

HUBBARD COUNTY

Planning Commission/Board of Adjustment Meeting Minutes

6:00 p.m. on Monday, April 22, 2019

Chairman Mark Petersen opened the meeting with the following additional members present: Ken Grob, Tim Johnson, and Veronica Andres. Also present was Environmental Services Director Eric Buitenwerf.

Petersen 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: March 25, 2019

Andres made a motion to approve the minutes as presented.

Johnson seconded the motion that carried unanimously 4 – 0.

Old Business: None.

New Business: None.

Board of Adjustment:

Approval of Minutes: March 25, 2019

Grob made a motion to approve the minutes as presented.

Andres seconded the motion that carried unanimously 4 – 0.

Old Business: None.

New Business:

Variance Application 2-V-19 by Steve and Tammy Pullar: Part of Government Lots 4, 5, and 6, Section 20, Township 141, Range 34, Lake Emma Township on Potato Lake, a recreational development lake. Parcel 16.20.01290. Applicants are requesting a variance from Section 506 of the Shoreland Management Ordinance for a proposed guest cottage that would cover more than 700 sq. ft. of land surface and exceed 15' in height.

Steve Pullar, 20343 Meadowvale Road, Elk River, MN 55330, presented the application.

Pullar stated I know that I am not supposed to read what we submitted, but I would like to highlight some of it. We are requesting a variance because we have a garage now that has a guest area, kitchen, bathroom, and a bedroom in the upper level. When we bought the property in 2004, it was always our intention to build this garage and loft and then

eventually build our retirement home, which we are now ready to do. If you take a look at sheets 8 and 9, you can see that the ordinance from 2015 has changed to now, 2018, in the section that I believe gives us the biggest hurdle. They have added at the very end, "and the structure must not cover over 700 sq. ft. of land surface." I was told that was added because there were interpretation discrepancies as to what this guest cottage had to look like previously. I had many discussions with people from Hubbard County, and some of them I put in the notes, I did have a discussion with Janet when I called Hubbard County services, and I took pretty good notes on that. I want to highlight a couple of things on sheets 12 and 13 of the submitted application. When I was talking to her, I took notes. We discussed, if we were going to have a guest cabin, what size the lot had to be and how much shoreline, and then what could I build and still not infringe on the future cabin or house that we were going to build. At that time, it was clear that it just couldn't exceed 700 sq. ft. and it couldn't be over 15', but then she corrected and said 25' if it is above a garage. Still on the same conversation with Janet, on 5/10/2005, she again said the garage size doesn't matter, but sleeping quarters and kitchen below must be less than 700 sq. ft. When we built the garage, we made sure that we did all that. We thought we were doing the right thing, we made sure we stayed under the 25'. I had another conversation that I recorded notes on, I had a lot of conversations, on page 16, I talked to Bryan on 7/1/2013. This conversation was because we were going to build a deck onto that garage and I wanted to make sure that the deck wouldn't affect the future cabin as well. You can see in that conversation I was told basically the same thing. I still think we did the right thing. I can also tell you that several times in between there, we had Environmental Services out there and it was always a topic of discussion with me because I was always worried that something might change. I was always told no, that what I have is fine. I am hoping that you would allow us to keep the livable space that we have in the current garage and allow us to build where the new building site has already been approved.

Grob said you are premising the fact that your living space is equal to or less than the 700 sq. ft. even though it is contained within a larger building. Your premise is that was not the understanding originally, that it was only the living space that was an issue. We were out there and reviewed what you have. You indicate that you think you are currently only using about 560 sq. ft. of the 700 sq. ft. allowance. However, when we toured the upstairs and you indicated that there was a storage area, it was very sparsely storage. It very easily could be considered additional living space, which would put you well over the 700 sq. ft. I calculated that out at about 980 sq. ft. Independent of your premise about the misunderstanding of the inclusion, it would appear to me that you have about 980 sq. ft. of living area in that garage. If we were to consider approving your application, there would have to be a way to eliminate or restrict that extra area upstairs. It would have to not be altered in any way to be living space. I am looking for validation that my numbers of about 980 sq. ft. are in fact what the total, non garage space is, in your garage.

Pullar answered I don't know if your numbers are right, they sound like they would be accurate. I have never calculated that area.

Grob stated I just took your numbers off your drawing.

Pullar agreed then it would be correct. That will not be used for living space.

Petersen asked do you ever have any intention of renting that space out?

Pullar answered none.

Grob asked Buitenwerf there was a violation for some filling done, a few years ago; there are no outstanding violations currently on the property?

Buitenwerf answered correct.

Petersen asked Buitenwerf this structure was built by permit when it was built and the restrictions that we are looking at did not apply? Am I reading that correctly? What he did then was able to be done by permit and the 700 sq. ft. didn't apply at all to the structure when it was originally built, is that correct?

Buitenwerf replied the ordinance at that time had the same guest cottage language that it does now, which prohibits being larger than 700 sq. ft. in footprint. The structure, when permitted, was permitted as a garage, and since it was also the only structure being used as a dwelling at that time, that was also able to be permitted without the 700 sq. ft. coming into play.

Petersen opened for public comment.

No public comment was given and no written public comment was received.

Petersen closed public comment.

Johnson added I saw that the permit was only for the garage, the application said one bedroom, one bath. That kind of makes a difference when we did that amendment. It comes down to us answering the findings of fact for #3. "Is the need for a variance due to circumstances unique to the property and not created by the current or prior property owners?" My answer is yes. He was developing the property in stages, he started out with that garage and then an amendment happened in the middle of it that changed it a little.

Grob said I might add to the fact that, the property is large enough to build a separate guest cabin at the 700 sq. ft. and eliminate this, or build a house attached to the garage, which would both fit in a permit situation, but both of those probably are more disruptive to the property than keeping what is there. I think the answer to #3 needs to be based on wording that we might put into a condition that prevents any further expansion of that storage room into any kind of living quarters. It could be a nice game room, it could be a lot of other things and I realize it is fairly hard to enforce and we would have to rely on your integrity. We would have to put a condition that the extra space would have to be storage and cannot be used for living at all.

Petersen asked are you saying that you would want the living space there to be restricted to 700 sq. ft. and anything over that would have to be used strictly as storage, is that the kind of condition that you are looking for here?

Grob agreed. I think the condition should be "There shall be no expansion of the living area that currently exists in the garage and the current storage area on the second floor must remain storage and not living area."

Johnson asked would you then address, since we are allowing it this way, do we make it so that he can't build an additional guest house?

Grob replied that might be a second condition. He could completely eliminate that in the future and then come back, because the property would qualify for a guest cabin. I don't think we would have to put that as a condition, if he came back for an application to build a guest cabin, immediately that would be a condition already on it.

Johnson added what about renting?

Grob stated he said no. I guess that could be a condition. If we were to approve it, do you think we should put a condition that no other guest cottage could be built? Do you think that would be necessary Buitenwerf?

Buitenwerf answered if this was approved, to allow the structure to be used as a guest cottage; that would prohibit a permit being issued for another guest cottage, unless a variance for such was first approved.

Grob made a motion to approve the variance application with the following two conditions and to adopt the staff report findings of fact for questions 1, 2, 4, and 5, while providing an answer for question 3.

1. No expansion of the living area in the garage is allowed and the current storage area on the 2nd floor must remain as storage and not be used for any living activity.
2. The guest cottage is prohibited from being rented.

Johnson seconded the motion that carried unanimously 4-0.

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? By combining the guest cottage and garage into one structure instead of constructing two separate structures, less impervious surface area is created on the lot and the aesthetic impact of additional structures is avoided.

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? Combining uses (living space, storage and garage) in one structure rather than building two or more structures to accommodate these uses by permit is a reasonable use of the property as it minimizes the amount of impervious surface area on the lot.

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? What is unique about the situation is that the garage was permitted with the understanding that it could be used as a guest cabin in the future. With the condition of no expansion of the living area, I believe it is reasonable.

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

Yes (X) No ()

Why or why not? This lot is similar in size and width to the other lots in the area. The property's use is seasonal residential which is also the majority use of the neighboring lots. There are 1-2 year-round residences located 2 and 4 lots to the west. The proposed guest cottage sits 300'+ from the ordinary high water mark and is not visible from the lake. A detached garage of this size/height is not uncommon on residential lakeshore lots and such structures exist on the lot located 4 lots to the NW and the lot located 6 lots to the NW of this lot – along with a lot to the NE on the other side of County 40.

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 practical difficulty.

Discussion ensued about clarifying conditions to the variance.

Variance Application 3-V-19 by Steve Thompson: Part of Government Lot 1, Section 12, Township 140, Range 34, Henrietta Township on Boulder Lake, a recreational development lake. Parcel 13.12.00600. Applicant is requesting a variance from Sections 502.2 and 702 of the Shoreland Management Ordinance for a proposed nonconforming structure addition that does not comply with the 50' road right-of-way setback.

Steve Thompson, 21072 County 18, Nevis, MN, and contractor Eric Munson, 473 Elmwood Road, Nevis, MN, presented application.

Thompson stated I was approved for a variance on that west side addition and I made a mistake on writing in the wrong measurement originally. I really need to increase the size of what I am trying to do there, a bedroom, a utility room, and a master bath. I am trying to get that variance increased from 25' long x 15' wide to 30' long x 19' wide.

Grob said we did validate when we were out there, that our 19' width x 30' length would meet holding tank and drainfield setbacks, so that we don't have to start over again.

Petersen added one of the additional issues on this is the right-of-way setback. 50' is what the ordinance requires; you are looking for a 4' setback. I think that was something the Board got stuck on last time on this particular issue. We have discussed on the Board a little bit, I think it was mentioned to you on the lot viewal Thursday, what you thought about moving that structure forward, away from the road and towards the lake.

Thompson replied the reason I was going that direction, I thought it would be easier to get a variance going toward the road rather than towards the water. I am not opposed to that at all.

Andres added I still have the same concerns that I had from the previous variance; the 4' safety mark. That 4' setback is a safety issue for me, just as it was previously. That was just an idea we came up with was moving it back. It might fit into your spot and it will meet all of your setback requirements from your drainfield and your tank.

Thompson stated the last time I was here, it was a lot larger structure and it was close to the road than it is even now.

Andres continued one of the other things that we talked about during the lot viewal was looking at your measurements and your markings. Servicing your septic area might be a situation, a potential problem in the future. If you needed to get big equipment in there, you might have some issues with that as well, just another thought about servicing your septic.

Thompson replied you can get a backhoe and a bobcat. You could get through there with a bobcat if you needed to.

Petersen asked Buitenwerf if the applicant was open to this suggestion and we were to try to go down that road, procedurally, how would we best handle this, in your estimation?

Buitenwerf replied you have a couple options. One would be to table the application and then when tabling you would want to keep in mind the 60 day rule. I would recommend that you would ask the applicant if they would be willing to waive their 60 day rights and we have a form that they can fill out to that effect. The other option would be to take action on this application and then if they wanted to submit a new application along the lines of something closer toward the water, that could also be done.

Petersen clarified that would involve a new application, if you went that second route?

Buitenwerf replied correct.

Johnson asked with the new addition, if it was to go towards the lake, how close would we be to the lake?

Grob answered it would be 58'.

Johnson said the way the topography sloped up, we didn't think that would be a problem.

Grob replied when I looked, he has a big berm across the lake, except for where he has a launch site. On the addition, what is the roof line?

Munson answered the pitch is going to be a 12/12 pitch and if you remember going out there, from the height of the road to where the actual foundation is, is about 22'. It is significantly lower than the road and I think with the way that the gable is, I don't see any inhibiting of view or right-of-way.

Grob added I am more concerned about water. Is the roof line such that gutters could be placed and direct the water to the left, so that it would not run towards the lake and down that channel where your dock area is?

Munson replied that is correct. Most of the natural drainage flows towards the west, to the berm on the west side of the property. Most of the water flows to the west, down and around the house and out, and that is obviously where we would direct the water from the gutters.

Grob mentioned to Johnson when I looked at that, it seemed to me that there would be no additional impact to any kind of water flowing into the lake if you move back 10', which is the amount it sticks out from the front edge of the current house. If they were to gutter it, we could put a condition on that, if they were to gutter it and the water to the left, I would not see an impact to the lake. It gives us a setback from the road and I think definitely helps his water flow in the front of the house.

Munson clarified you are suggesting in this variance application, moving the setback from the lake, or is that an additional variance application?

Grob answered you would move that whole 30'x19' structure towards the lake 10'.

Munson asked can that be approved here?

Buitenwerf stated to clarify; the application shows the addition being flush with the front of the house.

Johnson said we are talking flush in back.

Petersen agreed we are talking flush in back. Again, the two options we had to express to the applicant about what our options are. The applicant was open to going down that road. One is to table this, and you would have 60 days to amend the application, is that correct?

Buitenwerf explained the 60 day rule requires the County to take action on the application within 60 days of when it is submitted, or we can extend our review another 60 days for 120 days from the application date, which was March 18.

Grob said implying that we table it and make sure there is not some other issue with moving it back, and come back with a new layout that would reflect what we are talking about.

Buitenwerf replied right, but we would have to process the application within that maximum 120 day window.

Grob asked would you suggest that over us trying to approve the application as submitted except you have to move it back. That is not the proper way to do it, to change the whole design?

Buitenwerf said no, plus you are dealing now with a different portion of the ordinance from which a variance is required.

Grob stated we are down to the applicant making a choice.

Petersen opened for public comment.

Kathryne Szczeck, 4514 Russell Ave N, Minneapolis, MN, stated I own the property adjacent to the Thompson's at 21090 County 18, Nevis, MN. All along, my concern with the improvements that they are making is that the larger structure is conducive to more people, whether they would be family members or more visitors, permanent or temporary. That leads to more traffic in and out across the private easement. The wear and tear on that concerns me. Recently someone took out vegetation on my side of the property line, on the south side of the private easement, and I have not been able yet to determine who might have done that. That is my concern; I don't want to see my property used as a staging area. My other concern is one that I see you have already looked at, and that is the drainage issue. There is a wooden fence along our property line and it is a little bit open. Nothing will prevent the water from going under it or through it. I have talked to Eric Munson and to Steve Thompson about their ideas of preventing further erosion on my property. I see they have looked at where the water should go and I understand their plans are to do landscaping too, which would mean berms and a catch basin and drain tile, it is intended to make the water from the county road level, flow down around the building and not erode my property any further. Those are my concerns and I think they are addressed. Truth will be told when it's all finished.

No written public comment was received.

Johnson asked Thompson do you anticipate more traffic?

Thompson replied I wouldn't say any more than now. There are three of us that live there, my wife and my son. We have guests; we have friends and family that come there for holidays and whatever.

Johnson mentioned the day we were there, she was blocked in.

Munson replied it could be from the construction. It is pretty tight back there; there are a lot of cars. We do the best that we can. I met with the neighbor today, we had a good meeting. I think there was some misunderstanding about how we are redirecting the water and trying to solve this problem so there will never be any water issue for any neighbor or for the lake. It is my job to protect Thompson from ever having any water issues. Also for traffic, through one of our previous variances, we do have an additional road onto 18 that is approved. It isn't just right there; we have another access point onto 18 from that property as well.

Petersen closed public comment.

Petersen asked Munson from a building standpoint, can you see any reasons why that wouldn't be feasible, just from a structural standpoint?

Munson replied no. I think we have identified the water issue because there was a berm. I think moving it back and shrinking the overall structure from our previous variances, we have solved that problem. Structurally, moving it back, it is a gable roof, sliding it one way or the other isn't going to make a difference to the structural integrity of the building.

Andres added from the lot viewal, a lot of us are kind of in favor of moving it lakeward, in lieu of the right-of-way, for safety purposes.

Thompson asked do I have to wait another month to get this processed? Then my contractor has to wait another month too.

Petersen asked Buitenwerf what would be the soonest that anything could happen?

Buitenwerf replied the soonest would be the June meeting, we would need to receive the materials by the application deadline for the June meeting. It is also required so that we can give re-notice to all of the public in the newspaper as well as the 500' radius of the property due to the fact that we are dealing with a different portion of the ordinance.

Grob asked we can't do the May meeting?

Munson asked is there any way to try to simplify this process; we have been trying our best. This is a very difficult property, as we have seen. This has been going on for quite a while, trying to get this thing to fit in there, by the time we actually get the stakes in the ground, it is going to meet everything we have talked about. Is there anything we can do?

If it is safety, is there anything we can address, if that is the main concern of where the building is? What can we do to try to mitigate any safety issues to the public; we are trying to maintain the shoreline. We shrunk the structure.

Grob added you could put up a protective fence that would potentially restrict any safety issue; that could catch something coming off the road?

Munson replied anything on the road is natural; we are not disrupting that at all. We are not putting any more fence up, because of the view, it is on a corner. Where the house is, I don't know if I would subscribe to adding any more vegetation. There are pretty much going to be clear cutting except for those last few trees in that line.

Thompson clarified the distance to the road is the issue?

Petersen stated the 4' setback as opposed to 50'. You are asking us to go way down.

Thompson said the garage variance that was approved is closer to the road than this structure is.

Grob added we did approve 25'. Only five more feet than what we approved previously. Maybe the risk isn't much different.

Johnson stated I believe part of my concern mostly was the water.

Munson asked was that addressed adequately? When we were talking about our drain tile, I know it came up out there, for the water detention and where we drain; I think we addressed that too.

Johnson said if we go to our first findings of fact "Is the variance in harmony with the general purpose and intent of the official controls?" What is the answer to that? The water was taken care of and it is not negatively affecting the lake. You are kind of private there except for the one side.

Andres asked on the addition that you are proposing, where the 4' setback from the right-of-way is, how many trees are you going to take out there to put this addition in?

Munson answered I don't think we are touching anything.

Andres added so you still have a little bit of a barrier with the trees.

Thompson said that one that is shown in that picture by the stake, that birch there, that one will have to go.

Munson explained because we moved it back to 19'.

Thompson continued that tree right there in the middle, that one will have to go, but that is the only one.

Andres clarified none in the tree line by the road?

Thompson stated none of that is being moved.

Johnson read the second question would be "Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?" and if I said yes to that, I would say it's a reasonable manner because the addition will enlarge the cabin enough for central needs, like bathroom and laundry.

Thompson added there is no bedroom on the main floor.

Johnson clarified so it would be adding living space on the main floor?

Thompson agreed.

Petersen said from my perspective, I don't view the garage the same, as far as living space, as far as that right-of-way setback. I am going to struggle with approving this 4' setback that you are asking for. I don't know about my fellow board members here, but for me personally, that is my issue. That is why I think we were asking if you would be open to this other idea; at least you would be moving up to the back edge of the house. In a way we wouldn't be making it worse. Doing the addition the way it is shown here, you are coming out towards that road, which is where I really struggle. I would be looking to deny it or having you table it and seeing if we could approach it from that standpoint, having you get further away from that right-of-way setback.

Johnson added I believe that was part of our findings, the denial was because of the 4'.

Andres stated that is exactly where I was on the previous variance, the safety issue on that 4' setback. I was one of the ones during the lot viewal that suggested moving the entire structure lakeward because I thought that would push us away from that setback. It is going lakeward, but you are already set up that far basically with the deck anyhow. We didn't see a whole lot of reason why it wouldn't fit in that particular spot. Unfortunately, I know that it is going to push you out time wise.

Thompson said I wish you would have said that the last time I was here.

Munson added if we ask for the extension, would it save the Thompsons an additional variance? We have been trying to comply with everything and coming in here how many times. Is there any way for a motion to save them another variance fee?

Petersen clarified you are asking if we tabled it and amended it?

Munson agreed. If we went that option instead of just voting, I am getting a feeling I know where you guys are lining up. It would at least save on that expense. We really have been trying to comply. From a builder's standpoint, we don't go towards the lake.

Petersen asked Buitenwerf we could avoid a new application and fee by tabling and doing an amended application, am I correct there?

Buitenwerf agreed.

Thompson asked that pushes us out til the end of June, is that correct?

Andres added the one thing that you have to fall back on is your first approved variance, to that specific measurement.

Munson stated that is what we are struggling with, those stakes. Other than the 19' now, which we amended, those were approved on the variance. We are really struggling to figure out on the original one, that is where it was approved, going towards the road.

Thompson clarified the stakes were there, my measurement was wrong.

Munson said the measurement was wrong because it was drawn 8' from the lake, towards the road. That original setback, coming towards the road was approved, that many feet away from the building already. So we haven't changed anything towards the road further, we actually have moved it back from the previously approved variance. Where the measurement said 25', those stakes and the measurement from the existing house to the front of the addition, was already approved. If you look at that original drawing, it is drawn about 8' from the front of the building, away from the lake. We were going to build away from the lake; we were told that would help approve the process faster. That variance was approved 25'x15'. This drawing, nothing has changed closer to County 18 from that approved variance.

Grob added what you staked out, but by the numbers.

Munson replied it was supposed to be 35' and that dimension was from the lake side. The stakes were still in the spot. If you look at the dimension from the original house to the stake, that is actually less. One of the original ones, earlier when we were planning on building into that berm, we were advised that we should set back away from that tree to help mitigate water, we have complied with that twice.

Petersen asked Buitenwerf the variance request 45-V-18 to enlarge the west addition to 20'x40', which was denied in January, what was the basis, do you remember? Was it the same setback that we are dealing with now?

Buitenwerf answered I believe so; I can pull up the findings in the minutes if you would like.

Petersen continued it seemed to me, if I wasn't misunderstanding, that was the issue that we denied then. I am inclined myself to deny now for that same reason.

Grob said let me understand this, it's too bad things can't always be accurate. We approved a 15'x25' addition. You are telling us that the stakes that were there are in the location where the current 30'x19' building would be? That is because the stakes were in the wrong place?

Thompson answered I wrote the wrong measurement.

Munson added this all comes down to one measurement that was written down that said 25' and it was supposed to say 35'. The rest of the measurements are right that were on that variance that was approved.

Discussion ensued about the previous variance.

Munson added at the time when the 15'x25' was denied, it was strictly because the 25' measurement was wrong. We said "let's just go as big as we can", we know we're not going to build that big, but let's just go as big as we can.

Grob asked why the delay of two months? You have construction going on.

Munson stated these folks have been waiting so patiently, we were going to try to get this done last year.

Grob said you would be done with the current addition and move on before you would be ready in June to do it. That is the issue.

Munson agreed.

Thompson added we are living in pretty tight quarters now, one bedroom and three of us with one little bathroom.

Petersen asked do you have any further input before we make a motion on this?

Munson said if you make a motion, just so I am clear, if you make a motion to vote on it, they don't have the option to amend it? We would have to resubmit a whole new variance?

Grob added you would have to wait a year before they could reapply.

Buitenwerf clarified you are on the right track Grob. There is a requirement in the ordinance that a year be passed prior to the same application being submitted unless there would be significantly new information or a change in circumstances that I would feel would warrant a new hearing.

Andres made a motion to table the application.

Petersen seconded the motion that carried unanimously 4-0.

Discussion ensued about a deadline to resubmit amended information.

Variance Application 4-V-19 by Chris Bolton: Part of Outlot 5, Long Lake Park, Section 20, Township 140, Range 34, Henrietta Township on Long Lake, a recreational development lake. Parcel 13.42.05000. Applicant is requesting a variance from the recreational vehicle camping site 3,000 sq. ft. minimum area requirement in Section 402.8.C of the Shoreland Management Ordinance.

Chris Bolton, 18080 Emerald Island Circle, Park Rapids, MN, presented the application along with Jeremy Klinger, 502 24th Street NW, Bemidji, MN, attorney.

Bolton stated the Commissions have both asked for me to keep an RV park in the back part of my lot. In order to do that, I have to squeeze the 14 sites into the back lot. To do that, 3,000 sq. ft. does not fit when you are packing in the sites, overflow parking, septic and a bathhouse and roads. So, I am just asking to be a good steward of Long Lake and help the lake environment, to allow me to have the 2,400 sq. ft. site size in Tier 2, behind my protective berm between me and the lake.

Andres asked if you could please explain, in paragraph two of your application, as to how you can complete the RV park without a variance?

Bolton answered without a variance would require me to put 8 sites in Tier 1, which I am allowed. Going through all the density calculations, I qualify for 8. Just because of the chance and danger of runoff into the lake, Environmental Services and DNR asked for me to keep it beyond that protective berm. It is almost impossible to do a 3,000 sq. ft. because those lot sites sit right on top of the septic and drainfield area in two situations.

Johnson asked do you know of anything that is different from the first variance that was approved and then voided because it was denied by the Board?

Bolton replied quite a few things have changed. We now have civil engineered plans. We have a much better idea of how the lot will look and the process required to make it happen. That we did not have in the first stage.

Petersen asked Buitenwerf if he were to simply adhere to the 3,000 sq. ft. size for each site, do you feel there is room in your opinion for septic back in Tier 2, leaving these sites where they are, from a septic standpoint.

Buitenwerf answered the ability on the lot to meet the 150' setback that is required, whether there is space in Tier 2 for the drainfields, I wouldn't be able to say without seeing a better layout of what 3,000 sq. ft. sites would occupy and what would be available for a drainfields to be looked at. There would certainly seem to be adequate

room meeting the required 150' setback for drainfields to be made available for the proposed 14 sites.

Grob stated when I looked at the drawings, if you look at the 150' setback from the lake, there is very little area on the lake side of the berm for a drainfield, just one little corner. I would have to look at the map for site 11. You indicated that there was no room for the drainfield between site 11 and Enchanted Drive, and that the basin down below might be for overflow parking, but basically not very attractive for a drainfield.

Bolton agreed site 11 would have to be moved over; I think 60' from where it is, if we went to 3,000 sq. ft. It would clearly be on top of that. Also, it would shrink the area that we were going to use for our secondary drainfield.

Grob added my personal viewpoint is that if we require the 3,000 sq. ft. it would be very problematic for both of those drainfields. The other thing is, in the past, there was the thought that if you did the 3,000 sq. ft., it would eliminate a lot more trees. My conclusion from being out there, whatever trees are going to be taken down, they are going to be taken down with 2,400 sq. ft. or with 3,000 sq. ft. It is about the same.

Klinger said I would just like to add a few points, I think that the Board made a few good points, especially the impracticality of placing the drainfield anywhere closer to the lake. Important points to consider here, the lot size that Mr. Bolton is asking for is greater than what is required by MN State law. This is not an unreasonable request. One of the odd things about this variance request, usually when somebody requests a variance, they request it because they can't comply with a setback, because the building would be too close to a setback or there are some other zoning controls. What we are doing here is, we're saying that we are going to move this development back, further from the lake. Even though it would be legal under the current ordinance for Mr. Bolton to try to place lots closer to the lake, which would in fact be even a bigger problem for what the community is complaining about. Mr. Bolton is supplying this ordinance application to, in fact, do the community a service by placing his development back from the lake, rather than closer to it. Which is why the public opposition to this variance request makes no sense and it quite puzzling to me because when in fact, we are not even proceeding on economic considerations at this point in time, the public is essentially making Mr. Bolton's point for him, why this is a unique consideration and consistent with the ordinance itself because Mr. Bolton's application is further than the ordinance and taking into account what the community wants, which is protecting the lake in the first place. I would point out that the Board has already approved a variance request previously; this whole thing got caught up in a problem with the CUP process, which is why Mr. Bolton had to change his entire applications to you. I would also like to point out to you, in the public comments, that there is some allegation that this is in a wetland area, which is not the case, this is not a wetland presumed to Minnesota law regulation. I would also point out to the Board that it is my understanding, after speaking to my client, that Cedar Shores is another RV park which has 1,800 sq. ft. lots, and Spruce Hills, another RV lot that has 2,000 sq. ft. lots, which is less than half a mile from this proposed development.

Petersen opened for public comment.

Clifford Sweeney, 17517 County Rd 107, stated we are property owners on the west/northwest side that borders Mr. Bolton. I don't think that I have to elaborate on the fact of how undesirable an RV site would be in our backyard. One question that I have is for the Board, and you probably can't answer this, my understanding is that this is the first step, If you approve it, it will then go to the Commissioners, is that correct?

Petersen clarified no, this is simply a variance application for the size of the RV sites. It is either approved or denied here and won't go any further on that particular issue.

Sweeney continued as far as 2,400 sq. ft. vs. the 3,000 sq. ft., I think this was covered before, cut out the number of sites. You wouldn't make as much money I guess, is one of the reasons, the other one is that part of that is down closer to the lake, Is there not such a thing as a mound septic system, that would take care of that and still protect the lake. That is just a question to think about. The third one is, the lawyer mentioned, it's not an environmental issue. I am here to tell you that the access that Mr. Bolton has created to get to Long Lake is, I bet, 50' wide. Yes, it is a wetland and yes, if this thing is approved, he will have to go through another item before everything is approved. It doesn't take much common sense to realize that that's now 50' wide, there is more that will be taken away. Anybody, whether they are guests, or the property owner, can run the boat right next to the area that was illegally opened up and they can just keep making it wider. I am a firm believer that if you give a person an inch, they will take a mile.

Petersen interjected on that note, I am going to respectfully cut you off.

Paul Walker, 17459 Enchanted Drive, Park Rapids, MN, stated my concern is that when it rains, there is a significant amount of water that comes through there and my concern is that by reducing the lot size for the RVs, we are going to get more runoff. Especially with my property, all that water doesn't necessarily go to the lake in this direction, it also goes to the lake in this direction. We have an underground stream that pops up down there. I am very concerned that if we have more RVs there, we are going to have more runoff.

Grob stated everybody must understand, the property by calculation, by Environmental Services, will allow 14 RV sites on this property, legally. The size reduction from 3,000 sq. ft. to 2,400 sq. ft. does not add additional sites. It is still 14 sites. In reading the 48 or so letters that came in, over half of them made the assumption that they were getting more RV sites by reducing the size and that is not correct. They are allowed so many units, there is a requirement for 3,000 sq. ft. They have asked for less, but there are not more RV sites. So, anyone who premises their objection on that, that is incorrect. If I can go on, the second point is, we are only addressing the variance here tonight. Is there a valid reason and logic to allow the reduction of the sites based on the considerations that are there? What we decide tonight has no prejudiced or no indication whatsoever that would come to bear when a conditional use permit comes back around. All we are deciding tonight is if in fact, we are giving them the information they would need to develop a conditional use permit. That decision comes later on. All we are voting on, all we are

discussing is; do they have a valid reason to reduce the site sizes, based on the reasons that they provided.

Petersen continued with public comment.

Bruce Johnson, 17413 Enchanted Drive, Park Rapids, MN, said I would like to make a couple of comments on the Board of Adjustment's walk through. When we walked down, off of the road, towards sites 1, 2, 3, and 4, Mr. Bolton said I can't have a 3,000 sq. ft. size lot because it would go down and the problem would be with the septic tank on the west side. If that is the case, it is an economic consideration. He doesn't have enough room for the septic tank on that sized lot. Furthermore, on those lots, as you recall, we walked uphill and he suggested that there would be a 10' terrace that would allow a step up to the next site. A 10' terrace would be 5' off of each of site 2, 3, and 4. You take 5' off of one side that is going 60' towards the road, 5' off the other side; you have reduced your site that is flat to less than 2,400 sq. ft. You reduce it to 1,800 sq. ft. That is what was stated. I would also like to comment on the Cedar Shores lot size, check your letters. One came in from the owners of Cedar Shores. Their lot size is, I believe, 3,200 sq. ft. or 3,400 sq. ft. and others are 4,800 sq. ft. Incorrect information. The other thing I would like to bring up is, if you recall, on sites 5-11, those that are on the north Tier, Mr. Bolton said "What I want to do here is have these so they angle in, it will be easier access if we angle them in." I agree. I don't see how you could possibly go in and make a right hand turn into that site. But if you angle them in, that would be useful. When you leave, what do you do? You have to back out and the next step would be to pull forward onto Enchanted Drive. Buitenwerf has a letter from Henrietta Township saying, as before, RVs should enter and exit Emerald Circle Drive, not have any RVs on Enchanted Drive. I think that is an important thing. That is all I have from the walk-through that we did. I stand with the Hubbard County Shoreland Ordinance and say 3,000 sq. ft. is appropriate, anything less than that is a convenience and economic benefit to Mr. Bolton.

Jim Seifert, 17723 Enchanted Drive, Park Rapids, MN, stated my property is a little less than half a mile away from Mr. Bolton's property. The concern that the neighborhood has, is that we have not seen, nor has one been offered, a plan that would be compliant under the ordinance. We see a plan that shows, if he increased the size to what is under the ordinance, 3,000 sq. ft., it doesn't fit. He is not really showing us a plan that would work under the ordinance. He is only showing us plans that won't work or plans that require a variance. What I would like to ask you to consider, is asking him to show you a plan that actually complies with the ordinance. We have heard tonight, that the property allows 14 sites, which is a maximum. That is not necessarily what would fit topographically within the property. That is my biggest concern.

James Peters, Glenwood MN, attorney, stated I represent a number of property owners on Long Lake. We ask that you deny the variance application. I was here last fall and addressed the Board at that time too. I know you approved it and it was invalidated later by the County Board CUP action. I think the project in the application doesn't meet your standards. You have to meet all three of those variance standards to have the practical difficulties. Economic considerations don't work. The problem here is that the proposal is

out of scale with the site. As he mentioned, we haven't seen a plan that spreads all 14 over. The bottom line is that this particular site, which the history shows it has been improved at the access, with the history of violations; the site is out of scale for this type of a project. You should stay with the 3,000 sq. ft. requirement. Another big concern is traffic. Enchanted Drive is not suitable for RVs coming and going. You can tell from the slanting that is exactly what is going to happen. They are not going to be able to use Emerald with that kind of configuration as a practical matter there. They are going to use Enchanted Drive and that is going to result in a long term problem. I think the history of the violations, there is an issue technically about this coming back in six months too. I know that you technically approved it, but it was invalidated. To come back six months later with basically the same project, maybe the excavation has changed a little bit, there are some more minor changes, but nothing significant that would allow you to reconsider it. I think that is a question as well. We ask you to deny the application.

Kerry Cashman, 17602 Emerald Trail, Park Rapids, MN, said Robert Frost said that "good fences make good neighbors". I would add that good laws and good zoning ordinances make good neighborhoods and good communities. The Hubbard County Shoreline Ordinance is requiring camping spaces to be 3,000 sq. ft. It is important to limit density and to protect the environment. To be given a variance is not a right, it is a privilege. All of us need to earn the privilege of being given a zoning variance. Mr. Bolton has not shown himself to be a good steward of the land and I do not believe he deserves this privilege of a variance. Please vote no.

Tom O'Reilly, 17600 Emerald Island Trail, Park Rapids, MN, said I won't repeat anything that other people have said, but there are two things in reading Mr. Bolton's application that I want to talk about. Some of the justification that he was asking for, one was about the trees. He said by going to 2,400 sq. ft. vs. the 3,000 sq. ft., he would be able to save quite a few trees. By looking at the sketch that he submitted as part of his variance application, it's not really correct. You start with, by what I could tell on the sketch, 23 trees. If you have 2,400 sq. ft. lots, you cut down all but five. If you go to 3,000 sq. ft. lots, you cut down everything but three. So you are still pretty much cutting all the trees down, I don't think that is a valid justification for this variance. Big picture, you said "Is this in harmony with the intent of the ordinance?" I understand, and the lawyer mentioned this, that the State only requires 2,000 sq. ft. for an RV site. Hubbard County, in its wisdom, wrote this rule to have 3,000 sq. ft. for a lot of reasons. The way it looks, the way it affects the surrounding area and the lake. There is some good justification for having it. Even if you didn't agree with the justification, that is the ordinance right now. There needs to be a really compelling reason to go to less than that. I understand from Mr. Bolton's reasonings, that if he goes to 3,000 sq. ft. he has to reconfigure some septic to make it work. I understand this would be time and expense, but he doesn't mention one of the considerations that he could do, even though it's legal to put in 14 spots, he could reduce the number of RV spots in his application to a number that allows him to keep the septic plan the way it is without having to make any big modifications. Very last thing, 14 vs. 10 is 40% more. We already talked about a safety problem with traffic last year when the CUP came up for review. That safety problem is even bigger when you have 14 vs. 10.

Dawn Hammerschmidt, 4671 10th St. N, Fargo, ND, said I was here in the fall and listened to the arguments against the proposal then and as it states tonight. My family and I live on Enchanted Drive. We find it ironic, that here on Earth Day; we are discussing the possibility of “packing in”, according to Mr. Bolton as he stated tonight, a high density RV park. To be plopped into a residential neighborhood. You have heard the arguments about space previously. Why, a proposer who has already, and will continue to destroy these protected areas.

Klinger interjected I am going to move to strike those as ad hominem attacks, there is nothing on the record, I have not seen anything on the record.

Buitenwerf stated the public has a right to offer its comments.

Hammerschmidt concluded I will finish by asking you as the Board to please look closely at how both Boards, when the variance and the CUP and the County Commission saw these issues last year, please look at why they chose to vote the way that they did, to protect Long Lake.

Ellie Barnett-Cashman, 17602 Emerald Island Trail, Park Rapids, MN, said I just wanted to recognize and bring up the fact that the decisions that you are making about this ordinance and this variance is going to very much impact the youth in the area. It is really important that you think about the future of the neighborhood and of the environment.

Eileen Froelich, 17700 Emerald Island Circle, Park Rapids, MN, stated we are yearlong residents, have been there since 1999. I enjoy my peace and solitude in this area. I would regret to have more exposure, more of the population that doesn't have a year round commitment to the area.

Written public comment received from:

- Beth Mustar, 17459 Enchanted Drive, Park Rapids, MN 56470
- Wanita Nosbush, 17915 Dayspring Drive, Park Rapids, MN 56470
- Patrick Dolan, 17498 Driftwood Lane, Park Rapids, MN 56470
- Mary Walker, 17459 Enchanted Drive, Park Rapids, MN 56470
- John P. Viner, 17073 Day Drive, Park Rapids, MN 56470
- Long Lake Area Association, P.O. Box 808, Park Rapids, MN 56470
- Jim Cashman and Mary Germscheid, 17624 Emerald Island Trail, Park Rapids, MN 56470
- Tom and Patty O'Reilly, 17600 Emerald Island Circle, Park Rapids, MN 56470
- Stuart Hamilton, 16031 Dakota Shores Drive, Park Rapids, MN 56470
- Mary Jane Grausnick, 18317 Deer Drive, Park Rapids, MN 56470
- Matthew Sebold, 17648 Emerald Isle Circle, Park Rapids, MN 56470
- Mildred Cashman, 17624 Emerald Island Trail, Park Rapids, MN 56470
- Gerald R. Budgett, Dr. Dale M. Dannhaus, Vicki L. Dannhaus, and Stephen A. Budgett, 17620 170th Street, Park Rapids, MN 56470

- Donna Pederson, 170 Emerson Avenue East, #322, St. Paul, MN 55118
- Cheryl and Kirk Scholz, 12616 Beachview Road, Park Rapids, MN 56470
- Ruby Gustafson, 17459 Enchanted Drive, Park Rapids, MN 56470
- Dawn and Dale Hammerschmidt, 17447 Enchanted Drive, Park Rapids, MN 56470
- James and Jona Seifert, 17723 and 17711 Enchanted Drive, Park Rapids, MN 56470
- Robert Eggers, 13065 Breezy Pines Drive, Park Rapids, MN 56470
- David and Nancy Neal, 17747 Enchanted Drive, Park Rapids, MN 56470
- Wayne and Sandra Aamoth, 17727 Emerald Island Circle, Park Rapids, MN 56470
- Larry and Barb Roberts, 18500 Emma Drive, Park Rapids, MN 56470
- Charles and Kathleen Johnson, 17419 Enchanted Drive, Park Rapids, MN 56470
- Daniel Nelson, 13276 Beach Haven, Park Rapids, MN 56470
- Margaret Cashman, 17636 Emerald Island Trail, Park Rapids, MN 56470
- Russell Johnsrud-Henrietta Township Chairman, P.O. Box 81, Park Rapids, MN 56470
- James and Vera Gallagher, 13212 Beach Haven Road, Park Rapids, MN 56470
- Anne Cashman Dolan, 17485 Emerald Island Ln, Park Rapids, MN 56470
- Greg and Molly Sebold, 17684 Emerald Island Trail, Park Rapids, MN 56470
- Kerry Cashman and Bill Barnett, 17602 Emerald Island Trail, Park Rapids, MN 56470
- Paul and Christie Cashman, 17681 Emerald Island Circle, Park Rapids, MN 56470
- Carolynne White, 14388 Chippewa Loop, Park Rapids, MN 56470
- Eric Haugland, 17676 Emerald Island Circle, Park Rapids, MN 56470
- Hubbard County COLA, P.O. Box 746, Park Rapids, MN 56470
- Mildred A. Cashman, 17624 Emerald Island Trail, Park Rapids, MN 56470
- James Scheuring, 15887 Dakota Shores Drive, Park Rapids, MN 56470
- Paul Walker, 17459 Enchanted Drive, Park Rapids, MN 56470
- Bruce and Linda Johnson, 17413 Enchanted Drive, Park Rapids, MN 56470
- Marit and Mike Sprenger, 17715 Emerald Island Circle, Park Rapids, MN 56470
- Jeanne Cressy, 17709 Emerald Island Trail, Park Rapids, MN 56470
- James Edward Blodgett, 17437 Bay View Drive, Park Rapids, MN 56470
- Clint Newsum, 17621 Enchanted Drive, Park Rapids, MN 56470
- Lindsay Buchmeier, 17447 Enchanted Drive, Park Rapids, MN 56470
- Sharon M. Natzel, 13623 County 20, Park Rapids, MN 56470
- Debbra A. Tucker Nielson, 17748 Emerald Island Circle, Park Rapids, MN 56470

Petersen closed public comment.

Petersen asked Buitenwerf what is the status, he has one outstanding violation currently, is that correct? Can you tell me what it is and what he needs to do to remedy it?

Buitenwerf answered there is an outstanding violation dating back to 2013. A copy of the notice of violation letter was included in your packet. That letter details what is necessary to bring that matter into compliance, which would involve planting vegetation in the shore

impact zone to reestablish vegetation there. We have seen efforts thus far that do not meet the requirements of the restoration order that was issued back then.

Petersen asked if he was to remedy that, would he be able to get a list from you of the approved vegetation that you would want in there and the amount? Is that something that you would be that specific on?

Buitenwerf replied yes, those are conversations that have been held and that information has been shared.

Petersen continued if he were to meet your requirements there, is that something that you would sign off on actually, once he has met those requirements?

Buitenwerf answered yes.

Petersen asked Bolton do you understand what he and I have been discussing there?

Bolton replied I certainly do, in fact, of the list that he had given me earlier, last summer/fall, on that list were raspberries, chokecherries, Dogwoods, Red Osier Dogwoods, things like that. We were required by to plant 34 and we went ahead and planted more than the required amount, 42. As far as I understand, we are just waiting to see if there has been some killed by winter burn and winter kill. Soon, we will be able to tell, and if so, we are going to address every one of them that haven't made it. I believe it was 34 that you asked us to replant.

Buitenwerf answered I would have to look at the record.

Bolton stated we went ahead and did 5%-10% more, just because we expected to have some winter kill. We will still take care of whichever ones didn't make it, we will plant new ones.

Petersen stated without getting into the specifics about whether he agrees with your number, you understand at least from my perspective, I would want him to sign off on whatever you have out there as part of any approval decision I might make. I would want Buitenwerf to clear that off the table so to speak.

Bolton added I understand that, that would be for the CUP? Tonight I think that we are just meeting on the size and that has nothing to do with the CUP. Within a month or two months time frame, we will roughly know if those plants have survived.

Andres stated it appears to me that you are trying to comply, obviously as you have stated that you could build this RV site by the ordinance by putting the RV units closer. You are trying hard to stay back behind that berm and put everything in Tier 2, even though you are requesting it to be smaller. I understand you are trying to save that area to the lake. How far exactly would the first RV unit #1 be located from the ordinary high water mark?

Bolton replied right now it is 300'. Moving into Tier 1, somebody said it would be pretty tricky to get a septic in there; we did have a septic designer design everything with the exception of designing any septic in Tier 1. I would probably go to him first and see where the septic could go, and then design it outside of that. It would probably be 100' or less from the ordinary high water mark.

Andres clarified but currently RV site #1 is about 300' from the ordinary high water mark.

Bolton agreed 300' plus behind the protective berm.

Grob mentioned somewhere in my stack is a drawing. The 150' setback from the lake pretty much runs along the berm, except for where it touches Emerald Island Circle it deviated. Then of course 100' setback would be farther down and any site would have to be at least 100' back. If you took a 60' thing, you would be right up against the berm if you were at 100' and you would have very little septic area.

Johnson added unless you cross the berm with a pump to put a septic area above.

Grob agreed he could go back the other direction with the septic. If you moved a couple of sites on that side, then you would have space where he currently shows it.

Petersen said this is a question for Johnson or Buitenwerf, do we need to have an alternate site for a project like this?

Johnson answered I believe we do.

Petersen clarified for both of those drainfields?

Johnson replied he needs an alternate site for what he has proposed for RV sites.

Bolton added in the current plans, there are three septics and each septic drainfield has an alternative. It is on the map from Don Umthun.

Johnson stated I was just going to make another point, I don't even know if anybody brought this up the last time we did this, an average RV, a motor home that you drive is probably 500 sq. ft. or less. With a pick-up and a camper, you are looking at 400 sq. ft. to 500 sq. ft., somewhere in there. You are looking at 2,000 sq. ft. of usable property after somebody has pulled the camper in, at the 2,400 sq. ft.

Petersen said going back to my question about the alternate, I think that does pertain to any size, no matter what size site you are having here. Do we need to see; are there alternate sites dedicated now?

Buitenwerf stated that should be in the septic plan, which I can pull up for you.

Johnson added there is a specific alternate site on this plan, and borings.

Grob said from my perspective, I have not heard anything significantly different than when we addressed this variance back in September. We maybe know a little more about the amount of dirt that might have to be moved. But in essence, we approved this variance back in September. I have not heard anything significantly different. I think the logic or premise of trying to completely protect all the land on the lake side of that berm, without RV sites, drainfields, or structures whatsoever is the right direction to move. I think it's the applicant's issue as to whether 2,400 sq. ft. makes for a comfortable site. I am sure there are some RVs where it is and some RVs where it's not, but I think that is his choice. I definitely feel that 3,000 sq. ft. for all 14 sites pinches the drainfields. I want to make it clear to everyone in the audience, my thinking and I think appropriate for the Board, we are focusing only on the validity of this variance. If you can move your mind to this being in an open field some place, not this particular location. Does it make sense for us not to disturb anything within 150' or more from the lake, by reducing the size of a campsite, not increasing the number? I think that we would all say that it makes sense.

Grob made a motion to approve the variance application with the following conditions and provided answers for the findings of fact questions 1-5.

1. All RV sites must be located on the landward side of the existing earthen berm (on which the existing driveway is located) as proposed in the application now and in the future.
2. This variance will be void if the accompanying conditional use permit application required for the proposed RV campground use is not approved.
3. All outstanding ordinance violations must be corrected before this variance may be acted upon.

Petersen seconded the motion that passed 4-0.

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? We understand that the State Shoreland Rule does not regulate RV sites, except for the Board of Health, which is at 2,000 sq. ft. so allowing a 2,400 sq. ft. site rather than 3,000 sq. ft. is in harmony with the Shoreland Management 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 owner is proposing a 14 unit RV campground use for the property which complies with the rental unit density allowed to be placed on

property by the Shoreland Management Ordinance. All units will be located in the second Tier and in the rear of the lot.

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 circumstances are unique to the property. Keeping the septic and sites on the landward side of a natural berm that separates it from the lake, which is a condition of this, is desirable.

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

Yes (X) No ()

Why or why not? The ordinance allows an RV campground on the property as a conditional use. The ordinance also allows 14 RV sites to be located on a property of this size.

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

Yes (X) No ()

Why or why not? Economic considerations were not cited as a practical difficulty in the application.

Variance Application 5-V-19 by Duane Goeden: Lot 7 and part of Lot 6, Owasso Beach, Section 6, Township 140, Range 32, White Oak Township on 8th Crow Wing Lake, a recreational development lake. Parcel 28.37.00210. Applicant is requesting: Part 1: After-the-fact (ATF) variance from Sections 502.2 and 503 of the Shoreland Management Ordinance (SMO) for a residence that does not meet the 100' ordinary high water (OHW) structure setback. Part 2: ATF variance from Section 502.2 of the SMO for a platform that does not meet the 100' OHW structure setback. Part 3: Variance from Section 702 of the SMO for a proposed garage addition to a nonconforming residence located in a bluff impact zone. Part 4: Variance from Section 502.2 of the SMO for a proposed deck that would be located within the 100' OHW structure setback. Part 5: Variance from Section 902 of the SMO for proposed grading/filling in a bluff impact zone.

Duane Goeden, 16523 County 20, Park Rapids, MN, presented the application.

Goeden said the first part is for the after-the-fact variance. The house was built in 1993 under a variance for a structure within the bluff impact zone. It is not clear how the setback was measured at that time, but Environmental Services did visit the site twice before the construction of the house. Since that time, I purchased the property in May and inquired about a variance for the deck. During subsequent measurements, it was determined the house was closer than 100' from the OHW mark and also the retaining wall and urban patio were apparently constructed without a permit in 1993, and are also closer than the 100' setback. The garage variance would depend on your finding on the after-the-fact variance, whether I do or do not need a permit. The 4th part is the original

inquiry for the deck on the lake side of the house, which would be closer than the 100' setback. The 5th part is for erosion control projects in the bluff impact zone that would require a variance. I have been working with Soil and Water Conservation District, developing a site wide erosion control plan. I hope to implement those if the variances are granted.

Petersen asked Buitenwerf would you advise that we take these one at a time and put it to a vote on each one before moving onto the next, is that the procedure?

Buitenwerf replied that would make the most sense, due to the variety of requests and then allowing the findings to be developed in a way that is specific to each item rather than trying to capture all of the items in one set of findings if you would be open to approving all of the requests.

Andres asked is this going to be your permanent yearlong residence now?

Goeden answered no, we will retain our current residence. This is a site we hope to use in the summer to enjoy the lake. Grob inquired about the total erosion control plan, I do have a copy of that if you would like me to enter that. It is available here and Will is also here from the Soil and Water Conservation District if you have any questions on the scope of the erosion control plans.

Grob added my only thought is; it's pretty obvious the first two parts are just trying to correct what has existed for 20 years or so.

Goeden clarified 26 years.

Grob continued you do encroach close to a bluff zone, if we approve this part one and two of the variance, we should probably put a condition on that there is no further expansion of the living part. I know you want to add a garage so we could add a condition that there is no expansion of the home except for a garage on the non-lakeside of the building. I think that addresses your potential variance for the garage in Part 3.

Petersen opened for public comment.

No public comment was given and no written public comment was received.

Petersen closed public comment.

Parts 1 and 2:

Grob made a motion to approve Parts 1 and 2 with the condition that no further expansion of the living part of the house is allowed with the exception that a garage can be added of appropriate size on the non-lakeside of the house and to adopt the staff report findings of fact for the initial five questions as presented. The Board of Adjustment provided answers to the six after-the-fact findings of fact questions.

Petersen seconded the motion that passed 4-0.

Parts 1 and 2 Findings of Fact

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

Yes () No ()

Why or why not? Most of the house meets the 100' OHW setback. Only the SW corner is 1' off of the 100' setback. Requiring the corner of the house to be cut off would not make any sense. The platform only encroaches 7' into the 100' setback. It provides safe egress into the sole basement sliding door access. Both items have been in place since 1993 without any record of complaints or issues. The platform will be replaced with pervious pavers and its railroad tie retaining wall holding it in place will be replaced with a more environmentally friendly living green retaining wall as part of an overall property stormwater management plan prepared by the Soil and Water Conservation District.

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

Yes () No ()

Why or why not? The landowner purchased the property in 2018 and only learned of the house and platform not meeting the OHW setback in October 2018 after requesting that department staff measure the setback. Being able to use the house and platform rather than having to cut 1' off the SW corner of the house to meet the setback and remove the platform when it services the basement's exterior sliding door that provides egress is a reasonable use of the property.

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 ()

Why or why not? Only the SW corner of the house fails to meet the 100' OHW setback authorized by Variance 93-31. Given the steep bluff and slope between the house and lake, and the varying shoreline, it is very understandable how the house could have been laid out thinking it met the 100' setback its full width. The platform appears to have been built at the same time as the house. The record from that time is not clear as to whether the platform was discussed at the time of the 1993 variance hearing and permitted or not. Records of that time do often not show lakeside decks/platforms with building permits, but that the County was then allowing such items to be placed waterward of the structure within the setback. It is thus hard to say if the County was then aware of and consented to the platform or if the landowner constructed it without the County's knowledge. In such cases, we err on the side of landowner rights.

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 a mixture of seasonal and year-round single family residences. The house sits at an OHW setback that is right in-line with the four residences to the east and other residences to the west. The house has been in place since 1993 without any issues having been raised by the neighbors. Allowing the house and platform to remain will not harm the neighborhood.

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

Yes (X) No ()

Why or why not? Economics are 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 owner recently purchased the property and the condition existed. There is no record of the previous owner complying with the applicable official controls.

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

Yes (X) No ()

Why or why not? He purchased the property, making a financial commitment before it was discovered that the property was not in compliance.

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

Yes (X) No ()

Why or why not? The work was done 20+ years ago. The current applicant purchased the property within the last year.

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

Yes (X) No ()

Why or why not? The neighboring properties have similar conditions and are most likely closer to the lake than this property.

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? He purchased the property in good faith and he is trying to very hard to do extensive improvements to the property.

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? Very clearly a 1' infringement on the house to the lake is not a very significant variation.

Part 3:

Part 3 was withdrawn by the applicant.

Andres asked on Part 4, for the deck, as we were out there at the lot viewal, because of the bluff impact zone, there is not a lot of walkway on the east side of the house where the stairs are that go down.

Goeden replied that would be the east side.

Andres continued as we discussed out there, you have space to put the deck on that side in lieu of the lake-side of the house.

Goeden answered potentially, I could get it over there. I indicated when you were out there that there are wiring issues in the house that would make it difficult to make the access door onto the deck on the east side. In fact, the owner told me before I bought it that he had left wiring purposely out of the lake side wall of the house to make it more accessible to put a doorway in there for a future deck. Anything is possible, but as I indicated at the lake too, the neighboring properties all have their decks lakeside. That is one big plus of living on the lake, the view of the lake. Ideally, that is where you want to have a deck. I don't know that it would disturb the soil or any of the other conditions less by going on the east side of the house. Now that you have approved the after-the-fact variance on that retaining wall and patio, that is hopefully going to be replaced and be more environmentally friendly material. I hope to improve that part and during that time period, it would be easy to put in three cement piers to support the deck, lakeside of the house.

Johnson added that was going to be my question, are you going to use Sonotubes and cement to support that.

Goeden replied yes, it would consist of three Sonotubes with three posts on it to support the deck across the length of it. The stairs would head north, up the existing sidewalk. They would go down, away from the lake towards the hillside of the house. That would be the stair access.

Grob clarified the deck size is 20'x12' if I read it correctly.

Goeden agreed.

Grob continued does the 20' extend past the house where the stairs come up, or is it 20' to the edge of the house plus stairs coming up on the side?

Goeden added it is somewhat shown on the one drawing that I supplied. The deck would extend 4' beyond the edge of the house, which would also contain the landing down the stairs. The stairway would not expand the dimensions of the deck.

Petersen asked is your idea, if this deck is approved as shown, to cut a door in where the window is?

Goeden said as you can see, the second level window, right behind that birch tree, would be the door opening area. It would be a sliding patio door.

Petersen asked I can't see around the corner too well, is there a window over there also?

Goeden answered yes; there is a window of similar size. It has baseboard electric heat directly under it and other wiring in the wall.

Petersen clarified there is no baseboard under this window?

Goeden replied no, there is not any under there. The previous owner indicated that he purposely left wires out of that wall to make it easier to put a doorway in there.

Grob asked Buitenwerf I think the ordinance allows one to build a deck, for an existing home that has been there an amount of time; there is probably a date to it. They are allowed to expand 15% of the distance to the ordinary high water mark. Does it have to predate the 1971 ordinance? So it doesn't apply in this case?

Buitenwerf replied correct.

Grob added but I can consider it.

Petersen opened for public comment.

No oral or written public comment was received.

Petersen closed public comment.

Johnson added if we are leaning towards approval, we would make conditions that it couldn't be enclosed below.

Petersen asked how far out is that retaining wall from the front? Would this deck protrude farther?

Goeden answered the far corner of the retaining wall extends approximately 15' out from the house. The deck would not extend past the edge of the retaining wall.

Grob added considering that this is basically over an already existing patio, or platform, it won't extend any closer than the retaining wall. And the fact that if you look at the bluff, the crest of the bluff, and the foliage that is around, I don't think it in any way affects visibility from the lake. It is consistent for people to want a deck. It just seems to me that it is a fair and reasonable request that he is asking for.

Part 4:

Andres made a motion to approve a 12' x 20' lakeside deck as presented and provided answers to the the findings of fact question 1-4 while adopting the staff report answer for question 5.

Petersen seconded the motion that passed 4-0.

Part 4 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 property owner would just like to have a lakeside deck. The size is consistent with other decks and with the size of the home. It protrudes no farther towards the lake than the retaining wall.

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? This is reasonable. When you look at the extent that he is going to do stormwater control and what he is going to be doing on retention walls, it is more than reasonable what he is asking for.

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 current circumstances are definitely that bluff impact zone that he is on. There was also a discrepancy in the setback measurement.

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

Yes (X) No ()

Why or why not? All of the lake houses in the nearby area have decks on the lakeside.

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

Yes (X) No ()

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

Goeden stated the request, now that the retaining wall and patio area are approved as an after-the-fact; part of the proposal is replacing the retaining wall with more environmentally friendly materials. Since it is outside of the impact zone, I don't believe that a variance is required for that part of the request now.

Buitenwerf said I will check.

Goeden added I am just seeing if we could avoid that part of the request if it doesn't require a variance and rather just a regular permit.

Buitenwerf clarified if the yardage is less than 10 cubic yards, it could be done by permit.

Goeden said I am going to call on Will, would that be a safe assumption, the 10 cubic yards? Or should we include it with the variance just to be safe? I would prefer to include it with the variance just for the possibility that it would include more than 10 cubic yards of fill moving. Part of the request is the re-grading on the west side of the house to drain water away from the house, and then put in a step system to prevent the water from running directly down the yard and into the lake. Then part of it is putting rain gutters on the roof edge and putting in a rain garden or a French drain to address all the runoff from the roof and prevent that from running down the hill. That re-slope area is within the bluff impact zone and the rain garden or French drain could potentially be in the bluff impact zone also. The amount of fill moving is projected to be less than 50 cubic yards, again, requiring a variance because of the location and the amount of fill that would be required to be moved. All these items would be done under the supervision of the Soil and Water Conservation District tech and engineers.

Petersen opened for public comment.

No oral public comment or written public comment was received.

Petersen closed public comment.

Andres added I think it was pretty clear from both of you at the lot viewal what you propose to do and how you propose to secure the area and keep the erosion down. It was nicely put out there, lots of information for us.

Part 5:

Petersen made a motion to approve Part 5 with the following conditions, along with adopting the staff report findings of fact.

1. The Hubbard County Soil and Water Conservation District must be involved in and oversee the plan implementation to conclusion.
2. The gutters proposed in the plan must be installed.

Andres seconded the motion that passed 4-0.

Part 5 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 project in need of the variance is being proposed to correct existing stormwater management issues on the property and guard against future problems arising. Fixing and avoiding erosion, especially in a bluff impact zone, is very much 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 (X) No ()

Why or why not? The landowner is seeking to address existing stormwater issues by enlisting the design expertise and implementation assistance of the Soil and Water Conservation District whose staff developed the plan. Implementing such a plan to correct existing stormwater problems on the property and avoid future issues is a reasonable use of the property.

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? This lot sits on a bluff that slopes down toward the lake. There is an elevation change of 74' from the front to the rear of the lot. The house sits 2/3rds of the way down this slope. There is no way to site a house on the lot without having to implement some form of stormwater management because of this extreme slope and the uphill area that contributes stormwater to the building location.

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 a mixture of seasonal and year-round single family residences. The house sits at an OHW setback that is right in-line with the four residences to the east and other residences to the west. The house has been in place since 1993 without any issues having been raised by the neighbors. The proposed stormwater management projects will not harm the

neighborhood or be visible to neighboring properties or parties recreating on the lake. If anything, the projects ought to ensure the slope on the property is protected and stable which will help maintain the area's character.

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

Yes (X) No ()

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

[Variance Application 6-V-19 by Ron Offutt Jr.:](#) Lot 21, Block 1, Wild View Estates, Section 32, Township 140, Range 34, Henrietta Township on Long Lake, a recreational development lake. Parcel 13.57.02100. Applicant is requesting a variance from Section 701 of the Shoreland Management Ordinance for a proposed expansion of a nonconforming use.

Chris Hawley, architect, and Rusty (unintelligible), with RDO, presented the application.

Hawley stated there is an existing building that is currently on the site that we would like to make an addition to on the back side. I think we got here because the use of the property was deemed to be more of a commercial use. Initially we thought this was a multi-generational property, an estate property. They do use it as a residential property, it just so happens that they own a large business and meet there as a family. It is kind of a unique circumstance, there are a lot of family members and this is how they get together. At my house it is a kitchen table, this is their kitchen table.

Rusty added it is a third generation business, so with that third generation coming on board, they need more room for meeting space.

Hawley said I think the part that is unique to this, and I think the reason we approach this as more of a residential use initially, is because of the way that this thing is done. It is a very residential scale, it is not intended to be a business activity, there is not a ton of people that come in and out of this. It is mostly family members and executive members that are part of that group.

Petersen opened for public comment.

No public comment was given and no written public comment was received.

Petersen closed public comment.

Andres asked with this new addition proposed, what will the maximum occupancy now be for that?

Hawley stated with the use we currently have, we have 25 seats, so 25 people would be at a gathering at one point.

Grob asked is there space for parking for that many people? I don't know how many cars come in. I can't remember outside the building, what kind of room there would be for parking.

Hawley replied there is plenty of room for parking. There is the circle which accommodates at least 25. There is also offsite parking, which is separate from this. There is an out building, a shop building, which houses all of the cars when they are there. That is where they are getting parked. Nothing gets parked close to the lake, even within that residential piece. There is a lot of land there.

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

Johnson seconded the motion that carried unanimously 4-0.

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 addition is to an existing conference center structure that has existed since 1993 without issue. The applicant and/or his company own the property within a 500' radius of the subject property. Thus, there is minimal potential for property use conflicts with neighboring properties. The proposed addition meets all setback and structure height requirements and a new SSTS will be installed to service the expanded structure.

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? This property is part of a large complex of lots owned by the applicant and/or his company. The corporate connection is the reason for the conference center and proposed addition thereto. The scale of the addition is reasonable for the lot size and ought not to create any conflicts with neighboring landowners as the nearest property owner is over 500' from this lot.

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 variance is required because the conference center commercial use of the property is a nonconforming use for which a variance is required per Section 701 of the Shoreland Management Ordinance in order to construct the proposed addition to the conference center.

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

Yes (X) No ()

Why or why not? As mentioned in the responses to earlier questions, the applicant and/or his company owns all of the land within the 500' public notice radius of the property. This lot is part of a large complex of lots owned by the applicant and/or his company and serves as a family and corporate retreat. The existing conference center has not generated any complaints since its construction in 1993 and neither it or the proposed addition thereto is or will be visible to the nearest neighboring property owners because of the distance between them as well as the dense mature tree cover that provides an aesthetic and sound buffer.

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

Yes (X) No ()

Why or why not? Economics are not cited in the application as a difficulty. The difficult is caused by the property's nonconforming use status and Section 701 of the Shoreland Management Ordinance's requirement that a variance be obtained to expand a nonconforming use in this manner..

Variance 45-V-07 revocation consideration.

No applicants were present.

Grob asked the applicants are withdrawing both the conditional use permit, which the Commissioners have to approve, and also is offering to withdraw the variance? What happens when the conditional use permit is dissolved? Is there a new plat that has to be recorded? Does that plat come back here to the Board of Adjustment; does it go to the Commissioners? You will then be working on the plat? Your write-up, when I look at the drawings, I see Block 3 and I see Block 3A with one lot in each. Your write-up says Comeau wants to redevelop the plat by removing the controlled access lot and combining all the land between the road and the lake into a single lot that will include both lots in Block 2, and Outlot B; which is now 3. When you look at the original one, there were two lots there and an Outlot B. Are 3A and 3 now one piece of property or is it two separate pieces of property?

Buitenwerf answered due to the way that Statute 505 is worded, which is the Statute that governs how plats are to be done, when there is a right-of-way that runs through property, it requires a separate block on either side of the right-of-way even though, from the County's perspective, we view those as being one lot. So in the dedications to the amended plat, there will be a statement that says Block 3 and Block 3A are to be kept together and treated as one lot. The amendment is going through the district court for approval vacation of the original plat and then approval of the amended plat. That was determined by the County Attorney to be the appropriate process in this situation.

Grob said when this is all done, when you approve the new plat, there will be conditions in there that Block 3 and 3A are one piece of property, not separable in the future.

Buitenwerf replied correct.

Grob continued the second question I have is that there is a conservation easement.

Buitenwerf replied not anymore. That was rescinded by the County Board a few weeks ago.

Grob asked what did they do?

Buitenwerf clarified the easement that used to be along the shoreline was rescinded as part of this process.

Grob asked how did they do that without a public notice?

Buitenwerf answered it is simply a conservation easement that was held by the County, so the County Board had the ability to give up the easement and chose to do so because it did not afford any additional protections that the Shoreland Ordinance and Wetland Conservation Act did not already provide.

Grob said all the work that went in to that and the conservation easement that was developed and signed off, they were able to just dissolve it without notifying anybody on the Lake Association who were involved with this? Did they know what they were doing? Did they know any history on it? I am not happy about that. As president of the Lake Association, I am not happy about that.

Buitenwerf replied I provided them with a full history and it was my recommendation that it be removed.

Grob stated because I was going to recommend that it be modified to make sure that Outlot C, which was covered under the CUP, be now included in that easement for that whole property. There are two lots that are to the right side of where the dock area was, that was going to include that all in a conservation easement. So, they believe that the Wetland Conservation Act will protect it?

Buitenwerf explained the easement as it was worded was simply referencing the Wetland Conservation Act. It did not offer any additional protections.

Grob read it says "These restrictions and covenants shall run with the land. The owner, their successor, shall not drain, fill, or otherwise alter any wetlands on the property." So, you are basically saying that easement is no better than what the Wetland Act is.

Buitenwerf added additionally it provided a liability to the County and enforcement, which was an issue that we were starting to encounter.

Grob said this was one of our prizes on the lake, where we locked up $\frac{3}{4}$ mile of shoreline, and I realize that most of it is already wetland area. If I bought lot 3 and 3A, what am I allowed to do on 3A?

Buitenwerf replied anything that the Shoreland Ordinance and Wetland Conservation Act would allow.

Grob asked how big of a dock can I put on there?

Buitenwerf answered that is governed by the State.

Grob continued so this previous dock set-up that the DNR specified and laid out, all of that goes away. So, one would only be entitled to what a single resident would do?

Buitenwerf agreed. And the CUP rescission has already been enacted. The County Board passed its resolution to accept that at its most recent meeting. They were able to take action on that aspect of the redevelopment prior to the variance component being able to be considered by you.

Grob clarified they have already acted on the CUP resolution?

Buitenwerf replied correct.

Grob continued and the conservation easement is gone?

Buitenwerf replied correct.

Grob stated I don't have much to say after that.

Petersen asked does this require a vote, Buitenwerf?

Buitenwerf responded yes, that is what our legal counsel advised. Accepting the affidavit itself largely takes care of proper documentation of the landowners' voluntary rescission of their rights to that variance, but he recommended that the Board also put the matter on as an agenda item and then pass a resolution accepting the affidavit. Then that resolution will be recorded with the affidavit, along with the County Board's resolution regarding the CUP, as one document with the Recorder's Office, prior to the amended plat court order being recorded, once that action is complete. That way, we have all the proper documentation that the rights to the variance, as well as the conditional use permit, are no more. So the win-win is that we have reduced the amount of lots that have access to the lake through the controlled access lot, which is now a nonconforming use and is off the books.

Grob asked the alternate plat will require 3 and 3A to be a single piece of property, not divisible? Therefore it can't become the pretend controlled access lot.

Petersen made a motion to pass the resolution accepting the Comeau's waiver of their rights to the variance and officially revoking the variance, declaring it null and void.

Andres seconded the motion that carried unanimously 4-0.

Miscellaneous: Buitenwerf shared information regarding the land use training to be held in Baxter on Friday. Today was the deadline for applications for the May meeting. We are looking at around 4-6 applications that will be on the agenda for May.

Petersen asked variance applications?

Buitenwerf replied variance and one CUP.

Grob asked will we see the Bolton CUP again?

Petersen clarified that is the CUP that you are talking about?

Buitenwerf agreed.

Communications:

Adjournment:

Petersen made the motion to adjourn.

Andres seconded the motion.

The motion carried unanimously 4 – 0.

The meeting adjourned at 8:46 p.m.

Respectfully submitted,

Staci Harvey

Recording Secretary