

## **HUBBARD COUNTY**

### **Planning Commission/Board of Adjustment Meeting Minutes**

6:00 p.m. on Monday, October 23, 2017

Chairman Ken Grob opened the meeting with the following members present: Tom Krueger, Tim Johnson, Ted VanKempen, and Mark Petersen. Also present was Environmental Services Officer Eric Buitenwerf.

Cal Johannsen, ex-officio Planning Commission member, was absent.

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:** Acted upon at the start of BOA meeting.

**Old Business:** None.

**New Business:** None.

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

**Approval of Minutes:** September 25, 2017 meeting.

VanKempen made a motion to approve the September 25, 2017 Planning Commission/Board of Adjustment meeting minutes as presented.

Johnson seconded the motion that carried unanimously 5 – 0.

**Old Business:** None.

#### **New Business:**

**Variance Application 37-V-17 by Jennifer Jorgenson:** Lot 4, Rojean Estates, Section 33, Township 140, Range 34, Henrietta Township on Long Lake, a recreational development lake. Parcel 13.50.00400. Applicant is requesting an after-the-fact variance from Section 506 of the Shoreland Management Ordinance for a guest cottage that exceeds the maximum 700 sq. ft. allowed footprint to be located on a lot that does not meet the required minimum lot size for a guest cottage.

Jennifer Jorgenson, 4944 Abbott Ave South, Minneapolis, MN, presented the variance application. I am requesting an after-the-fact variance for 501, 506, and 506.2 for sleeping quarters which I already have had constructed in part of a workshop in a preexisting building attached to my garage. From the picture you can see the garage, with

two garage doors, and another service door. Part of that turned into sleeping quarters with two queen beds and two twin beds. No running water, no kitchen. Because of that I met with three different contractors to see who could help me with this project. I was instructed by all of them that I do not need permits with the exception of the electrician. They said a variance was not needed because of when the building was constructed. It was brought to my attention after the fact that because of change of usage for this building going from a workshop to sleeping quarters, that I am now in need of requesting this variance.

Petersen asked did it at any point it occur to you to contact Hubbard County Environmental Services to ask or were you just relying on the information from the contractors?

Jorgenson replied no, I did look online, researched various definitions of dwellings, cottage, home. I did look online and ran it by a friend of mine who is a lawyer. Since all three contractors were congruent with my research, I truly did not think I needed a permit or variance. If I had known that I would have done it ahead of time, absolutely.

Grob asked when you asked the contractors for their opinion with regards to whether you could do this, what were they responding to? Building a guest cabin or something that small? What was their answer related to?

Jorgenson answered my questions were which permits do we need to pull, are there any issues with building too close to the shoreline. Specifically because we are basically taking out workbenches and putting in bunks, and not putting in running water, bathroom, kitchen facilities, it is just a small portion of this pre-existing building that didn't need a variance because of its setback. That is what they were responding to, we talked through all of that. As you can see from the pictures, they were more comfortable places mostly for my family to sleep, some benches, and cubbies.

Grob asked did your discussions with the contractors recognize that this was a guest cabin? With sleeping quarters and a secondary structure and therefore falls under the ordinance of guest cabin?

Jorgenson responded that is where there is some confusion and ambiguity. I also discussed this with a lawyer friend and it is all in the definition. We discussed that if I had turned the garage into a guest cottage that would be a completely different issue. Or if I had put in a bathroom and/or a kitchen, that would have been a guest cabin or cottage. But what we could best tell according to the definitions using our best judgement, it is just basically sleeping quarters. Therefore it did not fall into alignment with an official guest cabin.

Grob replied the reason I ask is in order to have a guest cabin on a lot, it should be a conforming residential lot- 150 feet of shoreline, 40,000 square feet, and a guest cabin not over 700 square feet. Basically, a request for a guest cabin in your case would not meet any of the property requirements. I am wondering if the contractors or lawyers have any concept that those kind of conditions have to be satisfied before you can have sleeping quarters like that.

Jorgenson answered I do believe so. They are not here for me to speak for them, but we did have this discussion. The guest cottage is not 700 square feet. The sleeping quarters are under 170 square feet, it is in a very small space. It is part of the workshop and I think that is where the confusion maybe began. If I had been asking them to turn that whole building, it would have been a whole new cabin.

Grob asked for the record what does the ordinance say for the use in regards to having a living quarters in part of the garage? How do you apply the 700 square feet to that?

Buitenwerf stated the ordinance looks at the footprint of the structure involved and the footprint cannot exceed 700 square feet.

Grob clarified even though there is garage area because it is one structure, you look at that footprint and that is the way we interpret the use in the ordinance.

Buitenwerf replied that is the way the ordinance is written, yes.

Johnson asked did you ask for a license from your contractor? Did he have a license?

Jorgenson replied yes.

Johnson asked and he gave that to you? He is licensed, bonded, and insured?

Jorgenson responded correct. I would not hire someone who was not because I would never want to be in the situation I am right now. Again, because there was continuity between all the people I had come over to talk about floor plans and this whole project, I did not question the contractor who I worked with. I am certainly not a do-it-yourself project person.

Grob asked who was your contractor?

Jorgenson answered Grabow Construction from Detroit Lakes.

Grob clarified from Detroit Lakes, so Becker County?

Jorgenson commented I did talk to him. I was really surprised when I got the notice in the mail. For some reason, I did not get the first notice from Environmental Services in January so the end of June I received a second notice. I was in shock that I did something wrong and that I was in violation of an ordinance. I called him right away and we discussed this at length. He also agreed that because of all the things we discussed before the start of the project, that I should not have been in violation of an ordinance, that I did not need the variance, etc. We had done everything in accordance to Hubbard rules and regulations. Even though now that because of the change of usage that I was in violation of the couple of ordinances, I suppose. At that point neither of us entered this intentionally. As I mentioned when you folks were out on Thursday, I did not do this hoping I would not get caught and asking for forgiveness later. That was not my intention at all.

Johnson asked did you get a bid from him then?

Jorgenson replied yes.

Johnson asked did he include the permit in that bid?

Jorgenson replied yes. I think I even have a copy of that. He did not need a permit because we were not running water, he was just building wood. The bid from the electrician, because I had quite a bit of stuff done and wanted the beds to have lights and be able to charge phones, included the proper permit.

Grob clarified I think what Tim is getting at is did your contractor have a formal Hubbard County building permit and posted while he did his work?

Jorgenson answered that I cannot tell you for sure. I was not able to come up during the time of building, I had surgery and had many complications. While I was planning on being up here for this project, I could not.

Grob responded he is required to post it, even when he was done before everything was closed off, it should have been posted in visible sight. So if it was not, he possibly did not pull a permit from Hubbard County.

Jorgenson stated I was not here so I cannot say. This person I hired was recommended from my family that lives in Park Rapids and are familiar with a lot of builders. My suspicion is he is reputable.

Johnson commented I would like to see that bid the contractor did before we go so we know if he was going to provide you with a legal permit.

Jorgenson said she does not have the physical copy, but can look it up on e-mail if necessary.

Grob asked there is a charge for a permit right?

Buitenwerf replied there is a permit fee, but no permit was issued for this project. Interior remodeling of a structure does not require a permit. All that would be needed, from a zoning standpoint, for what has been done would have been a variance prior to the interior remodeling taking place.

Grob clarified so it would not have required a permit for what was just inside?

Johnson remarked unless a licensed contractor was bidding a sleeping quarters. If a licensed contractor is bidding a sleeping quarters, he should have asked and found out that he could not do it.

Grob stated you have owned a cabin on Long Lake prior to the one you own now so you have been a resident of the area, familiar with at least some level of ordinance requirements for the lake. Some of your neighbors suggested to you that you might need a variance. Why did you not come to the Environmental Services Office and get the real answer?

Jorgenson responded at that point my neighbors had not suggested I need a variance or a permit. My neighbors had just discussed with me that they were anxious about me renting my cabin out during the summer of 2017. We had some lengthy discussion about that. I had done what I thought was my due diligence: having owned a cabin on long lake, having grown up spending my summers here in Park Rapids, discussing with a lawyer friend with regards to definitions, and discussing with the folks I hired to bid the project. Everyone was consistent regarding the garage not needing a variance when it was built, because of the setback that I was not in any violation. Honestly, if I knew or any my pre-work suggested to me I needed a variance or permit that was not pulled, I would have come to do that. I absolutely would have. I invested a lot of money into this bunk house, essentially so I could have comfortable, quiet sleeping quarters for my family. There is no way I would have plunked all of that money, it's a significant amount of money, into that without making sure it was okay and legal.

Grob asked when did Environmental Services contact you with regards to possible violation?

Jorgenson replied the first letter was sent out in January apparently, but I did not receive that at my home address in Minneapolis. I did not respond back, I am not sure what happened to that. It got lost in the mail. It is not like me to not open my mail every day when I am home. The first letter that I opened was at the end of June. I was absolutely shocked, sick to my stomach that I was in trouble with Hubbard County and my neighbors were upset with me. So that is the first I knew of it, but it is supposedly not the first I was contacted.

Grob asked Buitenwerf, are the letters sent registered?

Buitenwerf responded no, they are not required to be.

Jorgenson commented immediately upon receiving that letter at the end of June, I contacted Jeff Kelly in Environmental Services and was in consistent contact for several months trying to get everything together for this variance.

Grob asked when was the work completed?

Jorgenson answered the work was completed at the end of January 2017.

Petersen asked when was the work initiated?

Jorgenson replied in mid-December.

Petersen asked Buitenwerf, when was the first letter sent?

Buitenwerf answered January 23, 2017.

Jorgenson stated I obviously did not think I was violating an ordinance or doing anything wrong. I was very open about the project with both of my neighbors. The neighbors on each side of me filed the complaints. I thought we were on friendly terms, I was sending them updates and photos of the project as it was being constructed because I was not

hiding anything. If I was trying to sneak something or get away with something, I would not have done that.

Krueger asked if that garage was attached to the home, that would simply be considered a bedroom of the house?

Buitenwerf replied that would be correct.

Krueger asked would a covered walkway be considered an attachment?

Buitenwerf responded no that would not be sufficient. It would have to be enclosed and more than just a breezeway. That would be viewed as someone trying to work around the ordinance.

Grob asked for public comment.

Public comment was given by John Flenner, 16073 Dakota Shores Dr, Park Rapids, MN. I have been a longtime resident on Long Lake, we date back to the 1960s. We feel it has been very dear to our heart. Our biggest concern is the negative impact of unrestricted growth if there are additions to properties with extra living quarters. Obviously you would have issues of septic tanks, the parking space, lake pressure. Those were concerns of ours. If this after-the-fact variance is allowed, we feel a sense of precedence for lake owners with garages and storage buildings to reconfigure portions of them into sleeping quarters. Without question, if something like that would occur, it would definitely be an impact on the environment. Also at the expense of the neighbors who could be exploited by such a situation. That is where I am coming from.

Krueger asked you are a property owner on the right side?

Flenner replied I am on the North.

Krueger asked above your boat house, is that a guest cabin there?

Flenner answered it is just what you said, a boat house. It always a guest home. My parents came in there in the mid-1960s and built the garage and boat house. The main house came later. That was their living quarters in 1965. Pre-existing. I have documentation for that. Always was a boat house.

Public comment was given by Roberta Lutz, 16089 Dakota Shores Dr, Park Rapids, MN. I wanted to bring to the attention of the Board that she had on Homeway.com, which I have a copy of, she advertised in the main house she can sleep 14 people. In her newly constructed four season bunk house she advertises two queen beds and two bunk beds so that is six more people. That is 20 people, she says in this ad, that can sleep in that house. When I talked to the Soil & Water Department in town, they said they would be concerned about the septic system for that many people. Thank you.

Written correspondence was received from Stuart Hamilton, 16031 Dakota Shores Drive, Park Rapids, MN, opposed to the variance application.

Written correspondence was received from John and Marlene Flenner, 16073 Dakota Shores Drive, Park Rapids, MN, opposed to the variance application.

Grob closed public comment.

Grob asked Buitenwerf to explain the current septic system and how many people it can support.

Buitenwerf explained that information was provided to the Board in the application. The current septic system is compliant and there is a design for expansion of that system to accommodate the proposed volume the occupants, including many renters, would generate.

VanKempen commented 168 square feet seems to be a minimal addition. As Eric stated earlier, in many jurisdictions if you were to remodel the inside of your home, you would not need a permit. I could understand a person thinking that remodeling the inside of your garage would not need a permit either. But technically, according to the ordinance, you are in violation with the over 700 square feet, not 150 feet lot width, and not reaching your 40,000 square feet lot size that is required. Of course with complaints from neighbors on each side, it is hard to justify allowing this application. But my understanding is if she is not in violation, she can still rent out the place. I would like to know is the sauna fine in the garage?

Buitenwerf answered there is nothing in the Shoreland Ordinance that prohibits a residential property owner on lakeshore from renting their property out so long as it is accessory use to the primary residential use.

VanKempen asked is that part of the violation?

Buitenwerf replied nothing says somebody cannot have a sauna in their garage.

VanKempen asked a step down from this bunkhouse in the garage would be campers or tents? Those would be fine on the lot?

Buitenwerf responded the ordinance allows occasional, intermittent guest use of campers or trailers.

Krueger asked maybe if she were to remove the bunks from in there, keep the sauna, and maybe put a couch in that one room, that would be meeting the ordinance?

Buitenwerf replied that would not be a violation as far as I can think of it at this moment.

Johnson remarked one of the things I am having a problem with is people that have come in ahead of time to ask for variances to just have a little bedroom for mother and father-in-law in the garage and they have been denied. We have been real consistent about it so that is where I sit.

Krueger made a motion to deny the variance application and adopt the staff report findings of fact except for questions 7, 8, 9, 11, and 12 for which the Board of Adjustment provided answers.

Petersen seconded the motion.

Findings of Fact:

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

Yes ( ) No (X)

Why or why not? The lot is one third less the required 40,000 sq. ft. minimum lot size and also has one-third less the required 150' width in order to have a guest cottage. The requested guest cottage is also 164 sq. ft. larger than the 700 sq. ft. maximum guest cottage footprint allowed with no reasons given for why it needs to exceed the maximum footprint.

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

Yes ( ) No (X)

Why or why not? There is a residential structure and detached garage on the lot – both of which provide reasonable uses of the property. The lot can also be used to enjoy the outdoors and access the lake for recreational purposes – which are also reasonable property uses.

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

Yes ( ) No (X)

Why or why not? There are fifteen lots in the plat in which this lot is located. All were laid out with areas and widths similar to the lot involved in this application. There are also many lots in shoreland areas of the county that are similarly sized or even smaller. This lot's size is thus not unique. The request to exceed the 700 sq. ft. guest cottage footprint has nothing to do with the lot's unique characteristics, but rather the applicant's desire to convert an existing detached garage into a guest cottage.

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 landowner created the difficulty by creating a guest cottage that is 164 sq. ft. over the maximum allowed size on a lot that is one-third undersized in area and width.

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



Yes ( ) No (X)

Why or why not? There are not guest cottages on other lots in the neighborhood. Adjoining neighbors have expressed concern to the Env. Services Department this year about this guest cottage use of the property and that it is not compatible with their single family dwelling residential uses. Allowing a guest cottage to exceed the maximum 700 sq. ft. footprint by 164 sq. ft. and be placed on a lot that is one-third the required minimum lot size and width would not be in keeping with the area's seasonal and year-round single family residential use.

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

Yes (X) No ( )

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

7. Why did the applicant fail to obtain a variance/or comply with the applicable requirements before commencing work? Did the applicant act in good faith?

Why or Why not? The applicant acted in good faith, she was trusting the professionalism of her contractor but they let her down.

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

Why or Why not? The applicant did not know she needed the permits.

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

No. The applicant obtained permits for electrical work but no zoning permits.

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

The contractor's invoice for the interior remodeling done to create the guest cottage totaled \$7,719.98. While this is not a trivial amount, it is not what we consider to be a "substantial" amount. The exterior of the detached garage was not touched in any way. The only work done to the structure was to its interior – converting a former 168 sq. ft. workshop area of the garage into a room with beds for persons to sleep.

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

Yes. The work was initiated in December 2016 and was done before January 23, 2017.

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

There may be one similar structure in the neighborhood.

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?

No. Only 168 sq. ft. of the interior of the 864 sq. ft. garage was remodeled to create the guest cottage at a cost of just under \$7,800. The structure does not need to be removed as it can revert to its original and previous use as a detached garage. The remodeled area can be put to other uses.

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

Yes. The lot is one-third the required width and area needed to have a guest cottage. The structure is 164 sq. ft. greater in footprint than the 700 sq. ft. maximum allowed guest cottage footprint. There are no other guest cottages in the neighborhood. Both adjoining neighbors have expressed concerns about the guest cottage causing a use of the property that alters the neighborhood's character. Only a small percentage of the interior of the structure was modified in order to create the guest cottage. This space can be put to other uses and the garage can continue to function as a garage so the landowner is only out the ~\$7,800 spent remodeling the interior space that could have been avoided had she inquired with Env. Services Department staff before commencing the work.

The motion carried unanimously 5 – 0.

Ken asked what follow-up action does she have to take with the Environmental Services Office with regards to correcting the situation?

Buitenwerf answered the living quarters in the garage will need to be removed. We will send her a letter with the decision of the Board as well as a timeline for taking care of that.

Krueger commented it sounds like the sauna can stay and you can even use that other room for a relaxing room.

Jorgenson asked the bunks are built into the room so I am assuming I have to take the mattress out or do I have to deconstruct the actual bunks? Everything is built in.

Buitenwerf replied I would say the mattresses as well as the underlying supports for where the mattresses are located so they could not be reinstalled easily.

Jorgenson asked if I remove the bunk beds, I could replace them with cots?

Buitenwerf responded not cots.

Jorgenson replied according to what I have heard here with regulations and rules, I could remove everything from that room so it is not sleeping quarters, but I could put a cot in my garage and I would not be in violation of an ordinance. If I wanted to sleep out there for

example. A cot or a thermarest. Or I could sleep in a tent in my backyard and that is not in violation?

Buitenwerf answered correct. As far as having a bed in the garage, we would have to look at the specifics of the scenario.

Jorgenson stated I might sleep out there because it is quiet for me. Moving forward I do not want there to be any ambiguity so that I am back here next year.

Buitenwerf remarked it would still be viewed as a guest cottage then whether it's a guest or yourself sleeping there.

Jorgenson clarified on a thermarest? After I remove all of the bunks and all of that.

Buitenwerf commented I am not exactly sure what a thermarest is.

Jorgenson explained a blow-up, inflatable mattress.

Buitenwerf replied it would still constitute a bed.

Grob commented I do not think the Board can do any more to give you direction. Environmental Services will send you a letter and they will have to review anything you propose to do that does not meet the requirements, or intent, of what that letter will ask. Basically, you cannot have sleeping quarters there. Buitenwerf has gone a little short of saying you have to tear everything out, but he is saying mattresses and any support for the mattress such that you cannot just haul mattresses in there whenever somebody wants to use it. You need to make it into a facility that is not conducive to sleeping.

Jorgenson responded I understand.

**Variance Application 38-V-17 by Frank and Patricia Hoffman:** Gov. Lot 8, Section 35, Township 142, Range 34, Clay Township on Big Mantrap Lake, a recreational development lake. Parcel 04.35.01800. Applicants are requesting a variance from Section 701 of the Shoreland Management Ordinance for a proposed expansion of a nonconforming use via a proposed addition to a structure that is a part of the use.

Frank and Patricia Hoffman, 20503 Jade Lane, Park Rapids, MN, presented the variance application. We are owners of Norway Hills Resort. We are asking for a variance to add ten feet to the back side away from the lake on cabin number eight. It is a three bedroom cabin at only 768 square feet. They were built in the days when nobody had queen sized beds, and did not need a full size stove and full size refrigerator like we have nowadays. We are asking to have ten feet by thirty-two feet to the road side of the cabin. That will bring it to 1088 square feet. This will allow us to come into a nicer cabin for us to be able to put in queen sized beds, be able to put in dishwashers, and the items that people are used to at resorts.

VanKempen asked how many years have you been running the resort?

Hoffman answered we just completed our 34<sup>th</sup> year.

Krueger asked is this a seasonal cabin?

Hoffman replied this is seasonal. We run from Memorial weekend through September 30. It was a three bedroom cabin and will remain a three bedroom cabin.

Grob commented you appear to do a very good job of protecting your shoreline from runoff. I believe you are at 90 some feet from the shoreline with this particular cabin.

Hoffman responded 91.92.

Grob asked for public comment.

No public comment was given.

No written correspondence was received.

Grob closed public comment.

Krueger remarked having been a resort owner and having upgraded cabins in the past, I know you do have to remain competitive with other resorts. If it is outdated with small bedrooms, I can understand wanting to increase the size of it. If we want to save our resorts, we have got to let them be competitive.

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

VanKempen seconded the motion.

Findings of Fact:

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

Yes (X) No ( )

Why or why not? The cabin is .08' shy of a 92' ordinary high water mark setback. The proposed addition will comply with the allowed rental unit density for Tier 1 in the resort. If the resort had a conditional use permit, the desired addition could be constructed with a land use permit because it complies with the requirements of Section 702 of the Shoreland Management Ordinance (SMO) that governs additions to nonconforming structures. The addition also will be made to the rear of the cabin so that it will not be visible from the lake and it will only increase the structure height 1' from 13' to 14'.

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

Yes (X) No ( )

Why or why not? The proposed addition to Cabin 8 will comply with the requirements of Section 702 of the SMO such that it could be constructed by permit

if the resort were to go through the conditional use permitting process. The existing cabin is 768 sq. ft. and the proposed 10' x 32' addition will cause the cabin to still be very reasonably sized at 1,088 sq. ft. The addition will still cause the resort to be well below the allowed limit for rental unit numbers in Tier 1.

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

Why or why not? The proposed addition could be constructed by a land use permit per Section 702 of the SMO if the resort had a conditional use permit. The resort does not have such a permit because its use commenced before the ordinance's July 12, 1971 enactment date and the ordinance content that now requires a variance to expand this legal nonconforming use was not added to the ordinance until a couple years ago. The owners have not undertaken any structural expansion projects until this one since the ordinance language changed that made this unique circumstance that affects this property.

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 cabin predates the SMO. An addition could be made to it by permit per Section 702 of the SMO except that Section 701. Nonconforming Uses of the SMO requires a variance to expand a nonconforming use such as this one. The difficulty is caused by the SMO requiring a variance from Section 701.

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

Why or why not? The variance is only for a 10' x 32' addition to the rear (non-lakeside) of an existing 768 sq. ft. cabin that is nearly 92' from the ordinary high water mark. The cabin to which the addition is being made is located in the middle of the resort property which is nearly a quarter mile long. There are two residential lots to the north of the resort. To the east of it lies State land. The resort has operated on this property for decades. Given all of the above, the variance to add onto Cabin 8 will not harm the locality's essential character.

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

Why or why not? Economics were not cited in the application as the sole difficulty. The difficulty is caused by the requirement of Section 701 of the SMO that a variance be required in order to expand a nonconforming use. The only reason the resort use is nonconforming is that it predates the SMO and has not gone through the process of obtaining a conditional use permit. If a CUP was in place, the addition could be made by permit.

The motion carried unanimously 5 – 0.

**Variance Application 39-V-17 by James and Sharon Peterson:** East 300' of Gov. Lot 7, Section 20, Township 141, Range 34, Lake Emma Township on Blue Lake, a recreational development lake. Parcel 16.20.01900. Applicants are requesting a variance from Sections 502.2, 503 and 702 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residence located in a bluff impact zone.

James and Sharon Peterson, 9480 Bataan St NE, Blaine, MN, presented the variance application. Both of us grew up in Park Rapids and have a cabin on Blue Lake that was built back in 1966. We are hoping to expand just enough to add an attached garage and a little larger bedroom sizes. Similar to the last application, we are needing a little bit more closet and bed space than they had back in 1966. We would like to become full-time residents in the Park Rapids area again.

Grob asked just for the record the width of your lot is 300 feet of shoreline and the depth of your lot is 675 feet approximately?

Peterson answered it is at least that, I was thinking it was 800 some feet, but maybe it is 600.

Grob remarked that is about five times the required size for a residential structure. Your current cabin is 130 some feet from the lake. The reason it is nonconforming is that the deck and about five feet of the house are in the bluff impact zone. That is the issue with the variance.

Peterson replied right and what we are requesting is on the backside, away from the lake.

Grob asked and you are not expanding the number of bedrooms?

Peterson responded correct.

VanKempen stated the site plan here shows one side at 850 feet and the other side at 910. I just wanted to clarify you are not increasing the number of bedrooms, you are just increasing the current existing bedrooms?

Krueger asked did you actually have a contractor come out there and do your sizing for the elevation?

Peterson replied we have had a couple of contractors come out and we are going to be working with Roger Peterson in terms of the location. The only question is whether the garage portion will one step up or whether we will need to step that down.

Krueger remarked I am just wondering how that wall is going to be in the back.

Peterson clarified in terms of the elevation of the whole building?

Krueger replied or just of the retaining wall there on the building, block wall.

Peterson answered if anything it is a foot, up to the level of the driveway. The level of the house was maybe a foot, foot and a half, below the level of the circle drive.

Krueger asked are you bringing any fill in to complete this construction?

Peterson responded we do not anticipate because there will be, under the bedroom expansion, a basement. The garage will be cut slightly into the ground, but it will not take any fill. The picture you can see there is to the left of that, it is up the hill. It will not require fill. The garage may cut into the hill slightly, depending on if it is one step up or if it is right at the house level.

Grob asked Krueger what is your concern?

Krueger replied runoff, when you are standing there it looks like everything is going to be hitting the garage for erosion, but I could be wrong.

Grob clarified from the garage runoff?

Krueger answered from above the garage runoff.

Grob stated from above the garage, into the garage.

Krueger remarked if you had to build it up higher than planned.

Peterson responded according to what Roger said, it will definitely move away if we had to swale next to the garage. But he did not see any problem with making the water to go on either side. If we ended up putting the one step up, it would be right at the driveway level.

Grob commented I think that is what you are kind of suggesting.

Peterson replied yes. We have not gotten the final drawings yet. We wanted to make sure we could do it before we put a lot more into the drawings so that is why we have the rough drawings. The final architectural drawings will be done once you decide if we can move forward, if that is where we end up.

Petersen explained my concern when I was out there, looking at the site and thinking about the construction process if it went forward, would be how to maintain the integrity of that slope behind the garage during and after construction. Until the garage was complete, landscaping was done, so you would not risk erosion on that hill. I worked in construction in the Twin Cities for many years and most cities require pretty strict erosion control means for situations like this in much less slope. I was just wondering if your contractor has talked about that?

Peterson answered we have not gotten to that portion of it yet. I know Roger is always concerned that he does not do anything wrong and to damage the lakes. We are a part of the Blue Lake Association. I am an officer, actually. We are quite concerned that we maintain everything with respect to protecting the lake. However we do that, it will be done in a way that does not risk any erosion.

Grob asked for public comment.

No public comment was given.

No written correspondence was received.

Grob closed public comment.

Johnson made a motion to approve the variance application and adopt the staff report findings of fact proposed answers for questions 3-6.

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? Removing the existing structure would cause more damage than adding on the structure.

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

Yes (X) No ( )

Why or why not? Being able to access your home through an attached garage is reasonable.

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

Yes (X) No ( )

Why or why not? The existing residence to which the addition is proposed was constructed prior to the ordinance in 1966 in a bluff impact zone (BIZ). The ordinance now requires a variance for any addition to a structure located in a BIZ.

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 residence was constructed in 1966 by a previous owner in a bluff impact zone. The ordinance requires a variance for any alteration to a structure located in a bluff impact zone.

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

Yes (X) No ( )



Why or why not? The proposed addition would not cause the residence to exceed the size of the neighboring residences which are situated at similar or closer lake setbacks.

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 having been built prior to the ordinance in 1966 in what is now classified as a bluff impact zone.

The motion carried unanimously 5 – 0.

**Variance Application 40-V-17 by Kurt Zarth:** South 125' of the North 310' of Gov. Lot 3, Section 13, Township 141, Range 34, Lake Emma Township on Lower Bottle Lake, a recreational development lake. Parcel 16.13.02700. Applicant is requesting a variance from Section 702 of the Shoreland Management Ordinance for a proposed alteration to a nonconforming residential structure located in a bluff impact zone.

Kurt Zarth, 423 6<sup>th</sup> Avenue West, Shakopee, MN, presented the variance application. I want to put a basement under our cabin so we can make it year-round use. It is an old small cabin with little bedrooms. We do not have room for the stairway in. I want to put four feet onto the north side of the cabin and also expand the bedroom four feet. The stairwell will be the other four feet to the front of the cabin.

Johnson commented I am not sure on the existing septic site of that lot.

Zarth replied right, I inherited this cabin from my parents and I did not even know we had septic over there. Either way I have to get that in compliance within the year. We would make that compliant whether we get the variance or not.

Johnson asked if you were granted this variance, would that stairway addition be ten feet away from the property line on that side?

Zarth answered no it would be much further away than that. I think it was around 24 feet.

VanKempen clarified you were twenty-four feet from the driveway?

Zarth responded no, our property line is about eight feet from the woodshed in the photo so it is probably 20, 21 feet from the stairway.

VanKempen is that a private road, Horn Drive, or is it public?

Zarth answered it is shared by five cabins.

VanKempen asked is it private?

Zarth replied I do not know.

VanKempen asked how much is your distance from Horn Drive?

Zarth responded it is probably a quarter mile.

VanKempen clarified there is another house beyond yours and then there is yours. You share that same driveway?

Zarth stated yes, there is another cabin on the side of us that share it too.

VanKempen remarked that is the one I am wondering about your setback from.

Grob commented the drawing shows about 23 feet, does that make sense?

Zarth answered yes.

VanKempen asked I was wondering if that is a private road?

Zarth replied I do not know that.

VanKempen stated the reason I am asking is that since you are raising your house.

Zarth responded I know we do own property on the other side of the road.

VanKempen asked is this an opportunity to move further back if you are raising your house anyways for a basement?

Zarth replied no. There is no opportunity to move further back.

VanKempen asked how come?

Zarth answered we have just enough between the road and where the cabin is to park one car. From where our cabin is now to where the driveway is, we have enough room to park one car so we could not go any further back.

Johnson remarked the log we see on the old existing cabin there, is that the same log you have on the inside?

Zarth responded yes.

Johnson clarified so you have no insulation on that?

Zarth answered right. We would just be insulating the basement portion of the cabin. We do not come up here in the winter to use it. We do not have water access or a bathroom down there.

Petersen asked what kind of foundation is under the building now?

Zarth replied it is old brick foundation that would be replaced with the basement.

Petersen asked is it a crawlspace?

Zarth answered yes, it is a crawlspace.

Grob asked so your intent is to put a whole new crawlspace underneath?

Zarth clarified an actual basement underneath. It would be a walk out.

Grob asked if you are building a whole new basement, lifting up the structure, why could you not build the basement closer to the road and move the house back?

Zarth responded we are probably ten feet from the road now, maybe twelve feet. If we go back, we could only go back a few feet.

Grob commented it looked like you could still have clearance from the road and move back the distance you are encroaching on the bluff with the main structure. You are only about four feet into that bluff zone.

Zarth remarked I guess if we extend the back of our cabin, that would not really be a place we could put a stairwell with the existing layout of the cabin.

Grob stated the concern we have is the integrity of the structure of the main cabin good enough to survive a long period of time. If we approve this, you build a new basement, then come back and want to do a whole new cabin or structure on the new foundation, we are then allowing you to do it in the bluff impact zone which is what we are trying avoid.

Zarth replied the picture that you show there, that side of the building, the timbers are bad and that is what we need to replace. That is what we would be replacing. The rest of the cabin is in pretty good shape. It was built in the 1960s.

Krueger asked so the septic is on the north side of the cabin?

Zarth answered there are two septic.

Krueger clarified standing there looking at the cabin and the lake is on the other side, it would be the right hand side. The addition on the left hand side, is that also a crawlspace?

Zarth responded it is a small crawlspace. It is only under the middle of the cabin.

Krueger asked will that also in the proposed basement underneath?

Zarth answered yes it would.

Johnson asked did you say you are going to build a walk out?

Zarth replied we would like to yes.

Johnson asked was there a calculation for the dirt to be removed in front of that?

Zarth answered in the application, I said we were going to raise what we have right now two and a half feet.

Johnson clarified, but you are going to dig down a basement?

Zarth responded right. I talked to Joe at Heartland, out in Nevis.

Johnson asked so on that basement you plan on walking out the front, lakeward?

Zarth answered yes, under the existing deck.

Petersen asked Buitenwerf did you know that calculation in the application? Had you seen that for a walk out?

Buitenwerf replied the application made no mention or request for excavation in the bluff impact zone for a walk out. This is the first I heard of that being a part of the plan. That would require an additional variance for whatever volume would be requested to be excavated from the bluff impact zone.

Grob remarked you do have a guest cabin and garage existing on the left as you face the lake. The septic system that is in front of it, does that handle only that guest cottage?

Zarth answered correct.

Grob stated the other septic system is the one we talked about having to be redone. Where are the drainfield and holding tank for it?

Zarth responded there is a holding tank and I did not even know it was there. I thought it was tied into the other one. We had evidence that it was for this, that is how we found out it needs to be fixed.

Grob commented I was under the impression you were just going to redo the crawl space underneath the cabin. When we were out there looking, I had no that you were going to do a full basement.

Zarth replied I think it said in my application we were going to add steps and raise the cabin up to put a basement underneath there.

Grob remarked yes, but two and a half feet does not make a full basement.

Zarth replied we are just going to raise it two and a half feet, and then go down the remainder.

Grob responded yes, that was the part that was not obvious.

Petersen asked your intention is to do a walk out in the front?

Zarth answered correct. I have never done this before, I am just trying to get the variance before I went any further to see if we could. I did not even know what a bluff was before this.

Krueger commented going back to the reason why, you are saying you cannot move the structure back so you can fit a car back there. But you have a garage with your guest cabin and a lot of room in between. In fact, you do not even need that driveway there that goes in front of the house. You have a driveway that could be between it going to the garage with your guest cabin.

Zarth asked so you would rather have us move it back four feet?

Krueger replied that is what we are suggesting, yes. Getting it out of the bluff impact zone.

Grob stated by ordinance, both the house and the deck should be out of the impact zone. Which would require you to move it back about 15 feet.

Zarth responded then we would be right on the road.

Johnson commented I think the staff report said the cabin is in the bluff impact zone six feet and the deck is in fourteen.

Buitenwerf clarified the image on the screen shows the setbacks the Environmental Services staff measured. The information in the staff report is based on the dimensions that were supplied in the application. There is a difference between what the application states for setbacks and what the staff sketch shows.

Grob asked do you have numbers? I see the dotted line is the impact zone, does it measure to the house?

Buitenwerf replied it shows the house as being 20 feet from the crest of the bluff, so the house would be ten feet into the impact zone. The deck would be 19 feet into the impact zone.

VanKempen asked Buitenwerf the ordinance does not allow excavating in the bluff impact zone, in order for this applicant to actually put in a walk out basement, it would have to be out of the bluff impact zone?

Buitenwerf answered that is correct. Or he has the option to amend the application to include a request to excavate in the bluff impact zone.

VanKempen remarked I guess we would want to have the calculations on the dirt volumes before we could move forward.

Buitenwerf replied that would be the department's recommendation to the Board, yes.

VanKempen asked is this something we want to table and let the applicant tweak his application to get some calculations for making the walk out basement?

Grob asked for public comment.

Public comment was given by Steve Kuriopic. (sp?) I have known Mr. Zarth for a number of years. Just to clarify, this distance from Horn Drive, I would imagine that is listed as a township road. Since it is labeled, and it does come into a dead end, I am sure there is an amount of space that is required, whether it is 33 feet or whatever. That would bring by rights that road could be widened. He has enough room, maybe, for a full size pick-up to park between this area and the house. It is the same thing on the other side by the garage. There is very little room there. If he moves this cabin back the four feet that you suggest, he will be right on the edge of any roadway expansion. I want to clarify it for you. I have worked under this cabin, it is a small crawl space. Mr. Zarth has upgraded to a four inch well. He has had the septic inspected, again, when that was done also. I just wanted

to make that clarification of how much room he has between the road and what he can actually do by moving back. It is just to give you a little more information on what is there.

Grob stated according to the staff report, the road is a private road and the deed to the property shows an easement exists only over the surface of the road. Since it is a private road, there is no setback requirements. He could build right up to edge of the road if he wanted to.

Kuriopic (sp?) commented if they wanted to make that road wider, even though it is listed as a private road, it is totally up to them. Who actually owns the road? If it was a township road, it would probably be a width of 33 feet for that.

Johnson remarked that road may not be centered on that 33 feet.

No written correspondence was received.

Grob closed public comment.

VanKempen asked does the applicant want to table this to get some more information? Perhaps even talking to the township to get clarification about the road even though the staff report does show it as a private road. If it is a private road, you could build up to the edge of the road, but if it is a township road, it may not be recorded. At that point normally township jurisdiction is just for use and maintenance of what they have already been using and maintaining. If your township does not have the setback from the edge of the road, then you may still be able to build up to the road. But I am sure you would not want to do that.

Zarth replied I will not do it if we have to do that.

VanKempen continued - going back to if you have to move it 16 feet back, the drawing shows you are at 23 feet from the backside of the cabin to the edge of the road. If you needed to be 16 feet back further to get out of the bluff impact zone, that leaves seven feet between the cabin and the road. Currently if it was approved tonight, you could put in a full basement, but it could not be a walkout.

Zarth responded I would like to table it then because if we do it, I would like to do a walkout.

Johnson asked historically, how many times have we ever allowed excavation in the bluff impact zone?

Buitenwerf answered I cannot think of any off-hand.

Grob commented if we ask him to come back, I would say clarifying the road conditions, how much dirt has to be moved, and that the front of the cabin must be outside the bluff impact zone. Not the deck, but at least the cabin has to be back 30 feet. Which I think indicates from the drawing that is at least a six foot push back.

Krueger asked by conditions of the road do you mean status of the road? I would like to confirm that.

Grob replied is it in fact a private road. The only easement is for his neighbor, 12 feet across his property that he can drive across to get to the end.

Krueger responded that is what I would like to see.

Zarth stated the County did not even have information on our other septic. The one that is not in compliance. There are very little records and like I said, I did get it from my father. I am just trying to fix it up to keep it or else move on. I would like to keep it, it means a lot to me, but it does not really serve the purpose of my family. One small bedroom and we have the guest cabin.

Grob asked is the Board in consensus of giving him the opportunity to defer and come back with the information if we specify what conditions we want him to come back with? Or the alternative is no and then we just vote on what his application is.

Johnson commented I think the road is a part of his most practical difficulty besides predating the ordinance with this existing structure. I do not want to waste somebody's time applying for something he could possibly be denied.

Grob asked would the Board be amenable to thinking that if he moved it back such that the full cabin meets the 30 foot setback and not the deck? I guess it depends on how much dirt. If he moves the cabin back, he would not be digging into the impact zone, right?

Johnson replied he would not need a variance.

Petersen asked Zarth am I understanding that you are wanting to go forward regardless of moving it back or not only if you have a walk out? Is that correct?

Zarth replied I do not think it is practical for us to move it back.

Petersen clarified is the walk out mandatory in your mind for the project to go forward?

Zarth answered yes.

Petersen commented I think even if we move the building back to excavate for a walk out, you will still be in that bluff impact zone. I think we need to take into consideration how we feel about that. The building can be moved out, but to get the walk out, to make that work, we are going to be excavating in that zone regardless.

Johnson asked how high could he come up out of the ground to lessen the excavation?

Zarth answered I think the builder was saying we are going to raise it two and a half feet right now.

Johnson replied, but then you are going to be in the ground six. So how high could it be raised to lessen the impact of the removal of dirt?

Zarth responded I just think it would look kind of funny if the front is so far up.

Grob remarked the other drawing in the staff report shows that line. He is only six feet into the bluff impact zone with the current house structure not including the deck.

Buitenwerf replied no that is a clarification I made a little while ago. The information in the staff report was based on the setback information provided in the application which differs from what is shown on the screen, which is the staff measurements taken on the property, which shows the cabin to be ten feet into the bluff impact zone.

Grob commented I get that by looking at the 20 feet here. That is what I was trying to find out. He is ten feet into it. I think there is this general feeling we do not want you digging a big basement in the bluff impact zone. It is something we typically would not do. If there is no way and you want to do the full basement, and it is not feasible to move it closer to the road, then Johnson probably has the right answer. That is we would just be asking you to come back with more information that would likely not be approved.

Johnson stated I am not so much against him doing the basement under the existing structure as I am against him taking out the dirt towards the walk out, outside the structure.

Zarth asked so you would allow a basement without a walk out?

Krueger commented to me the only practical difficulty that would exist is if he cannot move the cabin back because of Horn Drive. If it is a private road, there is no reason why it cannot be moved back. To me practical difficulty would not exist then. Again that goes back to my first thought that what does the township have to say about Horn Drive?

Zarth asked were you out there and looked at it?

Krueger answered yes.

Buitenwerf remarked if it helps the Board any, the map that is up on the screen currently is the township road map. This is a map that is sent out to the townships annually by the Highway Department. Townships are asked to update the map with any roads that they say are township roads and then indicate the mileage they maintain on those roads. I feel fairly confident that this is a current representation of the status of Horn Drive.

Grob asked so where it says Horn Drive, that is not indicated as a township road on this drawing? It is there, but it is not a township road?

Buitenwerf answered correct.

Krueger stated then to me, practical difficulty does not exist then. I really could not answer affirmatively to question number three.

Johnson replied I think it would be a practical difficulty because of the historic use of the neighbor beyond. I think he has a case. I see where you are coming from, but historically that road has been there a long time.



Zarth commented I guess that is one of the reasons I want to stay there is that we know our neighbors so well. I could buy another cabin, but I like the people around and I think I stated that in my application. I would like to stay in this area.

Grob asked would you be willing to table it if we set some conditions on what information you should come back with?

Zarth replied I will, but I do not want to waste my time or yours if you are going to tell me to move it back towards the road. I am not going to do that. That is not going to work. But I would entertain that not being a walk out.

Johnson stated the basement is part of the variance application already so no part of the walk out is included right now anyway.

VanKempen remarked as we have stated before, we normally do not allow excavation in the bluff impact zone and if the applicant does not want to move it back that ten feet to get out of the impact zone, then the only thing left would be to deny the application.

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

Krueger seconded the motion.

#### Findings of Fact:

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

Yes ( ) No (X)

Why or why not? There is room to move the cabin back out of the bluff impact zone (BIZ). Allowing the cabin to be raised and a basement placed beneath it in its current location when room exists to move it at least 6' back so that it is outside the BIZ would not be in harmony 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? There is a primary residence and guest cottage/garage on the lot – both of which provide reasonable uses of the property. The lot can also be used to enjoy the outdoors and access the lake for recreational purposes – which are also reasonable property uses.

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

Yes ( ) No (X)

Why or why not? There is at least 20' between the cabin and Horn Drive which would allow the structure to be moved back and out of the BIZ when the basement work is done. Horn Drive only services one other lot beyond this lot and is a private

road with an easement width that is only the maintained road surface so there would be no safety issue created by moving the cabin closer to this road that really functions as a driveway.

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

Yes ( ) No (X)

Why or why not? There is room between the cabin and Horn Drive to allow the cabin to be moved back outside of the BIZ and maintain a safe distance from the private road/driveway.

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

Yes (X) No ( )

Why or why not? The bluff that is present on this lot is also found on adjoining lots to the north and south. The adjoining lots are also improved with residences on them that are located at a similar ordinary high water mark setback to this cabin and also at a similar position on the bluff. The proposed addition to the cabin would not cause it to exceed the average size of residence present in this 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 motion carried unanimously 5 – 0.

**Variance Application 41-V-17 by Andrew Schauer:** Lot 5, Duck Lake Second Addition, Section 31, Township 139, Range 33, Crow Wing Township on Duck Lake, a recreational development lake. Parcel 06.38.40400. Applicant is requesting a variance from Sections 702 and 904.6 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residence that is located in the shore impact zone and will increase the lot's impervious surface area which already exceeds the 25% of lot area threshold.

Andrew Schauer, 75765 E County Road 100 N, Avon, IN, presented the variance application. I want to add an 8' by 16' addition on the back of the house tied into the rear of the cabin. It would have an entryway and bathroom. The cabin currently has one bathroom.

Grob stated when we were out there, we talked about being very concerned with the impervious surface. You might want to add what your current thinking is about bringing the property into compliance with the 25% impervious surface.

Schauer replied as we discussed when you were out there, I was hoping to hear your suggestions on that. The driveway currently is asphalt and comes all the way down to a wood wall at the rear of the cabin. I would have zero problems cutting that back to bring my impervious surface into compliance. There is also an 8' by 12' shed there that if needed could be removed. Having the cabin usable and having that second bathroom is much more important than that driveway or impervious surface problems that we have. I get the runoff issue and there is not a lot of ground left with the hill that drops off there between the driveway and the lake. I think cutting that back to your recommendation would be a no brainer. That would hopefully take care of my 25% problem. The rest of it would be what is already deck and impervious to make it into house space.

Johnson commented when I was at the lot viewal, I remember you saying that you would do what you needed to do to be in compliant with the impervious surface area and offered to remove that shed.

Schauer responded yes. I think Buitenwerf said it did not really matter where it came from, you guys needed to tell me. I am not going to argue with you over the shed, if we can take more driveway and leave the shed, if it was my option. I would have to talk to my wife about it a little bit and see what she says, but we do have a four stall garage. At the end of the day, the square footage on the cabin is much more important. I am not going to lose sleep or get angry about it if you tell me what we can do.

Krueger stated from the Environmental Services calculations it looks you just need to remove a little bit over half of your driveway and you have your square footage reduced to 25%. You can get everything out of your driveway if you want to keep your shed.

Schauer remarked I think somebody mentioned maybe narrowing the driveway, cutting it down to one car versus 18, 19 feet wide.

Krueger replied as long as it is a little bit more than half of it, yes.

Grob commented I would think that the best thing would be to take the entire driveway out up to about where the shed is, you have a sidewalk that goes to there, and plant that. Retain that kind of berm you have at the end to keep water from running. From there back, it is taking the shed out and cutting down the size of the driveway as much as you need to, to get the 951 square feet.

Schauer clarified take the driveway back to where the sidewalk ends, it is about the length of the car there, remove the shed, and cut the width of the driveway down to get under 955 square feet, roughly. That would be more than fair.

Grob replied that would give you the ability to at least walk down what you have left on the driveway on pavement and then onto your sidewalk so you would not be walking on grass or have to do other things.

Schauer responded that is more than amicable, I am fine with that.

Grob asked for public comment.

No public comment was given.

No written correspondence was received.

Grob closed public comment.

VanKempen stated if we are going to move to approve this, the wording should be in a sense that the applicant has to remove at least 951 square feet to meet the 25% threshold. I know that things might change from tonight to when the work actually happens, maybe you keep the shed and trim more driveway or maybe you take out the shed and cut the driveway width in half. There are so many different ways about it, we should word it in a way that he does not have to come back when the project starts and say I changed my mind, this is how I want to do it.

Grob asked Buitenwerf what is easiest for the Environmental Services staff to make sure the applicant is in compliance? If we say alright, approve the variance on the condition it be brought into compliance with the 25% impervious surface and not try to do any more details, we have had the discussion. But that would be your staff's responsibility to work with him to ensure that compliance is reached. Is that the easiest way to do that? Or would you like us to specify take the shed out and do this and this?

Buitenwerf answered a motion that would say approved subject to the property complying with 25% impervious would work fine. We do not care where he comes up with the 951 square feet that he needs to remove.

Schauer commented I do not know how this normally works, but to me it makes sense while the construction is happening, the demolition of the bedroom with the foundation issue, the build back of the addition, can I have until spring to remove that? Right now there is grass and everything is there and established. From a runoff standpoint, can I have within 30 days or 60 days after the completion of this? First thing in the spring, remove that or do you want it done this fall yet?

Grob clarified if I understand, you are saying can I keep the driveway with the way it is until the construction is done?

Schauer replied I guess within 30 days of that or March 1. If you want it done now, I will get it out now. It is not life or death. It just makes more sense instead of having a muddy mess or chance of erosion. Can I have until after we get that completed? Then first thing in the spring get it out of there or do you want it done prior to the start of construction?

Grob responded I would not touch that driveway until I was done with my construction. I would just have a mess.

Schauer remarked if the variance is approved based on compliance of that, my clarification would be does it need to be done beforehand or can I have six months from the time the application is pulled to get it removed or something like that?

Grob asked Buitenwerf do you want us to specify that or just make a general statement?

Buitenwerf replied that timing makes good sense. I would suggest the Board spells out, like Schauer suggested, it would have to be taken care of within a certain amount of time of getting the bulk of the addition completed.

Grob asked Schauer you are intending to do the addition this year yet?

Schauer replied I would like to. We have a foundation problem, I cannot move forward until we get that fixed. We would like to get the foundation in here before freeze in the next couple of weeks. The plan was to have construction completed by spring, done over winter. We cannot control Mother Nature, but I would say sometime within a short time after road restrictions come off, I could get that driveway removed.

Grob remarked my inclination is to say something to the effect of approved and the driveway has to be brought into compliance within two months after the construction is done. But if you do the construction this winter, you would not want to be tearing up the driveway in January.

Schauer replied I do not know what road restrictions will be for next year and getting somebody out there to remove it. I do not know what their schedule is in the spring. I realistically would like to have 60 days after road restrictions are off to get somebody in there to get it dug out of there.

VanKempen commented it is my understanding that the permit is good for one year. Perhaps we just state that it has to be in compliance before the permit expires.

Schauer remarked more than likely it will be done by June 1 of next year if you guys would give me that grace.

VanKempen made a motion to approve the variance application with the following condition and adopt questions 3-6 of the staff report findings of fact:

1. The applicant brings the impervious surface to 25% or less within the one year permit period.

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 applicant is willing to bring the lot into compliance with 25% impervious surface threshold.

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

Why or why not? To enlarge the bedrooms and making the cabin of more reasonable size 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 cabin is located in the shore impact zone and was constructed prior to the ordinance. The Shoreland Ordinance requires that a variance be obtained in order to add onto 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? As mentioned in the answer to question 3, the cabin was built prior to the ordinance in what is now the shore impact zone. The ordinance requires a variance for any alteration to a nonconforming structure located in a shore impact zone.

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

Why or why not? Even with the addition, the cabin will be similar in size and ordinary high water mark setback to the other cabins on either side of it. The addition is only 8' x 16' in footprint and will be located on the rear of the cabin and replace an existing platform.

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

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

The motion carried unanimously 5 – 0.

**Miscellaneous:**

**Communications:**

Buitenwerf stated there will be a November meeting and there will be a Planning Commission business item which will be Ordinance 10 that concerns Surface Water Use. At the most recent County Board meeting, the Board asked the Planning Commission to take up that Ordinance in regard to removing the regulations entirely that pertain to First, Second and Third Crow Wing Lakes. There are regulations on the speed of watercraft

during certain time periods of day. The Board asked if that could be removed and asked the Planning Commission to work on that for them. It will be on the November agenda along with two variance applications thus far.

Grob asked are they instructing us to remove that and reword it or to consider taking that requirement out?

Buitenwerf responded the instruction I received was they wanted a draft prepared for you, which I have already done, that would strike all of the regulatory language on those lakes. We have already been receiving feedback from parties on those lakes that do not agree with the regulations being removed. I do not know where it is going to lead.

**Adjournment:**

Krueger made the motion to adjourn.

Johnson seconded the motion.

The motion passed unanimously 5 – 0.

The meeting adjourned at 7:52 p.m.

Respectfully submitted,

Paige Nulliner

Recording Secretary