

HUBBARD COUNTY

Planning Commission/Board of Adjustment Meeting Minutes

6:00 p.m. on Monday, December 20, 2021

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

Kovacovich 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: None.

Old Business: None.

New Business: None.

Board of Adjustment:

Approval of Minutes: November 22, 2021

Grob made a motion to approve the minutes as presented.

Andres seconded the motion that carried unanimously 5 – 0.

Old Business:

Variance Application 54-V-21 by Jason Johnson: Part of Gov't Lot 4, Section 29, Township 143, Range 32, Lakeport Township on Kabekona Lake, a recreational development lake. Parcel 19.29.03110. Applicant is requesting a variance from Sections 901 and 902 of the Shoreland Management Ordinance for a proposed second access path to the lake and grading/filling in a steep slope that exceeds the permit threshold.

Kovacovich stated it is my understanding that this application has been withdrawn.

Buitenwerf replied correct.

Amended Variance Application 59-V-21 by Jon Sivald: Lot 1, Bannister's Stony Lake Addition, Section 1, Township 139, Range 34, Hubbard Township on Big Stony Lake, a recreational development lake. Parcel 14.48.00100. **Part 1: Applicant is requesting an after-the-fact variance from Section 502.2 of the Shoreland Management Ordinance for a detached garage located within the 100' ordinary high water mark (OHW) structure setback.** Part 2: Applicant is requesting a variance from Section 502.2 of the SMO for a proposed detached garage to be placed within the 100' OHW structure setback.

Jon Sivald ,5200 Lakeview Court, White Bear Lake, MN, presented the application.

Sivald stated this is a two-part application. Originally I submitted an application for a detached garage to be built. It was then found that my existing structure did not meet the proper setback requirements, so the variance had to be amended to include the existing garage. That was found when I had one of the Environmental Services employees out to take some measurements for the variance I applied for to build a second garage. Part 1 is the existing garage. This is a structure that was built in 1985 with a County issued permit. The structure had the proper setback from the north side. It did not have the adequate setback from the east side because of the fact that the lot has water on two sides. Part 2 is the proposed 24' x 24' garage that I applied for the variance for. The notes in the staff report point to the fact that the biggest hurdle is the fact that there is not an alternate drainfield site, so I had a survey done of the lot to determine what the boundaries were of the lot on all sides. After I had the survey completed, the Board asked that I get a septic system design so that we could see that there was an alternate site in the future if there is a need for an alternate septic system drainfield. I had a septic system inspector and designer come out a week or so ago. I got the notes back to Environmental Services. There was a site identified and the site was noted on the survey. As far as the drainfield issue, it appears to have been addressed because there is an alternate site, and it was signed off by a designer and inspector. This proposal has had multiple public notices, and I haven't had any objections from any neighbors that I am aware of. I did talk to three of my neighbors prior to putting in this variance proposal. There is also a note that talks about having three structures on the lot. The two existing structures are small. The staff notes indicate the cabin being 22' x 34', but it is actually 20' x 34'. The existing garage is an undersized two-car garage. What I am asking for is approval to build a standard two-car garage on the back side of the lot. It would be 10' off the property line. The proposed drainfield would be in the southwest corner of the lot. I feel that this is a reasonable request. I have identified a future septic system site. I need the space because I have an undersized two-car garage. I do not have room for my boat and UTV. I am not asking to build a pole barn, just a two-car garage.

Johnson mentioned on the septic sketch it shows the driveway location next to that alternate location. Would you disagree with that location? I think that it should be spun so that it runs north and south.

Sivald stated that is the driveway where the neighbor to the south of me is actually driving over a corner of my lot.

Johnson said looking at this map, the driveway should be the other way. I am just making a record of saying that.

Grob added that post point was in the center of the driveway. It went directly north and south.

Johnson stated so the map showing it right now has it in the incorrect location.

Sivald agreed. It is more of a north and south location, but it does clip that corner of my lot.

Johnson asked did you talk to the neighbor about any of that?

Sivald replied I haven't contacted him yet. I was just out there myself to see the locations of the posts on Thursday. I haven't contacted him, but I am going to have to contact him because his driveway is actually running over a corner of my lot.

Andres stated I appreciated your patience and accepting our guidance in regards to obtaining a certificate of survey and septic site evaluations to best support your variance application. Both items are beneficial when it comes to determining your variance request on smaller lake lots such as yours and keeping in harmony with the ordinance's intent. I appreciate your perseverance there.

You made comments that you need space for your boats, cars, and vehicles. At one time you mentioned remodeling the current garage to a possible game room.

Sivald replied I don't plan on remodeling. I plan on leaving it as a garage. I do plan on using it as a game room for the grandkids. I can pull my vehicle out. They make roll-in ping pong tables. I don't plan on using it for anything except a garage and game room. I have twin grandkids, and it is a small cabin. On a rainy day I can send them out to the garage.

Andres stated I just wanted to remind you that due to the lot size not meeting the Shoreland Management Ordinance's requirements for a guest cottage, living quarters are not allowed.

Sivald responded I have no intention of making it a guest cottage. I have one cabin. I don't need two.

Kovacovich opened for public comment.

No public comment was given.

Kovacovich closed public comment.

Andres stated the lot is 33,000 sq. ft. and fronts the lake on the north and east sides, which makes it impossible to meet the 100' setback anywhere on the lake other than the vacated portion. The garage meets that 100' setback from the lake's north side. I am in favor of approving the after-the-fact variance for Part 1.

Andres made a motion to approve Part 1 of the application as presented.

Petersen seconded the motion that carried unanimously 5 – 0.

The Board adopted the staff report findings of fact for Part 1.

Johnson commented besides the benefit of having the alternate site with his new site evaluation, I have seen the soils opinion of the site evaluator, and it is probably the best soils opinion that you could have to remove an existing and replace it over top.

Grob added so he has two alternatives.

Andres stated the certificate of survey will be beneficial for the future and acquiring a septic permit through the administrative approval in lieu of a variance. During the lot viewal, I also noticed some neighboring properties. You did point out one of the staff comments on having three buildings on your lot. I did notice during the lot viewal that you have neighbors with a similar size lot as yours, but does not front the lake. They have a few extra buildings as well, so it is reasonable and would still be in harmony and maintain the essential character.

Sivald responded that is the neighbor directly to the west of me. If you go one lot further to the west, that neighbor has five buildings on their lot. I would still have fewer.

Andres continued one thing that we mentioned as a possible condition was that no living quarters are allowed in the accessory structures. No further expansion on any other structure is another condition that I would propose.

Sivald asked so no more variances in the future?

Andres explained you can always come back and ask for a variance to change a condition. That is not saying no to that. It is just adding a condition that there should be no more expansions because your lot is half an acre in size. There is not room to add a lot more with your drainfield issues.

Sivald replied I do not expect that I will be doing anything more at this point, but I don't want to rule it out down the road. I guess that I would have to apply for a variance at that point.

Andres clarified that is just a condition that I thought of if we approve this extra garage.

Sivald responded I do not expect to be doing anything with the main cabin itself. That is a 50 year old structure, and it has stood the test of time. If you start messing with it, I think I might cause more problems than I solve. It would be best to leave that one alone I think.

Kovacovich stated I would be in agreement with those two conditions.

Grob added I don't know if this should be a third condition or not, but should the new garage be per the dimensions and location as presented in the application dated 9/22/2021?

Andres asked you want that as a condition or just make sure that I state it in the motion?

Grob replied you could make it part of the motion, and we will approve it on the basis that it will be built per the site plan.

Sivald added I plan to build it 10' minimum off the south line. I am not going to change the location.

Grob said that is what you show in your drawing. It is 10' off the south line, 46' from the ordinary high water mark, and a 24' x 24' footprint.

Sivald agreed.

Andres made a motion to approve Part 2 of the application for a 24' x 24' detached garage to be placed in the location shown on the 9/22/2021 variance application site plan sketch with the following conditions:

1. Living quarters are not allowed in either accessory structure.
2. No further expansion of any structures on the lot is allowed.

Johnson seconded the motion that passed 5 – 0.

The Board provided answers for questions 1, 2, and 4 while adopting the staff report answers for questions 3 and 5 for Part 2.

Findings of Fact

Part 1

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

Yes (X) No ()

Why or why not? The lot was identified by the Environmental Services Department back in 1971 as being substandard in size and having severe development limitations due to its having lake frontage on the north and east sides and being narrow enough in an east-west dimension that the 100' OHW setback from the east side of the lot extends beyond the west lot line. The County has not received any complaints regarding the garage. While the garage could potentially be moved to the west to increase its OHW setback, the gain in setback from

doing so is not worth the cost the landowner would incur in moving the garage. The garage does meet the 100' OHW setback from the lot's north lakeshore.

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 detached garage is only 22' wide x 24' deep so it is rather small in comparison to typical garage sizes of today. The cabin on the lot is only 22' x 34' so having a garage in which to store vehicles, lawn and lake equipment, and other items is a reasonable accessory use for a residential lake 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 lot is 33,229 sq. ft. in size per the GIS tax parcel map and fronts the lake on the north and east sides which makes it impossible to meet the 100' OHW setback anywhere on the lot other than in the vacated portion of the platted road right-of-way that makes up the far southwest corner of the lot. The garage meets the 100' OHW setback from the lot's north lakeshore.

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

Yes (X) No ()

Why or why not? The locality is made up of seasonal residential properties. The lots to the west are part of the same plat in which the subject property is located and are similar in their lot width. The adjacent property to the south is undeveloped and roughly 5 ac. in size. No complaints have been submitted to the County since the garage was built in 1985 claiming that it harmed the locality's character. A detached garage is a typical accessory structure on residential riparian lots.

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. The difficulty is caused by the lot's substandard area and dimensions, and having lake frontage on both its north and east sides.

Part 2

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

Yes (X) No ()

Why or why not? Having development limitations due to having lake frontage on the north and east sides along with the lot being narrow in the east/west dimension a variance is needed as the applicant cannot meet setbacks. The requested certificate of survey and septic site evaluations ensure that an alternate drainfield exist and thus is in harmony with the ordinance's intent.

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

Yes (X) No ()

Why or why not? Although the lot is small and narrow in the east/west direction with the lake frontage on both the north and east side of the lot, the certificate of survey and SSTS site evaluations ensure room for the alternate drainfield leaving room for the proposed 24' x 24' accessory structure.

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

Yes (X) No ()

Why or why not? The lot is 33,229 sq. ft. in size per the GIS tax parcel map and fronts the lake on the north and east sides which makes it impossible to meet the 100' OHW setback anywhere on the lot other than in the vacated portion of the platted road right-of-way that makes up the far southwest corner of the lot.

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

Yes (X) No ()

Why or why not? The neighboring properties have similar size lots with multiple accessory structures. Placing a second detached garage on the lot will maintain the essential character of the locality.

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. The difficulty is caused by the lot's substandard area and dimensions, and having lake frontage on both its north and east sides.

Variance Application 62-V-21 by Robert and Kristi Gorman: Part of Gov't Lot 2, Section 6, Township 141, Range 33, Mantrap Township on Big Mantrap Lake, a recreational development lake. Parcel 20.06.01200. Applicants are requesting an after-the-fact variance from Section 502.2 of the Shoreland Management Ordinance for a platform and accessory structure located within the 100' ordinary high water mark structure setback.

Kovacovich stated this application has been withdrawn.

New Business:

Variance Application 60-V-21 by Dennis and Laurie Bergstrom: Part of Gov't Lot 8, Section 27, Township 141, Range 33, Mantrap Township on Spider Lake, a recreational development lake. Parcel 20.27.01600. Applicants are requesting an after-the-fact variance from Section 904.6 of the Shoreland Management Ordinance to further exceed the 25% of lot area impervious surface area threshold.

Dennis Bergstrom, 23405 Great Pine Trail, Nevis, presented the application.

Bergstrom stated we are applying for an after-the-fact variance for a flagstone patio approximately 10' x 14' since we are over the 25% impervious surface limit on our lot.

Kovacovich mentioned when we were on the lot viewal there was snow so it was hard to see everything. Can you explain to the Board what mitigation efforts you have already made on the lot to handle the drainage?

Bergstrom stated it shows on the site plan. There are three catch basins that we dug in. All the downspouts from the garage and from the cabin comes around into these three catch basins here. There is one catch basin on the north side of the property also. All of the drainage off of the garage and cabin go into catch basins. They are 6' deep and tiled. The soil is extremely sandy in that area and so it is great drainage. The cabin has been in our family for about 50 years, and we have never had any issues with runoff or anything like that. This spring we are putting in rain gardens along the

top of the hill and then on the opposite side. Forest and Floral, and Midwest Diversified Services are doing the actual landscaping.

Kovacovich stated it was hard to see this time of the year with the snow that considerable efforts have been made on this to address the drainage situation.

Grob asked what are the actual dimensions of the flagstone area?

Bergstrom replied I think that it is 9' x 14' at the deck and then 11' wide at the bump out of the cabin. On average, 10' x 14'. 4' x 8' was previously a ramp off of that deck and then it was a 4' wide sidewalk off of that. About 40% of that area was already impervious surface prior.

Grob asked what is your shoreline like? Is it vegetated?

Bergstrom responded it is all vegetation.

Grob asked do you mow it?

Bergstrom answered it is all natural vegetation. We knock it down once or twice a summer, but it is normally tall weeds and wildflowers. We had rip rap and stone boulders put in about 10 – 12 years ago.

Kovacovich opened for public comment.

No public comment was given.

Kovacovich closed public comment.

Written public comment was received by Craig Hoium.

Grob stated I was asking about the shoreline in case there was a need for some kind of mitigation down by the lake. It looks like you have pretty much natural grass. I don't know if there is much need or any purpose in trying to do anything more to make up for the additional 70 sq. ft. that you are adding.

Grob made a motion to approve the variance application as presented.

Petersen seconded the motion that carried unanimously 5 – 0.

The Board adopted the staff report findings of fact answer for question 1 after deleting the second sentence, questions 2, 4, and 5 and provided the answer for question 3.

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 nature of how the house and lakeside deck are laid out requires foot traffic to intensively use the area where the platform is located. Some form of durable surface able to hold up to intense foot traffic is needed in this location. Trying to maintain just vegetation in this area given the foot traffic would be a constant battle with exposed soil and erosion.

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? Placing a platform in the requested area makes sense from a foot traffic flow standpoint given the lack of exterior doors on this side of the residence and the fact that the deck is accessed from the area where the platform is located. Some form of durable surface able to withstand foot traffic is needed in this area as vegetation would not be able to be maintained in a viable condition to protect the soil from being exposed and then eroding.

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 is close to the lake with a steep bank. A lot of mitigations and rain gardens control the water runoff. Actually filling in this little area is probably an advantage versus the traffic on bare ground. The lot only being 80' x 160' made a practical difficulty to have a standard residential lot. That size of the lot predated the ordinance.

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

Yes (X) No ()

Why or why not? The locality consists of almost entirely seasonal residential use riparian lots of similar size to the subject lot and a couple non-riparian tracts that are 20+ acres in size and put to agricultural and timber production uses. The requested platform is a common accessory feature to riparian residential structures, is at ground level, and will not have any harmful effect on the area's seasonal residential use 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.

Variance Application 67-V-21 by Dorothy Ann Fosse: The NW ¼ of the NW ¼, Section 17, Township 141, Range 34, and Gov't Lot 1, Section 18, Township 141, Range 34, Lake Emma Township on Rice Lake, a natural environment lake. Parcels 16.17.01800 and 16.18.00100. Applicant is requesting a variance from Section 507.3 of the Shoreland Management Ordinance for a proposed boardwalk that will exceed the 4' maximum width requirement and may harm existing vegetation below the boardwalk by impeding sunlight's ability to reach all of the area beneath the boardwalk.

Burton and Dorothy Fosse, 25725 Holly Road, Park Rapids, MN, presented the application.

Burton Fosse stated we have owned this property since 1998. We would like access year-round to the island out there. This is probably an old road bed from the 30s or 40s that they used to log out there. Several years ago we had a nice, dry winter and a dry spring. I was able to brush it out with a Bobcat. Normally, there is enough low ground there that we can't even get a Ranger out there. About 15 years ago I had some people advise me that I could put in a corduroy system, or I could put in an elevated boardwalk. We didn't discuss the dimensions or anything like that. The corduroy sounded really good until I had Hubbard County Soil and Water Conservation District come out and I found out if I wanted to cover the low land there I would have to buy wetland credits, which are \$1.00/ sq. ft., and this thing is at least 7,800 sq. ft. That made it economically not feasible. I would

like to get equipment out there. You saw the trees out there. My Bobcat is a little over 5' wide. My tractor is closer to 7' wide. I need something wider than a 4' boardwalk.

Grob asked repeat again the reason for wanting to get the Bobcat out to that property?

Fosse explained to be able to clean up the down timber that is out there. We have a boat out there. That is the reason to get out there is to be able to use that. Basically, to be able to get equipment out there to be able to clean it up.

Grob asked Buitenwerf can you identify what the distance is from the center of the island to the ordinary high water mark? This is a natural environment lake. If you ever intended to build any structure there it would have to be at least 150' from the ordinary high water mark. How far is that access line from the ordinary high water mark at its closest point? I was trying to establish that where he is proposing the boardwalk. Is it 100' from the ordinary high water mark?

Fosse replied no.

Buitenwerf answered 20' would be my guess.

Fosse stated I think the DNR drew that in on their paperwork. On the west side I think it was almost 60', and on the east side it was more like 40'.

Grob explained what I was trying to get at is that there may be an elevation that is at or above the ordinary high water mark along those lines, but the operational ordinary high water mark is out quite a bit further from there at the edge of the lake. The lake doesn't come in that far, it is just that there is a little small area that is below the ordinary high water mark.

Kovacovich added we are dealing with a wetland, not the actual lake itself.

Grob continued a lot of the shoreline issues that we would actually deal with don't apply. It is a wetland issue in this case.

Andres asked what is your alternative plan if this doesn't go forward?

Fosse replied tracks on my Ranger.

Grob mentioned in the winter time when it is really cold you could drive your Bobcat out over the ice.

Fosse commented I should be able to get down that trail with my Bobcat in January. As you saw the other day, it has not completely frozen yet.

Grob said if you are wanting to do certain amount of clean up, it could be done in the wintertime with access by the Bobcat. Therefore, trying to keep more in line with our Shoreland Management Ordinance and the 4' requirement, that would accommodate access all year.

Fosse responded if I put a 4' or a 6' boardwalk through there, I would not have room to get the Bobcat through.

Grob explained you could go along side of it in the wintertime.

Fosse stated that space that you walk through is only about 10' wide. If I put a 4 – 6' boardwalk in there, I would struggle to get the Bobcat through.

Kovacovich asked what is the width of your Bobcat?

Fosse answered the bucket is 6'.

Kovacovich said I can understand your need for access. Personally, my concerns are that anything built there has an effect on the vegetation and the wetland itself. My experience has been that if it is a closed boardwalk, more than likely everything underneath it will die. It will turn into a trench with water. It is very hard to keep vegetation alive underneath a boardwalk built the traditional way. The wider it is, the less sunlight that will get in towards the center. I understand the need for access, but I know if it were 4' to handle walking, that is about the maximum to be built to allow the vegetation to still be alive and not have further degradation of that wetland.

Johnson asked would it make a difference if he had it higher than 12", and would it make a difference if the boards were separated more than the inch that he is proposing?

Kovacovich replied yes on both accounts. My experience is that the height isn't as big of an issue. The higher up would be better. I think every time that you use boards, the distance that you put in between those for light to pass through is not going to be sufficient. What seems to work would be an expanded steel or mesh where there are actual openings where you are still allowing 50 - 60% of the sunlight through. I have seen that done, and the bog stays alive, and the plants continue to grow. You don't get this pooling or channel effect from the water because all of the plants are dying underneath it. Each situation is somewhat unique. In general, higher up is better, and the mesh is actually the most critical issue to let some of the sunlight through.

Fosse added something that I didn't know was when the Soil and Water Conservation District came out and told me about the wetland credits. I was told by them that if I paid the wetland credits, I could put any kind of road in there that I wanted to put. I could haul in gravel and make a road out to the island.

Kovacovich stated I think the difference would be that you have then purchased and replaced that wetland with credits somewhere else. Without doing the wetland credits, if what you do is detrimental, it is a net loss.

Discussion ensued about wetland credits.

Petersen asked Buitenwerf for clarification.

Buitenwerf stated if they were to pursue getting wetland credits to put a road in, they could through WCA, but then a variance would be necessary for there being a road that didn't meet the 150' setback from the ordinary high water mark.

Kovacovich explained we would still be involved.

Petersen asked if you were to build this boardwalk the way that you would like, who would build it and how would it be built?

Fosse replied I would build it. When I was first planning this I had the DNR come out. I lived in Alaska for 30 years. Up there if we are going to build an elevated boardwalk, it is steel posts that go in. Then you build the boardwalk onto that. To me, that was not logical. It would be too expensive to get heavy equipment in there to do that. The DNR told me that I could use wood posts. They would be 7" x 8" or 8" x 8" oak wood posts that are 6' long. They would be buried and have cement under them so that they won't sink any further when I get them in. They would have cross beams between the wood posts. The posts would be 8 - 10' apart and have a wooden deck on the top of

about 4". They would be separated by an inch. It is rough cut wood, and it will actually end up being 1 ½ – 1 ¾" by the time it dries out and shrinks.

Petersen asked I don't know what kind of weight requirement it would have if you want to drive your skid steer over this. I am not sure what one of those would weigh.

Fosse answered 7,000 lbs.

Petersen asked none of this wood that you would propose to use is treated?

Fosse replied none of it will be treated. The DNR told me that I can't put anything with arsenic in it.

Kovacovich opened for public comment.

No public comment was given.

Kovacovich closed public comment.

Andres commented I have concerns about the construction of this boardwalk and the weight capacity of your skid steer being approximately 7,000 lbs. Most skid steers are also made for paved, level ground, not for crossing a boardwalk. My concern is the weight on your boardwalk. Have you thought about that? Is what you have proposed going to carry your skid steer?

Fosse answered the deck will be 4 – 5".

Andres stated I believe your paperwork here says 3" x 5".

Fosse replied the 3" x 5" are going to hold the posts upright, then the top deck would be 5" x 10' and however wide the tree gives me. It would be all hardwoods.

Andres commented my concern was just the weight bearing aspect and the tipping problems that you would possibly encounter.

Fosse said I can certainly find that out for wood, such as ash, which is the predominant tree out there that is going to be used. In Alaska, the docking systems there were made by 4" planks and that handled anything we wanted to run on it.

Grob added it is still not obvious to me why you need, or we should even allow, a boardwalk to accommodate your Bobcat. The activity that is going to occur on that island may be a one-time activity where you might need your Bobcat. In order to just normally use it as a recreation area, I don't quite see that you need access with the Bobcat. I do feel that more than a walking boardwalk would be worthwhile given the distance for you to reasonable be able to use the property. A side-by-side is a little over 5'.

Johnson added Petersen and I stepped that off on his side-by-side and it is 6'. That is what his track was in the snow when we drove down there. Would 8' work for a boardwalk with a 6' side-by-side?

Petersen commented we were thinking he would need a little leeway for navigation out there.

Grob stated I was thinking about 7'. Just to repeat, I don't think that we need to accommodate a Bobcat.

Johnson asked were there turns in that trail that you needed to make, or was it straight?

Fosse replied there are two slight bends. One at the beginning and then one when you come out of the trees at the bottom there.

Andres asked do you also have 4-wheelers?

Fosse answered we have a 4-wheeler.

Andres continued what other transportation do you use to get to that area besides the side-by-side that we saw?

Fosse responded that is the only thing that I have been out there with, but I do have a 4-wheeler.

Andres stated so you could access it with a 4-wheeler or something narrower.

Fosse replied the answer is yes, but the issue is why you are going out there. If you are going out there fishing, then it is transporting what you need. The side-by-side to me is kind of the minimum.

Andres clarified you need the side-by-side to carry your items as well.

Fosse agreed. I could do 8'. That gives me a foot on each side for safety on the Ranger. And that also gets the Bobcat out there.

Johnson asked what about raising it more than 1'? You are going to be right down tight with 1'.

Fosse stated if I fall off, I want to be able to get back on.

Johnson clarified I understand what Kovacovich is saying and I am trying to figure out a way.

Kovacovich added if we were to go with 8', I would want a condition that it has to be higher than 1' off the bog. If you need to put a side rail on it to keep you from running off, then so be it. My concern is how much sunlight actually gets underneath there. If you are going to use wood, I would think a condition in my mind would be that it has to be a minimum of 2' above the plants at the spring of the year when they are just starting to grow, and the distance between the decking of the boardwalk would have to be extended. What would you be comfortable with for spacing between your decking planks?

Fosse replied it is going to be rough cut, and it is going to shrink. If we did 1 1/2" it would end up around 2".

Petersen asked I see here on your description about those hardwood posts into the ground 4 – 5', I am just wondering how you know at 4 – 5' that you are going to be solid? Did you say that you were going to be pouring footings?

Fosse answered I am planning on getting some cement down in there.

Petersen stated I ask because I have some experience building on ground where I needed pilings. It seems like it is unpredictable unless you do soil borings to know exactly what you are dealing with. 4 – 5' might just be a shot in the dark there.

Fosse replied correct.

Kovacovich asked what are the dimensions of the posts?

Fosse answered 7' x 8' or 8' x 8'. You were talking before about building out there, we don't intend to build anything out there. We would maybe have a picnic table and a cover shelter for the picnic table.

Discussion ensued about the conditions that would be placed on an approval.

Grob asked Petersen are you okay with the way that he wants to support the beams?

Petersen stated in my mind there are a lot of unanswered questions there. I have never built a boardwalk out over a bog. I do think there are a lot of unknowns going into soft land like that.

Grob added my concern is that if we approve 8', he could actually get a Bobcat on it that is 7,000 lbs. without having any clue as to what the support would be.

Fosse mentioned if I drill down and I don't hit something solid, I am not putting it in. It is not going just because I want to put it in. It is going to be done correctly or I am not going to do it.

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

1. The boardwalk cannot exceed 7' in width.
2. The boardwalk must be located 2' above the existing vegetation as measured in the spring after the snow has melted.
3. There must be a minimum of a 1 ½" gap between the decking boards on the boardwalk.

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

The Board provided answers to the findings of fact questions 1 – 4 and adopted the staff report answer for question 5.

Findings of Fact

1. Is the variance in harmony with the general purposes and intent of the official controls?
Yes (X) No ()
Why or why not? It is based on the distance and the circumstances of the geography of that area to be able to access the land and the lake for recreational activities.
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? He is just asking for access to the island so that he can get to the lake and do some fishing and picnicking on an area of high ground that is considerably sized.
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 length of the wetland and how the ordinary high water mark meanders through that area in relationship to where the actual open water is creates a very unique circumstance.
4. Will the issuance of the variance maintain the essential character of the locality?

Yes (X) No ()

Why or why not? No one other than the landowners or guests are going to be able to see it. It is a well wooded site in a very remote location.

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.

Variance Application 68-V-21 by Keith Mueller: Unit 5, CIC Number 7, Village in the Pines, Section 19, Township 141, Range 34, Lake Emma Township on Potato Lake, a recreational development lake. Parcel 16.39.90500. Applicant is requesting a variance from Section 702 of the Shoreland Management Ordinance for proposed enlargement of a nonconforming residence located in the shore impact zone.

Keith Mueller, 18071 219th Ave., Nevis, MN, presented the application.

Mueller stated I am requesting a variance to tear down our old cabin, which is pretty rotten. It is 20' x 20'. Since it is so little, we would like to add a second level to it.

Petersen asked the current building, what does it have for a foundation right now?

Mueller answered it is a poured foundation, but it is pretty old and doesn't look very structurally sound.

Petersen clarified there is no basement there?

Mueller replied no, there is just a crawl space under there.

Grob asked when did you purchase the property?

Mueller answered 15 years ago.

Grob continued were you aware of the fact that there are constraints on those structures to not be increased in size?

Mueller clarified as far as the footprint, yes.

Grob stated I am very familiar with this situation. I was part of the Potato Lake Board, and a very active participant in the original work that was done with the Planning Commission and with the Commissioners. I was able to dig out about 20 pieces of documentation on my computer on some of the meetings that took place. I would like to hear other people's comments before I make any more.

Kovacovich asked Buitenwerf could you explain to me how the conditions were not attached to the conditional use permit, but rather to the plat? What is your view of the original intent of the prior Board of Adjustment and the County Commissioners at that time?

Buitenwerf explained the intent was clearly to not allow any of the units that were approved and located in the shore impact zone, which includes this one, to be enlarged. That would be in keeping with the ordinance language as well as the State Shoreland Rules which say that if you have a structure in the shore impact zone, it is not to be expanded, and if there is room on the property during the approval process, an alternate location for the structure that meets all setbacks should be provided in the plat. That was not done here. I don't know if the County determined that there

wasn't the ability to meet setbacks in an alternate location or not. Logistically the County did not go about things properly when they processed the conditional use permit and the plat application. The County Board ended up placing conditions on the final plat approval that typically are placed on the conditional use permit. So, the conditional use was approved without any conditions as a result and the Board instead erroneously placed those conditions on the final plat. Many years ago, when the adjacent two units (3 and 4) approached the department asking what they could do, and how can we enlarge our units, we researched that history of events with counsel. Counsel concurred that the County made an error, and thus there were no conditions placed on the CUP. That said, counsel advised the appropriate process at that time for enlarging those structures would be to apply for a variance which was done and then granted. That is also the reason why the applicant is before you this evening with his request.

Grob added the ordinance is very clear that planned unit developments must have a conditional use permit. When the conditional use permit is issued, if there are no conditions, why does not the Shoreland Management Ordinance then take precedence over what should be allowed or not allowed? A conditional use permit spells out very clearly what is allowed in the shore impact zone with conversions like this. If they forgot to put it on the conditional use permit, why does not the Shoreland Management Ordinance take precedence? That should be our baseline in our discussion and decision that we make, rather than hide behind the fact that the conditional use permit does not have any conditions. Nowhere did the County Board say that they were overriding the Shoreland Management Ordinance. I understand what counsel says, but at the same time I don't understand why the Shoreland Management Ordinance does not take precedence.

Buitenwerf stated the County obviously erred procedurally back in the day. The fact that the variance is before you tonight is due to the fact that we are saying the ordinance does not allow expansion in the shore impact zone just by permit. In light of everything, this is the best means of moving forward, and it provides the means for a public hearing, public input, and review by at least the Board of Adjustment which also functions as the Planning Commission. Yes, we don't have an amendment application process to amend a condition of the CUP.

Grob said there is no root that we can go back to.

Buitenwerf continued you obviously had the intent back then to reference in your deliberations tonight.

Grob stated clearly this particular structure is falling apart. He did invest in something, and he needs to replace it in some way. The fact that it is in the shore impact zone is the major driver to any amount of expansion or change that could be done. That is where the ordinance is very clear about it, you have to move it back. He is constrained by the fact that there is a 30' x 33' footprint that belongs to him. When this all went down, it was way over density. It is not even 50% of what the surface area ought to be. That is why there were such strict rules put in place. If the homeowners association would give him another 20' away from the lake, such that he could build back at 50', I all of a sudden see about 20' of vegetation in front of the structure. Then he could build up to about 17', which would not be objectionable as opposed to something higher than that. Whatever we allow in this particular case, I guarantee you that there will be about 4 or 5 similar requests in the future. I am trying to find a solution while still going back to what the original intent was of keeping it low profile and staying out of the shore impact zone. Otherwise, I am not in favor of doing anything given the history.

Petersen asked what are your feelings about that proposal?

Mueller clarified about moving it back?

Petersen mentioned you would have to go to the association.

Mueller replied it would look weird to have all of the cabins in a line and then one set way back like that. The peak of the roof would only be 6' taller than what it is right now. I don't understand why going up impacts the environment of the shoreline.

Grob explained for visibility. That is why in the Shoreland Management Ordinance there is a 35' maximum at a 100' setback. As you get closer to the lake you are trying to maintain a profile. Part of my notes were to allow a 50% increase of the footprint if you move it back to the 50' setback. In the past we used to have a policy where we allowed structures that were out of the shore impact zone to expand on the opposite side of the lake at about 50%. To try to maintain the profile of all of the cabins and get more back to the intent of the ordinance, there should have been alternate sites. Moving it back a little bit is kind of the equivalent. I have a plat from way back in the beginning that shows the actual dimensions of his lot. There is definitely space to move it away from the lake. That would give him more space to build in and be more in line with things that we have done in the past with individual residences that were not in the shore impact zone, but less than 100' from the lake.

Petersen asked if he were to just rebuild the building exactly as it is, could he do that?

Buitenwerf replied with a permit.

Petersen clarified with a permit he could rebuild it exactly as it is right now.

Kovacovich asked right now the peak of the existing building is 13'. The proposal is for 25'. It is a 12' increase in peak. Just for the record, is that correct?

Mueller agreed.

Andres asked are the bedrooms going to be upstairs or downstairs?

Mueller answered upstairs. There is not much room downstairs. We were going to put the beds upstairs and make the whole downstairs living room, kitchen, and bathroom.

Petersen added I was thinking about the idea of you having a basement under this building as opposed to what you have now. If he were to rebuild it as it is, there is a crawlspace. There would be excavation no matter what to that site. That is unavoidable, even if you were to rebuild it by permit. What if you could have a single story building there with a basement, and perhaps a lookout to the lakeside if you eliminate the deck on the lakeside? Grob's proposed is fine, I am just thinking of options if that wouldn't work.

Mueller responded I would be a little nervous about the water level if the lake ever got high.

Petersen said you would have to check into it. We would have to have a 3' separation between your lowest floor and the water table. Those things would have to be verified. Assuming those things were, then we keep the profile lower and get the deck off the lakeside so that we are going back with our impervious surface.

Grob mentioned you would gain some greenway by taking the deck out of the way, which is part of what I was seeing as an advantage to moving it back. You can see there is not much here.

Petersen agreed. He would need a design and survey work to shoot grades to see if that could be done.

Kovacovich stated I would be open to that with the documentation and elevations. With all of the unknowns, it is hard to know how to proceed with this without more information.

Andres said currently the applicant has the potential to rebuild the structure by permit in the same footprint and dimensions. By permit can he also build a basement, or does he need a variance?

Buitenwerf explained a basement could be built through that permitting process, assuming that the 3' separation from the highest water level is able to be achieved.

Andres continued the applicant could have a shore alteration permit to remove 10 cubic yards as well, if that was needed for this construction?

Buitenwerf agreed.

Andres stated it appears that you have some options to rebuild your structure and have the same 3D exterior, a lower expansion that you could probably get your two bedrooms in, and that you could do it by permit with a shore alteration permit and the building permit. Do you realize that you do have some other options besides this variance?

Mueller replied I didn't think about a basement being that close to the water.

Andres clarified as long as you meet the 3' separation. It appears that there is a possibility because of the crawl space that you have and the elevation that you are currently at. That was noted at our lot viewals, we just didn't know if you would be open to seeking that route.

Grob mentioned Potato Lake does not have a wide range of levels because of the dam. The dam design controls it. It has been kind of low this summer, but it would never get more than about a foot above where it was.

Kovacovich opened for public comment.

No public comment was given.

Kovacovich closed public comment.

Andres commented if the applicant was in lieu of wanting to keep his structure in line with the other structures, I personally feel that I would deny the application, as he has possible other avenues that he can use to rebuild by permit.

Mueller asked are you saying that the Board made a mistake by letting the two units next to us build up? How were those people able to add another story to theirs?

Buitenwerf explained a variance was granted for them to do that.

Mueller asked are you saying that someone messed up?

Buitenwerf clarified not in that process. It was prior to that, when the resort first converted to a residential planned unit development. The County process was not handled properly.

Mueller said they just did this a couple years ago.

Grob stated the prior variance was granted in 2007.

Andres added I am saying that I believe you can still achieve an expansion. Instead of going up, it is going to go down.

Mueller responded being that close to the water, that would be really weird. No one would build a house that close to the water like that.

Kovacovich asked Buitenwerf do you have the contour layers to put up?

Grob mentioned he is about 10' above the ordinary high water mark.

Petersen asked you told me before that you have a crawl space under the cabin?

Mueller replied it is up on that poured foundation. There is about a two foot crawl space under there.

Petersen said I am just trying to think about how deep you could go and still maintain that 3' separation. I think if that were something that would be tried, you could pull up your foundation to meet that. You can keep your main story to just a single story, so you would still be keeping a lower profile.

Kovacovich stated I would be more in favor of that.

Grob said 1440.5 is the ordinary high water mark.

Buitenwerf added the highest known elevation is 1440.8.

Discussion ensued repeating the options that the applicant has for building and the information that the Board would need to make a decision on the application.

Kovacovich stated before us are two options at this time. One is to table it, and to explore the possibility of putting a basement in to accomplish more space for the cabin. The second option would be to deny as presented.

Buitenwerf added as I consider the basement option, if the highest know water level is 1440.8, three feet above that is 1443.8. Your highest point on that building site is 1450, and that isn't the entire site. You aren't going to have the ability to have a full basement without some allowed height increase.

Kovacovich agreed. Rather than the current height of the building at 13', it may end up having to go to 14 or 15'.

Grob said the cabin to the right is a little bit higher than his.

Kovacovich added until we have more information here, maybe tabling it is the best. If they could put an 8' basement under it and 13' on top, we would end up being at 15'. Knowing that would be a lot more acceptable to myself than granting the proposal as is.

Johnson asked what would he be coming back for a variance for then?

Buitenwerf replied the same thing that is being requested, which is expanding the structure in the shore impact zone.

Kovacovich clarified if the height has to increase.

Buitenwerf added I don't see how you could get a code compliant basement height without the structure above it rising and occupying airspace that the existing does not. You would have to go a foot or two higher if you are going to have an 8' sidewall height on the main level and the same on the basement.

Andres said according to the water level being 1440, and having the 3' separation takes us to 1443. The highest level there is 1450. That only leaves like 7' to work with, and he is going to need a little more than that to meet code.

Discussion ensued about tabling the application to explore the possibility of adding a basement to the structure.

Petersen made a motion to table the variance application to allow the applicant time to pursue permit possibilities with Environmental Services or the option to add a basement instead of a second story to reduce the proposed height of the structure.

Kovacovich seconded the motion that passed 5 – 0.

Variance Application 69-V-21 by Jennifer Rover and Brad Greiner: Lot 1, Block 3, Mantrap Point, Section 18, Township 142, Range 35, Clover Township on Little Mantrap Lake, a recreational development lake. Parcel 05.40.01000. Applicants are requesting a variance from Sections 502.2, 503, and 704 of the Shoreland Management Ordinance to develop an unimproved nonconforming lot into an improved lot. Variances are requested from the ordinary high water mark, bluff impact zone, and road right-of-way setbacks for a proposed house, detached garage, and driveway, and from the requirement that there be two suitable septic system sites that meet all setbacks.

Jennifer Rover, 4371 Horizon Heights, Chester, SD, presented the application.

Rover stated I am here this evening to present my application to build on a lot that was developed several decades ago and does not meet what the current ordinance sizing regulations are. I am requesting a variance from the ordinary high water mark setback, the lot line setback off of the right-of-way, the secondary septic site setback, and the bluff setback.

Grob said the only part that infringes on the road right-of-way setback is that 15' dimension on the corner of the garage.

Rover agreed. I measured it and it is about 4 ½' into that 20' setback.

Grob asked that is the only violation of that particular requirement?

Rover replied right, unless we wanted to take more for the drainfield area. I don't know if that would gain us any advantage.

Grob added the big issue with this is the second drainfield.

Rover responded it only has room for one drainfield. Thelen's went out and looked at it, and what he recommended was a two-bedroom.

Johnson explained it only has room for one site that meets the setback. It does have room for an alternate site beyond the 100', but for the proposed right now it only has room for one that meets all setbacks.

Grob clarified you are saying that there would be room for a drainfield?

Johnson continued there would be room for a drainfield that would be beyond the 100' setback from the ordinary high water mark there on the map.

Grob stated it just wouldn't meet the 150' setback.

Johnson commented this met the soils opinion that it would be one that would qualify to dig out. It is a sandy soil. The layout there makes a lot of sense because it would be able to be a gravity system with the cabin up on that hill. You can get by without any pumps.

Kovacovich opened for public comment.

No public comment was given.

Kovacovich closed public comment.

Grob stated it looks as though most of the infringement with regards to the bluff impact zone is right in front of the cabin. If I remember, this lot was approved before there were bluff requirements.

Kovacovich questioned with snow cover it is hard to see everything, but that entire hillside and bluff is vegetated?

Rover agreed. The entire lot is vegetated.

Andres asked are you going to have a basement on this?

Rover replied yes. The idea would be to put a walk-out on that to make sure that we keep things level up top and don't have drainage towards the cabin. I am not sure that you could even do slab in there or a crawlspace on it. It is quite a drop.

Andres asked which direction is the walk-out going to be on your cabin?

Rover answered to the northeast/northwest. It will just be that very end. It won't be towards the lake.

Kovacovich stated looking at what that lot is, it seems to be that quite a bit of care has been taken to put this in the most desirable location to minimize any impacts. I would be in favor of this, I am just mulling any conditions that we would want to put on this.

Grob mentioned make sure that they follow the ordinance with regards to not altering the vegetation within the first 50' from the lake. We could note that, but it is a standard requirement.

Rover commented our plan isn't to modify anything along the lakeside at all.

Grob continued you are aware of the ordinances that, other than a walking path to the lake, you are not allowed to remove any of the vegetation within 50' of the lake.

Rover replied right, unless it is causing a danger.

Andres added I don't see any type of deck proposal. Are you proposing a deck at all on your cabin?

Rover answered that was part of our design plan. The side towards the garage will be a screened porch. That will serve as our deck area.

Andres clarified so you don't have an exterior deck in mind?

Rover replied no.

Andres asked Buitenwerf if they decide that they want a deck in the future, is that something that would have to be done by variance for the bluff?

Buitenwerf replied correct.

Rover added if we were to do that on the north side, we would probably need one there too?

Buitenwerf stated it appears that area meets the 100' setback, and that was not determined to be a bluff, so that could be done with a permit.

Rover said that end is a bedroom, so I don't think we will be doing that anyway.

Grob asked when I see your 61' dimension, if I understood what you said, the left side would be a screened porch?

Rover replied correct.

Grob continued that would be the equivalent of your deck then?

Rover responded yes, there is just under 14' that will be a screened room. That will be on slab, and the finished area will be beyond that.

Kovacovich made a motion to approve the application as presented in the variance application site plan sketch.

Johnson seconded the motion that passed 5 – 0.

The Board provided answers for the findings of fact questions 1 and 2 while accepting the staff report answers for questions 3, 4, and 5.

Findings of Fact

1. Is the variance in harmony with the general purposes and intent of the official controls?
Yes (X) No ()
Why or why not? Great care has been taken to identify all of the components of this to minimize the impact on this lot that was established prior to portions of 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? It is a recreational lake and there are numerous cabins and homes on this lake, and this will fit right into that. The home size and garage are reasonable.
3. Is the need for a variance due to circumstances unique to the property and not created by the current or prior property owners?
Yes (X) No ()
Why or why not? A bluff occupies the eastern middle portion of the lot. The lot varies from 135' in depth at its narrowest point to ~240' at its maximum depth along the north lot line. The lot is 47,000 sq. ft. + in size per the tax parcel GIS map. The bluff location and lack of lot depth make it difficult to site much for an improvement on the lot and still meet the 20' road ROW, 30' bluff crest, and 100' OHW structure setbacks along with the 150' OHW SSTS drainfield setback.
4. Will the issuance of the variance maintain the essential character of the locality?
Yes (X) No ()

Why or why not? The locality is made up of similarly sized lots within the same plat. The riparian lots that are developed are used seasonally as residences. Most of the back lots in the plat remain unimproved. The bluff that exists on this lot runs along the shoreline through the other lots in the plat as well. The proposed structures would be placed at setbacks from the bluff and ordinary high water mark that would be similar to the setbacks of neighboring structures. The dimensions of the proposed cabin and detached garage are similar to those of the structures on the neighboring lots.

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.

Miscellaneous: Buitenwerf stated we are a week from the application deadline for the January agenda. We could receive more, but more than likely you will have a preliminary plat application for the Planning Commission. We currently have five variances that are new, plus the one that was tabled this evening, so a minimum of six, and probably some additional that we will receive before the deadline.

Communications:

Adjournment:

Andres made the motion to adjourn.

Grob seconded the motion.

The motion carried unanimously 5 – 0.

The meeting adjourned at 8:12 p.m.

Respectfully submitted,

Staci Lee

Recording Secretary