

HUBBARD COUNTY

Planning Commission/Board of Adjustment Meeting Minutes

6:00 p.m. on Monday, December 16, 2019

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

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

Planning Commission:

Approval of Minutes: October 28, 2019

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: October 28, 2019

Andres made a motion to approve the minutes as presented.

Petersen seconded the motion that carried unanimously 5 – 0.

Old Business: None.

New Business:

Variance Application 51-V-19 by Mark Stenzel: Lot 23, Swasteka Park, Section 28, Township 140, Range 34, Henrietta Township on Long Lake, a recreational development lake. Parcel 13.45.01700. Applicant is requesting a variance from Section 506 of the Shoreland Management Ordinance for a proposed guest cottage to be located within the 100' ordinary high water mark setback.

Mark and Mardel Stenzel, 29097 Biehn Drive, Madison Lake, MN, presented the application.

Stenzel stated we are asking for a guest cabin that is a little closer to the lake than the rules allow. It is on Long Lake.

Grob clarified as part of your variance and mitigation that goes with it, you are offering to remove Cabins 3 and 7. Is that correct?

Stenzel replied that is right.

Grob continued this is a question for Buitenwerf. Why isn't there also a variance required for the second cabin that they are proposing to make into a game room? It is an accessory structure in the shore impact zone.

Buitenwerf answered the ordinance doesn't require accessory structures to meet the 100' setback in order to be put to such a use, whereas for a guest cottage there is a requirement that it comply with the 100' setback.

Grob added but this is an accessory structure in the shore impact zone. Even that does not require a variance in this case?

Buitenwerf explained it is an existing legal nonconforming structure.

Kovacovich asked is it your intent, once the new house with the attached garage is built, to remove the existing garage that is there?

Stenzel answered yes.

Kovacovich asked would you object if we approve this with the conditions that those two cabins be removed, that we also include that the garage be removed after building? It would not have to be removed before building. Would you object to that as a condition?

Stenzel replied I guess that is the intent, so I would see no problem with that.

Andres asked can you tell me some specific plans that you have for Cabin 2, the one that you do plan on keeping?

Stenzel answered my daughter will be using that as her cabin.

Andres clarified so you plan on remodeling it?

Stenzel replied not at this time, no.

Petersen said Buitenwerf, this is a question for you. I think I asked you out at the site, the new home that is going to be built that will replace the existing lodge can be built by permit as long as it adheres to a 50' setback. Am I understanding that correctly?

Buitenwerf answered yes that is correct.

Petersen clarified you have not marked that yet, that 50' setback? Nobody from your department has ever been out to mark that, is that correct also?

Buitenwerf replied yes.

Petersen continued I would switch then to the applicants. Do you have any problem then if we require, as part of the whole process, that his department would be out to mark that 50' setback to make sure that it is adhered to before building would start.

Stenzel answered I think that is a good idea. I was actually going to have Buitenwerf come out there before I started anyway to make sure I got it in the right spot.

Andres asked Buitenwerf would you want that done before or after demolition?

Buitenwerf said that is entirely up to the landowners when they would want that done. I would probably say to have it done before they would demo, so if for some reason that would throw a wrench in things and they wouldn't be able to put the structure at a 50' setback, then they aren't without that existing structure.

Grob added if you mark it and then are tearing it down, you are likely to lose the markers.

Buitenwerf stated it is not that hard to re-mark it once the demo is finished.

Johnson asked Buitenwerf how close can you get to the pond? Would that have to be a 3' vertical and 3' horizontal, just to meet the 3'?

Buitenwerf answered the lowest floor of the structure would have to comply with the 3' vertical separation requirement from the highest recorded water level on the lake, but there is no horizontal setback from that harbor because it is not open water connected to the lake itself.

Johnson clarified so he could put a deck out over top of that if he wanted to.

Buitenwerf added if it meets the lake setback requirements, yes.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Andres asked do you have a timeline and plan for your demolition if this is granted?

Stenzel answered in the spring. I guess as soon as the frost is out of the ground.

Andres clarified so you do plan on starting this coming year, 2020?

Stenzel replied yes.

Petersen asked you are fine with the condition that also the kitchen and bedrooms in the proposed game room structure would be removed as part of the condition of this variance?

Stenzel responded I would think the kitchen would be good to have there for a game room, but the beds would be put in the other cabin and we will put tables in there. I have a

game table I plan to put in there and probably a ping pong table. The kitchen isn't much anyway. It is pretty basic.

Grob stated I think that we should make sure that there is no opportunity for that to be used as a sleeping dwelling. I would be in favor of removing any kitchen-related equipment and facility in the building.

Andres said I agree as well. Photos need to be taken to the Environmental Services Department.

Petersen added if you understand where we are going here, you already have one living quarters besides your main house. We are trying to ensure that the second one couldn't be used for living space. That would be a violation of the ordinance, to have two possible spaces like that on the property. That is why I brought that up. I think that was one of Buitenwerf's concerns also, that we ensure that those be removed as part of approval for the game room structure.

Stenzel asked what exactly would you want removed?

Petersen clarified the kitchen and bedrooms. Apparently there is a kitchen and at least one bedroom in there?

Stenzel stated there are two.

Petersen said we are trying to take out the opportunity for living space in there where it could be used as a second guest cabin. That would be a violation of the ordinance, and we are trying to ensure that doesn't happen.

Stenzel added I really didn't want to spend any money on that place. I have no problem taking out the kitchen cabinets. That is easy to do. The refrigerator and stove are pretty old anyway, so that is not a problem.

Grob said get rid of the bedrooms. You would have one large game room.

Stenzel stated then I would have to tear all of the walls out. That would be a major project.

Grob agreed.

Petersen asked Buitenwerf what is your view on that? Would walls have to be taken down? Or would it suffice to ask that furniture like beds, kitchen cabinets, and appliances be taken out?

Buitenwerf replied I would say if the beds and the kitchen were removed, I would be satisfied.

Grob stated I am not in favor of enabling a potential second living quarters. Why do you need a game room? You are going to have a new home. You have a guest cabin. You own the property adjacent that has a home and a guest cabin on it. Why do you need a game room when you have all of those other facilities?

Stenzel answered the facility is there and would be a nice place to put a pool table or a ping pong table. The place we are building, we could make it bigger I suppose, but I don't want to make it bigger.

Grob stated that is the trade off in my mind. There is room on your property to move your new home back to meet the 100' setback, and you could make it more than adequately large enough to have a game room area. That is always an option.

Stenzel explained where we plan to build would be the best spot with the least disturbance to the trees. The well is right there, and with the way that the electrical is going to work that is really the best spot to do it. I guess the preference is not to have to tear something down that is already there. That is additional cost. I am willing to tear down the other two cabins. That is not a problem. We are going to get the lodge out of there. It will be a major improvement when that is gone.

Grob asked do the bedrooms have bearing walls at all? Are they completely enclosed or are they just partitioned?

Stenzel replied I am sure those walls are where everything is braced to. The main wall through the center of the house would be carrying the roof.

Grob said it is too bad that we didn't look at it when we were there.

Andres asked what are your intentions with the two properties in the future? Are you planning on having one of them as a permanent residence?

Stenzel answered I don't know. As you get older, your plans change. If you had asked that 10 years ago, I would have said probably so. I had a setback in my health, and I am still dealing with some of the problems. I don't know. It is going to be built with the intentions of coming up here. We can't come up here now in the cold because we don't have anything for that.

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

1. Cabins 3 and 7 must be removed before the permit can be issued to build the new house in replacement of the old lodge.
2. The beds and all kitchen equipment including cabinets in Cabin 1 (a.k.a. proposed game room) must be removed by completion of the new house.
3. The existing detached garage must be removed within 90 days of completion of the new house.
4. The guest cottage (labeled Cabin 2 on the application sketch) and game room (labeled Cabin 1 on the application sketch), if ever rebuilt or enlarged, must be moved to locations that meets all setback requirements.
5. The game room (a.k.a. Cabin 1) must not be used as a dwelling unit.
6. The Environmental Services Department must establish the 50' ordinary high water mark setback for the proposed new house.

Andres 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 proposal will result in the removal of two old resort cabins from the property and the conversion of a former resort cabin into a non-dwelling use, and thus bring the property into compliance with the allowed residential dwelling unit density standards. The condition placed on the variance that the guest cottage must be moved to comply with all setbacks if/when it is ever rebuilt or added onto is further in harmony with the ordinance's intent of bringing properties closer toward compliance 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? Using the existing former resort cabin that is in good condition, but located in the shore impact zone in exchange for converting another existing resort cabin to a non-dwelling game room use and removing two other old resort cabins is a reasonable use of this 2.5 acre 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 former resort use predated the Shoreland Management Ordinance (SMO) and the cabin proposed to be used as a guest cottage was built in the shore impact zone prior to the SMO enactment date. Requiring the proposed guest cottage to be moved to a conforming setback would not be reasonable as the structure is in good condition. If/when the guest cottage would be enlarged or rebuilt, a condition being placed on the variance will require it to then be moved to a conforming location which is also reasonable and appropriate to require at that time.

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

Yes (X) No ()

Why or why not? The proposal to remove two of the former resort cabins and remove the lodge that is ~38' from the OHW and replace it with a new residence located outside of the shore impact zone will improve how the property fits the locality's character. The applicant has not really changed a thing on the property since purchasing it in 2010. Much of the old resort equipment still lies where it was

left when the resort ended. The property lies between smaller residential lots to the north, larger residential backlots of around 4.5 ac. in size to the NE, a large undeveloped 40 ac. tract to the east, and an active resort property and golf course of over 100 ac. to the south. The locality is thus a mix of property sizes and uses. The reduced dwelling unit density and aesthetic impact of the subject property will improve the locality's character, not detract from it.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as a difficulty. The difficulty is due to the proposed guest cottage being a former resort cabin that predates the SMO and was built at an ordinary high water mark setback that is now located in the shore impact zone.

Variance Application 52-V-19 by Mariah and Ryan Kent: Part of the S ½ of the SW ¼ of the SW ¼, Section 24, Township 144, Range 34, Schoolcraft Township on Kabekona River, a Tributary. Parcels 23.24.00110 and 23.24.04061. Applicants are requesting an after-the-fact variance from Section 502.7 of the Shoreland Management Ordinance for an accessory structure to be located within the 150' ordinary high water mark structure setback and to rescind the condition placed on Variance 12-V-02.

Ryan and Mariah Kent, 20724 County 44, Laporte, MN, presented the application.

Mariah Kent stated we are requesting a variance for a garage and a garden shed to remain where it is located currently. We purchased the home in 2017, and both of those structures were there when we purchased the land itself. It wasn't until I ended up digging for more information that we found out there was no permit and that we were against the guidelines of the setback.

Grob mentioned the write-up seemed to show that you were very surprised to find this noncompliant situation. Did you go through a real estate company when you bought it?

Mariah Kent replied we did, yes.

Grob asked did you have a lawyer help with your closing?

Mariah Kent answered no.

Grob said Buitenwerf, they are asking for this variance from the setback for both the shed and for the garage. It is also written in your report that we have to consider cancelling the variance from 12-V-02. Is that a separate action that we have to take or would approving the variance include that?

Buitenwerf answered you could do that all in one motion. You would just specify that you are striking that condition on that prior variance and allowing larger garage dimensions.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Johnson asked did the person who had it for sale have their own realtor, or did you have a realtor that found them?

Mariah Kent stated they had their own realtor.

Johnson asked you only talked to their realtor? You didn't have one that was representing you?

Mariah Kent replied we had our own and they had their own.

Johnson clarified there were two different realtors.

Mariah Kent said yes. The Martins owned the property before us. They were aware that they needed a permit.

Ryan Kent corrected he said he didn't think he needed one.

Mariah Kent continued we just bought the property in good faith. You think the title company would have caught this, but you find it out after-the-fact.

Grob asked your real estate agent did identify the fact that this had been built without a permit?

Ryan Kent answered we came to you guys asking for the permit for the garage, and there was no permit for the garage. Our real estate agent thought it was permitted, but it wasn't obviously.

Petersen asked I am curious what prompted you to even inquire.

Mariah Kent explained it was like that little voice that you have in the back of your brain. We were having issues with windows and a few other things. In the back of my mind I didn't know if he had a permit for the house to begin with. I pushed a little harder and asked about the garage, and that is when we found out the garage was not permitted.

Grob asked is this your permanent home?

Mariah Kent answered it is.

Kovacovich made a motion to approve the variance application for the garage and the shed and to rescind the condition on Variance 12-V-02 (that restricted the garage dimensions to 20' x 40') with the following condition:

1. If the garage or the shed is ever replaced or enlarged, it must comply with all setback requirements.

Andres 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? There is no viable alternate location for a garage on the lot that would meet the 150' ordinary high water mark setback or improve enough upon the garage's current OHW setback to justify the expense of requiring it to be moved. The garage is well screened from the river and the nearest privately owned property and residence by mature coniferous tree cover. The adjacent land to the north and west is public forest land. There thus is no negative aesthetic impact caused by the garage and any stormwater runoff its roof generates is able to infiltrate the sandy soil on which it is located and be filtered by the trees and wetland that lie between it and the river.

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 garage, in this case detached, is a reasonable accessory structure use on a full-time residence property such as this one. The applicants did not construct the garage; a prior owner did. Requesting an after-the-fact variance to allow the garage to stay in its current location is reasonable in light of the situation and the very limited upland area on the lot that meets all setbacks.

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 long (~575') and narrow (~175') and all wetland aside from a roughly 33,000 sq. ft. upland area, half of which lies within the 150' river setback. There is not sufficient area on the lot to shoehorn a house, septic system, well, and accessory structure in the space that meets the ordinary high water mark setback.

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

Yes (X) No ()

Why or why not? The garage was built in 2003. The department has not received any complaints regarding it. The property is located in a very remote, rural, low population area. The closest neighboring residence is 300' to the east and is a

seasonal residence. The adjacent land to the west and north is publicly owned forest land. The same is true of the land southwest of the subject property on the south side of County Road 44. The property immediately south of this lot is a 40 ac. homesteaded tract where the house and outbuildings are located ¼ mile to the east. The second closest residence is almost 900' to the east. The structure is very well screened by mature tree cover and large expanses of wetland and thus is not harming the locality's very remote, undeveloped character.

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

Yes (X) No ()

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

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

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

Yes (X) No ()

Why or why not? The applicants did not construct the garage. The garage was built by a prior owner – Sherri Hane - in 2003. The applicants have been cooperative in taking the necessary steps to apply for an after-the-fact (ATF) variance as the first of two steps (ATF land use permit also required) needed to bring the structure into compliance once they were informed that the structure was an ordinance violation.

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

Yes (X) No ()

Why or why not? The applicants purchased the property on December 22, 2017 and learned of the garage's noncompliance in the fall of 2019 after contacting the Environmental Services Department.

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

Yes () No (X)

Why or why not? The garage's construction was completed by a prior owner before the applicants purchased the property.

4. Are there structures, circumstances, or conditions in the area similar to those that are

the subject of the variance request?

Yes () No (X)

Why or why not? This property is unique in that it is largely wetland with only a roughly 33,000 sq. ft. upland area. The upland area is very close to the Kabekona River. The residence on the adjacent lot to the east was built in compliance with the 150' OHW setback and that lot has more upland area that meets the river setback. As mentioned in the response to another findings of fact question, the land to the north, west, and southwest of this lot is publicly owned forest land.

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

Yes (X) No ()

Why or why not? As mentioned in the response to after-the-fact question 1 above, the applicants did not own the property when the garage was constructed in 2003 by a prior owner. Once the applicants learned this fall of the structure's noncompliance, they made timely work of applying for this variance and taking the necessary steps to bring the structure into compliance with the Shoreland Management Ordinance.

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

Yes (X) No ()

Why or why not? The structure is well screened from the adjacent property to the east by mature tree cover and wetland vegetation – and distance. The land to the north and west is public forest land. There is no viable location on the portion of the lot that is not wetland to which the garage could be moved and the garage's pole building construction does not facilitate easy moving.

Miscellaneous: Buitenwerf stated there will be a January meeting. We have two items for sure and possibly one or two others that might come in.

Andres asked Board of Adjustment, Planning Commission, or both?

Buitenwerf answered just Board of Adjustment. Tomorrow, the County Board will take up your per diem increase proposals. They are entertaining an increase to \$180.

Communications:

Adjournment:

Andres made the motion to adjourn.

Petersen seconded the motion.

The motion carried unanimously 5 – 0.

The meeting adjourned at 6:37 p.m.

Respectfully submitted,

Staci Harvey

Recording Secretary