the structure's placement.)** The contractor lined up to do the proposed work in this variance application obtained the building permit for the structure's construction in 1999. It appears that the contractor did make a good faith effort to measure the 150' OHW creek setback and build the structure at said setback, but either did not measure from the nearest point of the creek or the substantial natural vegetation between the creek and structure contributed to the mismeasurement.

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

Why or Why not? Yes. As mentioned in answers to previous findings of fact questions, the contractor did obtain a building permit for the structure in 1999 and stated on the application that the structure would meet both the lake and creek OHW setbacks. The current owners and applicants did not own the property at the time the structure was originally constructed.

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

**(The department is not aware of such, but recommends asking the applicants this question during the hearing.)**

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

Yes. The County Assessor's Department has the residence valued at \$92,777 which is a substantial amount of money.

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

Yes. The structure was constructed in 1999. The fact that it does not comply with the 150' creek OHW setback was not learned until the spring of 2017 when Environmental Services Department staff measured the structure's setback for purposes of the proposed addition project.

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

Yes. See the answer to Question 5 of the findings of fact which states that the residences on the six lots to the east of this lot all meet the lake OHW setback and are of similar size to this structure. The homes on the lots to the west of this lot are also similar in size and are located closer to the lake OHW than this structure due to the fact these lots were developed prior to the Shoreland Ordinance enactment.

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 structure is only 8' off of the required 150' creek OHW setback and then this is only for a 25' long stretch of the creek. The structure meets the creek setback from the rest of the creek located on either side of this 25' bend. The residence is 28' x 42' in size and is a single story slab on grade house which makes it not feasible to attempt to move it 8' back or remove a portion of the structure to allow it to meet the 150' setback.

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

No. For reasons stated in the answers to previous findings of fact questions, the house is only 8' off of the required 150' creek OHW setback for a ~25' stretch of the creek where there is a bend. The residence otherwise meets the 150' setback on either side of the bend. The house is a slab on grade style of construction and 28' x 42' in size – which is not conducive to moving further back or removing the portion that infringes on the setback. The residence is set back twice the required 100' OHW setback from Potato Lake.

The motion carried unanimously 4 - 0.

Part 2 – addition.

Olsen stated based on the size of the house and our future plans we are requesting a 12' x 28' dining and living room addition on the lakeside. With the appropriate deck. As the diagram shows it will end up being 128' from Rice Creek. It will be 176' from the lake. I have adequate space straight south.

Grob asked if the deck is existing.

Olsen responded no. The dotted lines will be the planned deck. The existing deck is shown and is the size of the requested addition. I would like to enclose it.

Grob asked if the expansion of the deck will be causing the encroachment to the creek.

Olsen responded yes.

Krueger commented it appears that you have enough lots of building space to where you would not need a variance for an addition.

Olsen responded where the kitchen is designed we are planning on a dining room addition. The current kitchen area is 8'x10'. We will be able to place the family room in the appropriate location as the bedrooms are on the back side of the cabin.

Krueger asked is there crawl space beneath it.

Olsen responded no. The plumbing to the north is in the wall.

Grob asked if expansion would be possible to the east or the other direction from the kitchen.

Olsen replied the fireplace was put in place after-the-fact so the venting system would make it difficult to move to the east. The way the kitchen is presently set the exhaust system and the counter top stove would cause some issues.

Grob asked if both expansions were approved would you end up with three bedrooms.

Olsen replied yes.

Grob asked what the foliage is like from Rice Creek.

Olsen responded I am limited where we can cut grass. Everything else is brush. We have a good filtration system for rain water.

Grob asked when the creek rises in the spring, how far up does it spread over its banks.

Olsen responded the picture shows the creek at its fullest.

Grob asked for public comment.

No written correspondence was submitted.

No public comment was given.

Grob closed public comment.

Grob commented I am very familiar with the area. I realize Rice Creek required to have a 150' setback as that is what the requirements are. This is virtually a water shed in the spring. This is one of those situations where it is a logical way to expand without it influencing any negative way to the lake. I am inclined to be supportive of the variance application.

Krueger noted during the on-site lot view he was looking for the creek and you can basically only see the beginning part of it. It does not even seem like there is a creek there. Changing around the layout of the house for the addition on to be on the other side would be difficult. I agree with Grob on supporting the application.

Krueger made a motion to approve Part 2 of the variance application as presented with the following condition.

Condition:

1. The lot area between the house and the ordinary high water mark setback of lake must be kept "as-is" in terms of its current natural state with the only allowed improvement in this area being the existing lake access path

Grob seconded the motion.

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 (X) No ( )

Why or why not? Maintaining the ordinary high water mark setback of the lake.

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

Yes (X) No ( )

Why or why not? The need for a garage is typical for this climate. The location of the garage and the bedroom is a logical place. The living expansion is reasonable. Without those it is a fairly small cabin.

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

Yes (X) No ( )

Why or why not? It is unique in the sense that there is a creek. However, it is a small water shed. Few lots have creek and lake setbacks.

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 topography and building location on the property.

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

Yes (X) No ( )

Why or why not? The locality consists of single family seasonal and year-round residences. The half dozen residences to the east of this lot all meet the 100' OHW setback. The half dozen lots to the west of this lot also have residences on them that are located closer to the 100' OHW lake setback because they were developed prior to the Shoreland Ordinance's enactment as cabins in a previous resort. The

proposed addition would be 380' from the nearest house on the adjoining lot to the west.

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 4 – 0.

**Variance Application 13-V-17 by Brent Gulsvig:** Part of Gov. Lot 4, Section 30, Township 143, Range 32, Lakeport Township on Kabekona Lake, a recreational development lake. Parcel 19.30.01100. Applicant is requesting a variance from Section 902 of the Shoreland Management Ordinance to excavate approximately 150 cubic yards in a bluff impact zone to facilitate a residence with a walkout basement.

Brent Gulsvig, 27654 County 37, Laporte, MN, presented the variance application. We would like to build our retirement home designed to be senior citizen friendly without any steps going into the house. That requires me to have a full basement with 8' ceilings. I would like to have a walk-out basement behind the house. There is already a pocket in the bluff impact zone. To accommodate the walk-out basement I would need to remove approximately 150 cubic yards of earth.

Krueger asked if behind the house means lake side of the house.

Gulsvig replied yes. Without the variance I would need to exit the house on the other side of the lake and walk around. There is a set of steps there that go down to the lake. The pocket that is already in the bluff is natural or dug out by previous owner. My intent is to extend it to the house.

Krueger noted going through the findings of fact there are a couple that I will have difficulty changing to yes. Basically questions one through three. Can you try and explain to me why I should change my mind to yes.

Gulsvig responded it is a matter of convenience for me and my wife to be able to walk out the lower level of the basement. As opposed to walking out the back door and walking around.

Krueger remarked as I mentioned during the lot view, you can accomplish a walk-out with a two story home.

Gulsvig replied it is going to be a log home. A two story house would not be practical or economical. Having one story above the ground and the basement below would be practical. The setback line is shown in the picture. I had the technicians from Environmental Services Office come out and measure the setback. At that time I told them my intent and Bryan Haugen, Environmental Specialist, said that I would need a variance to remove the triangular shaped area in the bluff.

Krueger clarified you are wanting to excavate 25' x 16' of earth.

Gulsvig replied yes.

Johnson asked have you entertained the idea of having the lower section half way into the ground and be able to walk up four feet.

Gulsvig responded yes. Our intent is to have a level entry from the garage without any stairs.

Grob you will still have stairs to maneuver inside.

Gulsvig replied correct. With the walk-out basement we can walk directly out to the lake.

Grob asked the importance of not having the steps on the outside of the house.

Gulsvig replied convenience in the later years.

Grob remarked your practical difficulty is cost.

Gulsvig replied yes. The construction of a two story log home would be costly.

Krueger asked what the elevation is from the ordinary high water mark to the top of the bluff.

Gulsvig replied at least 100'. There are at least 50 steps down to the lake.

Grob asked for public comment.

No written correspondence was submitted.

No public comment was given.

Grob closed public comment.

Krueger noted the variance is for excavating in the bluff. The previous variance we approved for the septic was approved with horizontal boring so we would not be disturbing the soil. I am having difficulties with not wanting to add a few more steps for a basement when you will still need to take approximately 50 steps down to the lake.

Johnson remarked the rule in the ordinance was created to prevent any gouges out a natural lake shore. If it was something being buried I could understand but this is removal to change topography.

Krueger made a motion to deny the variance application.

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 ( ) No (X)

Why or why not? The lot was recently created by administrative subdivision such that it meets all current lot size and residential lot suitable area requirements. Thus, there is no reason why a residence cannot be placed on the lot with a land use permit at a location that meets all ordinance requirements. Allowing 150 cubic yards of soil to be removed from the top of a bluff for a walk-out basement when many other styles of homes can be placed on the lot by permit would not be in keeping with the ordinance's intent.

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

Yes ( ) No (X)

Why or why not? As stated in the answer to question 1, the lot was recently created by administrative subdivision which means it had to meet all current lot size requirements and have sufficient room on the lot for a residence to be able to be constructed by land use permit and not require a variance. There is ample room on the lot where a residence can be placed by permit – thereby not depriving the applicant of a reasonable use of the property is this variance application is denied.

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

Yes ( ) No (X)

Why or why not? Many lots throughout the county have bluffs on them between the OHW structure setback and lake. This lot was recently created through an administrative subdivision and thus the lot complies with all current lot size requirements which means that the lot is large enough and has suitable space for the desired residential structure to be able to be placed on it via land use permit and not require a variance.

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

Yes ( ) No (X)

Why or why not? As stated in the answers to the previous three questions, the lot was recently created through an administrative subdivision which means the lot meets all minimum lot size requirements to be able to have a residence placed on the lot in a conforming location by permit. The alleged difficulty is entirely due to the landowner's desire to construct a walk-out basement style home.

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

Yes ( ) No (X)

Why or why not? The house on the adjoining lot to the north of this lot was built at a conforming bluff impact zone setback as was the nearest house to the south of this lot that is two lots to the south. No excavations into the bluff impact zone occurred in

these two neighboring situations. Allowing a 25' wide x 16' horizontally deep x 10' vertically deep portion of the bluff impact zone (150 cubic yards) to be removed would not maintain the locality's character as it would result in a compromised bluff that would have a visible man-made look to it when viewed from 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 motion carried unanimously 4 – 0.

**Variance Application 14-V-17 by Bill and Michelle Rice:** Lot 4 except the North 42.5' and Lot 5, Borhel Subdivision, Section 30, Township 140, Range 32, White Oak Township on Loon Lake, a natural environment lake. Parcels 28.39.00400 and 28.39.00500. Applicants are requesting an after-the-fact variance from Section 502.1 of the Shoreland Management Ordinance to allow a residential structure and lakeside deck to be located at less than the required 150' ordinary high water mark setback.

Bill and Michelle Rice, 28535 Diamond Drive, Nevis, MN, presented the variance application. We are asking for a variance for the house to remain at less than the 150' setback. In 1981 when the house was built it was constructed without a permit. We are approximately 113' from the ordinary high water mark. I would like to have a bedroom addition on the north side of the house. I had someone from Environmental Services Office come out to see if we could have it done with a permit and we later found out the house never had a permit to be built. We are needing the house to be accepted as it was built.

VanKempen clarified you did not build the house.

Rice replied correct. We bought the house March 1, 2016. It was a built in 1981.

VanKempen noted the house is 126' from the ordinary high water mark with a deck on the lakeside.

Rice responded it is actually 113' to the house. The deck is currently 16'x12'. The deck is in need of repair. We wanted to tear it off and rebuild it at the exact same size.

VanKempen asked if the addition is on the lakeside.

Rice replied no.

Grob commented in 1981 when this structure was built it was built to the setback requirements at that time but not by permit. Subsequent changes in 1991 when the State combined the two different classifications they went with the 150' setback. If it had been built by permit in 1981 it would have been built a legal nonconforming structure. Our order of business here is to consider the after-the-fact variance to make this a legal nonconforming structure.



Grob asked for public comment.

Public comment from Audrey Iverson, 28592 Diamond Drive, Nevis, MN 56467. I have a life-time easement and I want to make sure this addition does not interfere with it.

Rice responded there is an easement on the property that is 15' wide for anyone to cross the road to gain access to the lake. The house sits 50' towards the easement line and I am wanting to add on 16'. I will still be 34' from the easement line.

Iverson replied I just wanted to be sure.

Grob closed public comment.

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

Grob seconded the motion.

Findings of Fact:

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

Yes (X) No ( )

Why or why not? The structure appears to have been placed on the lot as far back from the OHW as is feasible. So the previous landowners who constructed it did a good job of determining the maximum OHW setback possible on the lot. The house has been in place since 1981. Requiring it to be moved further from the lake when only a few more feet could be reasonably obtained to still allow room for a SSTS drainfield in the rear yard and meeting the road ROW setback would be very unreasonable.

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

Yes (X) No ( )

Why or why not? The lot is not deep enough (less than 200') to be able to meet the 150' OHW setback and the 20' road ROW setback. Thus, a variance of some degree/kind is needed in order to be able to place a residence on the lot and having a house on this lot is a reasonable use of the property.

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

Yes (X) No ( )

Why or why not? The lot is less than 200' deep. According to the plat, the lot is 162' deep. There is not room to be able to meet both the 150' OHW setback and the 20' rear lot line setback and fit a house, well, and SSTS on the lot without some sort of variance.

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

Yes (X) No ( )

Why or why not? The difficulty is caused by the lot depth which was created by the party that platted the lot in 1969.

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

Yes (X) No ( )

Why or why not? The house has been on the lot since 1981. The locality consists of a mixture of seasonal and year-round single family residences and a couple vacant lots. This house is located at a similar OHW setback to that of the other houses in the neighborhood.

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

Yes (X) No ( )

Why or why not? Economics were not cited in the application as the sole difficulty. The difficulty is due to the lack of lot depth.

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? The applicants did not construct the house. The house was built by a previous owner in 1981. The applicants purchased the property on March 1, 2016. As soon as the applicants were informed of the need for an after-the-fact variance on the house, they submitted this variance application to resolve the problem.

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

Why or Why not? The applicants did not construct the house. Prior owners did so in 1981. The applicants acquired the property on March 1, 2016. As soon as the applicants were informed of the house being in violation of the ordinance's setback requirement, they made work of submitting this variance application to bring the structure into compliance with the ordinance.

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

No. The applicants did not acquire the property until March 1, 2016 and the structure was constructed in 1981 by previous owners.

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

Yes. Per the deed tax paid when the deed conveying the property to the applicants was recorded, the property was purchased for \$125,000.

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

Yes. As stated in answers to previous findings of fact questions, the structure was constructed in 1981 by a previous owner.

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

Yes. There are other residences on the other lots in this platted neighborhood that are also at a similar OHW setback as this house – largely due to the plat having been created in 1969 – two years prior to the enactment of the Shoreland Ordinance – and the fact that Loon Lake used to have a 100' OHW setback when most of the homes on the lots in this neighborhood were built.

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 house is sited on the lot about as far back from the lake as it can practically be placed and still comply with the road ROW setback and leave room for a septic system and well. The few feet that possibly could be gained would not be worth the significant cost to the landowner to move this house with a full basement back a few feet.

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

No. For reasons stated in the answers to previous findings of fact questions, the house could only possibly be moved back a few feet from where it currently sits and still leave room for the SSTS and road ROW setback. Other homes in the neighborhood are located at similar OHW setbacks as the neighborhood was largely developed when Loon Lake had a 100' OHW setback. Had the previous owners who constructed the home obtained a permit at that time, the structure would have met the then 100' OHW setback and it would now be considered a legal nonconformity that would not require an after-the-fact variance. The proposed addition to the house and reconstruction of the deck could then be done by permit.

The motion carried unanimously 4 – 0.

**Variance Application 15-V-17 by Eric and Barb Billing:** Lot 1, Block B, Lot 27, Block A and Block F, Plat of Hurd's Acres, Section 23, Township 141, Range 34, Lake Emma Township on Big Sand Lake, a recreational development lake. Parcels 16.44.05900, 16.44.02700, and 16.44.02900. Applicants are requesting a variance from Section 702 to replace and enlarge a nonconforming residence that is located in the shore impact zone.

Eric and Barb Billing, 4133 Country View Drive, Eagen, MN, presented the variance application. We have recently purchased this lodge, knowing that it was a legal nonconforming lot as it is very close to the river that runs next to the house. We bought this house with the intent of repairing it and rebuilding it to make it our retirement home. We plan to change the pitch to the front portion of the house so it matches the rear portion of the house to allow more light to come in. While increasing the pitch we are not exceeding the elevation. We are wanting to move the east entry from the northeast corner of the house to the midpoint on the east elevation. We are removing the other entry, stairway and utility shed in the rear. We are wanting to move the entire structure four feet to the east. This is as far as we can go before we start putting trees at risk. We are shrinking the front portion of the home making it narrower and shorter for the purpose of creating more shade for the high sun traffic areas.

VanKempen clarified the front roof pitch would not be as tall as the rear. It appears the front part of the house is smaller than the existing house. They are moving it away from the creek as much as they can without wiping out a bunch of trees.

Grob asked do you own all three parcels of land.

Billing replied yes.

Grob asked if the west area is buildable where the bridge is located.

Billing responded it is not buildable at all. There is no structure on the lot.

VanKempen noted you could not meet the 150' setback as you would be in the river.

Grob asked what the setback is to the home.

Billing replied about 110'.

Johnson noted part of your proposal includes a crawl space. Is there going to be a problem with the 3' separation for the floor of the crawl space to be above the creek level?

Billing responded we do not know yet. We have to get the variance approved and then we can either build by crawl space or grade on. We would like to do a crawl space. There is a basement there now.

Grob asked if the current house has a basement.

Billing responded yes.

Grob asked what the head space is.

Billing replied 6 feet. Roughly speaking the rear portion of the house is going to come down 18" so it is at the same elevation as the front.

Grob asked if the creek rises much in the spring with the run-off.

Billing responded no. It raises up plus or minus 6 inches like a lake.

Grob asked if there is a garage on the property.

Billing replied yes. It is 24' x 36' garage beyond the 150' setback.

Grob noted the 3' separation could be problematic.

Billing responded if it is not feasible we will do slab on grade.

Grob asked for public comment.

No written correspondence was submitted.

No public comment was given.

Grob closed public comment.

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

Condition:

1. If the proposed new residence's crawlspace cannot meet the 3' vertical separation requirement in Section 507.1 of the Shoreland Management Ordinance (SMO), then the applicant must put the new residence on a slab on grade. Said another way, the new residence must comply with Section 507.1 of the SMO.

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? Section 702 of the Shoreland Ordinance would allow the structure to be rebuilt by permit if its dimensions remained the same. The reason a variance is needed is because the height of the single story portion of the house will increase 4' and a roof will be added over the main entry. The applicants are voluntarily proposing to move the house 4' away from the creek and remove two small bumpouts on the current house. The aesthetic impact of the increased roof height will be negligible as the house meets the lake setback and is far from the nearest neighboring residences and separated from them by mature stands of trees.

2. Without the variance, is the owner deprived of a reasonable use of the property?  
Yes (X) No ( )

Why or why not? The house appears to have been built no later than the 1940s and has run its life cycle. The spot on this lot where a house could be placed and meet the 150' creek setback, 100' lake setback, and 50' road ROW setback is not feasible because it would be in the east half of the lot that is located behind two adjacent

riparian lots and thus the house would function as though on a non-riparian lot rather than the riparian lot it is. The proposed site will meet the lake and road ROW setbacks and be 4' further away from the creek. Being able to have a residence on a longstanding riparian lot in a location where the lake can be seen 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 property is ~260' deep between the lake and road. It has a 100' lake OHW setback, 150' creek OHW setback, and 50' road ROW setback that apply to it. The lot is oddly shaped with half of its width being located behind two other riparian lots. While this portion of the lot behind the other riparian lots would technically provide a space for a house to be placed and meet all setbacks, such a location would not be reasonable as it would effectively cause this riparian lot to function as a backlot because the house would then be behind the two neighboring riparian lots' residences.

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

Yes (X) No ( )

Why or why not? The lot and existing house were created many decades prior to the ordinance's enactment. The difficulty is caused by the three aforementioned setbacks that apply to the lot and the lots unique shape and position relative to the lake and two adjoining riparian lots that sit in front of the east portion of this property.

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

Yes (X) No ( )

Why or why not? The new house will be nearly identical to the current house and basically in the same location. The house has been in the location for decades and predates most of the other homes in the neighborhood that is comprised of single family seasonal and year-round residences.

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 unique lot shape and position relative to other adjoining lots and the lake, creek, and road ROW setbacks all making it difficult to site a residence on the lot.

The motion carried unanimously 4 – 0.

**Variance Application 16-V-17 by Claudia McGrath:** Lot 4, Belle Taine Westview Beach, Section 18, Township 140, Range 33, Nevis Township on Lake Belle Taine, a recreational

development lake. Parcel 21.52.00400. Part 1: Applicant is requesting a variance from Sections 502.2 and 703 of the Shoreland Management Ordinance (SMO) for replacement of a lakeside deck and platform that exceed that maximum 15% of existing structure ordinary high water mark (OHW) setback encroachment and the 30' OHW setback threshold. Part 2: Section 902 of the SMO to exceed the permit table volume of earthen material that can be moved in a shore impact zone and on a steep slope.

Claudia and Patrick McGrath, 19248 219<sup>th</sup> Avenue, Nevis, MN, presented the variance application along with Keith Kinnon, Karvakko Construction.

Kinnon stated the applicants are requesting two separate variances. The first one is to exceed the amount of cubic yards of earth to excavate and the other is to install a stairway connection from an existing deck to another existing stairway on the property. The home was recently purchased and soon discovered the patio and deck were coming away from the home. They began seeking a solution by reaching out to contractors for a solution. We have come up with a plan to resolve the issue. The most applicable solution involves this plan which requires an additional 13.3 cubic yards above what is normally permitted. We also want to connect the deck to the stairway. The largest outstanding issue is the steep terrain. We had a structural engineer involved looking into several alternatives and cost scenarios. The largest issue is the access. This appears to be the best solution to keep the deck and patio in place. We need to carve a temporary road along the north side of the home. We would re-establish it upon completion to get it back to its natural state.

VanKempen asked if the deck and retaining wall were not coming away from the house and sliding down the hill you probably would not be doing this.

Kinnon replied correct.

VanKempen noted the extra excavation is only for the equipment to do the project.

Grob asked if the deck and platform area would be the same size as the current one.

Kinnon responded it is actually an addition. Part two on the application is to provide access directly from the existing patio to the stairway. At this point there is no access to the stairway from downstairs. You cannot get to the deck from the lake without going to the front of the house.

Grob asked if the footprint of the deck and the platform below will remain the same. You are only building a stairway to it. Are you encroaching towards the lake with the platform or the deck?

Kinnon replied no.

VanKempen asked if the house needs stabilizing.

McGrath mentioned there are cracks in the ceiling. But I am unaware of any issues.

Patrick McGrath mentioned with all of the contractors that have been to the lot seem to think the house is fine. The previous owners installed the deck and all we want to do is resolve the issue before it slowly falls into the lake. We were seeking a long term solution.

Kinnon mentioned another component that we are addressing is the drainage around the house. We are looking to improve the drainage as we are unsure that it was the reason for the structure to fail but it certainly will not hurt to improve the drainage away from the house.

Grob asked for public comment.

No public comment was given.

Written correspondence was received by David and Sandi Wingert, 19232 219<sup>th</sup> Avenue, Nevis, MN, supporting the variance application.

Grob closed public comment.

VanKempen asked if the steep slope had adequate vegetation.

McGrath replied yes.

VanKempen 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 existing deck and platform below it are in need of replacement as they are separating from the house and inching downslope. The new replacements will not go closer to the lake than the existing items. The volume of material to be moved is for a temporary access path to the project site that will be restored and landscaped into a series of retaining walls and walkways as shown in the project plans. The overall end product will not look markedly different than what is currently present and is intended to leave the slope in a more stable situation.

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

Yes (X) No ( )

Why or why not? The house is a walkout basement design with lakeside facing doors on both levels. Thus, for safety's sake, replacement of the deck and platform is needed for safe ingress/egress to/from the house. Having a lakeside deck and platform on a house on a riparian lake lot is a reasonable request as such things are typical accessory features on such lots.

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

Yes (X) No ( )



Why or why not? The house was constructed prior to the Shoreland Ordinance's enactment and is situated at the crest of a steep slope and in the shore impact zone. There is no way to replace the deck and platform without a variance and doing so is necessary due to the house design to allow for continued safe entry and exiting to/from the home.

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 applicant did not own the property when the house, deck and platform were constructed in the shore impact zone at the top of a steep slope.

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

Yes (X) No ( )

Why or why not? The deck and platform will be replaced at essentially the same size as what exists with the exception of a minor 8' x 10' deck addition to the north of the existing and some connecting walkways added between the deck and platform. Thus, there will be negligible impact to the neighboring properties. There are some mature trees and shrub understory between the project area and adjoining house to the north that will provide screening so the project is not harmful to the neighbor.

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 structure, deck, and platform being constructed at the top of a steep slope in a shore impact zone prior to the ordinance being enacted.

The motion carried unanimously 4 – 0.

**Variance Application 17-V-17 by Aaron and Michelle Mullenbach:** Part of Gov. Lot 1, Section 18, Township 140, Range 33, Nevis Township on Lake Belle Taine, a recreational development lake. Parcel 21.18.01100. Applicants are requesting a variance from Section 507.1 of the Shoreland Management Ordinance (SMO) for a proposed addition to a nonconforming residence that will not meet the required 3' of vertical separation between the highest known water level and the lowest floor of the addition. Section 702 of the SMO for a proposed addition to a nonconforming residence located in the shore impact zone.

Aaron and Michelle Mullenbach, 19600 Emerald Drive, Nevis, MN, presented the variance application. My parents purchased the property in 1978 and built the cabin there. We have been using it as a vacation home. Last fall we purchased it from my mother and we have made it our permanent residence. We have looked into a few different addition options and this appears to be the best solution. We have a noncompliant septic system that we will be updating. This garage addition on the east side of the house will include a bedroom above. The current garage on the house is small and is basically used for storage.

Grob asked what the other two structures on the property are.

Mullenbach responded the property line is incorrect and the structures shown are inaccurate.

Krueger noted during the lot we noticed a pump running and draining. What is the purpose of that?

Mullenbach responded it was never used a lot so we are attempting to clean it up a bit.

Krueger asked if they are allowed to construct a structure 3' above the water level on blocks.

Buitenwerf replied possibly.

Krueger remarked we are going to have the 3' minimum separation that will be problematic here.

Buitenwerf clarified in the ordinance it states you are not allowed to bring fill in to raise the structure floor height to comply with the 3' elevation.

Grob asked what makes the current SSTS noncompliant.

Buitenwerf responded it does not meet the separation from the water table.

Grob asked if there was an existing tank and drainfield.

Buitenwerf responded yes. They have been noncompliant for quite some time.

Johnson remarked the actual compliance inspection shows the soil does not have the 12 inch suitable for a drainfield. Do we have an ordinary high water mark elevation and topography elevation around the structure?

Buitenwerf responded the highest known water level on Belle Taine was 1429.77 feet above sea level. The highest points on the property are shown to be at 1430' elevation.

Johnson noted for septic we go by the highest known water level.

Buitenwerf responded for purposes of the 3' separation for the structure floor it would be the highest known or it would be the OHW whichever is the higher of the two. For the septic system we would go wherever you are finding modeling.

Grob asked how old the house was.

Mullenbach responded 1978.

Johnson asked if the current structure had three bedrooms.

Mullenbach replied correct.

Johnson noted you are not proposing any additional bedrooms.

Mullenbach replied we are technically decreasing bedrooms.

Grob asked if it is possible to install holding tanks when you are within a foot of the highest water level.

Johnson replied it is possible. It can be a challenge.

Grob asked how large the proposed holding tank is.

Mullenbach responded two 1500 gallon tanks.

Grob remarked it seems like you are proposing a large home and could possibly be filling up the tanks quickly.

Mullenbach responded it is not my preferred way. If I could get a drainfield in there I certainly would. As it stands now, I am under the assumption that I will have to change that no matter what.

Grob commented if you add more living space it will require more use of the septic system.

Mullenbach mentioned we are not adding another bedroom. We will have guests as we have a couple kids.

Grob clarified with the addition you will still remain with three bedrooms.

Mullenbach responded correct. Most of the addition is for storage. It was not quite built to support a family of three as it was built as a retirement home.

Grob asked for public comment.

No written correspondence was submitted.

No public comment was given.

Grob closed public comment.

VanKempen made a motion to deny 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 ( ) No (X)

Why or why not? The lot is barely suited for the existing size house on the property. The proposed 36' x 40' two story addition is excessive for a lot that is roughly 100'

wide at its midpoint, surrounded by the lake on three sides, and not even a foot higher than the highest known water level on the lake at the highest points on the lot.

2. Without the variance, is the owner deprived of a reasonable use of the property?  
Yes ( ) No (X)

Why or why not? There is an existing 36' x 36' 1 ½ story house on the lot that currently provides a reasonable use of a lot with the limitations that this lot possesses that are described in the answer to question 1. The lot can also be used to enjoy the outdoors and access the lake which are also 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 is surrounded on three sides by the lake and there is not a place on the lot where the 100' OHW setbacks can be met. The lot is also less than 1' higher than the highest known lake level at the highest points on the lot.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?  
Yes (X) No ( )

Why or why not? The difficulty is due to the lot being a narrow peninsula into the lake that is roughly 100' wide and barely higher than the highest known lake level at the highest points on the lot. The existing house was constructed on the lot by a previous owner.

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

Why or why not? The proposed addition to the house will bring it to a 2736 sq. ft. footprint. The other two residences on this peninsula are roughly 1500 sq. ft. each in size. The nearest house is single story and the further away house is two stories. This house will be too tall at 26' and large in size such that it will look out of place on the point of this peninsula.

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 lot being on a narrow point of a peninsula and barely higher than the highest known lake level at the highest points on the lot.

The motion carried unanimously 4 – 0.

**Variance Application 18-V-17 by Brad and Kari Rasmus:** Part of Gov. Lots 1 and 2, Section 24, Township 141, Range 35, Arago Township on Potato Lake, a recreational

development lake. Parcel 02.24.02100. Applicants are requesting a variance from Section 506 of the Shoreland Management Ordinance to allow a proposed guest cottage to exceed the 700 square foot maximum allowed footprint.

Brad and Kari Rasmus, 15163 Haakon Drive, Park Rapids, MN, presented the variance application. This is a seasonal home and we are requesting an additional 20 square feet of living space on the guest cabin. We are asking for a 4' overhang on one side of the cabin. We are good stewards of the land. We will be tearing down our cabin and making it slightly larger. We could make it much larger and make the guest cabin as part of it but we prefer not to. We would rather have the home back beyond the 100' setback. There is an open air storage area and a dead tree along with a few other trees that need to be removed. There is a buffer zone to the water that we mow minimally to ensure a natural filtration to the lake.

Grob asked how far the cabin is from the lake.

Brad Rasmus responded 53' to the deck and 63' to the overhang.

VanKempen noted on the photo it shows 70' from the lake.

Kari Rasmus replied that is what we thought it was.

Brad Rasmus replied it depends on where you call the OHW.

Grob stated the current cabin is 40' x 24'.

Brad Rasmus explained the intent is to build the guest cabin and tear down the existing residence and build in the same footprint.

Kari Rasmus commented there is an additional slab 24' deep and 16' wide is where the footprint would be.

Brad Rasmus commented we believe we can build at the existing footprint. The variance is for the guest cabin.

Grob asked for clarification on the footprint as it is 24' x 30'. Is the 700 square feet a footprint for the basic structure or does it include overhangs?

Buitenwerf responded the ordinance states the guest cottage cannot cover more than 700 square feet of land surface. This question came up during the lot viewal as to whether or not the proposed covered porch counts toward that space if they would be able to cantilever it away that they would need support posts on the outside corners. At that time I gave my best interpretation which would be that would not change things. I explained I would check with the DNR once I got back to the office. In doing so, the DNR area hydrologist agreed with my thoughts. Even if the corner posts were not there, that would still function as outdoor living space and thus count towards the 700 square feet.

Grob asked would a normal 18" overhang be included in the 700 square feet.

Buitenwerf replied no. That would not as it is there to safeguard the house from storm water. It is not meant to serve as a space under which you could do anything out of the weather.

Grob asked could I view the picture of the porch. What are the dimensions of the proposal?

Kari Rasmus explained we originally asked for 16' but after we talked with the contractor he said we need 4' and we would change the position of the door.

Grob noted the proposed addition is 4' x 30' with a deck underneath. Why do you need that?

Kari Rasmus said we do not need it. It would be very nice to have a place for people to sit and protect the windows from the rain. Right now we have a lot of trees but we happen to live on a lot in Hubbard County that happened to get hit by a tornado and no longer have any trees. It is mainly for sun protection in the summer and to allow for the sun in the winter.

Johnson noted during the lot viewal you mentioned you will be adding onto or changing the cabin.

Brad Rasmus replied yes.

Johnson commented the cabin is outside our shore impact zone. Will they be able to increase the footprint for size?

Buitenwerf replied yes.

Kari Rasmus remarked we could add it to the cabin but we prefer to keep it back. We want the view from the lake.

Grob asked why not move the guest cabin back 30' and build it large enough to include the guest cabin and have a larger home.

Brad Rasmus replied we have beautiful Norway trees and if we move the structure back we would impact those.

Kari Rasmus explained we would not be heating the guest cabin all year around. If we added it to the cabin we would be.

Grob asked for public comment.

No written correspondence was submitted.

No public comment was given.

Grob closed public comment.

Kari Rasmus asked if you disapprove the 4' overhang, could the cabin still be built at 720 square feet.

VanKempen asked Buitenwerf if they built the proposed cabin at 24' x 30', which would make it 720 square feet, with the porch becoming a deck. Would that be fine?

Buitenwerf replied no. It would still exceed the 700 square feet by 20 square feet.

VanKempen commented the extra 20 square feet is not an issue for me. With the deck being added on and plans of rebuilding the main cabin my thought would be to build the guest house as close to the ordinance as you can and make a deck or porch on the cabin when you rebuild it.

Johnson made a motion to deny 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 ( ) No (X)

Why or why not? The application shows that a guest cottage can be placed on the property in compliance with all setbacks. The alleged difficulty is that standard lumber dimensions do not facilitate the construction of a guest cottage in compliance with the 700 sq. ft. maximum footprint size without causing additional labor costs and wasted building materials. Allowing a guest cottage to be constructed 28% larger than the 700 sq. ft. allowed footprint when this is the difficulty would not be in keeping with the ordinance's intent.

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

Yes ( ) No (X)

Why or why not? The application shows that there is a location on the lot where a guest cottage can meet all setback requirements and thus be built by permit. Thus, the applicants are not denied the ability to construct a guest cottage. Many 700 sq. ft. maximum size guest cottages exist on other lakeshore properties in the county – proving that such sized structures can be constructed with existing standard dimension lumber. There is an existing detached garage, open-sided shed, and primary cabin on the property that all provide reasonable uses of the property. The property can also be used for enjoyment of the outdoors and accessing the lake for recreational purposes – which are additional reasonable uses provided by the property.

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

Yes ( ) No (X)

Why or why not? The application shows that a guest cottage can be placed at a conforming location on the property and thus be constructed by permit. The stated

difficulty has nothing to do with the property and any unique circumstances related to it. Rather, the stated difficulty is that the applicants cannot find existing standard dimension lumber that will allow a 700 sq. ft. maximum size guest cottage to be constructed without wasting lumber and requiring additional labor to build the structure.

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 application shows that a guest cottage can be constructed on the lot in a conforming location and thus be issued a land use permit. The alleged difficulty is that standard lumber dimensions will result in greater construction labor costs and material waste than if the proposed 896 sq. ft. guest cottage is allowed to be built. This difficulty has nothing to do with the lot characteristics and everything to do with landowner preferences.

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

Yes (X) No ( )

Why or why not? Other lots in the neighborhood do not appear to have guest cottages on them. The existing residence on this lot is 960 sq. ft. The proposed guest cottage would be 4 sq. ft. shy of 900 sq. ft. and thus make it appear as though this lot has two primary residences on it which would not fit in with the neighborhood that is made up of single-family residences with either attached or detached garages.

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

Yes (X) No ( )

Why or why not? Economics were cited in the application as a difficulty along with waste of building materials and difficulty in locating suitably dimensioned lumber. These difficulties have nothing to do with the lot characteristics or the findings of fact criteria upon which a decision concerning the variance are to be based.

The motion carried unanimously 4 – 0.

**Variance Application 19-V-17 by Bernard Arseneau:** South 100' of the North 600' of Gov. Lot 6, Section 3, Township 142, Range 32, Steamboat River Township on Benedict Lake, a recreational development lake. Parcel 24.03.00700. Applicant is requesting a variance from Section 902 of the Shoreland Management Ordinance to excavate more than the permissible volume of earthen material on a steep slope in the area between the shore impact zone and the ordinary high water mark structure setback.

Bernard Arseneau, 33448 Parkway Forest Road, Benedict, MN, presented the variance application. I am requesting a variance for a two tiered land scape effort between the shore impact zone and the structure setback. The number in the variance is 47.5 cubic yards. That is a conservatively high number. I do not anticipate it to be that much. In addition to



the landscape effort, there would be some perennial vegetation including native plants under the tree canopy where there is very little vegetative growth. This is driven by multiple reasons. One reason is erosion. When I was out at the property today I noticed the three trees that are eroded out in that area. That would be directly corrected by the landscaping effort that I am recommending. The second reason is within this permit I can annually move 10 cubic yards of soil. Rather than do this in multiple efforts that open it up into potential erosion it would be nice to capture the erosion in one construction effort. I spent 30 years at MNDOT, I had the environmental and construction groups below me. I am a steward of the environment and I recognize the impact of erosion and soils entering lakes. There is also an added value of use in the property.

Grob asked how far is the house from the lake.

Arseneau responded the edge of the deck is 100'.

Grob asked what the terrain or vegetation looks like to the lake. Is there any buffer at all?

Arseneau replied the whole bluff is a buffer. It is all natural. It is well developed in terms of tree and ground growth. At the top of the stairs, which is about 50' from the lake, which is the area we are talking about. The slope of the area is apparently 16%. If it was 12% I would be within a permissible amount of soil.

Johnson asked where the 16% slope is located.

Arseneau responded between the edge of the deck and the top of the stairs. I originally applied for a permit. In the permit it appeared to be ok, but then the slope was 16% instead of 12%.

Grob asked what the elevation drop is from the stairs to the dock.

Arseneau responded there are 24 steps there. Approximately 7" per step, roughly 12 or 13 feet.

Grob asked what kind of vegetation is in the area.

Arseneau stated thigh high grass. There are a lot of trees in that area.

Grob asked what the purpose is for wanting to build this area.

Arseneau replied it is too full. I believe it will manage the erosion better and allow us to utilize the area at a higher level. We have had people fall around the fire pit area. I would like to level that out.

Grob noted you are wanting to scoop out of the hill in two places. Is that correct?

Arseneau responded yes and balance the soil as best as possible.

Grob remarked to put a retaining wall around and create a sitting area.

Arseneau replied yes.

Johnson noted you do not have rain gutters on either side of the roof. How much run off comes straight down through the deck?

Arseneau replied at this time about half of it does. I have someone coming out to do that and drop it on the back side.

Grob asked for public comment.

No written correspondence was submitted.

No public comment was given.

Grob closed public comment.

Grob mentioned I was not at the lot viewal but it seems to me that erosion does not seem to be the issue. It seems to me you are asking for a variance to dig into a hill so you can make a sitting area. From an ordinance stand point it is hard to answer the questions in an affirmative way. The findings of facts allow us to justify us giving you the opportunity.

Arseneau commented there is erosion there and I am sorry that you did not get a chance to see it. The other thing is, I can move 10 cubic yards annually. Rather than do this over three or four years it seems as though this is a better path to take.

Grob remarked I realize what the ordinance may say but it was intended to move dirt for some purpose other than creating a different living arrangement. For people to take that approach it may be legal I do not think it comes close to the intent.

Arseneau explained to be conservative so you could see a maximum number, I looked at this as excavating and removing all of the dirt. I have no intention to do that. It will be much less than that because balancing that is what makes total sense from a construction and management point of view. The 47 cubic yards is highly conservative and I wouldn't imagine it is hardly 20 cubic yards.

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

Condition:

1. Applicant must install rain gutters and direct the run-off away from the lake.

No one seconded the motion.

Krueger noted you are asking for two tiers. Is that correct?

Arseneau replied it is only to balance the area. I have done landscaping in my own back yard at home and you have to make it fit. This was the easiest way to represent it. I do not need two tiers. I was trying to develop a level.

Krueger commented I understand a single tier for a little area for your family to sit around the fireplace. I think a single tier would be appropriate.

Arseneau replied I would be happy with a single tier.

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

VanKempen seconded the motion.

Findings of Fact:

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

Yes ( ) No (X)

Why or why not? There is no observable erosion occurring on the existing slope. Cutting into the slope and then installing retaining walls to hold back the cut slope will expose the slope to greater chances of problematic erosion than the current situation consisting of a mown lawn and a paved walkway to the lake.

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

Yes ( ) No (X)

Why or why not? The landowner currently has access to the shoreline via the existing walkway over this slope that is documented in the application photos. There is also a house with an attached garage on the lot that provides a reasonable use of the property. The property can also be used for enjoyment of the outdoors and to access the lake – which are also 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? There does not appear to be an erosion issue present on the slope that would need to be solved and which the proposed two terrace system would effectively fix. The difficulty appears to be due to the landowner's preference for two flat terraces with stairs as a means of accessing the property shoreline instead of the existing consistent slope and walkway.

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

Yes ( ) No (X)

Why or why not? The difficulty is caused by the landowner's desire to have a two tiered level terrace system on his lawn instead of the existing sloped yard. There is no apparent erosion on the slope that the terraces will solve. The difficulty thus appears to be due to landowner preference of how the lawn on the property looks and operates in gaining access to and from the shoreline.

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

Yes (X) No ( )

Why or why not? The locality consists of single family seasonal and year-round homes. The proposed two terraces will not be visible to adjoining property owners due to dense mature tree cover on either side of the project area on this lot.

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

Yes (X) No ( )

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

The motion carried unanimously 3 – 1 with Johnson voting nay.

**Variance Application 20-V-17 by Walter and Jane Cook:** Lot 2, Block 1, JSC Plat, Section 16, Township 143, Range 34, Lake George Township on Lake George, a recreational development lake. Parcel 17.48.00200. Applicants are requesting a variance from Sections 502.2 and 702 of the Shoreland Management Ordinance to replace an existing nonconforming residence located in the shore impact zone with a new residence that would be outside the shore impact zone, but located closer to the Township road right-of-way than the existing structure and within the required 20' road right-of-way setback.

Jane Cook, 37180 Night Hawk Rd, Lake George, MN, presented the variance application. We have a cabin built in 1929 that we would like to do a complete tear down that is 24' from the water and rebuild a year-round cabin 50' back with more living space. We are proposing 50' back due to a township road that goes through the middle of the property. We would like to stay in front of the road for safety issues.

Grob noted the current cabin is setback 29.5' and you are proposing to rebuild at a 50' setback.

Cook responded yes.

Grob asked Buitenwerf other than the closeness of the road is it permitted to tear it down and build larger.

Buitenwerf responded what they are proposing would be to move the structure back out of the shore impact zone, in which case they would be able to rebuild it and enlarge it as long as the structure in its nonconforming aspects would not be made more nonconforming. If they could meet the road right-of-way setback they could reconstruct with a permit. Due to the fact that the road setback cannot be met is the reason for the variance.

Grob commented they can rebuild at the same footprint or they can expand if they move the structure out of the shore impact zone. How close is the road?

Cook replied we would be building 9' into the setback of the road right-of-way. We would be 11.5' plus the 33' away.

Grob noted that would be approximately 27' away.

Cook replied correct.

Grob asked what the road setback measurements are for the other cabins.

Cook responded across the road the cabin is 14'. The next cabin to the south is within the setback. The cabin to the north received a variance and they are 16' or less.

Grob mentioned a cabin across the road. Is that yours too?

Cook replied yes it is. We do not use it very much. It is where we store things.

Grob asked if the cabin is livable.

Cook responded only animals.

Grob asked what about the shower house.

Cook responded the property was a campground and a resort with nine cabins. There are five cabins left including the one the Jorgensen's built. The shower house was for the campground. It had two bathrooms and two showers. We now have it with one bathroom, one shower and laundry.

Grob asked what the reason for building the cabin on the lakeside of Nighthawk Road verses the other side is.

Cook responded safety.

Grob asked if you build on the other side of the road how far back would you be.

Cook responded I wouldn't. I would just rebuild the cabin 24' from the water. I have grandchildren and I do not want them to run across that road.

Grob asked how much traffic is on the road.

Cook remarked it is a road between County 4 and US Highway 71, basically a cut-off. The Lake George boat landing is there too. There is quite a bit of traffic with vehicles with boats.

Cook responded they use the road often.

VanKempen noted you are basically 9.5' off the road.

Cook responded we will be 11.5' off the road. If you look at the property it gets wider as you go north. We were thinking of moving the cabin towards that area.

VanKempen remarked the ordinance says you need 20' and you are asking for 11.5'.

Cook responded yes.

VanKempen mentioned during the lot viewal it did appear the distance between the road and the lake it was getting wider as you drove east.

Grob noted the Township Board reduced the road right-of-way from 66' to 33'. I assume they did that because of situations like yours as it was problematic. What is their view of the traffic level on that road and the control of the traffic relative to safety for several of

those homes by doing that? The outcome was going to be just what you are doing. Do they feel it is a safe situation? Having made that change they had to assume it was going to be safe. Did they ask for any input from traffic engineers or the Department of Transportation?

Cook replied I do not know.

Buitenwerf commented a representative from the Lake George Township is in the audience. I am not sure if he was planning on speaking on this during public comment but you may ask him.

Grob asked Daryl Bessler to comment on the township road.

Public comment from Daryl Bessler, Lake George Township Supervisor. My perspective would be there is some traffic through there that we are aware of. The reality of it is it should have never been changed from a 33' to begin with. I happen to be an owner of property there too. It should have been grandfathered in. The township officers came up with a proposal that quite frankly the township screwed up. They did not procure the property rightly anyway. This came up in our annual meeting and we had a public hearing and it was the consensus of all of the folks along there to get the road back down to 33'.

Grob noted it was an original 33' road that went to 66' and then you put it back to 33'.

Bessler commented this is the first township road in Lake George Township. I came to say I support the variance request.

Grob asked if the entrance door faces the road.

Cook responded the entrance currently faces the road. There is a side door to the garage.

Grob asked for public comment.

Written correspondence was received from Gary and Elaine Sperl, 37160 Night Hawk Road, Lake George, MN 56458 in favor of the variance application.

Grob closed public comment.

VanKempen commented personally I would like to see the variance approved. If being this distance from the road is an issue I do not see us allowing them to move the structure 2' closer to the lake allowing them to be at a 48' structure setback instead of the 50' setback. I am familiar with the area. There are a number of cabins there that are close or closer to what you are proposing.

Krueger commented I think it is a good thing to be moving further back from the lake out of the shore impact zone. During the lot view I was along the lines of Grob with the traffic off of County 4 but even VanKempen has said he uses Nighthawk Road. It sounds like it is used a fair amount. I understand the safety issue of not wanting to be on the other side.

Johnson commented he did not have an issue.

Krueger made a motion to approve the variance application as presented.

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? Moving the cabin further away from the lake and out of the shore impact zone.

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

Yes (X) No ( )

Why or why not? Due to the condition of the cabin it is unsafe and needs to be replaced and it would be better to do it at a 50' setback.

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

Yes (X) No ( )

Why or why not? The township road (Nighthawk Drive) runs through this property and neighboring properties along the NW side of Lake George at roughly the 100' OHW setback – creating safety concerns when residences are placed on the non-lakeside of the road and landowners have to cross the road to get to the lake.

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

Yes (X) No ( )

Why or why not? Nighthawk Road was not created by the landowners and existed in its current location long before the ordinance was enacted.

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

Yes (X) No ( )

Why or why not? The two lots to the southwest of the lot have cabins on the lakeside of Nighthawk Drive as do three of the four lots to the northeast of this lot. Said cabins range in size from being small former resort cabins to ~1500 sq. ft. in size. The proposed cabin is on the high end for sizes of cabins in the area at 1860 sq. ft. which will not fit in as much with the other cabins in terms of square footage, but will in terms of location relative to the lake and road.

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

Yes (X) No ( )

Why or why not? Economics were not cited in the application as the sole difficulty. The alleged difficulty is due to the township road running through this property at roughly a 100' OHW setback and the applicants' concern about their and their guests' safety when going to and from their cabin and the lake.

The motion carried unanimously 4 – 0.

**Miscellaneous:**

**Communications:** Buitenwerf noted there will be a July meeting. The agenda will not be as large as this month. Mark Peterson was appointed to replace Charlene Christensen and he will be joining the PC/BOA in July.

As far as the Planning Commission, the Sign Ordinance will go to public hearing on July 18, 2017 at 10:00 a.m. if anyone plans to attend.

**Adjournment:**

Krueger made the motion to adjourn.

Johnson seconded the motion.

The motion passed unanimously 4 – 0.

The meeting adjourned at 9:30 p.m.

Respectfully submitted,

Veronica Andres

Recording Secretary