

HUBBARD COUNTY

Planning Commission/Board of Adjustment Meeting Minutes

6:00 p.m. on Monday, August 26, 2019

Vice Chairman Ken Grob opened the meeting with the following additional members present: Tim Johnson and Mike Kovacovich. Also present was Environmental Services Director Eric Buitenwerf.

Grob started the meeting by reading the procedure by which the meeting of the Planning Commission/Board of Adjustment will be conducted to the audience.

Planning Commission:

Approval of Minutes: July 22, 2019

Kovacovich made a motion to approve the minutes as presented.

Johnson seconded the motion that carried unanimously 3-0.

Old Business: None.

New Business:

Shoreland Management Ordinance - proposed amendment

Grob stated there are two items. The first one is Section 506 in regards to guest cottages. What is being proposed is to delete item 4 of the current amendment. Buitenwerf, is it possible that you could give us a little background as to why this is being proposed?

Buitenwerf responded that the proposal to remove item 4 is due to it not being part of the State Shoreland Rules. It is not a minimum requirement that has to be in our ordinance. We are also encountering issues with it leading to increased cost to landowners and providing septic services for their guest cottage. Rather than being able to put in a separate system, their guest cottages are requiring their tank capacity to increase, which can often mean a need for a new tank to have a guest cottage as well as additions to the drainfield. It is also creating an administrative burden for the Department in that we are having to go out on properties and view them more frequently to make determinations on whether topographic features are an issue with installing a guest cottage system.

Grob said let's move to the other proposed change to Section 1105. This is an addition of a new requirement, could you give us a little background to that Buitenwerf?

Buitenwerf said a few years ago, we added language to our variance section that prohibits reapplication for one year from the date that a variance application would be denied unless there would be sufficient new information or change in circumstances that would warrant the rehearing of the matter. We did not have language of that sort for conditional use permit applications. The proposal would be to add the equivalent language for conditional use permit applications so we have that covered just the same as variance applications.

Grob opened for public comment.

No public comment was given.

Grob closed public comment.

Grob made a motion to forward a recommendation to the County Board that they adopt the proposed changes to Section 506 and 1105 of the Shoreland Management Ordinance.

Kovacovich seconded the motion that carried unanimously 3-0.

Board of Adjustment:

Approval of Minutes: July 22, 2019

Kovacovich made a motion to approve the minutes as presented.

Johnson seconded the motion that carried unanimously 3 – 0.

Old Business:

[Variance Application 14-V-19 by Jon and Tina Boughner](#): Part of the NE ¼ of the SW ¼ and Government Lot 8, Section 36, Township 143, Range 32, Lakeport Township on Kabekona River, a Tributary. Parcel 19.36.00213. Applicants are requesting a variance from Section 502.7 of the Shoreland Management Ordinance for an after-the-fact request to place an accessory structure within the 50' road right-of-way setback.

Grob stated this item was tabled in June. Buitenwerf, is there any new information on this matter?

Buitenwerf answered yes there is. Information was provided to the Board in your packet that contained a determination by the DNR as to the ordinary high water mark elevation for this basin and a couple others between Oak Lake and Leech Lake. There is now a set elevation that has been established. They also went out to the Boughner property and located the ordinary high water mark as well as the 150' setback in relation to the proposed structure site on the June variance application. That information was also shared with Mr. Boughner, who has submitted an amended application. He is proposing an addition to the existing detached garage on the property rather than the original proposed location. I have been in contact with him recently and he is considering if he can make his space needs work in a permissible fashion that would not require a variance. If it continues along with a variance route, you will likely see that in September. If he goes the permissible route, that would be the end of this matter before the Board.

Grob clarified there is no action we can take tonight so we need to continue tabling to the next meeting.

Buitenwerf replied correct.

New Business:

Variance Application 28-V-19 by Kenneth and Ruth Tix: Part of Government Lot 8, Section 20, Township 141, Range 34, Lake Emma Township on Potato Lake, a recreational development lake. Parcel 16.20.02900. Applicants are requesting a variance from Sections 702 and 703 of the Shoreland Management Ordinance for a proposed deck and platform to be located in a bluff impact zone lakeside of a nonconforming residence.

Kenneth and Ruth Tix, 24052 Gander Drive, Park Rapids, MN, presented the application.

Ruth Tix stated we are requesting a deck and patio to be added to our new home so we have access through the north side door of our house that has patio doors already. The deck needs enough space for a table, chairs, and a wheelchair to get past; especially for an emergency exit. The stairs to the patio would run alongside the house. We did build a new structure and we moved the home back from the bluff. The original home was in the bluff. The new home is a similar structure and layout. Recently we have installed roof gutters to limit erosion. We have worked with Flying W Landscaping in Park Rapids. They have come to our house twice to assist us with erosion control on our property. The deck will have landscape fabric and rock underneath it to limit erosion and the grass will be extended to allow for drainage. The heavy rain today had no impact and we had over an inch of rain. We were pre-approved from our original permit for a 10' x 24' patio, but that was not constructed as we ran out of time before winter set in.

Kovacovich said originally, the house was to be moved back to 145'. When staff measured it, the structure was only moved back 133', which is the reason it is now impacting the bluff zone. Could you tell us why that house was placed at 133' rather than 145' as the permit required?

Ruth Tix replied we originally had Environmental Services out to view the property and determine the bluff line, it is not a straight bluff line. It is angled. Since we agreed to move the house back and not build the same house right in the bluff line, they said that moving it back as far as we did was acceptable.

Kovacovich asked who told you that?

Ruth Tix responded Bryan from Environmental Services. He was the one that came to our house.

Grob clarified he agreed that you could build it where it is, or was he in agreement that the 145' was acceptable?

Ruth Tix stated he never specifically said 145'. What he told us was if we moved it back at all, it was a win-win taking it out of the bluff.

Grob continued, but your application that was signed off for the permit indicated 145'.

Grob opened for public comment.

No public comment was given.

Grob closed public comment.

Grob said as I would understand the facts, as background, you did get a variance to build the structure in 2017 to replace an old structure that was in the bluff impact zone at 125'. The variance allowed the new structure to be basically the same configuration. The new structure was to be built at 145' and the 10' x 24' ground level patio was allowed, which kept it outside of the 125' setback. No deck was identified or permitted in the original variance. Do you agree?

Ruth Tix replied that is correct.

Grob continued the new house was incorrectly placed at 133', which is 12' closer to the lake than permitted. The new house does exceed the footprint of the old structure slightly, even though the requirements are that it be exactly the same size or smaller. You are asking for a variance to build a 15' x 12' deck which would encroach to within 121' of the ordinary high water mark, which exceeds the old structure setback of 125'. Have I stated those facts properly?

Ruth Tix replied I believe so.

Grob asked you had no real answer as to why it was built at 133'.

Ken Tix added our contractor pretty much handled all of the permits.

Grob asked do you believe he knew that it should be at 145'?

Ruth Tix replied I do.

Grob said I do believe, Buitenwerf, that if the house had been built at 145', that a variance wouldn't be required to build a patio and the deck as they are proposing?

Buitenwerf responded that is correct.

Grob said the issue we face here is how do we handle this situation when clearly nothing should be placed any closer than the 125' that the original structure was set back from the lake?

Johnson asked what would they be legal to add to a landing?

Buitenwerf said based on the ordinary high water setback, they would be allowed to go up to the original 125' setback which would be 8' depth, plus the depth of the eave overhang, which appear to be around 18"; so total of 9 1/2'.

Kovacovich asked would they need a variance then or could they do that by permit?

Buitenwerf replied that could be done with a permit.

Grob asked on the basis of that, we would like them to meet that 125'. We have two choices; we could deny the variance and they could come for a permit for a deck that would be no wider than 9 1/2' and that the patio would only be as wide as would be allowed to meet the 125', or we could approve the variance and put a condition on those sizes. Which is the easiest for us to do?

Buitenwerf answered if that is the desired dimension, then it wouldn't make any sense to grant a variance for those dimensions that could be constructed with a permit. In that case, I would advise denial of the application.

Grob asked do you understand that if we deny this because you are encroaching more than the 125', that you can go to the Environmental Services Office and obtain a permit for a deck that can only be 9 1/2' from your current structure wall and a patio that would have to meet the 125'. You could do that by permit.

Ken Tix clarified 9 1/2' would be the maximum?

Grob agreed. 8' from the overhang.

Ken Tix asked we can't go to 10'?

Grob said no; 9 1/2'.

Ruth Tix added we are just concerned to be able to get the door open, which is 3', and then be able to get a wheelchair out there if we need to get out that north side of the house.

Grob said 9 1/2' should be enough for that.

Ken Tix added if you have a table and chairs you probably have 7' by the time they are pulled apart and we have a 3' swing on the door.

Grob said that is a matter of placement, where you place the table. I think it is pretty important to us that you do meet the requirements of 125'.

Johnson added I agree with Grob.

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

Johnson seconded the motion that carried unanimously 3-0.

Findings of Fact:

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

Yes () No (X)

Why or why not? The landowner erred by not placing the new residence at the OHW setback stated in the permit application. Because the landowner placed the new house closer to the OHW than the setback shown in the application, there is insufficient room to fit the desired 12' deep platform/deck behind the original 125' OHW setback of the prior residence. An 8' deep deck and platform could be constructed by permit as they would comply with the 125' setback. When a permissible option exists and the need for the variance is caused by the applicant

placing the structure too close to the OHW, granting a variance would not be in harmony with the official controls. Otherwise, there would be no point in a landowner ever complying with the setbacks if after-the-fact variances could always be obtained.

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

Yes () No (X)

Why or why not? The house was constructed with a sliding door on the main level of the house that currently leads to nowhere. Allowing some form of a deck in front of this door addresses a valid safety concern. This concern can be addressed with an 8' deep deck by permit. Allowing a 12' deep deck when the need for such is caused by the landowner's error in siting the new house and a permissible option exists would not be reasonable.

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

Yes () No (X)

Why or why not? The landowner could have constructed the deck and platform by permit had the new house been placed to account for the desired 12' deck/platform depth and maintain the original structure's 125' OHW setback. The need for the variance is solely caused by the landowner's failure to properly measure and locate the new house.

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

Yes (X) No ()

Why or why not? The locality is made up of a mixture of seasonal and year-round single family dwellings of similar size that are at similar OHW setbacks and also have the same bluff running between them and the lake. Most of these other residences have a lakeside deck and/or platform of some kind. Thus, the requested deck and platform will not harm the locality's residential character as lakeside decks/platforms are a common accessory feature of a residence on a riparian lot.

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

Yes (X) No ()

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

Variance Application 29-V-19 by Laurie and Paul Fischer: Part of Government Lot 4, Section 35, Township 141, Range 34, Lake Emma Township on Little Sand Lake, a recreational development lake. Parcel 16.35.02100. Applicants are requesting a variance

from Section 702 of the Shoreland Management Ordinance to expand a nonconforming structure located in the shore impact zone.

Paul Fischer, 20254 County 50, Park Rapids, MN, presented the application.

Fischer stated we are requesting a variance from the Board that would allow us to remove the pre-existing, nonconforming structure that is in the shore impact zone and replace it with a new structure. The new structure that we are proposing would expand a portion of it, but will be a smaller profile as it is viewed from the lake. Certainly it would be much more aesthetically pleasing than the current structure and will actually provide us a structure that is usable. While the new structure would not be in compliance with the Shoreland Management Ordinance, I do think in a number of areas it does move us in the direction of improvement of compliance. What the drawings here show, if you look in the lower right-hand corner, as I was talking about the profile; the structure right now is a T-shaped format with the upper portion of that being 36' wide and approximately 10' – 11' deep. It has a very large profile as you are looking at it from the lake. Our request is that the profile would go down to 14' from outside wall to outside wall. In addition to reducing that footprint, we would be taking off the portion of the T-shape that goes towards the neighbor's property. This is one area that we would be moving closer to compliance with the ordinance. Right now the setback from the side lot line is less than 0'. We would be moving that between a 4' – 5' setback off that side lot line. Still not the 10' required by ordinance, but certainly in the direction of improvement there.

Kovacovich asked is your intent not to ever have water or sewer to this structure?

Fischer replied no.

Kovacovich added would you use it as a guest cabin?

Fischer replied no.

Johnson asked have you ever attempted to talk to the neighboring property about being 4' from their line?

Fischer responded yes we have traded emails with Wayne and Jone Classon, who are our neighbors, informing them when we had the survey done and it became aware to us that there was probably about 5' of our boathouse that was on their property. We did notify them that we were seeking this variance in order to resolve that and move it off of their property line.

Grob opened for public comment.

No public comment was given.

Grob closed public comment.

Grob stated by current ordinance, this boathouse, although dilapidated, could be rebuilt with the same footprint per Section 602 of the ordinance?

Buitenwerf corrected per 702, yes.

Grob continued as the applicant indicated, it currently encroaches on the neighbor's property. Those are two of the conditions. If I understand the application, the new structure would be reduced in size from about 580 sq. ft. down to about 350 sq. ft. A substantial reduction. You would now be 4' from the property line and about the same distance back from the ordinary high water mark.

Fischer replied probably about 8" back.

Grob stated all positive improvement. I think as a Board, would we like to consider putting a condition on to make sure that no living quarters are placed in the new structure such as grey water or sleeping facilities?

Kovacovich added I think that would make sense.

Johnson asked does it currently have that?

Fischer replied it is quite dilapidated right now, but I think the intended use when it was originally built was probably going to be more of a guest cottage. One section is very apparent that it was going to be a bedroom and you can see where they had it set up for water and a section to mount a toilet in. I think that was the intended use when the property was originally built.

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

1. The structure cannot be used as a guest cottage.
2. The structure cannot be serviced by a well/water supply or a septic system.

Grob seconded the motion that passed 2-1 with Johnson voting nay.

The Board adopted the staff report findings of fact.

Findings of Fact:

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

Yes (X) No ()

Why or why not? The proposed structure increases the OHW and side lot line setbacks from those of the existing original boathouse and reduces the structure footprint and aesthetic impact when viewed from the lake.

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

Yes (X) No ()

Why or why not? The existing boathouse can be rebuilt by permit. Rather than doing so, the applicants propose building a smaller replacement structure that improves the OHW and side lot line setbacks and reduces the structure's footprint.

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 existing structure predates the ordinance and was constructed by someone other than the applicants. It can be rebuilt by permit per Section 702 of the Shoreland Management Ordinance. The proposed structure has less of an aesthetic impact, occupies a smaller footprint, and improves the OHW and side lot line setbacks.

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

Yes (X) No ()

Why or why not? The locality is made up of a mixture of seasonal and year-round single family residences. The existing boathouse is larger and has a greater aesthetic impact when viewed from the lake than the proposed structure. Thus, the new structure will improve the locality's character from what it is with the current unsightly, run down boathouse.

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

Yes (X) No ()

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

Variance Application 30-V-19 by Jacquelyn Parker: Part of Government Lot 2, Section 9, Township 143, Range 32, Lakeport Township on Garfield Lake, a recreational development lake. Parcel 19.09.00500. Applicant is requesting a variance from Sections 502.2 and 801.4 of the Shoreland Management Ordinance and Article 5, Section 1.01 of the Subsurface Sewage Treatment System Ordinance for a drainfield to be located within the 10' property line setback.

Kathleen Reinarz, authorized agent for Jacquelyn Parker, presented the application.

Reinarz stated a year ago I was here and we got a variance for putting a cabin on this property and a new septic system. Now that the cabin is built, our installer informed me that we didn't have enough room to do the drainfield as proposed without using the 10' setback toward the south of that property. I have been in contact with the neighbors to the south and they have no problem with us using that 10' setback for the drainfield. I have that letter for Mr. Buitenwerf. That is what I am asking for, a variance to use that 10'.

Grob stated I think when we were out there, there was some concern if you really know where the property line is now. I think we are going on the basis that both you and your neighbor do agree that the current survey metal stake is the property line?

Reinarz answered we are. They were surprised, they thought it was another 10' towards them. We agreed since those marks are there that we would use those as the property line.

Grob asked could you submit the letter to Buitenwerf please?

Reinarz replied yes.

Grob asked could you read into the record what it says, Buitenwerf?

Buitenwerf said the letter handed to me states:

"To whom it may concern: I/We, Vernon LaCombe, Marty LaCombe, have talked with Jacquelyn Parker about the proposed septic system on her property, and agree with waiving the 10' setback requirements from the property line. Signed, Vernon and Marty LaCombe."

Grob opened for public comment.

No public comment was given.

Grob closed public comment.

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

Kovacovich seconded the motion that carried unanimously 3-0.

Findings of Fact:

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

Yes (X) No ()

Why or why not? The lot averages 110' in depth and is 74' wide with a flowage running along the north property line such that the 150' OHW drainfield setback applies from two directions. A variance was granted in 2018 for a lesser OHW setback to site the drainfield, but accurate property line locations were apparently not known then and allegedly are now. Allowing a drainfield to be placed on the lot so that a holding tank can be avoided is in harmony with the ordinance.

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? Having a standard septic system with a drainfield versus a holding tank is a very reasonable request and property use.

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

Yes (X) No ()

Why or why not? The lot averages only 110' deep and 74' wide. There is a flowage along the north side of the property that is connected to the lake and thus the ordinary high water setback must be met from it as well. The lot was created prior to the ordinance. The lot simply lacks sufficient area to be able to meet all applicable setbacks.

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

Yes (X) No ()

Why or why not? The locality is made up of a mixture of mostly seasonal and some year-round single family dwellings of similar size and setback to the residence on this lot. The proposed in-ground septic system drainfield placed up to the side lot line will not harm the locality's residential character in any way.

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

Yes (X) No ()

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

Variance Application 31-V-19 by Mark Sertich: Part of Government Lot 1, Section 11, Township 145, Range 32, Farden Township on Midge Lake, a recreational development lake. Parcel 07.11.00100. Applicant is requesting a variance from Section 506 of the Shoreland Management Ordinance for a proposed guest cottage on a lot that doesn't meet the minimum lot size requirement and that would be serviced by its own septic system instead of by the primary residence's system.

Mark and Kelly Sertich, 31027 Waterwheel Road, Cass Lake, MN, presented the application.

Sertich stated we would like to park an RV next to our modular home that we just moved in on a basement. I believe the lot is 1,400 sq. ft. short of being one acre. As was stated, we had the septic designer look at it and recommended that we drain that sewer into a separate tank. The RV would be for our daughter's use. She would probably come down on the weekends and one week in the summer. It would be closed up during the winter.

Grob asked Buitenwerf for clarification. There are two parts to this application. One is that the lot is slightly short of the 40,000 sq. ft. to allow a guest cottage. The other is a separate dedicated septic system. Given what we voted on earlier this evening, is the individual septic

system still an issue with the application or do we have to put in a condition that it has to be approved by the Commissioners before we would approve the variance?

Buitenwerf answered there is still a need for a variance from that provision in 506 of the ordinance until such time as the County Board would adopt and that amendment would take effect.

Grob clarified the variance would include the fact that they would be allowed an individual septic system because it is not official at this point?

Buitenwerf replied correct.

Grob opened for public comment.

No public comment was given.

Grob closed public comment.

Grob asked you talk about an RV, and our Shoreland Management Ordinance very specifically identifies what an RV is. It is a portable structure built on a chassis for recreational use. Basically, a travel trailer. Do you have a sense of the size? Your application talks to 600 ft. to 700 ft. That is very large for an RV.

Sertich explained we are probably looking at a 40' long and 8' wide with slide outs. She just did mention that she was looking at a Scamp trailer as well, so it could be much smaller. That would be the maximum.

Grob said I am thinking since it is going to be an RV and you are under size, I was thinking an 8' x 40' trailer would be 320 sq. ft. If we were to put a condition of 400 sq. ft. not including a possible deck or platform or any bump outs, would that be reasonable?

Kelly Sertich asked Mark Sertich if that was the same size as what they had before?

Mark Sertich agreed.

Grob added it could be 50' x 8'. That is a big camper.

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

1. The recreational vehicle (RV) allowed to be used as a guest cottage cannot exceed 400 sq. ft. in size excluding any deck or platform area.
2. This RV guest cottage cannot be converted into a stick built permanent structure.

Johnson seconded the motion that passed 3-0.

The Board adopted the staff report findings of fact.

Findings of Fact:

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

Yes (X) No ()

Why or why not? The lot was allowed to be created per a 1988 variance. The Board of Adjustment at that time felt the lot met the intent of the 150' minimum lot width and 40,000 sq. ft. minimum lot area requirements in place then and still today. Thus, allowing an RV to be used as a guest cottage on the lot when it exceeds the 150' width by almost 10' and is only ~1,400 sq. ft. shy of the minimum lot area when a condition is being placed on this variance that the guest cottage can only be an RV 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? Having an RV as a guest cottage on a lot that exceeds the 150' minimum lot width requirement by almost 10', but is only ~1,400 sq. ft. shy of the required 40,000 sq. ft. minimum lot size is a reasonable property use – especially given the lot was allowed to be created per a 1988 variance. Allowing a holding tank for the RV's septic system rather than having to incur the expense of trying to add onto the existing mound drainfield is also very reasonable.

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

Yes (X) No ()

Why or why not? The lot was allowed to be created per a 1988 variance that established the lot's size. The lot exceeds the 150' required minimum width by almost 10' which offsets the lot's being ~1,400 sq. ft. shy of the required 40,000 sq. ft.

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

Yes (X) No ()

Why or why not? The locality is made up of a mixture of seasonal and year-round single family dwellings. The residences on the two lots to the east of this lot are much larger in size than the combination of the primary residence and proposed RV guest cottage on the subject lot. Most of the homes in the neighborhood also meet the 100' OHW setback as do the existing and proposed structures on the subject lot.

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

Yes (X) No ()

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

Variance Application 32-V-19 by Jay Hirsch: Part of Government Lot 5, Section 22, Township 141, Range 33, Mantrap Township on Coon Lake, a natural environment lake. Parcels 20.22.01300 and 20.22.01410. Applicant is requesting a variance from Section 704 of the Shoreland Management Ordinance to allow an unimproved lot to be made into an improved lot.

Kevin Lindow, 1308 Park Avenue South, Park Rapids, MN, presented the application as authorized agent for Jay Hirsch.

Lindow stated we are requesting a variance from Section 704 of the Shoreland Management Ordinance to allow this parcel to be deemed a buildable parcel. As we discussed at the lot viewal, originally this was a 100' wide parcel that was created prior to the enactment of the Shoreland Management Ordinance. In order to try to increase the area of the parcel and make sure there is plenty of room for a driveway, septic, well, and septic, Mr. Hirsch was able to obtain some additional acreage from his parents, the next door neighbors.

Grob asked can you for the record state why that 200' expansion could not have been run all the way to the lake?

Lindow replied there is a septic system that is right up to the east line. The drainfield of the septic system would not allow for any additional footage there along that side.

Grob stated it doesn't show on here, or am I missing it?

Lindow continued where the angled break in the line there, the two circles have the "R" inside of them. That is the drainfield for the neighboring house.

Grob opened for public comment.

No public comment was given.

Grob closed public comment.

Kovacovich made a motion to approve the variance application with the condition that the property cannot be subdivided in the future.

Johnson seconded the motion that passed 3-0.

The Board adopted the staff report findings of fact.

Findings of Fact:

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

Yes (X) No ()

Why or why not? The landowner has taken specific action to make the property more conforming by making it 200' wide for the majority of its depth – as much as possible given constraints on what could be obtained from the neighboring property owner to the east. There is room on the lot to place a house and two drainfield sites that meet all setbacks. The only deficiencies are that the lot is 100' wide at the ordinary high water mark and 150' OHW setback.

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? Yes, allowing the lot to be developed into an improved lot when there is room to locate a house and two drainfield sites in full conformance with setbacks 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? The original 100' lot predated the ordinance.

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

Yes (X) No ()

Why or why not? The property abuts 40+ acres of State forested land to the west and there are two year-round residential properties to its east that are 10 and 27 ac. in size. The area is very rural and has low-density residential development. Allowing a house to be constructed on this lot will not change the locality's character.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as a difficulty. The difficulty is that the lot was created prior to the Shoreland Ordinance taking effect in 1971.

Variance Application 33-V-19 by Rosemarie Flannigan: Part of the SW ¼ of the NW ¼, Section 19, Township 140, Range 34, Henrietta Township. Parcel 13.19.00800. Applicant is requesting a variance from Section 4, Subdivision A.1.b.1 of the Subdivision Ordinance to create a tract that doesn't comply with the 300' minimum lot width requirement.

Kevin Lindow, 1301 Park Avenue South, Park Rapids, MN, presented the application as authorized agent for Rosemarie Flannigan.

Lindow stated the request here is to allow this Tract A to be subdivided from the parent parcel at a width of 200'. This parcel is going to be 5.3 acres in size, whereas the Subdivision Ordinance would require a width of 300' once you cross that 5 acre threshold. Like we discussed at the lot viewal, originally they were hoping to make this parcel smaller, less than 5 acres in size. If that had been the case, where they would have been able to make the parcels smaller, they could have went down to 150' in width and been within compliance of the Subdivision Ordinance, however, the County Subdivision Ordinance and the Township zoning ordinance conflict there. Henrietta Township requires the 200' in width and 5 acres in size for a rural residential parcel, which is what brings us here.

Grob opened for public comment.

No public comment was given.

Grob closed public comment.

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

Grob seconded the motion that carried unanimously 3-0.

Findings of Fact:

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

Yes (X) No ()

Why or why not? The ordinance allows a 2.25 ac. tract that is 150' wide to be created with a certificate of survey. The applicant was interested in doing so, but the Township zoning district has a 5 ac. minimum lot size. So allowing a larger 5 ac. tract to be 200' wide on a property that abuts the city limits is 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? Allowing a 5 ac. tract to be 200' wide when the ordinance allows a 2.25 – 4.9 ac. tract to be created with a 150' average width is a reasonable use of the property – especially when the lot abuts the city limits.

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 need for the variance is due to the Township's zoning ordinance that requires a 5 ac. minimum lot size and the landowner being caught between it and the County's ordinance that allows a 150' lot width for lots sized 2.25-4.9 ac., but not 5 ac. The landowner is caught in a technicality between two levels of government regulations.

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

Why or why not? The property is just under 34 ac. and abuts city limits on its west and south sides. The proposed 5 ac. tract will continue to have the existing mobile home used as a residence located on it. The remainder tract currently has two outbuildings on it, an old homesite, and an old agricultural field. The property's use will not change after the subdivision and there have been no use conflicts with adjacent properties that have been brought to the County's attention.

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

Yes (X) No ()

Why or why not? The difficulty primarily involves conflicts between overlapping government entity jurisdiction regulations.

Variance Application 34-V-19 by Vince and Teresa Schneider: Lot 4, Block 2 of Liberty Ridge, Section 12, Township 140, Range 33, Nevis Township on 8th Crow Wing Lake, a recreational development lake. Parcel 21.69.00600. Applicants are requesting a variance from Section 902.4 of the Shoreland Management Ordinance to remove a portion of a permanent ice ridge.

Vince and Teresa Schneider, 24506 Highway 10, Hawley, MN, presented the application.

Schneider stated we are requesting to remove 10' of an ice ridge in order to install a dock and pontoon lift.

Grob opened for public comment.

No public comment was given.

Grob closed public comment.

Grob stated I have a couple of questions and possibly a couple conditions I might want to propose. You are asking for a 10' width cut?

Schneider replied correct.

Grob added there should also be a typical 3-1 slope on both sides of the 10' cut constructed and planted with vegetation to prevent erosion.

Schneider agreed.

Grob continued the second thing is that the cut depth be according to the drawing in your application. You have left a little ridge on the landside and a little bit of a ridge at the water. I think those are important. The last one is that in the future there should be no alteration to the vegetation on the remainder of the ice ridge. It should remain in its current natural condition. That is to prevent you from completely wiping out the vegetation, which is not allowed by the ordinance. Would those conditions be reasonable?

Schneider replied yes they would.

Theresa Schneider asked can we put wildflowers instead of just grass on the sides of the ridge?

Grob replied yes that would be consistent with that.

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

1. A 3:1 side slope must be constructed on both sides of the allowed 10' wide ice ridge cut.
2. The cut depth should be per the application.
3. Vegetation on the rest of the ice ridge outside of the cut area shall not be altered and is to remain in its current vegetative state.

Kovacovich seconded the motion that passed 3-0.

The Board adopted the staff report findings of fact.

Findings of Fact:

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

Yes (X) No ()

Why or why not? The ice ridge runs the full width of the property and various agencies like the Department of Natural Resources and Soil and Water Conservation District have visited the site and found the proposed location to be the best location for such on the property. Not allowing such a cut could lead to greater environmental issues caused by the landowners then having to find a way to get a dock and lift over the ice ridge and constant foot traffic over the ridge that could degrade the vegetative cover and lead to erosion at the point of use.

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 ice ridge is consistently 3' high across the full width of the property. Allowing a 10' wide cut through the ridge to facilitate lake access for the landowners is a very reasonable request and use of a riparian 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 ice ridge was created by nature and not by the applicants or prior owners.

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

Yes (X) No ()

Why or why not? The locality is made up of largely seasonal single family residences. The three lots to the north of this lot are similarly sized. The adjacent lot to the south is at least three times the size of the subject lot. The terrain on the subject lot is the same as that found on the adjacent lots in that it is undulating hills with this consistent ice ridge along the shore. The requested 10' wide cut in the ridge will not harm the locality's character.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as a difficulty. The difficulty is the permanent ice ridge being along the shore.

Variance Application 35-V-19 by Sigrid Hedman-Dennis and Jon Dennis: Lot 11, Miller's Lakeview, Section 27, Township 141, Range 33, Mantrap Township on Spider Lake, a recreational development lake. Parcel 20.38.01100. Applicants are requesting: Part 1: A variance from Section 502.2 of the Shoreland Management Ordinance (SMO) for a proposed platform to be located within the 100' ordinary high water (OHW) setback; Part 2: An after-the-fact (ATF) variance from Sections 502.2 and 503 of the SMO for a deck located within a bluff and the 100' OHW setback; and Part 3: An ATF variance from Section 502.2 of the SMO for a platform located within the 100' OHW setback.

Jon Dennis and Mark Hedman-Dennis, 32170 County Road 1, St. Cloud, MN, presented the application.

Dennis stated we didn't realize that we needed to get a variance. These two structures were built back in 2001. The stairway was built from the top deck down, and that is as far as our

contractor built. We were instructed that we could build a stairway down and connect it to the docking area. Unfortunately, there were some technical difficulties. There are four walkways that come together at the upper level. It seemed to be logical at the time. It was bigger than what we had intended, but it ended up being the only way to get all four walkways. One from the upper level, one from the lower level to the south, one from the lower level on the north, and then the stairway going down from that. This first platform; that is a confluence of four walkways coming together. The second area down at the dock is again, a technical issue. We were trying to connect the dock up to the walkway that is on the lower level and trying to estimate where the edge of the dock would come in and where it would meet up depending on the water level and the length of the dock. We ended up building that end a little bit larger in order to be able to connect with the end of the dock. Otherwise there would be a gap or it would not always connect up. The third area is for completing a walkway around on the south end of the lower level on the structure. There is a garage that is down below. We use this garage primarily for storing boats and materials. The area is down below ground level at that point. The configuration of the house at that level is kind of varied. To build a 4' walkway and to try to manipulate a commute around that area is a little inconvenient. This is an area that was dug out from the original construction. All that we are asking to do is instead of 4' wide, we have got 10' wide so that we could get canoes and boats in and out of there and communicate with the other pathway that goes up through.

Grob stated if the Board is okay with it, I think we need to split our discussion into two. Deal with part one that is not after-the-fact and then deal with the after-the-fact ones afterwards. Let's first deal with Part 1.

Grob opened for public comment.

No public comment was given.

Grob closed public comment.

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

Johnson seconded the motion that carried unanimously 3-0.

Findings of Fact:

Part 1

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

Yes (X) No ()

Why or why not? The area where the platform is proposed to be located is an area of high intensity foot traffic that is currently bare ground and devoid of protective cover. Much of the proposed platform area has existing impervious surface area above it due to the existing cabin eave overhangs and main floor deck. The cabin was allowed to be placed within the bluff per variance in 2000. The impact to the area

thus already exists. The platform will not really add to the impact, but better protect the soil in this high traffic area.

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? Having a platform on which to walk around the cabin and by which to gain access to the basement via the garage door on its west side is a reasonable use of the property. The area is already experiencing heavy foot traffic such that no vegetation exists and a good portion of the area falls beneath existing impervious surface area in the form of the main level deck attached to the cabin and the cabin's eave overhangs.

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 cabin was allowed to be placed in the bluff and 100' OHW setback by a 2000 variance and that cabin replaced a previous cabin that had been on the property since before the ordinance was enacted in 1971.

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

Yes (X) No ()

Why or why not? The locality is made up of a mixture of seasonal and year-round residences on lots of similar or larger size than the subject lot. The bluff located on this lot extends north and south of the lot onto these nearby lots. The proposed platform will not be visible from the nearby properties or parties recreating on the lake. Platforms alongside residences are common accessory features on residential lots.

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 the difficulty. The difficulty is the cabin being located in the bluff and 100' OHW structure setback per a 2000 variance.

Kovacovich said to my understanding the stairways were built in 2001. Have there been any major improvements to those stairways or those two decks since then?

Dennis replied no. It was started in the beginning of 2001 and completed about a year into it.

Grob asked can you explain what the technical difficulty was that required the deck to be that large?

Dennis answered if you have the photograph, coming in from the left is a walkway from the lower level. Coming also from the upper left is a stairway. To build that around and connect up, there is also a walkway that comes off to the right on that lower photograph. We also store a boat underneath the house and that is a walkway that goes around to the left or the north side of the house as you are facing the house. We did not complete a board walkway from that area, but as you can see, there is one step down that goes up to the house and there is a storage area for a boat underneath there. Trying to see how to cut that out if we would have cut out that one corner, I still have to build stairs and I still have to build a walkway to get up to the boat storage area. We tried to keep down the visibility of the structure as much as possible and avoid cutting down trees. There are also a lot of tree roots. The other technical difficulty is trying to sink a post in that without disturbing a root system. The picture you have in front of you is looking up the stairway towards the house and the storage area for the boat. The bottom photograph is looking along the walkway from the lower part of the house, coming onto that landing.

Grob stated I think I understand your reasoning for making the landing larger than what is allowed, which I think is 32 sq. ft. It would appear to me that you have made it into a deck. The bench, the gas fire place, etc. Which is the real problematic part of this after-the-fact variance. It is clear to me that you have made it a deck rather than just a platform that you say is there because of the technical requirements; which is of course contrary to the ordinance.

Dennis replied I understand that. The original intent was to make the walkway come up around the other side of the house instead of running it off the corner. I decided in building it, it would be simpler and make more sense to run it off there. We ended up with about 2' extra. The bench that is there is not attached. It is just sitting there. That was something I threw in afterwards. It is used as a place to sit now, but that was not the original intent when we started to build it.

Grob opened for public comment.

No public comment was given.

Grob closed public comment.

Grob asked what would you propose doing if the variance were denied? Considering not making major reconstruction, how would you change the layout of that to get back to 32 sq. ft.?

Dennis replied there are a couple things that could be done and I have to ask the Board what the main interest would be. We could just cut it off at that point. I would have to make a stairway down to the ground, but then I need a walkway up to there. The one part of the deck that is extra is about the 2' where the bench is. That is the one part that could be done away with if that is the main offending part. All of the other walkways are needed to be functional. If you look at the walkway coming in from the side, that is 4' x 12' total. It is flat, but it is a walkway; not a deck.

Grob asked why were the steps coming down from the house placed where they are? When I was there it seemed there was no logical reason why it could not have been moved over and went straight down with a landing and then straight down with the next steps.

Dennis answered I can't remember precisely. First of all, the contractor put it in and we didn't have much discussion about it. He just put it in where he thought it was reasonable. We said we needed a straight shot down to the shoreline without a lot of curves. There were a couple of trees that were there that have died and have been cut down since.

Grob continued I mean the steps coming down from your deck on the house to the platform, not from the platform to the lake. Why could that have not been a straight shot?

Dennis clarified coming from the upper deck down to the platform? There was a tree that was in there, but then again it was the contractor's decision. He built it and left it. When I got to finishing it up, I realized that he had not considered all the different areas that had to be moved around. We found it very difficult to wind around the trees that were there at the time and this was the best we could do with what we had.

Johnson added I know if someone would have come with a variance for this, it would have been denied. Now we have to play the card we are dealt here. Something has to be done.

Kovacovich asked on the lower platform, why does that need to be as large as it is rather than just a continuation of a dock section to meet up with the dock?

Dennis replied it was difficult to try to estimate where the dock would come in and the path that was there. The dock at times would go in further. We added a section on to the end of the dock in order to extend it back and it still didn't meet all the way. The water level varies a bit so it was difficult to estimate where the end of the dock was going to be. We also talked about putting another piece onto the end of the dock, but we couldn't do that because it would be too heavy. So I made it wider to make sure it met with the end of the dock. It is solely utilized to store canoes and meet up with the end of the dock, there is no other use for it. The superfluous part is where the canoe is on. If we did away with that, we would have to put in a canoe stand. We have a stand for the canoe and a stand for the kayak. Our interest was that we wanted something that was not visible from the shore. Originally, we were instructed that we had to build it higher and we had to put railings on it. We consulted with the Department of Natural Resources and the suggestion was to put something down at ground level and keep it low so it was below the visible foliage that is down there.

Grob asked Buitenwerf can I see a picture of the upper deck landing area from the side? There is a wall here to the back side of the tier where that bench is.

Dennis said again that is not something that I wanted to put up, but we put a bench there that is not attached. The instructions on building height to protect children from falling off is that it has to be higher than the child could fall off. So that is what we put in. Again, if it is offensive to the Board we can cut that down to the normal 42" and 36".

Grob added I do not know how the rest of the Board feels, but my perspective is that clearly we would like that 8' x 8' platform by the lake to be restricted to the normal 32 sq. ft. and we would also like this landing, or deck, to meet the 32 sq. ft. However, it is fairly problematic

as to how you could do that. What is most important to me personally is that we end up with something that prevents it from being a deck instead of just a platform, and what is left does not enable any use as a deck.

Dennis asked would it be acceptable to the Board if the 2' where the bench is was to be removed? Then it is a straight walkway without the bench. It could still maintain the support of the beams. If I cut off anything more than that, then I can't support the rest of the structure because of the need to sink beams in there. We could cut off that 2' that contains the bench.

Grob asked could you just take the bench out and move that wall to be in line?

Dennis said I can take the wall out.

Grob continued and remove your gas fire place.

Dennis replied sure.

Grob clarified in other words, completely disable any use as a deck.

Dennis asked you are saying if we remove the fireplace, and then move the wall up, and remove the bench. Would it be acceptable to just put a railing in at that point?

Johnson asked a railing at an angle from the base of that stair over to the one that goes down?

Grob added I had thought about coming straight back.

Dennis stated we walk the canoe off that edge and it goes under the deck. We need access to the front of that house. That is really the entryway to the walkway around the other side of the house.

Grob explained I was thinking parallel with the front edge of the seat with the bench. It didn't look like it was heavily traveled when you talked about four paths. You say that you walk off the end of that platform and then up the hill.

Dennis agreed. And we did not complete a board walkway to that because we felt it was enough construction and we just stopped there. If you are suggesting that it would be acceptable to the Board then to take the bench and the fireplace out and move that railing up to where the edge of where the bench is, is that what you are suggesting?

Grob answered that is what I am thinking. Buitenwerf, if we denied the variance for Parts 2 and 3, and added a comment that Environmental Services would work with them to make those changes, how is it best to do this? Deny the variances with a comment that this would be ok; or do we have to approve the variance with those conditions? How is it best to go about it if that is what we want to do?

Buitenwerf answered if you are not supportive of the application as proposed for those two parts, then I would say to act on them as they stand and then entertain a motion to approve something different since it involves very different answers to the findings of fact.

Grob clarified deny the two applications. Do they have to come back with another variance request or should we act on that tonight?

Buitenwerf stated that is up to you. My only concern is that we would be able to document whatever approval of an amendment.

Kovacovich asked could we go about it by listing Parts 2 and 3 as a separate motion? Part 3 is the lower deck and Part 2 is the upper platform. Can we approach it that way? It may work itself out a little easier.

Grob said I am going along with Buitenwerf. We would want documentation. What makes sense is that we proceed along denying Parts 2 and 3 of the current application and that they come back with a proposal for a variance to allow that platform to remain with the discussions that we have had; that the fireplace would be gone and the bench would be gone and they would move the wall in. I would prefer that be documented and brought back. I think that is what you were saying, Buitenwerf?

Buitenwerf replied that or if the conditions are straightforward enough and able to be clearly documented, then you could potentially take action to approve.

Kovacovich added I think we could do that. Denying and accepting the staff findings of fact for the lower platform next to the lake. That one is straight-forward. I don't wish to entertain amendments to that. That one should just live within the ordinance. Whereas, the platform, I believe that we could state that the bench and fire pit be removed, that the platform not be used as a deck, and that the railing goes from the stairway going down to the lake straight back where that bench is to that upright post and then we would approve it with those conditions. Nothing on the platform and a new railing cutting off approximately 2' at a straight line there.

Grob asked are you ok with the process to do that?

Dennis replied yes.

Grob continued let's act on Part 3 then.

Kovacovich made a motion to deny Part 3.

Johnson seconded the motion that passed unanimously 3-0.

The Board adopted the staff report findings of fact as amended to apply to only Part 3.

Findings of Fact:

Part 3

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

Yes () No (X)

Why or why not? Allowing an 8' x 8' platform at a 6' OHW setback would not be in harmony with the ordinance's intent as it strictly prohibits any impervious surface area in the shore impact zone aside from a 4' wide access path (which exists on the lot) in order to maintain viable vegetative cover and minimize impervious surface area to guard against stormwater and erosion issues.

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

Yes () No (X)

Why or why not? Having a platform 6' from the OHW mark is not reasonable especially when viable alternatives exist.

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

Yes () No (X)

Why or why not? There are no unique circumstances next to the lake where the existing ordinance square footage would suffice.

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

Yes () No (X)

Why or why not? Allowing that lower platform next to the lake would be contrary to the localities character.

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

Yes (X) No ()

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

Kovacovich made a motion to approve Part 2 with the following conditions:

1. The platform cannot be used as a deck and can only be used as a landing.
2. The existing bench and fire pit must be removed.
3. The railing behind the bench must be moved to the front of the current bench.

Grob seconded the motion that passed 3-0.

The Board provided answers to the findings of fact for Part 2.

Findings of Fact:

Part 2

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

Yes (X) No ()

Why or why not? For the configuration of the stairways and two pathways leading into it, the ordinance square footage appears not to be able to work there. The existing deck with the 2' being removed is a reasonable request.

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? It is reasonable in the sense that getting the two stairways and the two pathways to come together in a smaller surface doesn't seem practical at this time. The existing size with 2' cut off should be reasonable.

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? It is somewhat unique to the property because of multiple levels and a steep bank, trying to come together to minimize the amount of impact on the hillside going down to the lake.

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

Yes (X) No ()

Why or why not? It is reasonable to have an access from the cabin on the top of the bluff down to the lake.

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

Yes (X) No ()

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

Miscellaneous:

Communications:

Buitenwerf stated for next month we do have agenda items. We have a final plat application for the Paradise Point plat that you saw the preliminary plat application on a month ago, and then we have at least 6-9 variance applications.

Grob added there are five Mondays that month.

Buitenwerf confirmed the meeting is on September 23.

Adjournment:

Kovacovich made the motion to adjourn.

Johnson seconded the motion.

The motion carried unanimously 3 – 0.

The meeting adjourned at 7:40 p.m.

Respectfully submitted,

Staci Harvey

Recording Secretary