

HUBBARD COUNTY

Planning Commission/Board of Adjustment Meeting Minutes

6:00 p.m. on Monday, October 22, 2018

Chairman Tom Krueger opened the meeting with the following additional members present: Ken Grob, Ted VanKempen, Tim Johnson and Mark Petersen. Also present were Environmental Services Director Eric Buitenwerf and ex-officio Planning Commission member and County Board Vice-Chair Dan Stacey.

Krueger 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: September 24, 2018.

Petersen said I noticed in reviewing the minutes that there was an exchange between myself and Darrin Hoverson from the DNR and Eric Buitenwerf from Environmental Services where I was asking them to reiterate their position on Mr. Bolton's violations, current and any outstanding. They gave me their answers, they had already had their input in there and I was just asking for a reiteration of those answers. I noticed that exchange between myself and those two gentlemen was omitted from this minutes.

VanKempen made a motion to approve the minutes with missing information added.

Petersen seconded the motion that carried unanimously 5 – 0.

Old Business: None.

New Business:

Conditional Use Permit 1-CU-17 Amendment Application by Ben and Janae Hass: Outlots C and D, Highland Park, Section 9, Township 140, Range 33, Nevis Township on Lake Belle Taine, a recreational development lake. Parcel 21.40.04000. Applicants are requesting an amendment of Condition 2 of Conditional Use Permit 1-CU-17.

Ben Hass, 393 West Avenue, Nevis, MN, presented the application to amend condition 2 of the Conditional Use Permit, getting rid of the height of the buildings. I apologize that I changed it in building for the health inspector, having their measurements exact in the bedrooms. I needed to change that and I think it worked out better anyway. I am looking to get rid of that height to go with the state law of 30' or 32'.

Krueger asked you were approved for 12' and you are at how much?

Hass replied depending on if you are measuring from floor or from grade. If you are measuring from the floor it should be approximately 17'.

VanKempen said from grade what would it be?

Hass replied possibly 25'.

Krueger opened for public comment.

No public comment was given.

Krueger closed public comment.

Grob added I do remember back when we were discussing this, there was some concern that those three units not be too large or too high just because of the terrain. If you could give us your best estimate of the maximum height, would it be acceptable to put that in the condition instead of the 12'. If we take it off completely, the ordinance would allow 35'. I don't think 35' high structures there would ever be very pretty. Would 25' be sufficient for your current height? I don't want to box you in, but I don't want to leave it open that ten more feet could go up in the future or fifteen feet or whatever it may be.

Hass replied correct, I understand. I don't want to be a foot off and then be back in here again.

Johnson asked would 30' be enough?

Hass answered yes. Nothing is over 30'. I don't intend to build any higher than what was there.

Grob added 20 years from now someone might or something might burn down and you want to build again and then it gets up.

Krueger said this just applies to these three that are already built.

Grob said it shows 22' to the top from grade on this picture.

Hass responded actually the gentleman who came out and measured it, he was measuring the overhangs with the roofline and everything. That particular one is, but if you look to the one just to the side of it, the ground drops off there quite a bit more and I was trying to keep all my roofs the same height. You are probably talking several more feet there.

Krueger asked is 30' acceptable?

Grob said I am ok with that; I just would not like to see things any higher than the ones that are there. I think the change is very appropriate; they have been compliant with all of the other conditions that we set. The board of health insisted they have larger bedrooms. Going up was a good idea. I think all of that is reasonable.

Grob made a motion to recommend to the County Board of Commissioners the amendment of Conditional Use Permit 1-CU-17 to alter Condition #2 for the three units to be 20'x24'x30'.

VanKempen seconded the motion that passed 5-0.

Findings of Fact:

1. The Board of Health required him to make the bedrooms larger.
2. Applicant has been compliant with all the other conditions.

Board of Adjustment:

Approval of Minutes: September 24, 2018

Grob made a motion to approve the minutes as presented.

VanKempen seconded the motion that carried unanimously 5–0.

Old Business:

[Variance Application 32-V-18 by Dan Carey:](#) Lots 13-16 and part of Lot 12, Ojibway Beach, Section 1, Township 140, Range 35, Todd Township on Fish Hook Lake, a recreational development lake. Parcel 27.42.00800. Applicant is requesting a variance from Sections 502.2, 503 and 902 of the Shoreland Management Ordinance for a proposed structure that will not comply with the 100' ordinary high water mark structure setback, will be located in a bluff impact zone, and involve grading/filling in a bluff impact zone.

Dan Carey, 15897 Fishhook Drive, Park Rapids, MN, presented the application.

Carey stated based on our last discussion I have resubmitted a rock wall done by a professional landscaper that would correct the erosion problem and that rock wall would taper up the hillside where it is lesser of an issue. So it is a total of about 40', that is 20' at the steepest point wide and then it would go up that hill 20'.

Krueger asked Buitenwerf in your staff findings you said you are waiting on a revised aerial photo and cross section sketches. Did you get everything you needed?

Buitenwerf replied no, that information was not submitted.

Krueger asked do you feel this application is incomplete?

Buitenwerf answered standard practice departmentally, we would prefer to have that information so the Board would have accurate dimensions as to what is being proposed. I would suggest you should ask Mr. Carey if he has that information to share with you this evening.

Krueger asked Carey if he brought what Buitenwerf referenced.

Carey asked is this different than the original information that was submitted with the original variance application?

Buitenwerf replied this is information in response to an email that you see on the screen that I sent to you on October 10th.

Carey answered I thought I submitted everything to you and asked if there was anything additional you needed. This is a surprise to me. It is not a different aerial, it is the same as the original variance application.

Grob said my view is that when we were out there, I did not know what you were planning and where you were planning additional retaining wall or rocks.

Carey asked you were out at the site?

Grob responded yes this last time.

Carey answered the painted area was the critical part. It was painted red, part of the application and the rest of it is staked off in red stakes.

Johnson added the stakes were not up when we were on the lot; they were thrown in a pile on the hillside when we were there on the lot viewal.

VanKempen replied we were there just last Thursday.

Carey responded I am looking at the original pictures from the original application.

Krueger added I can recall from the last meeting that one of the reasons I was in favor of tabling is that what I viewed as the primary problem out there is erosion coming down that road and it looks like you didn't address anything about that.

Carey said that is the second step in the process. I want to make sure I correct the sloping problem first.

Grob asked can we see from these drawings where he is proposing the sections of rock wall?

Carey asked from these pictures?

Grob added because there was nothing marked when we were out there last week.

Carey responded my error; I thought the original application was tabled so that we would use that same information for this amended application. It reflects the same area that was originally submitted.

Grob asked for clarification on a picture.

Carey replied the roadway goes up and tapers down.

Grob asked where are you proposing putting the rock?

Carey answered 20' all the way along starting with that first stake and then right where it goes back into the hillside that would be the additional 20'.

Grob said are you talking that the first stake is this big, bright red one here? And you are talking about a rock wall from there all the way down.

Carey replied correct.

Grob asked how long is that?

Carey answered in my resubmission it is about 40'.

Grob asked one continuous line?

Carey replied yes.

Grob asked how about upstream of this stake, is there any erosion on the hillside at all?

Carey said it is not as noticeable there. This is the critical spot in my opinion.

Grob added to Krueger's question, what are your thoughts about how you prevent erosion on that road? It seems to me that is a more environmentally unfriendly thing to the lake than the little bit on the banks. The banks to me actually look to me that they are like that because somebody used a piece of equipment to take the dirt off of it as opposed to the erosion.

Carey replied as I stated before, this was the condition it was in when I purchased the property three and a half years ago. Buitenwerf did send me some information on the roadway, a manufactured product that you could insert in the roadway. Obviously I am open to doing that as well. It just wasn't part of the original submission, which is why I didn't address it.

Krueger opened for public comment.

No public comment was given.

Krueger closed public comment.

Krueger stated my own opinion is that I would be in favor of tying it all together, allowing a rock wall along with doing something about the erosion at the same time.

Carey added I am open to that. I want to fix the problem. I haven't had a chance to check cost on that but of course I will.

VanKempen said I think in my mind something simple on the road itself. I am talking where it starts even up at the tarred area there, just something where some black dirt could be brought in and some grass seed to get some grass growing. That would still allow you to use that road. You came here looking to correct that erosion problem. We find more of an erosion problem, it is not a violation of the Shoreland Management Ordinance, but it is something that you want to address. If we can correct that all here at the same time that would be great.

Grob added if we were to approve this 40' of rock wall to prevent more degradation in the bank, if we were to say that any part of that road that exists now that is in the shore impact zone, 50' from the lake, that a berm be put on the road at that level and everything beyond that berm be seeded and not used for any kind of vehicle traffic except walking. I think that would correct the erosion problem. You can put grass down there as VanKempen is suggesting, but if you are going to drive cars and four wheelers down

there you are just going to make ruts and they are going to continue to erode. My thought would be that if we approve the retaining wall that we put a condition on that any part of that road that is in the shore impact zone, 50' from the water, be reseeded and bermed such that it has to be a walking path and not a vehicle path.

Carey answered that doesn't work very well for me. I have a Ranger and that is one of the ways to get down there. That is one of the primary reasons that I bought the property, it is accessible that way.

Grob replied it would still be accessible, you would only have to walk 50'.

Carey said I just pulled my docks out and I used my Ranger to do it, if I can't use a vehicle that is a problem. I would like to look at Buitenwerf's solution concerning the material that actually could stop the erosion of the road and this year obviously with the heavy rains it definitely washed down that way. I think that is a better solution. I am not opposed to seeding as well. I definitely need to have access.

Krueger asked Buitenwerf how the solution he talked about would work with using a Ranger or ATV. Does an ATV cause more ruts when you put that stuff in place?

Buitenwerf said in theory it is not supposed to allow it to rut as badly. There are all kinds of products. There were a couple that I sent to Carey in an email, some examples. One is a plastic grid system, kind of like carpet squares that interlock that you put down and then you infill those with either class 5 or you can also infill them with topsoil and then they can be seeded to grass so it's got vegetation, but it's also got the plastic underneath it. As long as you are not running super heavy equipment it is designed to accommodate regular vehicle traffic. The other is a geotextile that forms a honeycomb shape when you fan it out. You have to support those honeycombs as you infill them with dirt, but they can operate the same way as either being filled in with class 5 or black dirt that you then can seed on top with grass to have a fairly porous surface that still is able to withstand the very light traffic that access road sees.

Carey added I don't drive a vehicle down there. I did have a contractor drive his Blazer down there to drop off material at one time but other than that, I have never driven down there myself other than by a Ranger.

Krueger said if you use that fabric along with grass seed, which would accommodate your Ranger in my opinion.

Johnson commented I think that rock wall he is proposing is fine and grass seeding is fine because the alternative is that he can leave it the way it is.

Krueger replied our alternative is we don't have to approve the rock wall.

Johnson added and he can leave it the way it is.

Petersen asked Buitenwerf I think what I am understanding you are saying is some of these projects that you have suggested, they would hold up to a Ranger type vehicle

using that road occasionally? To prevent the erosion that might otherwise cause if it wasn't there. Is that what they are designed to do?

Buitenwerf said there is an example on the screen of what I was describing.

Carey replied I would most definitely use that system versus any other because I think it would stabilize that roadway much better.

Krueger said I will just reiterate that I would be in favor of approving the rock wall as long as this is used along with grass seeding and then you are fine with the Ranger going down there.

Petersen asked Krueger would you have a specific one, the one you see pictured here; if we were to include it as a condition you would want one over another?

Krueger asked what do you think Buitenwerf? Is there one that works best?

Buitenwerf replied I am not familiar enough with all the products that are available to say which would be preferred over another.

Krueger asked could a motion just be worded that he uses one of these kinds of fabric with grass seeding?

Buitenwerf agreed.

Carey said I do not mind going back to Buitenwerf with whatever we end up with to make sure that it is satisfactory. I just want to fix the problem and make it look decent.

Krueger said I personally would like to see the road erosion corrected.

Krueger made a motion to approve the rock wall as presented with the condition that honeycomb geotextile fabric is to be installed on the access road running alongside the rock wall location, infilled with topsoil, and seeded with grass.

VanKempen seconded the motion that passed 4-1 with Grob voting nay.

Staff report findings of fact were adopted with the exception of # 3 for which the Board provided an answer.

Findings of Fact

1. Is the variance in harmony with the general purposes and intent of the official controls?

Yes (X) No ()

Why or why not? The ordinance's intent is to avoid erosion and stormwater runoff into public waters. The proposed rock retaining wall would be installed to stabilize the cut face in the bluff slope and thereby halt the erosion that has been occurring.

2. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?

Yes (X) No ()

Why or why not? The owner is looking to stabilize the cut face in the slope that was created by a previous owner so that the erosion which has been occurring can be stopped.

3. Is the need for a variance due to circumstances unique to the property and not created by the current or prior property owners?

Yes (X) No ()

Why or why not? Yes the property is unique because of an access trail leading down to the lake and the disturbance of the toe of the slope may or may not have been caused by a previous owner. The cause is undetermined.

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

Yes (X) No ()

Why or why not? A rock retaining wall is not uncommon to see on lakeshore property and the proposed wall would not harm the locality's single family year-round and seasonal residential use character.

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

Yes (X) No ()

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

New Business:

Variance Application 34-V-18 by Robert and Kristi Gorman: Part of Government Lot 2, Section 6, Township 141, Range 33, Mantrap Township on Big Mantrap Lake, recreational development lake. Parcel 20.06.01200. Applicants are requesting an after-the-fact variance from Sections 502.2 and 1104 of the Shoreland Management Ordinance (SMO) for a hot tub to be located within the 100' ordinary high water mark setback and from Section 601 of the SMO for a water-oriented accessory structure that is not used solely for storage.

Robert and Kristi Gorman, 27384 Island View Drive, Park Rapids, MN, presented the application.

Krueger asked for our record can you give us a rundown of how you got the hot tub and sauna/storage building there?

Gorman said in the fall of last year we purchased a hot tub and a sauna in Bemidji and I had it placed in the fall of 2017. According to the dealer, there were no permits required. This summer we found out that we need some permits or variances to comply. When I looked at it, I think the confusion was that the Minnesota, the model Shoreland Ordinance, says that a sauna can be a water-oriented accessory structure. They say that saunas are accessory structures and for administrative reasons local governments can consider them water-oriented accessory structures. When we looked too, if this was the confusion on the dealer's part, when you go to the Hubbard County Shoreland Ordinance, it specifically says that hot tubs do not require a permit. They say it has to meet structure setbacks. And structure setbacks include side setbacks and ordinary high water setbacks. When you look at it and you go to the Hubbard County site, it says what does not require a land use permit and it says hot tubs. Then you have to look further and it says but all setback requirements are met including ordinary high water mark setbacks. Then I checked with Buitenwerf, Nick came out and said it looks like you are going to need a variance to make these in compliance and then when I looked at the Hubbard County ordinance further, it looks like we met all the criteria for an accessory structure. Ninety percent of the year it will be storage. We use the sauna primarily in the winter. We took the dock section out. It is 40 feet long so it's up against the garage. We took out shore station out. It is a wide bermed lot. It's really our only access to the lake. Fifteen years ago we applied for some variances and we have done a lot of things to terrace the area in front of the cabin. We made an area where runoff can get caught. We made it pea gravel; we removed the concrete ramp that was going directly into the lake. We had the drainage now go to the rear of the property, there used to be a drain that went directly into the lake. We completed the roof line and had all the drainage off of the roof go to the rear of the property. When we placed the sauna, we placed vegetation around it, boulders, we pitched it so it will drain away from the lake. We tried to have a structure that fits in with the north woods look. When we looked at the old variances, there is a medical hardship. It looked like that was removed. My grandson and I both have pretty significant medical hardships. For his neutral buoyancy vest, the medical literature says that both hot tubs and saunas are beneficial for his medical condition. We do not have indoor stairs so it isn't like we go down through our basement and go out the garage. We have to go out through our deck and around down to the lake. We have three cement stairs and the only way we access it is going around the cabin. We have beach cushions, vests, and lifejackets. Right now it is air tight, rodent proof. I have cushions, all kinds of things, it is probably too much.

Grob said I would like to focus this discussion on the hot tub and get the information and come back to the sauna. A lot of that is getting mixed together; they are distinctly different conditions and situations. Why could you not have placed the hot tub on the deck? The hot tub is allowed. Setback requirements, but with your deck there I believe, Buitenwerf, he could have placed the hot tub on the deck with no permits or variances required.

Buitenwerf answered that is correct.

Grob continued so my first question is why could you not have placed it on the deck and therefore have had a conforming situation.

Gorman answered I am not sure structurally the deck can support the hot tub. They recommend either a concrete or pea gravel base. I think it would affect, if you put it on the deck, as far as moisture to the underlying roof structure.

Grob said the deck, to me, appears right where that table is or the indentation to the left, which appears to be right on solid ground. It's not on posts or anything, very similar to where the hot tub is now. I understand the weight. 3,000-4,000 lbs. But it seems like your deck is on solid ground so it could have been put there.

Gorman replied I would have to check with the manufacturer to see if it was possible even.

Kristi Gorman added there would be some bowing. That is partly why we redid the deck was because we have had so much runoff from our old roof onto the deck.

Gorman continued it is a 500 gallon hot tub plus it potentially holds eight people. It is thousands of pounds.

Grob agreed it is 5,000 lbs.

Gorman said when I talked to the dealers, they said either concrete or pea gravel. I thought the pea gravel would be more permeable. It would minimize the runoff effect. The runoff would go into the pea gravel. With the decking, I don't know if you would get more drainage towards the lake.

Grob added I understand the weight issue and space issue. Why did you not consider coming in for a variance to extend your deck or that area?

Gorman said I didn't think that the deck would support the hot tub with all the weight. I do have a variance already to extend my deck. I've got an old variance that was grandfathered from 2005. If you think the best solution is to put it on decking or put decking around it, I have an additional 150' of decking that I could put around it. It creates more of a runoff issue, but if that is preferred by the Board as the best option.

Grob said you have a variance for additional decking. How wide is your current deck?

Gorman answered it is 10' wide.

Grob clarified I mean the total length.

Gorman said it is 40'.

Grob stated that is the width of your house?

Gorman replied yes.

Grob asked the variance which you have never done is for a new house or an extension of the house, how wide is that?

Gorman answered the plan that we drew was an additional 15' and 30' deep which would allow to have another 10' of decking in front of that. The length of our house would go from

40' to 55' and in front of that 55'. So that would be 15'x10' which would be another 150' of additional decking.

Krueger commented when I was at home reading this, that question did come to mind, is your deck at its maximum size?

Gorman replied I have the 2005 variance.

Grob asked Buitenwerf is that variance still valid?

Buitenwerf replied correct.

Grob said explain to me again, the new house would be 55'. How do you get 150'?

Gorman answered because this deck that is on there is allowed to extend the length of the new addition.

Grob said 15'.

Gorman added and 10' deep so a total of 150 sq. ft. additional decking.

Grob continued where I was headed is that if we were to approve the hot tub and consider the 15' where the hot tub is, would it be satisfactory to say that in the future you are limited to that 55' and if your home changes, that 15' would no longer be able to be deck.

Gorman replied that is something I would consider. If you think that is the best option. The only thing that I am worried about is I have got drain tile, we dug a trench under here and all the drainage off the house goes to the rear of the property.

Grob stated you wouldn't have to change anything, you could just leave the hot tub the way it is and that 15' would be considered deck because you already have wood out to it and you are on the pea gravel.

Gorman said leave it as pea gravel.

Grob added leave it like it is, but you would be giving up 15' on your deck if you ever expand your home.

Gorman clarified the 15'x10'? It is an 8'x8' hot tub. I would be willing to do that.

Krueger opened for public comment.

No public comment was given.

Krueger closed public comment.

Krueger added I think if he is willing to give up 150' of future deck and leave the hot tub where it is at.

Grob made a motion to approve the after-the-fact hot tub variance with the condition that Variance 71-V-05 relinquishes 150 sq. ft. of decking in any future expansion.

VanKempen seconded the motion that passed 5-0.

The Board adopted the staff report findings of fact for questions 2, 3, 4, and 5, and provided answers for question 1 and also for the after-the-fact findings of fact questions 1-6.

Findings of Fact

Hot Tub

1. Is the variance in harmony with the general purposes and intent of the official controls?

Yes (X) No ()

Why or why not? Although there is other room on the property, the location is reasonable for access and the relinquishing of 150 sq. ft. of future deck surface makes it reasonable.

2. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?

Yes (X) No ()

Why or why not? The house predates the ordinance and is located in the shore impact zone. It is reasonable to place a hot tub within a short distance of one's residence.

3. Is the need for a variance due to circumstances unique to the property and not created by the current or prior property owners?

Yes (X) No ()

Why or why not? The design and placement of the existing house predates the owner and the ordinance. Because of the lots topography, that existing house was placed there making the main level being a practical difficulty to use the lower level as access from the back. There is no access through the house to the second lower level.

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

Yes (X) No ()

Why or why not? Hot tubs are a common accessory feature on riparian residential lots. The tub is well screened from the lake by mature tree cover and does not create any aesthetic imposition on neighboring lot owners.

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

Yes (X) No ()

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

If the Board of Adjustment answers yes to all 5 questions for a variance in the first instance, thereby finding that all of the criteria set forth in Section 1103, Item 1, parts 1 through 5, of the Shoreland Management Ordinance are met, then the following additional criteria may be considered and weighed by the Board of Adjustment in determining whether to grant or deny a request for the after-the-fact variance:

1. Why did the applicant fail to obtain the required permit or comply with the applicable official control before commencing work? Was there any attempt to comply with the applicable official controls?

Yes (X) No ()

 Why or why not? The applicant knew there was no need for a land use permit but did not fully understand the setbacks.

2. Did the applicant make a substantial investment in the property before learning of the failure to comply with the applicable official controls?

Yes () No (X)

 Why or why not? No, it is not a substantial investment.

3. Did the applicant complete the work before being informed of the violation of applicable official controls?

Yes (X) No ()

 Why or why not? It was done before hand.

4. Are there structures, circumstances, or conditions in the area similar to those that are the subject of the variance request?

Yes () No (X)

 Why or why not? Similar situations were not observed in the area.

5. Based on all of the facts, does it appear to the Board of Adjustment that the applicant acted in good faith?

Yes (X) No ()

 Why or why not? Applicant corrected the earlier violations immediately.

6. Would the benefit to the county appear to be outweighed by the detriment the applicant would suffer if forced to remove the structure?

Yes (X) No ()

 Why or why not? Moving the hot tub under the adjoining porch would be a detriment and could be problematic to the existing structure of the existing deck.

Krueger added I do have one question on the sauna, you saw some of the questions we have to answer. I think the intent of the 48 sq. ft. storage building is if you have no other option that is close by to store water related things. When we were on your dock, it is just a few short steps up to your garage basement area. That looked like a good place to store it. This thing is way up the hill. That defeats the intent of the ordinance for a storage building.

Gorman replied we took some additional pictures as far as accessing. You can see even on those old pictures, it's still done that way, where we have the docks and shore station in front so you really have a hard time just accessing that area and there is a boat in there most of the year that we store there as well. We are very limited, that is part of the reason we are considering an addition. Things are packed to the gills in that sauna right now.

Krueger responded I took a look and there are a few things in there, but it's not that much.

Gorman said we took a lot of it out.

Kristi Gorman added making room for the boat to go in there this fall, in the garage.

Krueger continued when I looked in the sauna, it looked like a few cushions and life jackets.

Gorman replied if you looked at it now it is packed to the ceiling. Things change, the docks and the shore station came in. I was under the impression that it was for an accessory storage structure. To me it is primarily a sauna used for those 40 days. It is going to be storage most of the winter. We're not up there and it's full of stuff. When I look at the statute, the model ordinance specifically allows for a sauna to be used as an accessory water storage structure. This is one structure. We don't have any other structures between the house and the lake. The way we go down by the lake is by that hot tub/sauna area. We don't go down through the garage and back. If that is one of the criteria, if you are close enough that you can use your primary structure as the storage unit instead of some other accessory storage structure, that could be a consideration.

Grob said clearly you built that sauna with the idea of using it as a sauna. I think you, as an after fact of the situation, you are thinking about it as a storage thing. What you had stored in there, a simple little storage container would store most of those water-related pieces of equipment that are right down there by the water. It seems to me that water-related storage, other than winter time which is a separate issue, the intent of the water-related structure is specifically dedicated only to storing water-related equipment. Life preservers, paddles and things like that. To claim that sauna as a water-related structure for storing things, its location, size, etc. just to me doesn't fit the verbiage.

Gorman responded that means that you are going against the model ordinance because they specifically say local government may consider saunas a water-oriented accessory structure.

Grob added the only thing we go by is Hubbard County's ordinance, which is allowed to be more restrictive than the State one. And up until a year ago, no structures were allowed except for extreme medical reasons. That was it.

Gorman said depending on how you interpret it, initially Buitenwerf said it had to be used solely or exclusively as a storage structure. It doesn't say that in your rule. He referenced paragraph three. The size that you are allowing, this is 5'x7'. The largest structure you are allowing is 6'x8'. It meets every criterion A-F under the Hubbard County ordinance. It is within 100' so you are going outside of your own ordinance to shoot this down because you don't like the idea that it's a sauna.

Grob stated you misunderstand. The five people sitting here were the five that put that 48 sq. ft storage building into the ordinance about six months ago with the very specific intent that it be used for water-related storage. You can read whatever you want, but Buitenwerf gets to make the call.

Kristi Gorman added we do have water-related storage; it's just not necessarily the lake water. We have a hot tub sitting right there.

Robert Gorman continued the life jackets that are used in the hot tub are used towards the lake.

Kristi Gorman mentioned the chemicals for the hot tub are in there. Maybe there weren't a lot of things in there at that time because of the fact that we were in between seasons, things were kind of shuffled around back and forth, but it is used as storage.

Grob asked what are you going to do now in the winter time if you are going to use the sauna?

Gorman answered take the cushions off.

Grob asked do you take those and put them in a plastic container?

Kristi Gorman asked where do you put them from there?

Grob replied down underneath your decks.

Gorman replied there is no room under there. You could walk through there and you can barely get through.

Kristi Gorman said the dock and the dock sections are stacked there.

Gorman added I think it meets your criteria and I think it meets your more restrictive criteria. Even if you went back to your standard that you had before, it meets the criteria for medical hardship and I don't know if this body wants to take that on. I would apply even based on your previous standard based on serious medical disability. I am on Social Security disability and my grandson has cerebral palsy. I am the owner, you should say it has to be on the deed and you can't sell it. His name is on the deed, it is a family trust. My name is on it and I don't know how restrictive you are going to be on a medical hardship.

Petersen said I would like to back up a bit to see how we started this process. If I could get a clarification from Buitenwerf, to do the sauna did we need a building permit?

Buitenwerf replied yes a permit would be required and then it would also need to meet all setback requirements.

Petersen continued going from knowing that now, you were relying on the dealer's advice as to what you needed to not only build, but place this building.

Gorman responded right, until they told me, partly thinking that my variance covered it. The setback from the lake is no closer.

Petersen asked are you referring to the variance we cited earlier?

Gorman asked so nothing can be more than 30' closer to the lake. There can be no forward encroachment to the lake. My house is 40' away from the lake. The end of my 10' deck is 30' away. This sauna is more than 35' away. Somebody said why don't you just

put it down under the deck? The direct visual impact from the lake is dramatic. It is right in your face, it's on concrete. It is direct runoff into the lake. It is pitched backwards; it is nestled into the trees. You can't see it from the lake. Your own rule says it has to be 20' back. I don't have any place I can put it 20' back, closer to the shore or under the deck. It is 8'. You said it has to be less than 10'. This thing is 8'4". It doesn't even fit under the deck.

Petersen added are you saying you weighed that option? Using it as an accessory structure and then you were considering where you could place it based on that?

Gorman answered we looked at different options of putting the hot tub and the sauna. Where would the best location be? So it wouldn't have a visual impact from the lake, but also make it accessible for all of us. Plus the medical hardship that I think meets the criteria. It seems overly restrictive.

Krueger said these accessory structures that are 20' from the lake, not a single one of them have access directly into the house. They have to walk from the accessory structure to the house. We have to go back to the same thing when I was standing on the dock, a few steps up and there is the door into the basement of your house. To me, the primary purpose of this building was a sauna. You do have room further back for a sauna.

Kristi Gorman asked further back where?

Krueger responded further back on your lot, for a sauna.

Kristi Gorman stated but we have no access to it without going further outside through cement stairs. If we had stairs from the inside, we could go out the lower level and our grandson could easily without slipping. We have added hand railings on all of our stairs just for him and we're not getting any younger either. It makes it more accessible.

Gorman said it looks like according to the model ordinance, most counties follow it, you can be more restrictive, but with the medical hardship, why make him go down and around on cement stairs to access this structure?

Krueger asked his purpose of going to it is to access a sauna?

Gorman agreed.

Krueger said that is what I wanted to hear and that can be placed further back.

Gorman responded he uses it as a sauna, but then when he goes out on the boat he grabs a life jacket.

Krueger added he has to go down anywhere to get out to the boat so that can be in your house.

Gorman clarified so you are saying I can't have an accessory storage structure for him?

Grob said keep in mind, without looking like we are being unreasonable, our job is to enforce the County Ordinance. 100' setback for any structure is the rule. Any new

structure, 100' back from the lake. In your case you have a major structure only 30' from the lake, which complicates things. We are pretty rigid about nothing in the shore impact zone, which is the first 50'. This particular structure violates both of those and it is not purely a water-related storage unit. All those things are in conflict and we have to be consistent with everyone.

Gorman added they don't have the medical hardship. You are telling me that in Hubbard County there are no saunas within 100' of the shoreline?

Grob replied you have 250' of property. You can put a sauna in the backside of your house and be in compliance without a problem and keep in mind a lot of things were done before ordinances were put in place, our job is to look forward and not to create nonconforming structures if there is an alternative. Through the set of criteria we have to go through to approve a variance, I can look down those sets of questions and I can't answer them yes. We are required to have a firm yes to all five of the findings of fact criteria and we can't.

Gorman responded if you can consider the medical information and going against the model ordinance.

Krueger added you keep bringing up the state statute and it did not use the word "shall" it said "may". We can go stricter.

Gorman said that is why I am trying to give you some wiggle given the medical hardship. It does say "may". This is a unique practical consideration with the medical hardship.

Krueger opened for public comment.

No public comment was given.

Krueger closed public comment.

Petersen asked Buitenwerf when we were out there visiting the site, we did not have the 100' OHW marked, did we? Your staff, in any visits they made prior to ours, had not located that had they?

Buitenwerf replied that is correct.

Petersen continued I was just wondering where that was on the sauna side of your building. It seemed like the contour was relatively flat for a while before it dropped off.

Grob added the drawing shows 35' from the lake.

Gorman said the 100' would be roughly back behind the wood pile.

Petersen commented what I was wondering is it possible if we were to go that direction to have you move it to get in compliance, would you be on that flat piece of land. I know that it does drop down. I just can't remember.

Gorman responded it would be down behind the berm. You see where the cars are parked right there, we don't even have a regular driveway. It is grass. You access the garage on the one side and it just doesn't make sense.

Grob added there is a 10'x12' shed, is that shed still there?

Gorman replied yes, that is roughly just over 100' back.

Grob made a motion to deny the after-the-fact sauna variance and adopt the staff report findings of fact.

VanKempen seconded the motion that passed 5-0.

Sauna

1. Is the variance in harmony with the general purposes and intent of the official controls?

Yes () No (X)

Why or why not? The lot is 263' deep on the northwest side and 329' deep on the southeast side, relatively level, and free of obstructions that would prohibit placement of the hot tub at a location conforming with all setbacks. Thus, granting a variance for the sauna to be located in the shore impact zone when there is ample room to locate it in a conforming location would not be in harmony with the ordinance's intent.

2. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?

Yes () No (X)

Why or why not? The structure is clearly constructed and positioned to function as a sauna and not a storage structure. As mentioned in the answer to question 1, there is ample room on the lot where the sauna can be placed so that it meets all setback requirements.

3. Is the need for a variance due to circumstances unique to the property and not created by the current or prior property owners?

Yes () No (X)

Why or why not? The need is due to the applicant's not wanting to have to walk very far from the house to the sauna, not because there is a lack of room where the sauna could be placed in conformance with setbacks.

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

Yes (X) No ()

Why or why not? Saunas are not an uncommon accessory feature on riparian residential lots. The sauna is well screened from the lake by mature tree cover and does not create any aesthetic imposition on neighboring lot owners.

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

Yes (X) No ()

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

Variance Application 35-V-18 by David and Julie Johnson: Part of the South Half of the Southeast Quarter of Section 4, Township 143, Range 32, Lakeport Township. Parcel ID 19.04.02220. Applicants are requesting a variance from Section 5 of the Subdivision Ordinance requirement that a property once subdivided by a minor subdivision cannot be further subdivided within 5 years of the prior subdivision approval unless by platting.

David Johnson, 25903 420th Street, Guthrie, MN, presented the application.

Johnson stated I applied for the variance because I was ignorant to the fact that they changed the ordinance. Over a period of years since 2009 we had been selling off parcels. Generally with an administrative subdivision, I just brought it in for Buitenwerf and he would grant it. Then about two months ago, I was in and did a minor subdivision to split these two. At that time I was unaware until I got late in the process that this ordinance had changed and now there is a five year waiting period, or I would have split these up. Platting seems to be a little overkill at this point with what is left. I would like you to consider a variance from the five year waiting period so we can continue marketing our property.

Krueger opened for public comment.

No public comment was given.

Krueger closed public comment.

VanKempen commented when we were out there Thursday, it looks like it is pretty much ready to go. There is a road that you have constructed through the property that the township has taken over. Everything else meets the ordinance requirements?

Johnson replied yes I have got the site evaluations already done, they have been handed in. All the lots meet minimum lot size requirements. The road has been taken over in 2009 by the township. Highway 45 is on the east side. Sunset is on the west side and then 393rd, the township took that over in 2009.

VanKempen added if it wasn't for the ordinance change, you have been doing this as an administrative subdivision?

Johnson replied yes.

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

Grob seconded the motion that passed 5-0.

Findings of Fact

1. Is the variance in harmony with the general purposes and intent of the official controls?

Yes (X) No ()

Why or why not? The intent of the ordinance's requirement from which the variance is sought is to ensure subdivisions go through the appropriate level and type of review/approval process. Given the length of time over which this property has been subdivided, the fact the interior development road was long ago constructed and became a township road, and the remaining tracts to be sold are in an awkward layout for which there would be no benefit in having them platted, allowing a second minor subdivision application to be submitted/processed makes the most sense and best fits with the ordinance's intent.

2. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?

Yes (X) No ()

Why or why not? The tract layout of this 80 ac. development has not changed since it was previously submitted for partial approval roughly a decade ago. The project has encountered an ordinance language technicality that now requires the remaining tracts to be platted. It is more reasonable to allow the remaining tracts to be created through a minor subdivision application process.

3. Is the need for a variance due to circumstances unique to the property and not created by the current or prior property owners?

Yes (X) No ()

Why or why not? The layout of the remaining tracts owned by the applicant is not conducive to platting. The interior road in the development is already in and has been adopted by the township. Because of the majority of the surrounding lots having been sold, the way that the remaining tracts must be laid out is already determined and not able to be adjusted in any way that would make sense.

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

Yes (X) No ()

Why or why not? As mentioned in a previous answer, the layout of the development has not changed since the initial tracts were created/subdivided roughly a decade ago. Whether the remaining tracts are done by a second minor subdivision or a plat will make no difference on the locality's character as that has already been determined by the majority of tracts that have been created, sold, and developed over the last decade or so.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as a difficulty. The difficulty is due to the length of time over which this development has been subdivided, the amendments to the ordinance that have been made during this period, and the applicant's not having stayed abreast of these amendments as they occurred.

Variance Application 36-V-18 by Dana and Jennifer Cirks: Lot 6, Belle Taine Park, Section 9, Township 140, Range 33, Nevis Township on Lake Belle Taine, a recreational development lake. Parcel ID 21.51.00600. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed residential structure to be located within the 100' ordinary high water mark setback.

Dana Cirks, 20380 Fairwood Drive, Nevis, MN, presented the application.

Cirks stated what I am here to do is request a variance. I was here four years ago for a similar reason and my variance was approved. In preparation of breaking ground this fall or in the spring, prior to my variance expiring in a year, I thought I would do my due diligence and have it surveyed professionally only to find out that the ordinary high water mark on my property, as you travel northeast, it jets in. That took away 8'-10' of the setback from the ordinary high water mark to the cabin. My request is to have you consider a setback of 39' from the ordinary high water mark.

Krueger asked is the 39' for that one corner? Are you satisfied with the placement of the house as it is in this survey?

Cirks replied yes that is as far back as I can go, as you can see I am up against my drainfield setback which was approved at 10' last time and each property line setback. So yes, I am happy with that.

Krueger opened for public comment.

No public comment was given.

Krueger closed public comment.

Krueger added I think Buitenwerf makes a recommendation that we be very specific in a motion to approve, that the house is orientated exactly as it is on the survey.

Grob made a motion to approve the variance application with the condition that the house should be placed exactly as shown on the application such that no part of the house extends any closer to the ordinary high water mark than shown in the application drawings and to adopt the staff report findings of fact.

Krueger seconded the motion that passed 5-0.

Findings of Fact

1. Is the variance in harmony with the general purposes and intent of the official controls?

Yes (X) No ()

Why or why not? In 2014, we approved Variance 47-V-14 that essentially allowed the proposed residence to be located in the spot for which it is proposed now in this application. The only difference is now more accurate information is available from the applicant that the NE corner of the house, as presented in the 2014 variance application, is not able to meet the 50' OHW setback that was requested in 2014 and the applicant then said this corner of the house would meet. There is nowhere else for this residence to be placed on the lot. It is as far away from the OHW as is possible while still providing room for a septic system.

2. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?

Yes (X) No ()

Why or why not? As was vetted in the Board's action on Variance 47-V-14, the lot is very limited on space. The proposed house location is the only spot available on the lot for it that maximizes the OHW setback while still providing enough room for the needed septic system. A variance is required in order to place a house on the lot because it lacks depth.

3. Is the need for a variance due to circumstances unique to the property and not created by the current or prior property owners?

Yes (X) No ()

Why or why not? The lot is roughly 160' deep, but the OHW extends 1/3 to 1/2 the lot's depth into the lot. There is no way to place a house and its accompanying septic system without multiple setback variances.

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

Yes (X) No ()

Why or why not? The locality is comprised of single family seasonal and year-round residences. Most of the structures in this neighborhood are located on similarly sized lots and at similar OHW setbacks to what is proposed.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as a difficulty. The difficulty is due to the lot's lack of depth and the fact that the OHW extends quite a way into the lot.

Variance Application 37-V-18 by Thomas Siwek: Part of Government Lot 9, Section 17, Township 141, Range 33, Mantrap Township on West Crooked Lake, a natural environment lake. Parcel ID 20.17.00110. Applicant is requesting a variance from Section 701 of the Shoreland Management Ordinance for a proposed expansion of a nonconforming use by adding a residential structure and accessory structure to the property.

Tom and Jan Siwek, 25401 County 86, Nevis, MN, presented the application.

Krueger asked can you give us a description of what you are asking for?

Siwek replied we are looking to rebuild the existing home there and we wanted a garage structure. Basically those structures are well beyond the 100' setback. We have a nonconforming use situation where the total amount of building may exceed the use so we are asking for allowance to rebuild our retirement home in a very similar place that it is in now, shifted over because of trees. One hundred seventy-five feet will be the proposed location back from the shoreline. Then we just need a garage structure. We don't have a place to put any kind of ATVs and vehicles and storage for our campground business that we have there.

Krueger asked it looks like the deck and the house is 175' back from the lake?

Siwek answered yes.

Johnson said I looked at the septic sites. It looked like for the house, there was plenty of room along that hillside from that existing septic for an alternate site. Going by the maps of the inspector and his design, it looks good to me.

Grob asked you volunteered to discontinue the use of the 21st RV site?

Siwek replied yes, the 21st site doesn't have septic. When we listed it as 21 sites, I didn't realize I had to say if they had septic or no septic. So the 21st site does not have septic and that will not be used.

Grob asked we don't have to put that as a condition, Buitenwerf, on the variance, the fact that he has volunteered that? Or should we put that as a condition?

Buitenwerf replied I think it would be good to memorialize that as a condition in light of the fact that the variance involved a nonconforming use and expansion of that use through the addition of these two structures.

VanKempen added when we were out there, you showed us where the garage was framed up for the slab. Can you just touch on that a little for the record? Why you started and why you stopped.

Siwek responded when I applied for the permit, I first applied for a land use permit and knowing that we wanted to build a garage and we didn't know what we wanted to do for a home. That is what I originally put in a permit for, but then I realized that I needed to take a look at the house possibility too. I didn't know if I had to do it at the same time or separately. I got a verbal ok from the Environmental Services to go ahead with the garage and get a permit. I got a voice message that the permit was to be issued for the garage and when that didn't happen, we checked back and found out that we needed to do a variance for the whole thing. I went ahead to placing it and doing what I know is not beyond the point of going too far just so we are ready to go when the permit is approved so we could get building and get it done this season. We are thinking next season now, but that is why I went ahead and did that and then waited.

Krueger opened for public comment.

No public comment was given.

Krueger closed public comment.

VanKempen made a motion to approve the variance application with the following conditions that RV site 21's use discontinues and when the house is built, it must meet all setbacks.

Petersen seconded the motion that passed 5-0.

The Board adopted the staff report findings of fact.

Findings of Fact

1. Is the variance in harmony with the general purposes and intent of the official controls?

Yes (X) No ()

Why or why not? The proposed house will replace the existing home and be located in the same spot. The proposed accessory structure will also comply with all setbacks (same as the house) and is reasonable for a resort to have as there currently is very limited storage space on the property for what is needed to service 20 RV sites and six cabins.

2. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?

Yes (X) No ()

Why or why not? The existing owner's residence is in a state of disrepair. Replacing it with a new Code compliant home is a reasonable use. The proposed accessory structure is also a reasonable use as there is no other structure on the property that affords much for storage space which is reasonable to have in order to operate a resort of this size.

3. Is the need for a variance due to circumstances unique to the property and not created by the current or prior property owners?

Yes (X) No ()

Why or why not? The landowner or previous owners did not create the need for the variance as it is due to the resort use predating the shoreland ordinance and the ordinance regulating nonconforming uses in a way that does not allow them to expand – and expansion includes structural additions, alterations, and expansions or the creation of a structure where none previously existed.

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

Yes (X) No ()

Why or why not? This property has been in a resort use for several decades. Surrounding properties are largely low-density year-round residential uses on lots that range from 1.7 to 15+ acres in size. The proposed house will simply replace the existing house in the same location and the proposed accessory structure will comply with all setbacks and not be visible from the lake.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as a difficulty. The difficulty is due to the use being nonconforming because it predates the ordinance and has not obtained a conditional use permit, and the ordinance does not allow nonconforming uses to expand – which includes structural alterations or new structures being placed where none previously existed.

Miscellaneous:

Communications: Buitenwerf said for November we have an ordinance amendment application proposing a high ropes course use be allowed on recreational development lakes as a conditional use permit and that is a result of a CUP having been granted to expand a resort to include a high ropes course and it came to light recently through some permit applications that the ropes course has been operating independently of the resort. The only way it was allowed was as an extension of the resort. It is not an allowed use if it is operated independently of the resort. There is also potentially an application for a second ordinance amendment application proposing a marina use as a conditional use of a general development lake, of which we only have one, Kabekona Bay, Leech Lake. That is potentially going to be on the agenda as well. The individual proposing the idea is intending to get it in by the deadline for November. There might be a CUP and there might be a few variances too. I am sure we will have a similar sized agenda for November.

Discussion ensued about attendance of Board members for November's lot viewals and PC/BOA meeting. Lot viewals will be held Wednesday, November 21st.

Adjournment:

Petersen made the motion to adjourn.

Krueger seconded the motion.

The motion carried unanimously 5 – 0.

The meeting adjourned at 7:54 p.m.

Respectfully submitted,

Staci Harvey

Recording Secretary