

HUBBARD COUNTY

Planning Commission/Board of Adjustment Meeting Minutes

6:00 p.m. on Monday, August 24, 2020

The Hubbard County Planning Commission/Board of Adjustment (PC/BOA) held its regular public hearing and meeting on Monday, August 24, 2020 at 6:00 p.m. remotely by electronic means with one or more PC/BOA members present in the Hubbard County Government Center – County Board Room # 324.

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

Andres 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 27, 2020

Kovacovich made a motion to approve the minutes as presented.

Grob seconded the motion that carried unanimously 5 – 0.

Old Business: None.

New Business: None.

Board of Adjustment:

Approval of Minutes: July 27, 2020

Kovacovich made a motion to approve the minutes as presented.

Grob seconded the motion that carried unanimously 5 – 0.

Old Business: None.

New Business:

Variance Application 24-V-20 by Terry Seter: Part of Government Lot 1, Section 29, Township 140, Range 34, and Part of Outlots 3-5, Shady Point, Section 28, Township 140, Range 34, Henrietta Township on Long Lake, a recreational development lake. Parcel ID 13.44.00600. Applicant is requesting a variance from Section 701 of the Shoreland Management Ordinance for a proposed replacement of a structure devoted to a nonconforming use.

Terry Seter, 17976 Dayspring Drive, Park Rapids, MN, presented the application.

Seter stated I am requesting a permit for a 32' x 42' garage on my property.

Johnson said when I was there, there were vehicles parked in the location. Did you already remove that structure?

Seter replied yes I did.

Johnson continued I didn't see any stakes for where it was, or what the setback was, but I saw quite a few vehicles parked there. I was wondering if you had a plan about where to park those vehicles if you were to put in a building that size?

Seter responded I am hoping it will hold all of the vehicles.

Johnson asked Buitenwerf if this applicant was going to entertain using that upper level for living quarters, would he need to go through a conditional use process?

Buitenwerf explained not necessarily. He could do that through another variance from Section 701 concerning nonconforming uses. We would evaluate the dwelling unit density to see where the property would be at relative to what would be allowed.

Johnson asked would the County look at this as a residential garage, or would you look at this as a commercial garage? The reason I am asking is to know how that would be handled if the applicant was to put plumbing inside this. If it was going to be used as living quarters on a resort, it would need to be reviewed by the Department of Health and the Department of Labor and Industry. If it were residential, it could be done without even having an inspection. I was wondering how the County would view this.

Buitenwerf stated I would probably best allow Mr. Seter to answer the question of its intention. I have an idea, but I would let him say for sure.

Seter replied the upper level is going to be used for storage.

Johnson asked what was the deck going to be for?

Seter responded there is no deck, there is just a stairway going up from the outside. There will be steps with a railing.

Kovacovich asked other than the few feet difference in size, are there any differences to this request than the one that was approved several months ago?

Seter answered there are not.

Grob stated I had the same difficulty with this visit as the prior one. Things were not staked out. All I can go by is your drawing. It would appear to me that if the drawing is correct, you are going to have a propane tank under your steps. It looked to me like there was a clean out for your septic. Is the propane tank going to be moved?

Seter replied it could be if it is required.

Grob asked aren't there some requirements about how close you can have a big tank like that to a structure?

Seter answered I guess I don't know that.

Grob asked how close do you expect it to be to the tank and to that septic clean out?

Seter responded I guess I am not certain about that.

Grob continued the questions are appropriate in the sense that if we approve this, we are going to want to precisely designate size and location of where you are building it. The only reference I have is that it is 3' from Cabin 2 and 45' from the shed across the street. If you had marked those off, wouldn't you have some feeling for how it is going to affect that propane tank and septic clean out?

Seter replied the building hasn't gotten any closer to the tank than it was the first time. The extra two feet is going the other direction.

Grob asked you said the building is the same, but you have those steps and platform on the back side. Is that what is going to be the equivalent to the back of the previous structure?

Seter answered yes. Are you talking about the earlier permit that I had?

Grob clarified the garage you tore down.

Seter explained that was just a little single garage, 12' x 20' at the most.

Grob continued how close was it to the propane tank and septic clean out?

Seter replied I am certain that was probably 8' – 10'.

Grob said the other question that I have for you, you are building 3' away from Cabin 2?

Seter responded that is not correct. It is wide enough that I can get my 6' mower in between the two units. I think I will be tearing that cabin down also.

Grob stated your drawing shows 3'. That is my concern. You show this garage, but there is no way that I can tell from your drawing exactly where it is that you are going to place it. It was never staked out. We would like to know those so that we can specify it in anything that we approve.

Seter answered it was staked out.

Grob said I have been there twice and it was never staked out.

Seter replied I don't understand that. My nephew had it staked out. He is the one that measured it all.

Grob stated there were two cars parked in that area when I was there this time. The last time I do not believe there were any flags that I could tell.

Seter said I don't know if they got knocked down or what might have happened to them. I can't tell you that.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Andres asked during the lot viewal, I observed that the original garage had been removed. The Environmental Services Office has been out to the property and has established the 100' ordinary high water mark setback according to the land use permit application acquired after the previous approved variance application 9-V-20. I agree with you, Grob, if we move forward in approving this variance application, we will need to address the exact location where this structure will be built.

Grob stated I would want it for the record, for Mr. Seter to say what the distance from that shed is. Is the front of your garage going to be 45' from the shed across the road, and how far is your garage going to be from Cabin 2?

Seter replied it is going to be 6' from Cabin 1. I haven't measured from the other.

Grob corrected I meant from Cabin 1. It is going to be 6' from the wall of Cabin 1, and 45' from the shed across the road?

Seter answered I believe that is correct.

Grob asked you can't answer from those dimensions how it might affect your propane tank, your septic clean out, or those steps?

Seter replied I guess I can't.

Petersen asked Johnson what is the concern, since you are the expert in my opinion on septic clean out, about the location of the new building?

Johnson stated he could go over it if it was the correct schedule pipe. He could be over top of that.

Petersen continued do you have a concern about its location?

Johnson answered yes, I agree with Grob. I was confused both times going there about what was going to happen and where it was going to be. I guess the only comment I would make is that whatever motion is made, that we void the previous Variance 9-V-20.

Andres replied I agree, and a possible condition stating that no living quarters can be in the accessory structure as well. We would have two conditions. Mr. Seter, do you understand the conditions being applied?

Seter answered I didn't quite understand the first one.

Andres explained the first condition would mean that if we were to approve this variance application at the specific location described by you, you would have to void the previous application that we approved a couple months back, Variance 9-V-20. It would void that

variance. The second condition would be that there would be no living quarters in the accessory structure.

Seter added I understood that.

Grob stated I want to add a third condition that the garage is at least 6' away from Cabin 1, and that the structure, including the steps on the back side, meet the 100' setback from the lake.

Seter said it is 120' right now. The County came out to measure it.

Grob replied I understand that, but since you have not precisely located the garage in your drawing, I have to make sure that you are including that in your calculations. The drawing I have shows 110', not 120'.

Seter stated I thought it was 120'. The original measurement was from the edge of the grass where the sand started. He didn't go to the high water mark.

Grob responded that is not the issue. I just want to make sure that when you build the garage, including the step entrance on the back, that it meets the 100' setback.

Seter answered yes it will be.

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

1. Variance 9-V-20 is null and void and cannot be acted upon if this Variance 24-V-20 is acted upon.
2. There are to be no living quarters above this new garage.
3. The new garage must be built at least 6' from Cabin 1.
4. The entire garage, including the external stairs and deck, must meet the 100' ordinary high water mark setback.

Petersen seconded the motion that passed 5 – 0.

The Board adopted the staff report findings of fact.

Findings of Fact

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

Yes (X) No ()

Why or why not? The proposed structure will meet all setback requirements and the property will continue to comply with the 25% impervious surface area threshold. The proposed garage will occupy the space where the current garage sits so its aesthetic impact to neighboring property owners and parties recreating on the lake will be minimal.

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 garage is small and not in the best shape. Thus, replacing it with a new, larger garage that provides additional storage for the resort use and meets current Building Code requirements is a reasonable 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? Because the property use is a resort that predates the ordinance, the ordinance views it as a nonconforming use for which a variance is required in order to replace the existing garage with the proposed garage. This ordinance requirement is beyond the landowner's control.

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

Yes (X) No ()

Why or why not? The proposed new garage will replace an existing garage and be placed in the same location. The resort occupies a point that juts out into Long Lake so where there normally would be neighbors to either side, the shoreline wraps around the sides of this property. The locality is a mixture of seasonal and year-round residential use and another resort use two properties to the southeast of the subject property. As garages are a common accessory structure seen on both of these residential and commercial property uses, the proposed structure ought to maintain the locality's mixed residential/resort feel.

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 difficulty is due to the resort predating the ordinance and thus being a nonconforming use for which the ordinance requires that any structural modification such as is proposed requires variance authorization.

Variance Application 25-V-20 by Kent and Laurel Swenson: Part of the SE ¼ of the NE ¼ of Section 29, Township 141, Range 35, Arago Township on Beden Lake, a natural environment lake. Parcel ID 02.29.00210. Applicant is requesting a variance from Section 701 of the Shoreland Management Ordinance for proposed additions to a nonconforming residential dwelling located in the shore impact zone.

Kent and Laurel Swenson, 10538 34th Street NE, Lakota, North Dakota, presented the application.

Laurel Swenson stated Kent and I have owned this property now for nine years. We just love the area and decided we want to retire in Park Rapids. Looking at the house, we just need a little more elbow room. It is working well for weekends, but we need to be able to run our business in North Dakota, which is an 800 cow dairy and an 800 cow feedlot. We need to be able to run that remotely. We are proposing to remove the garage roof and add a second story where we would add an office, an exercise room, and a small sitting area,

which the architect labeled as a loft. We are also proposing a 10' x 16' addition on the north side of the house, mostly to alleviate our cramped kitchen where we barely have enough room for a table. Now we have a china cabinet in our bedroom and our exercise machine behind the furnace. We just need a little more elbow room.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Andres commented I am in favor of the application as the house is located at the end of a dead end road with the nearest neighbor being 700' to the south. The proposed additions are reasonable in size and placed on the non-lakeside of the house. There is also tree cover between the house and the lake.

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

Grob seconded the motion that passed 5 – 0.

Findings of Fact

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

Yes (X) No ()

Why or why not? The cabin was constructed in 1974 per a 1971 variance that allowed it to be placed at a 175' setback from what was then determined to be the ordinary high water mark. In 2020, Minnesota Department of Natural Resources staff determined the OHW to be in a different location which resulted in this structure being found to be located at a 58' OHW setback and thus within the shore impact zone. The house is on a small area of upland that is surrounded by wetland and the lake. The two proposed additions are located on the north and east sides of the house away from the lake which is in line 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 two proposed additions of 10' x 16' on the north side and 6' x 10' on the east side of the house are very reasonable in size and reasonably placed on the two exterior walls of the home that are furthest from the lake.

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 house was originally constructed in 1974 per a 1971 variance to be placed at a 175' OHW setback. It was not until this year (2020) that the DNR visited the site to locate the OHW and determined it to be in a much different location

than historically thought which resulted in the house being now located in the shore impact zone at a 58' OHW setback.

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

Why or why not? The house is located at the end of a dead-end road that runs along the east side of this small natural environment classified lake. It is surrounded by wetland to the north and west. The nearest house is located 700' to the south. The small scale additions to the house will not be visible to neighbors nor visible from the lake due to the dense tree cover between the house and lake and the fact the additions will be on the non-lakeside exterior walls of the house to the north and east.

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

Why or why not? The application does not mention any economic issues as being reasons for requesting a variance. The need for a variance is due to the cabin being recently determined to be in the shore impact zone after a recent Department of Natural Resources ordinary high water mark location determination along the property and the wetland complex that runs along the lake's north end.

Variance Application 26-V-20 by Barry and Joan Wood: Government Lot 6, Section 8, Township 141, Range 33, and part of Government Lot 3, Section 9, Township 141, Range 33, Mantrap Township on West Crooked Lake, a natural environment lake. Parcel ID 20.08.00400 and 20.09.00410. Applicants are requesting an after-the-fact variance from Section 502.1 of the Shoreland Management Ordinance for a platform located within the 150' ordinary high water mark setback.

Barry Wood, 12110 Idaho Ave. N, Champlin, MN, presented the application.

Wood stated we are requesting an after-the-fact variance because someone from the Environmental Services came out and said we had a platform that was in violation. It is a platform that was already existing when we purchased the property. We would like to request a variance to be able to keep it if possible.

Grob asked did you redo the platform that was originally there? The pavers look relatively new. Have you dug up the old ones and redone them recently?

Wood explained over the years as they have buckled, we have basically put them back together. We have never made it any larger, we have just maintained it. We have never installed anything.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Andres clarified I just want to be sure that you understood the violation at hand is the paver platform, not the rock fire ring. During the lot viewal I also noted that the ground where the

platform is located could easily be removed and returned to grass vegetated state. Have you considered removing that and just letting it grow back to grass?

Wood replied we hadn't just for the simple fact that we were waiting on the Board's decision.

Grob stated when I was there it was indicated that the large camper that was there is going to be removed?

Wood answered that is correct.

Grob continued the other thing that I noted is that where you replaced the sand down by the lake and you put down those erosion bags, I did notice there were a couple of serious places where water was eroding on the land side of the bags that were there. Any thoughts about what you could do to prevent that from happening?

Wood responded yes. Our daughters are very allergic to poison ivy. A good friend of mine that I went to high school with is an Arborist for the University of Minnesota. I just asked him for a natural way to get rid of weeds. He said to put a little sand on them. What you are looking at is about 11 years of us bringing up tubes from Menards and sprinkling sand down there to get rid of the weeds. Basically, I started from scratch and now we have more rock material that I am going to bank that up with. As the vegetation comes back, which it is already doing quite well, I will make sure that it all stays back in there with more rock. I had to start somewhere and I didn't have a lot to work with. In a matter of another month or so I will have that all squared away.

Grob asked how far is your deck from the lake? About 100', is that right?

Wood answered that is correct.

Grob stated the required setback for a natural environment lake is 150'.

Wood explained that is correct. However, given the lot size with what is there, there is really no place that they could build and meet that. Again, the deck was there when we purchased the property.

Grob said I am just trying to confirm that, in fact, your cabin is a nonconforming structure.

Wood replied that is correct.

Grob asked I want to reconfirm what was said. The fire pit itself is allowed in that shore impact zone. It is the platform that is an issue.

Andres replied that is correct. The ring of rocks can be placed anywhere on the lot, the platform underneath cannot. They may leave the ring of rocks.

Andres clarified I think some of my colleagues' questions are because we have five findings of fact questions to answer affirmatively in order to approve your request. It is difficult to answer the first three questions affirmatively if there are other alternate permissible solutions for your fire pit.

Johnson added I don't have a problem with that fire pit being there. I don't think the platform is a cause of runoff. I don't think it is going to harm anything with the rock berm around there. I think this is the reason there is a variance for this, to vary from the rules, and this one qualifies. I don't believe these people installed it in violation. I think doing something different is going to make it harder to sit around the fire, unless someone has a better idea about something sturdy enough to sit on.

Grob stated we have been pretty consistent about not allowing platforms like this, especially in the shore impact zone. I don't know how we will end up voting, but if we were to consider this staying where it is, we definitely have to put a condition that there is a really strong vegetative buffer placed next to the lake. This clearly would increase the amount of runoff.

Kovacovich said it is my belief that the grass around that fire ring would be perfectly fine for lawn chairs to sit around when there is a fire. The pavers aren't needed. Based on consistency of what the Board has done in the past, I would not be in favor of granting a variance to keep this there when it seems to me that the alternative of grass around a fire place would be sufficient.

Andres added I understand where you are coming from, Johnson. But, I also agree with Grob and Kovacovich. I am in the same area they are. I personally have a fire ring that only has grass around it and it is sufficient. I feel as though they will still be able to have their fire ring and if they remove the pavers they will be able to sit comfortably. They also have a deck. It is 97' from the water's edge. It is a nice view as well, if they needed some stability. Those are my feelings at this time.

Petersen asked Grob your thought about letting the applicant keep this, were you thinking about a no-mow zone from the lake, or more than that?

Grob replied I think more than that. You probably have to shore up the shoreline with rocks. It is definitely more than a no-mow. That soil is not going to grow real thick grass. You can tell from the rest of the yard. You would have to do a planting of shrubs. You would have to do more than a no-mow if you really wanted to protect the shoreline.

Petersen continued I was going to pose that question to the applicant. If you were to be faced with one of those two options, I am curious if you have an inclination about which way you might go if we were to offer you one of those options. Do you have a preference?

Wood answered I certainly would be in favor of planting vegetation there. Whatever your recommendation would be. The lot is at such an incline. It is not a level surface now, but I can't imagine what it would be like without being somewhat level, even if it was vegetation. I would be concerned if it would stay there or if it would end up being dirt because of the heat of the fire. If I was given an option to put shrubbery in there, I would be all for that.

Grob stated I think the deck has a nice view of the lake. There would be room to have a fire pit area up to the left of the house. With those alternatives, it is very hard to answer the five findings of fact affirmatively.

Wood explained the area to the left of the cabin, because our septic system has been deemed as failing, that area is now going to become a mound system. That little area is

going to be taken up to be able to get the proper setback. I am going to meet with Nick Macklem, and we are going to benchmark that. Because of the lot size, our new mound system is going to take up that area where the large camper is now. It is going to push that fire ring within the 150' setback.

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

Kovacovich seconded the motion that passed 4 – 1 with Johnson voting nay.

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 platform is 32' from the ordinary high water mark (OHW) and there is ample area on the property where the platform could be placed by variance, but at a much greater OHW setback and easily outside of the shore impact zone. The paver-style construction is relatively easily disassembled and re-laid down elsewhere or put to an alternate use.

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? A 17' diameter paver platform 32' from the OHW on a natural environment classified lake is not a reasonable use when there is a large lakeside deck on the cabin that provides the desired outdoor seating area with a view of the lake and there is room elsewhere on the property where the platform could be relocated and have much greater compliance with the OHW setback.

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 is room on the lot to place the platform elsewhere and at least get it out of the shore impact zone. There is no need for it to be only 32' from the OHW. The need for the variance is due to the prior owner's choosing to place the platform 32' from the OHW without proper zoning approval.

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

Yes (X) No ()

Why or why not? West Crooked Lake is a natural environment classified lake that has low-density development on it – especially on the peninsula on which this property is located. The platform is ground level so it is not very visible from the lake until one gets close to this shoreline. The platform would not change the area's low-density rural residential nature.

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

Yes (X) No ()

Why or why not? The application does not mention any economic issues as being reasons for requesting a variance.

Variance Application 27-V-20 by Jeff Jordahl: Part of Government Lot 4 and Government Lot 5, Section 29, Township 140, Range 34, Henrietta Township on Long Lake, a recreational development lake. Parcel ID 13.29.00700. Applicant is requesting a variance from Section 701 of the Shoreland Management Ordinance for a proposed structure to be placed on a nonconforming use property.

Jeff Jordahl, 17499 Driftwood Lane, Park Rapids, MN, presented the application.

Jordahl stated we are applying to move a building from an adjacent property onto our property, convert it into an office/store, and possibly have a chair for a salon in there.

Johnson asked when you say salon, is this going to be a salon that is going to need a license to operate, or a hairdresser?

Jordahl answered yes.

Johnson continued will you be going through the Department of Labor and Industry, and the Department of Health too?

Jordahl replied yes we will have the proper licensing.

Andres opened for public comment.

No oral public comment was given.

Written public comment was received in favor of the request.

Andres closed public comment.

Andres added the structure is several hundred feet from the property line and meets all setback requirements. The septic design is on file. The variance is required because the resort use commenced before the Shoreland Management Ordinance was adopted, and the Shoreland Management Ordinance now requires a variance in order to add any structure to a property on which a nonconforming use is occurring. At this time, I am in favor of the variance request and support the staff report findings of fact as well.

Johnson asked Buitenwerf if this did turn into a beauty salon that was open to the public, are we looking at this being the same business as the resort, or would it need a separate conditional use permit? What if he split this off and sold it to someone as a separate business?

Buitenwerf answered as proposed, they have indicated that it will only be made available to resort customers. If the Board is so inclined to approve the request, I would suggest a condition documenting that. Should they desire to make it available to the public, at that point it would then need a conditional use permit to operate separate from the resort, through a professional service business, that is an allowed use in the Ordinance through a conditional use permit.

Andres commented I contacted the Environmental Service Department today with similar questions.

Johnson made a motion to approve the variance application with the condition that the proposed salon/gift shop business is for resort guests only. If it is ever to be open to the general public, a conditional use permit will be required.

Kovacovich seconded the motion that passed 5 – 0.

The Board adopted the staff report findings of fact.

Findings of Fact

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

Yes (X) No ()

Why or why not? The structure greatly exceeds all setback requirements. A septic system design is on file showing the necessary system can be installed for this structure's proposed use. The sole reason for needing a variance is the property's resort use is nonconforming in that a conditional use permit for a resort use has not been requested/granted.

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 24' x 36' structure is reasonable in size and also in its placement on the property in a location that is well-screened by the ample mature tree cover on the 14+ ac. property and several hundred feet from the property lines and lake.

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 resort use commenced before the Shoreland Management Ordinance (SMO) was enacted and the SMO now requires a variance in order to add a structure to a property on which a nonconforming use is occurring.

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

Yes (X) No ()

Why or why not? The resort property is very large in size at 14+ acres and the proposed structure will be located several hundred feet from property lines and the lake. The structure will also be very well screened from view from neighboring properties and the lake by the dense mature coniferous tree cover on the property. The structure will not be visible from the lake or adjacent properties.

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

Yes (X) No ()

Why or why not? The application does not mention any economic issues as being reasons for requesting a variance.

Variance Application 28-V-20 by Roy and Stacy Thomsen: Part of Government Lot 7, Section 30, Township 142, Range 33, Thorpe Township on Big Mantrap Lake, a recreational development lake. Parcel ID 26.30.01700. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed lakeward addition to a conforming residence within the 100' ordinary high water mark structure setback.

Roy Thomsen, 275 9th Street SW, Dilworth, MN, presented the application.

Thomsen stated I would like to add a 12' x 20' deck and a 16' x 20' screen porch on the lakeward side of the cabin that is 85' from the high water mark on the furthest point on the porch. The addition is going to be off the main level of the cabin. The porch would be a screen porch. It would help with the mosquitoes out there in the evening. Right now there is a door walking out going to nowhere. I had to prove to the insurance company that I screwed the door shut because it is a 10' drop. I bought the cabin about 2 ½ years ago and that is where it was on the property, so that is what I am working with now.

Grob asked Buitenwerf how do we consider the issue with the Township and their refusal to approve an addition on the right side of the house? If he came and asked to put it there on the right side of the building, and Thorpe Township is not in agreement, do they have any control over that? How do we handle that issue?

Buitenwerf explained to my best understanding, Thorpe Township having applied a side lot line setback to shoreland property and not adopting any of the other shoreland rules is kind of cherry picking regulations, which the State Shoreland Rules do not allow. I have had some conversations with the DNR Area Hydrologist to that effect and he indicated that he would be reaching out to the Township to try to initiate that conversation to see if they are willing to amend things. Until then, I have visited with counsel as to what the County's role is, and that would be to require that the Township approval be obtained and then unfortunately the issue of if the Township isn't administering it's regulations in a way that allows a variance to be submitted, that would be a matter that the landowner would need to take up with the Township and potentially involve private legal action if need be.

Grob said I ask that in the context of, when I was there I was trying to observe their property versus the neighbors. Was the house to the north just rebuilt, or resided?

Thomsen answered that structure is approximately two years old. The previous cabin burnt down. They build it in the same location, but a little bit bigger.

Grob asked it can't be more than 10' – 15' from the property line. My guess is about 60' from the lake. It looks like their well might be on the property line. Do you have any idea who approved all of that and allowed you to be within 100'?

Thomsen replied I know it was painstaking, but all of the neighbors have had difficulty trying to get a permit or a variance through the Township. First of all, it is difficult to find out who you needed to talk to in the Township to get a variance. Then, I was talking to the Chair of

the Township and she was adversarial about whether or not I deserved to put a deck on, and that nobody deserves to put a deck on just because you have a lake property. I could see it going down a very long road and a hassle. Then I just decided to put it on the back of the cabin because I didn't want to go through all that. But, I am going to have to go through them because eventually I want to put a porch on the non-lakeside of the cabin for an entryway. The one that is on there now is poorly done. I am going to have to get a variance for that too because I am not 100' from the back of the property either. I didn't want to deal with it, and now after looking at it, I think off the back would look better anyway. If I go off to the side, the cabin is going to look really long without much architectural variation. I think that the gable roof coming off the back towards the lakeside would look a lot nicer. I have talked myself into that being a better option anyway.

Andres opened for public comment.

No oral public comment was given.

Written public comment was received in favor of the application.

Andres closed public comment.

Grob stated the fact that this house was built less than 10 years ago and is nonconforming, built contrary to the permit that was issued, it seems inconsistent with the Shoreland Management Ordinance to now move 16' closer towards the lake, when clearly there is an option to build it to the side of the house. I am not in favor of that. I don't know how to address whether if we were to approve something to the side, how that would be dealt with by Thorpe. What is being proposed is not in harmony with what the Ordinance says.

Kovacovich asked Buitenwerf if in fact it were put to the side, could that porch not be built by permit?

Buitenwerf answered that is correct.

Kovacovich stated I would be in favor of denying the porch and allowing some kind of narrow deckway off the lakeside of the house to make that door accessible and safe. As the request is written, I am not in favor of.

Andres added when you were talking about the access on that top landing, were you just thinking along the lines of a landing and stairway down? If it is a narrow, 5' access landing and stairway down, I believe it can be done by permit through the Environmental Services Office.

Kovacovich said that would be preferred if it could be done by permit.

Andres commented it would be very narrow. It would be 5' to my knowledge, is that correct, Buitenwerf.

Buitenwerf responded yes.

Grob clarified one could build just a balcony up on top that would come out 5', and then also a 5' walkway from the lower patio doors that could go along the house to a deck and/or porch that would be placed on the right hand side. Is that appropriate?

Thomsen stated not on the lower level because of the landscaping.

Grob said you could just do a balcony up on top without a set of steps that come down.

Thomsen asked could I make it smaller, but usable coming off the back side? The neighbor's cabin, I am set probably 30' – 40' back from the neighbors back of the cabin. The neighbor to the south side is blocked by a heavily wooded area. We are the second to last cabin in the bay. I think it would look nicer, the cabin doesn't look nice from the back right now either.

Andres explained we have five findings of fact questions to answer affirmatively. Even though I understand the lakeside deck is desired, it is not always an option. You do have some options that have been described with a balcony at the top and no stairs, placing your porch to the side by permit. It is hard for several of us to actually answer those questions affirmatively when we know there are permissible options available. During the lot viewal I noticed, as Grob did, that the screened-in porch would have a nice, clear, unobstructed view of the lake if it was placed on the northwest side of the house. I know that you may have some resistance from Thorpe Township, but you do have permissible options with the Environmental Services Office. In my opinion, the current size of the proposed deck is a bit excessive and encroaching 18' lakeward, so an 85' ordinary high water mark setback is not in harmony with the Shoreland Management Ordinance and would not maintain the essential character of the locality. I understand you said the house next door is built closer, and it was burnt by a fire, my best guess is that house was probably built several years before yours, before the fire.

Thomsen stated it is a brand new house, it is only two years old.

Andres added because of the fire.

Thomsen stated but they enlarged the house quite a bit as well.

Grob questioned how did they enlarge it?

Thomsen asked as far as through the County, or through the Township?

Grob said that would be my question. It is probably not relevant to our application here, but how could they significantly enlarge it 60' from the lake? How would they get a permit? How would they have done that just a few years ago?

Mark Condiff added this is the homeowner next door in question. I am sorry that I couldn't get my phone off of mute during the public comment section. This is Mark Condiff. We did not build any closer to the property line, closer to the Thomsen's. We built further to the other direction when we rebuilt. It was approved by the County. We did meet with Thorpe Township and it was approved by them.

Thomsen asked if I were to do a porch on the north side, a screen porch, can I do a 10' deck off the back? It would be like a 90' setback. Would we reapply for the whole thing?

Grob stated I don't think that we are in a position to make a decision or confirmation. We would have to see a new variance that would show you doing that to the northwest side. It would have to be part of a whole new variance, I don't think we can do it in this meeting.

Andres added that is correct. We cannot make amendments to this particular application.

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

Petersen seconded the motion that passed 5 – 0.

Findings of Fact

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

Yes () No (X)

Why or why not? The cabin was constructed in 2011 at a conforming 103' OHW setback. Allowing a lakeward addition to go up to an 85' OHW setback would not be in harmony with the ordinance especially when there is room to place the desired screen porch on the northwest side of the house by permit.

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? Placing a 16' x 20' screen porch lakeside addition on a house that was constructed at a conforming setback only 9 years ago that would make the house nonconforming in terms of OHW setback would not be reasonable. There is room on the northwest side of the house to place the desired screen porch by permit.

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 house permit application in 2011 showed the house and a 10' deep lakeside deck with the deck being placed at the 100' OHW setback. Had the house been placed at the setback stated in the application, a slightly scaled back version of the porch/deck/platform proposed could have been constructed by permit.

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

Yes () No (X)

Why or why not? The homes on the adjacent lots on either side of this lot meet or exceed the 100' OHW setback. Thus, allowing this home to go 18' waterward to an 85' OHW setback would not maintain the character of the homes on this side of this finger of the lake meeting setbacks.

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

Yes (X) No ()

Why or why not? The application does not mention any economic issues as being reasons for requesting a variance.

Variance Application 29-V-20 by Steve and Diane Winkels: Part of Government Lot 4 and Government Lot 5, Section 29, Township 140, Range 34, Henrietta Township on Long Lake, a recreational development lake. Parcel ID 13.29.01200. Applicants are requesting a variance from Section 702 of the Shoreland Management Ordinance for a proposed expansion of a nonconforming structure located in a shore impact zone.

Steve Winkels, 21445 Farwell Avenue, Fairbault, MN, presented the application.

Winkels stated what we are requesting is to make two additions to our cabin. One would expand the kitchen going to the south, the other going to the back. It would allow the two bedrooms that we have to be a little bit bigger so we can put a closet in them, and then also to give us a storage and utility room.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Johnson stated since he is not doing anything that increases the septic, I am more in favor of what he is asking for. I think going further back into the hill, and going into that turnaround, it is not going to make that big of a difference to move back. I am in favor of what he is asking for.

Petersen asked if anybody can answer this, including the applicant, what is the difference between this application and the previous one?

Winkels explained in the previous application we asked about putting a third bedroom in, which we are not asking to do here. The third bedroom would have required a larger septic drainfield. It was questionable as to whether that could be done or not. In the meantime, the property line between us and Dolan's, the neighbor to the north, has been surveyed. The line is over further than we thought. We are not requesting that, we are just keeping it two bedroom and doing what I explained earlier.

Grob asked as part of this application, are you intending to rebuild, with the same footprint, the decks that already exist? Is that true?

Winkels replied yes, sorry, I forgot to mention that. We would use the exact same footprint and style.

Grob clarified just for the record, your lot is about 20,000 sq. ft., which is about half of the standard size. You are asking for permission to expand, by 50%, the size of your living space within the shore impact zone.

Winkels responded I never figured out what the expansion percentage would be.

Grob stated about 1,000 sq. ft. and you are adding about 500 sq. ft.

Winkels said that is about close enough.

Andres clarified your application is the same as last year, as far as the structure, just no added bedroom? Instead of a bedroom, you are having a storage room.

Winkels replied it will be storage and a utility room. Plus, the two existing bedrooms will be made bigger so that we can add a closet in them. Right now there is no closet.

Andres asked have you considered moving the structure back out of the shore impact zone and rebuilding?

Winkels answered I think Johnson asked that question the other day. We estimate that the remodel would be about \$130,000. To tear it down, move it back, and rebuild it is estimated between \$250,000 - \$270,000. It depends on the cost of lumber, which has skyrocketed lately. I don't know if we could afford to do that.

Grob asked how old is the original structure?

Winkels responded the original structure was built in 1925.

Grob questioned and it is structurally sound?

Winkels answered yes it is. It has a good, solid foundation under it. For all intent and purposes, it appears to be structurally sound.

Kovacovich asked how long have you owned this property?

Winkels replied we bought it in December of 2012. This would be our 8th summer there.

Andres stated I would just like to note a few things. I did review the previous application of September last year and the request for the landward proposed additions have not changed as much as for the dimensions and square footage is concerned. I understand that the proposed additions are not lakeward additions, but the fact is the structure is still in the shore impact zone, 34' from the ordinary high water mark. Any expansion would create a larger nonconforming structure in the shore impact zone. I have also contacted the Environmental Services Office about rebuilding and enlarging if you were to move it. Obviously, I didn't know about the price change, but you are able to get a permit and do that if it was moved back 16'. Again, I did the same calculations, I have your current structure at about 981 sq. ft. and you are requesting another 526 sq. ft., half again as much. It is just a little difficult answering those findings of fact questions. I do understand wanting to expand. Your cabin is in the shore impact zone at the 34'. That is the problem for myself. I am not sure about the other members.

Kovacovich asked if public comment had been done.

Andres answered we have opened and closed public comment.

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

Andres seconded the motion that failed by a 2 – 3 vote with Kovacovich and Andres voting aye and Johnson, Grob, and Petersen voting nay.

Andres asked Buitenwerf at this time we are back on track and waiting for a new motion?

Buitenwerf replied that is correct.

Johnson stated I would like to make a motion, but first I would like to ask Grob or Petersen if they would have any conditions for mitigating any runoff from around the back side.

Grob responded there was a retaining wall and an open space behind it, if I recall. It is not clear to me, because I haven't thought about it, if you push that back you would have to move that retaining wall. I am not sure that would make any difference in terms of runoff. I don't have a good answer because I didn't really look at it that way.

Petersen added if I remember correctly, doesn't the general grade run to the lake from all around the building there? That is my recollection. I guess I am not seeing gutters as a way to do any mitigation there. I don't know, I am not an expert in this, but if we were to try to push this forward, would we be looking at something along the shoreline to try to act as a buffer? That is the only thing that I can think of, and I don't know if anybody likes that.

Johnson stated the whole lot slopes to the lake. He has dealt with it pretty good, it is a lot better than the last visit that we had. I guess, if neither of you has anything in order for that, then I will proceed with the motion.

Johnson made a motion to approve the variance application while providing answers to the findings of fact questions 1 and 4, while adopting the staff report answers to questions 2, 3, and 5.

Petersen seconded the motion that passed 3 – 2 with Kovacovich and Andres voting nay.

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 additions are landward.

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 cabin is modest in size by today's standards and thus the proposed additions are not unreasonable space additions. What is not reasonable is the project will essentially result in a completely new, expanded structure being located only 34' from the OHW.

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 built in the 1920s at a nonconforming OHW setback before the 1971 enactment of the Shoreland Management Ordinance.

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

Why or why not? Neighboring structures are residential structures and several along the shoreline are in the shore impact zone.

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 posing a difficulty.

Variance Application 30-V-20 by Best Properties, Inc: Part of Outlot 1, Long Lake Park, Section 20, Township 140, Range 34, Henrietta Township on Long Lake, a recreational development lake. Parcel ID 13.42.03920. Applicant is requesting an after-the-fact variance from Section 501.1 of the Shoreland Management Ordinance to allow a duplex on a lot that does not meet the duplex minimum lot size requirements.

Mary Best, 16817 Crown Point Road, Nevis, MN, presented the application.

Best stated 19 years ago I entered into an agreement with Bill Jones to use his property to build my log structure. As the owner of the property, he applied for the permit for a single family dwelling, knowing full well that it would be operated as a duplex. It has been operated as a duplex off and on for 19 years. I am in the shoreland zones of Mud Lake, a natural environment lake, to the north, and Long Lake, a recreational development lake, to the south. I have no actual lakeshore, and I don't think any runoff affects the lakeshore because I have roads surrounding me. I request a variance to apply to the recreational development standards of Long Lake to the property. Long Lake is the closer lake, rather than Mud Lake, a natural environment lake. By applying the Long Lake standards, it would give the acreage necessary for the duplex, which was built 19 years ago. I am hoping you have had a chance to read the practical difficulty and unique circumstances as submitted.

Grob said I want to get my facts straight. If Mud Lake were not part of this equation, the structure, as it is now, would be conforming for a duplex?

Best replied as I understand it, that seems to be the facts.

Grob clarified the thing that brings it into nonconformance is Mud Lake, which is across the highway and down the road.

Best responded correct.

Grob stated there are two apartments in it. Does one of them include a second floor?

Best answered yes. The one to the east has a loft in it. That is included in the living space of that 26' x 36' of that apartment.

Grob continued there isn't potential for a third living space?

Best replied no, there is no bathroom in that lofted area. It is 400 sq. ft., and there is no bathroom up there.

Grob asked the next question that I have is, there appears to be an occupied mobile home also on the property. Is that correct?

Best responded there is, temporarily. It is a hardship situation. A young man that was employed in the oil fields bought that trailer to take his family out there with him. Then Covid hit, and he was laid off. It is a temporary situation, it is obviously not winterized and won't be able to be. I would expect it will be gone. I know they are trying to sell it and buy a home.

Grob stated if we were to approve your application, a condition would be for that structure to be removed.

Best replied yes, I would have to let them know that.

Grob continued we could probably give them a timeframe if it is a hardship, but that is not a long term permanent third apartment.

Best answered no, it was just a hardship with Covid, and there was no place to put a 50' camper. They came to me and I said there used to be a mobile home there. I know that I am not in compliance by allowing them to do this, but it is a hardship, and I let them do it.

Grob asked is it connected to the septic system?

Best responded yes, I have three approved septic systems on the property. There used to be a mobile home on that site. I have three approved septic systems. I believe I included the approvals with my application.

Grob clarified it does have access to septic?

Best replied yes. It has a separate septic, it is not the septic that the duplex is connected to. It has a separate septic.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Andres noted as we have already established, this lot does meet the recreational development classification minimum duplex lot size requirement. It does function as a nonriparian lot to Long Lake, since it is separated by Highway 34 from Mud Lake. I would be open to a couple conditions. No expansions could be made to the structure, and only this structure could be used as a duplex. Mrs. Best, would you be open to those conditions?

Best clarified no expansions to the duplex and only this structure?

Andres explained only that structure can be used as the duplex.

Best answered yes.

Grob asked can we add that the current mobile home has to be removed within the next 6 months?

Andres stated since it is hardship during Covid, I am not sure that 6 months would be appropriate. If it is obviously Covid related, we might need to extend it a bit.

Grob asked how about a year?

Best said I don't believe that camper would sustain itself over the winter. It is a seasonal camper. It is not a mobile home.

Andres clarified so maybe they have no intention of staying through the wintertime? Maybe 6 months would be acceptable?

Best replied I think 6 months would be appropriate. It is not able to be winterized.

Grob explained that is why I was suggesting 6 months. I was taking into account her previous testimony that it is not winterized, and it would have to be moved anyway.

Andres added I am supportive of the application and the staff's recommendations with those three conditions.

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

1. No expansion to the structure is allowed.
2. Only this structure can be used as a duplex.
3. The travel trailer must be removed from the property within the next 6 months.

Johnson seconded the motion that passed 5 – 0.

The Board adopted the staff report findings of fact.

Findings of Fact

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

Yes (X) No ()

Why or why not? The property really functions as a non-riparian lot to Long Lake (RD classification.) Highway 34 separates it functionally from Mud Lake (NE classification.) The structure in which the proposed duplex is located is really only the size of a standard single family residence. The duplex consists of a one bedroom apartment and an efficiency apartment that have a similar impact to that of a single family residence. The lot meets RD class. minimum duplex lot size requirements and the NE class. minimum lot width.

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? A duplex consisting of two – one bedroom apartments within a structure that is the size of a typical single family residence on a lot that meets RD class. minimum duplex lot size criteria and happens to be in a unique situation of also falling within 1000' of Mud Lake (NE class), but physically separated from Mud Lake by Highway 34 which is a major travel corridor is a reasonable use 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 property is uniquely located between Long Lake (RD class) and Mud Lake (NE class), but physically separated from Mud Lake by State Highway 34. It meets the RD duplex minimum lot size requirements, but not the NE duplex lot size requirements. The lot practically functions as a non-riparian lot relative to Long Lake (RD class.)

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

Yes (X) No ()

Why or why not? The log structure has been illegally used as a duplex for many years without neighborhood complaints. A condition is being placed on the variance that prohibits enlargement of the structure and restricts the duplex use to only this structure which will help ensure the locality's character stays "as is".

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

Yes (X) No ()

Why or why not? The application does not mention any economic issues as being reasons for requesting a variance. The need for the variance is due to the unique situation of the property being in the middle of two differently classified lakes 1000' jurisdictional areas.

Variance Application 31-V-20 by Christopher and Melissa Hayes: Lot 7, Sky Manor Aero Estates, Section 9, Township 141, Range 35, Arago Township on Island Lake, a recreational development lake. Parcel ID 02.39.00800. Applicants are requesting a variance from Sections 503 and 702 of the Shoreland Management Ordinance for a proposed relocation of a lakeside deck and a proposed addition to a nonconforming structure located in a bluff impact zone.

Christopher Hayes, 26718 Island Air Drive, Park Rapids, MN, presented the application.

Hayes stated we have a two part request. The first part is to remove an old deck on the front of the house and build the exact same size up on the second story. We are going to re-side our house and put new windows in during the fall. At that time we would add a patio door to our kitchen. The second part would be a bump to the bedroom about 6' and add a walk in closet. It doesn't change my roof line, I don't have to add any concrete, it doesn't even add any siding. I am just moving one wall over 6'. That wall is not on the lakeside.

Grob asked for the record, the deck is going to have basically the same footprint as the existing deck?

Hayes replied the deck will be the exact same size. My proposal shows moving it 7', so that I can line up with my window. Right now it is past the house because there is a staircase that runs down to it. We will not have stairs coming off this deck, so we don't need that staircase anymore.

Andres opened for public comment.

Tim Kjellberg, 26794 Island Air Drive, stated I am the neighbor about four houses over. I have seen Chris and Missy's property, and I think the deck idea that he is proposing is going to enhance the lakeside view. It will look very nice.

Written public comment was received in favor of the application.

Andres closed public comment.

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

Petersen seconded the motion that passed 5 – 0.

Findings of Fact

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

Yes (X) No ()

Why or why not? The new deck will keep the same footprint as the existing lakeside deck, but only be raised 8' above the ground instead of being at ground level. The addition to the house will be to the side and not visible from the lake. It will fit under the existing eave overhang and actually make that side of the house more aesthetically pleasing.

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? Raising the deck to allow access to the upper level kitchen is reasonable as is adding a closet to the master bedroom.

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 structure was constructed prior to the ordinance in a location that is now located in a bluff impact zone where variances are required in order to alter a structure's dimensions.

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

Yes (X) No ()

Why or why not? The adjacent lots in this locality are similar in size and the bluff on this property also runs along the lakeside portion of the adjacent lots. Most of the residences in this area were constructed at a similar time to this structure and are thus also located at the crest of the bluff. The adjusted deck height and small addition bump out on the side of the house that will still be below the existing eave overhang will not change the area's seasonal and year-round residential composition in any negative way.

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

Why or why not? The application does not mention any economic issues as being reasons for requesting a variance. The need for a variance is due to the cabin being located in a bluff impact zone and having been constructed before the ordinance.

Variance Application 32-V-20 by Paul Davey: Lot 11, Block 1, Gladens Addition, Section 11, Township 145, Range 32, Farden Township on Midge Lake, a recreational development lake. Parcel ID 07.56.01100. Applicant is requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed platform to be located in the shore impact zone.

Paul Davey, 21797 320th Ave. NW, Warren, MN, presented the application.

Davey stated I am looking to get a variance for a larger platform down by the lake, placed on top of existing stumps, for my daughter, who is currently going through chemo and radiation, for a spot for her to rest.

Grob asked you propose a platform and intend to use the stumps? When were those trees cut down that would allow those stumps to be there?

Davey answered upon purchasing the property almost two years ago, I contacted the agency. They were allowed to cut them down as they were dead.

Grob responded I hear what you are saying, but when I was out there I looked at them very closely. They didn't look to me like they were all dead trees originally.

Davey added I do have images on file with the County showing that they were completely dead all the way to the top.

Grob clarified all six of those that are in that shore impact zone?

Davey stated yes, I was wishing that they wouldn't be. Throughout the winter time we watched them, and in the spring it happened. I did send pictures into the County prior to getting permission to cut them down.

Grob asked so you had permission to cut them down?

Davey replied yes.

Johnson asked from the edge of your platform, the stairway that you have drawn in going over to the stairway, how far do you guess that would be?

Davey answered the stairs from the existing stairs?

Johnson explained we are looking at a picture right now. Can you see that?

Davey responded I cannot, I joined in on the phone. I apologize.

Johnson continued you have drawn a platform, there is an American flag there, and you drew in a platform with a stairway going to an existing stairway going down the hill.

Davey responded yes.

Johnson asked what did you estimate those stairs to be?

Davey answered I would estimate that, without having the pitch and everything else that I would need, I would estimate those to be roughly 2' wide and 3' in length.

Johnson stated I would guess from the shoreline to the top of that hill would be 32'. The stairs that you are proposing are just about what it would take to get to the top of the hill.

Davey replied the walkway that I am proposing would run perpendicular to the hill, not parallel.

Grob said I agree with Johnson's calculation, around 37' is the top of the hill. It seems like from there back another 20', you completely cleared the vegetation, leveled it out, and probably removed some stumps, and planted some grass. Did you have approval, since that is in the shore impact zone? Did you have permission to remove all that vegetation in addition to the dead trees?

Davey answered the grass was planted on top. I used a harrow to put it in. No vegetation was cleared. All I did was run a harrow to plant grass, as there was a substantial amount of ant mounds in there. If you were actually to walk to the east or to the west, that was all cleared out by the real estate agency with a brush hog to make a path to inspect the site.

Grob asked someone cleared it out then.

Davey replied yes. I would definitely agree with you, but I have been trying to establish grass in there as there were some very large ant mounds. I was going to be there on Thursday, I apologize, I was at chemo. I have been trying to establish grass in those areas now, as that was kind of a natural waterway down there.

Petersen asked Buitenwerf does the Ordinance allow a 4' x 8' landing to be incorporated into the stairs? Would that be able to come off perpendicular to the stairs?

Buitenwerf answered it is intended to be used in places where you have a switchback in the stairs, or at the top or bottom. The Ordinance language is far from being very defined. I don't know that you could say that you couldn't go off to the side at the midway point with a landing.

Petersen clarified and you are saying midway point, to me if I am looking at the photo there, would you say the midway point is right above where his drawing shows, and there still seems to be, a tree standing?

Buitenwerf stated in the photo that he submitted in the application per the requested platform, that to me seems elevationally to be at the midway plane along the stairs.

Petersen asked where the stumps are?

Buitenwerf answered yes. That said, I have not visited the site like you have. I would trust your viewings first hand.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Andres stated speaking of the 4' x 8' landings, as you mentioned they are typically in the switchback, but if one was placed in the middle, could one still be placed at the top?

Buitenwerf answered probably, again, that is not quite the intent. The Ordinance is not specific enough to say that you couldn't.

Davey explained the reason that we are trying to get it down at the bottom is that I have two girls. The one that is currently going through chemo and radiation gets tired very easily. Our plan was to have it close down to the bottom so that we didn't have to be at the top. The brain cancer has taken one eye's sight completely. It has also affected her other eye so that her depth perception and her peripheral vision is down. When she gets really tired we would like to have her really close to us so that we are able to be as close to the lake as possible, but that she also has a place to not climb up stairs, just a spot to have her up and still do activities. The closer it could be would be the most advantageous for us. I just wanted to explain that.

Petersen asked does this platform that you are requesting, would this have a railing system installed too?

Davey replied yes it would. We plan on putting a railing in front of it for safety purposes, just a normal wooden railing attached to the 2' x 6' underneath.

Grob stated I see so much sand and fresh soil halfway up that hill. Did you redo the steps and spread that dirt, or why do I see so much fresh soil to the side of your steps on the side of the hill?

Davey responded it is basically from cleaning a few things off and just kind of raking things flat so that I could apply the sand as there was some major washouts in that area. Basically, all I did was raked the sand, planted grass, and applied the matting to promote grass growth. Nothing was touched underneath it, it was just raked around to try and promote growth of grass in that area.

Johnson stated it looked like the stairways that are existing were ducked down into the bank to get down there, did you install those stairways?

Davey answered yes I did install those stairways.

Andres asked would you be putting a handrail on the stairways?

Davey replied I had not thought of that as of yet. I am sure that I will at some point. I hadn't really even thought about that.

Grob asked there were no steps or access to the lake prior to you buying the property two years ago?

Davey answered correct.

Grob continued so you, and or the real estate people, pretty much cleared that lot of vegetation, put in those steps, and cut down those trees? Most of that alteration has been done since you purchased the property?

Davey responded the clearing of the dead trees, and the installation of the steps has been done since I have owned the property.

Petersen asked according to the Ordinance, you would be allowed a 4' x 8' platform landing in that vicinity somewhere. Do you think that would work for you? I am struggling a bit with the size that you are looking for here, and I am getting your thoughts on something that is more in line with the Ordinance.

Davey replied absolutely. I really don't want to affect the shoreline at all. I basically just measured off of the dead trees and how it would be easier just to attach to the current dead trees, preserve those as they stand, and utilize their strength. That is the reason for that. As far as if the 4' x 8' size would be big enough, the purpose is for allowing my 7 year old to have a blanket out and be playing and also have a lounge chair to take a nap on and make her feel like she is being part of the group down there. The reason is to have a little bit more space for her to play as well as utilizing the current stumps that are there and those wind up being 20'.

Kovacovich stated I am having some difficulty with the size of this platform also. Plus, my experience building anything on top of stumps is a fairly short term building method. Those stumps will rot, especially in the environment that is then covered with a deck and a limited amount of air, a very moist situation. I am having trouble with that part of it also. With the fact that you are allowed a platform off the stairway, or incorporated into the stairway now, but this platform actually has additional stairs going up to it. It just all does not seem to me where I can find my way through the questions that we need to answer, and answer them in the affirmative.

Andres said as members, as Kovacovich mentioned, we have findings of fact questions to answer affirmatively in order to approve the application. There are some options available for you. Granting the variance would not be in harmony with the Ordinance's intent, especially with something of that size in the shore impact zone. That is where we are all struggling, trying to give you options with the 4' x 8' and the hand railing.

Petersen clarified if we were to deny this application as it is presented to us, would I be correct in assuming that he could simply go ahead, and this is probably a question for Buitenwerf, with a 4' x 8' platform landing without having to go through another variance process? He could just proceed with that. Am I correct in that understanding?

Buitenwerf replied yes, that is correct.

Grob asked usually those platforms are kind of for where there is a change in direction. What size platform could he build right down by the lake?

Buitenwerf answered the intent is to allow them at the switchback points, but as the Ordinance is written, it just states that you are allowed a 32 sq. ft. area for a landing. It doesn't give further detail on how many, where they can be placed, things of that sort. I can share what the intent is, but there is not specific language that nails it down tighter than that.

Johnson asked so this would be included with the original permit to put the stairs in? Did he have a permit to put the stairs in?

Buitenwerf replied the Ordinance does not require a permit, it just requires that you comply with certain performance standards, namely that it cannot be more than 4' in width. As long as you meet those standards, you do not need a permit.

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

Johnson seconded the motion that passed 5 – 0.

Findings of Fact

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

Yes () No (X)

Why or why not? The desired resting point for the daughter when traversing the stairs and the desired vantage point from which the parents can watch their children play in the lake can be obtained by placing a 4' x 8' landing in the stairs which is permitted by the ordinance. When a permissible option exists, granting a variance would not be in harmony with the ordinance's and State Shoreland Rule's intent.

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

Yes () No (X)

Why or why not? Having a 10' x 20' platform 12' from the OHW is not a reasonable use of the property when a 4' x 8' landing in the stairs leading to and from the shore is permissible and would provide the desired resting point for their daughter when traversing the stairs on the slope and also vantage point for the parents from which to watch their children play in the water.

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 stated need for a variance is due to the health condition of the current owners' daughter.

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

Yes () No (X)

Why or why not? The platform would be very visible from the lake. This lot is one of several riparian lots in a recently platted development where the lots are largely still unimproved. Allowing a 10' x 20' platform within the 100' OHW setback only 12' from

the shoreline would not be in keeping with the ability to develop these lots in full compliance with ordinance setbacks because the lots were created at a time when that was the requirement in order for the lots to be approved.

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

Why or why not? The application does not mention any economic issues as being reasons for requesting a variance.

Miscellaneous: The Board inquired about getting name badges and possibly vests to wear for lot viewals. This would make it easier for the members to identify themselves to homeowners when they visit the property. It was also discussed that better directions would make lot viewals go a little more smoothly.

Communications: Andres inquired about having all public comment sent at one time after the public comment deadline. The concern is that the Board might miss an email when they are coming in at multiple different times. The current procedure is to send the public comment as it is received.

Adjournment:

Grob made the motion to adjourn.

Andres seconded the motion.

The motion carried unanimously 5 – 0.

The meeting adjourned at 8:17 p.m.

Respectfully submitted,

Staci Lee

Recording Secretary