

## **HUBBARD COUNTY**

### **Planning Commission/Board of Adjustment Meeting Minutes**

6:00 p.m. on Monday, January 22, 2018

Chairman Ken Grob opened the meeting with the following members present: Tom Krueger, Ted VanKempen, Tim Johnson and Mark Petersen. Also present was Environmental Services Director Eric Buitenwerf.

County Commissioner Dan Stacey, ex-officio Planning Commission member, was absent.

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

#### **Election of Officers:** Chair, Vice-Chair, and Secretary

Grob called for a nomination for Chairman.

VanKempen made a motion to nominate Tom Krueger as Chairman.

Johnson seconded the motion.

The motion carried unanimously 5 – 0.

Grob called for a nomination for Vice Chairman.

Johnson nominated Mark Petersen as Vice Chairman.

VanKempen seconded the motion.

The motion carried unanimously 5 – 0.

Grob called for a nomination for Secretary.

Grob nominated Ted VanKempen as Secretary.

Petersen seconded the motion.

The motion carried unanimously 5 – 0.

#### **Planning Commission:**

**Approval of Minutes:** December 16, 2017 meeting.

VanKempen made a motion to approve the minutes as presented.

Petersen seconded the motion that carried unanimously 5 – 0.

**Old Business:** None.

**New Business:** None.

**Board of Adjustment:**

**Approval of Minutes:** None.

**Old Business:** None.

**New Business:**

**Variance Application 1-V-18 by Margaret Marth:** The Southerly 175 feet of the Northerly 550 feet of Government Lot 1, Section 11, Township 143, Range 35, Lake Alice Township on Lake Alice, a recreational development lake. Parcel 15.11.00300. Applicant is requesting an after-the-fact variance from Section 506 of the Shoreland Management Ordinance to have a guest cottage that exceeds the 700 square feet footprint and the 15 feet height threshold.

No applicant present.

Johnson asked Buitenwerf do we know what the status of the boat house next to the lake is, as far as compliant or not?

Buitenwerf replied we do not have accurate assessment records on that. They had an estimated year built of 2011, but my guess would be that structure has been there for some time and the assessor just picked it up. They did not have an actual year built date entered in, which they often do.

Krueger asked on the building permit, was it asked for a 24' x 40' building because there are several different sizes on the actual permit sheet I saw. So was it 24' x 40' or was it a 20' x 24'?

Buitenwerf responded the 20' x 32' permit was for the garage. They have a storage building and a garage marked on the permit. Based on reading these old permits over the years, the storage building dimensions are 24' x 40'. The storage structure, nor the garage that was also permitted at that time, were built to dimensions listed on the permit.

VanKempen commented if you look at the dimensions section, the 20' x 24' has been crossed out, and above it is written what looks like 40' x 24'.

Buitenwerf stated the garage is 24' x 36' per the assessment records. The guest house is 960 square feet per assessment records.

Krueger asked does that mean even the garage was not built according to the permit specifications?

Buitenwerf replied per the dimensions on the permit, that is correct. It meets all the setbacks and there is not an impervious surface issue on the lot so it is not a critical factor that it was built larger than was stated.

Krueger asked was there a permit ever issued for the gazebo?

Buitenwerf responded we have no record of a permit for the gazebo.

Krueger commented I am trying to establish a history for the record.

VanKempen asked so tonight we are just addressing the guest house?

Buitenwerf answered that is correct. That is what is before you in the variance request. If there are other items that require attention, those will be handled separately through the department.

VanKempen commented that was kind of my question. The boat house seems to be a question and some of the other buildings that were out there. There were three permits, for the home, garage, and storage shed, issued in the past, but nothing for anything else.

Buitenwerf remarked two permits actually, just the garage and guest house. The main house does not have a permit. The assessment records show a year built date of 1972. I typically treat those dates with a lot of grace. Based on the assessment records of having an actual year built of 1972 for the main house, my guess is that since we do not have a permit on file, the house was built prior to the ordinance.

Grob clarified because the assessor identified in 1972? I think it is closer than 100 feet to the lake. Back to not addressing the accessory structure on the lake, if I understand it, one of the conditions for a guest cottage is that there are no violations in the shore impact zone. That accessory structure is clearly a violation both size wise and location wise. Somehow it has to fit in the equation in terms of this, they are only asking for a variance for size and height of the guest house. In essence, in order to have a guest house, they should also be asking for a variance for that accessory structure or we should address it not being there. To have a guest house, it needs to be 100 feet back, you need to have a 40,000 square feet and 150 feet wide lot. It meets all of those requirements, and it cannot be more than 700 square feet or 15 feet in height. It violates those two, but it also violates an additional condition which is there cannot be any violations in the shore impact zone. I think the ordinance is pretty clear on that. Section 506 requires there are no violations in the shore impact zone. Even an accessory structure has to be less than 10 feet high, 48 square feet, and 10 feet from the lake. That accessory structure is into the lake from best I can tell. I am trying to make the point that I think that has to be part of the variance or at least into consideration.

Buitenwerf stated to clarify on the point made by Grob, we do not have sufficient information to make a determination on when the boat house was constructed. That would be something that you could possibly request of the applicant. Since they are not here this evening, that would necessitate tabling the matter until that information can be provided. That would be the avenue I would recommend if that is a key consideration for the Board.

Grob commented I actually think it is built beyond the ordinary high water mark, it is into the lake. If you look at all the vegetation, cattails and such, he has filled that in and built a platform for the boat house.

Krueger stated when I first started reading this, I was thinking maybe the owner had a misunderstanding of what the definitions of a guest cottage and storage facility were. That maybe just having bunks in a storage facility would be acceptable until I read Roger Marth's letter which stated, "We will move the guest facilities into the only extra bedroom in the house and the office storage and the art storage into the storage building." That says to me Mr. Marth understood that having bunk houses in that storage building was not allowed.

VanKempen remarked go back to the letter from Roger Marth, which Krueger just referenced, received June 8, 1990. In the second paragraph it says, "Our home has literally been under construction for over 20 years." If this letter came in 1990, 20 years before that would have been 1970. Per Roger Marth's letter he started construction prior to the 1971 ordinance.

Krueger clarified that is on the main house?

VanKempen replied on the house.

Petersen asked Buitenwerf are the two communications we have on file, the only written communications that exist between the Environmental Services Department and the owners?

Buitenwerf answered prior to the current variance application, yes, that is all we have in the file.

Petersen asked there is nothing from 2002?

Buitenwerf replied correct.

Krueger asked for public comment.

Public comment was given by Harry Vollen, 1603 Irvine Ave NW, Bemidji, MN.

Grob asked Vollen you have been inside the building structures, we have not. How many bedrooms are in the main house?

Vollen answered there is one bedroom on the main floor and then there are Jack and Jill bedrooms upstairs. They do not have doors or anything, just kind of an attic.

Grob asked what is in the guest house/storage building for bedrooms?

Vollen replied there are two bedrooms and bathrooms upstairs. They both have geothermal heat in them. It is well constructed. My buyer had a home inspection and everything, in both homes, checked out.

Grob asked are there any bedrooms in the basement of that guest house?

Vollen replied no there is just the geothermal furnace and cement floor. It is probably only 10 feet by 20 feet.

Grob asked are there any bedrooms on the main floor?

Vollen answered no, I do not think so.

Grob clarified so just in the loft area up above, in the second floor of the guest house?

Vollen replied yes. It is not Jack and Jill up there, there are two bedrooms.

Grob asked and those are the only bedrooms in the guest house?

Vollen answered correct.

Grob asked can you describe what is on the main floor?

Vollen responded the main floor is just kind of a living room area, a bathroom, and a mechanical room with laundry, I believe. I sold it at the beginning of October, so I have not been there in a while.

Grob asked is this the kitchen area here?

Vollen replied yes. It is a nice little guest house they made out of it.

Krueger asked Vollen do you have any comments you want to share with the Board?

Vollen stated I just came to find out what was going on. They said it would be approved or denied at this meeting. I have a buyer who is down in Florida, Jerry and Gloria Heldt. They want to buy the house with the use of the guest house. We ordered the first appraisal earlier. There is another appraisal ordered for tomorrow unless this does not work out. We could delay it of course. Rachel, the original appraiser, contacted the court house and learned of the violation. We did not know anything about it, but that is when we learned we had to do the variance. I do have Marth's phone number if we want to talk to her by cell phone, if you needed too. My buyer does want to buy it and we are hoping to close in February.

Grob asked Buitenwerf did the Environmental Services staff measure the distance of the guest house to the lake? Where do they consider the ordinary high water mark? Do you see all the brown on the map? That is all cattails and emergent vegetation. I would think the ordinary high water mark is where that ends. There is suspicion that got filled in. I was almost of the conclusion that the accessory building is built beyond the ordinary high water mark.

Buitenwerf replied the ordinary high water mark for Lake Alice is 1419.8 above mean sea level. That orange line along the shore on the map is depicting approximately 1420 elevation.

Grob clarified so even though all of that could be emergent vegetation, they consider the ordinary high water mark at approximately 1420.

Buitenwerf commented the laser system that is used relies on a lot of control points that are taken at various vegetative covers. Even with that, they run that through a formula to make adjustments for how the laser reflects in certain vegetation types. With shorelines like that, they kind of use old fashion eyeballing where the water is too. It could be when you went out with survey equipment in spring, when the lakes open again, the ordinary high water mark could go some ways into that cattail/emergent vegetation area. It is hard to say without actually being able to do that.

Krueger commented if you look at the contour lines, everything is straight until right there by the boat house. It looks like some fill was put in there, probably going way back to the construction of the house.

Buitenwerf said the closest aerial I have, which is on the screen, is from 1969. There is not enough detail to the imagery to know if there are structures there.

Johnson asked Vollen if the guest house was converted back to a storage building, how much would that affect the estimated market value?

Vollen replied it would obviously be less, but I do not know for sure. If the only way you could use it is as storage, even with the bathrooms. The whole property is listed at \$219,000. Lake Alice is a smaller lake so the land is not worth as much. The house is honestly almost less. The main house has decks off of it, but the guest house is just as nice if not better. With the boat house, Roger Marth said in one of the letters that he owned the property since he was 15. He died in 2013, so it was probably done a while ago. I have been selling real estate since 1992. I have seen a lot of stuff happen over the years. This is a new one, an after-the-fact variance from over 25 years. The buyer probably would not want it if it was really just a storage building.

Johnson clarified my question was how much money do you think it would be less, approximately?

Vollen answered I would guess probably \$30,000 - \$40,000. It would be like a garage, supposedly. The value would definitely decrease.

Written correspondence was received from Chip Lohmeier, Land Commissioner.

Krueger closed public comment.

Krueger stated one thing I noticed was this septic system. He has a notice on it way back in 1990. Was it not until 2002 that anything was done about it? Is that the very same system that Vern Massie was talking about (in his letter)? In the last paragraph in Roger Marth's letter, he says he "would attack the septic drain field this fall." In other words, he was telling Vern Massie, the Environmental Services Officer in 1990, that he was going to go fix this right away.

Vollen commented I do not know why, I look at everything and I keep saying variance denied or whatever. It has been going on many years. The septic was hooked up to both units. You do not put a septic to a storage building. It has been looked at as a guest house for almost 25 years.

Grob stated this is very problematic for us in a couple of ways. As a Board, we have been very adamant about people building guest houses to the right size, in the right location, and so on. We have been pretty tight about not allowing them to exceed the requirements. However, when I look at this, the guest house meets the setback, the lot is large enough, and the shoreline is large enough, except for the accessory structure which bothers me because of its impact on the lake. Basically size and height are the issues. It is clear the owner willfully and with premeditated intent violated the ordinance. At the same time, Hubbard County has not done anything going all the way back to 1990 and 2002, at least 25 years. What sits there now today, has been there. If we want to talk about the ambiance or the harmony or the location, it is as much a part of that lake's setup as anything. When I look at the complications of trying to bring it back into compliance, it would be very unreasonable to make it smaller, size wise. You could chop off that second floor and meet the height requirements. Fundamentally what it comes down to is, I do not see a very practical way to say alright, it cannot be a guest house anymore. You have to get rid of the bedrooms. How do you do that unless you tear down the structure? They are still going to be there. What I am trying to get at is the ability to specify to the Environmental Services staff what they should do to bring it into compliance, to make it a storage building. It is almost unenforceable or impossible to do. I thought about this a lot, if we could put some conditions on approving the variance, the two I am thinking about is getting rid of that accessory structure. The thing that bothers me the most is these two buildings together would be ideal as rental property. If you want to try and be in harmony and preserve the ambiance, if you could ensure it would never end up as rental property and get rid of that accessory structure, that guest house as it sits now is not hurting anything. It has been there 25 years. If we keep it the same size and shape, its effect on the lake is not going to change. But my problem is when I look at the findings of fact, I have a hard time coming up with five or six yes answers. The unique thing is, it has sat here for 25 years and the County has done nothing about it. It is basically already part of the natural situation of what is there. When you get to question 13 in the findings of fact, where it says would the minimum benefits to the County outweigh the detriment, I am not sure. It would surely make it easier on Environmental Services staff to make sure that it is in compliance. If we could guarantee that we preserve the character of the area, in terms of usage, if that was possible, I would at least be open to that as a possibility. I do not see, without being able to go into that building, how you can say what has to go and what can stay. I do not see how you ever eliminate the potential for a guest house. If I bought that place I would say okay, I will get rid of the bedrooms and take out that. But when somebody walks away, I would let people sleep there and whatever. We can pretend that we have implemented the ordinance, that it is no longer a guest house, but it is still there with all of its features and the entire infrastructure. The County approved the septic for a guest house, it is therefore sized for probably more bedrooms and living space than the main house. I am trying to say that it is not enforceable in any way. If you granted it, you would not offend any neighbors by having all kinds of activity. You would just maintain what has been there for 25 years. If we cannot do that, I am of a mindset to say to bring it into compliance, you have to rip off at least the second floor on that guest house.

Krueger stated when I was going through this I was torn by two opposing sides on this. One was the lack of follow-up by the Environmental Services Officer in 1990, or 2002. Now that I find this was probably the very same septic system they were talking about

from 1990. They had 12 years, why was nothing done. There is that tugging me one way. Tugging me the other way is Mr. Marth's blatant attempt to try and avoid the ordinance. Maybe if you could come up with some mitigation methods, like we said one would be building the boat house. If we get the findings of facts questions, specifically one through six, from a no to a yes then maybe we could.

Petersen remarked my concern here is consistency with what we do here on the Board. Not only with this homeowner, and future homeowners, but past. I am kind of in agreement that Mr. Marth knowingly looked the other way when being asked to comply with the ordinance requirements at the time. It is hard for me to just say okay, it is done. I do have a problem, as Krueger referenced, with the septic approval in 2002. Why the County did not look at it at that time, I am not sure what happened there. I still cannot get by trying to be consistent as a Board with the future going forward. What are we saying to homeowners if you just ignore the ordinances, then let the chips fall where they may and the Board will say okay, you did it and you can now have your guest cottage that exceeds the 700 square feet footprint and other height requirements. I am struggling with that to go forward. I am wondering if we just deny the variance, what would that do to the appraisal? If we do nothing else to enforce, we are just denying approval of a variance where we know it is not in compliance in anyway and there was no attempt to make it into compliance that I can see here.

Vollen stated I do not think it would go through, nobody is going to borrow any money to a building that was denied a variance. I do not think anybody would be able to borrow money unless you did a cash deal. I do not know if it is the same Vern Massie, I think Roger kind of put blinders on and moved forward. I think the Environmental Services Department said whatever you think. I do not know what happened. This went on for so many years. Roger obviously wanted a guest house when he had the property. Even the area that is filled in, that might have been done in the 1970s or something. A lot of septic were upgraded in the early 1990s.

Grob commented how can we be consistent? We have been really tight about this. If this had happened two years ago, or he was just coming in for a first time variance to do it, I think we flat out we would say no. But it has been there 25 years and at some level overlooked. To me that is the uniqueness that may allow us to maintain the tough stance we have had on guest houses. We just deny the variance but I know Buitenwerf will ask us what conditions you are putting on that denial in terms of what has to be done to bring the property into compliance.

Buitenwerf clarified if the Board would deny the application, then the enforcement of the ordinance falls on the Environmental Services Department. We would send a letter saying you have applied for and were denied an after-the-fact variance therefore the guest cottage use of the structure must cease.

Petersen summarized in other words, if we did deny, there is nothing that we are required to do to make sure it comes into compliance. It falls out of our hands and onto the County's.

Buitenwerf replied correct.



Grob remarked if the Environmental Services Department then enforces compliance, we come back to question 13 on the findings of fact. Would the minimum benefits to the County appear to be far outweighed by the detriment the applicant would suffer if forced to remove the structure? You are going to drop the property value \$50,000. Potentially these people who sold their home in Florida, and are ready to move in, are left hanging. There are all of those consequences. Maybe we should not worry about that. As I stepped back and looked at it, I thought if we denied it, it has to be a storage building. What is different? Other than this consistency thing about guest houses, what is different?

Johnson replied the difference is he did not get away with building a guest house without a permit. And they paid for it by having to sell it for less.

Grob commented he stated flat out that his long-term plan was to do all of this stuff. He was telling the County what his big long-term plan was.

VanKempen stated I am going to go back to Roger Marth's letter from 1990, in the third paragraph. He states that he had owned it since he was 15. His death certificate shows he was born in 1936 so that potentially means he could have owned it since 1951. The filling of the lake shore, where the boat house is now, could have occurred at any time after that and maybe even prior to the 1971 ordinance. Without good aerial photos and stuff like that, it is kind of hard to address that boat house without any concrete facts.

Grob remarked I went down and looked at the structure. It is much newer than that.

VanKempen responded he could have replaced it without permit. The filling could have been done. I feel the boat house has been rebuilt or built not that long ago, five or ten years ago at the most. But it could have been a rebuild, without a permit. The filling of the land could have happened anywhere from 1941 until five years ago, who knows without evidence and documentation. In his 1990 letter, he states it is not going to be a guest cabin, it talks about moving the beds back into the house and stuff like that. He was definitely aware. The way I look at it, he got to have that guest cabin for 25 years without penalty. Now the time has come to be consistent with our guest cabin part of the ordinance. I myself, I cannot find any way to approve it. As far as what we do to make it into a storage facility, or reduce the size and make it a guest cabin. That is in a sense not our decision here tonight. That is something the Environmental Services Office would take care of.

Johnson stated I like both Grob and Petersen's opinions. As far as being consistent, each one is unique like the attorney's have always told us. We do not have to consider that this is a unique situation. Like Grob said that is what we are, a variance board. We are not here to read the ordinance, we are here to vary from the rule. I thought about it back and forth, back and forth, just like you guys. I thought going along with the staff's recommendation is where it is going to be okay. We just have to live with it because we do not have county-wide inspections. It stays what it is, they can ask for documentation for taking beds out, but the house stays the way it is. Leave the bathrooms, leave your laundry, I can have that in a garage.

Grob asked Buitenwerf what are your thoughts on the minimal kinds of things you would probably require? I know you probably were not in the building either. What would be some of the things you would make them do to come into compliance?

Buitenwerf answered at a minimum it would be to state the use of that structure as a guest cottage would have to cease. Going above and beyond that, if we reached that point, I would have to consult our attorney for guidance on what if anything additional we would direct them to do.

Grob remarked if you read some of the things Marth said; it is like, "I am not going to use it as a living or guest cabin, whatever. I just want it for storage and for my family to stay when they come." He never bought into the concept it was a guest cabin, but rather the fact of well I could still let them stay there once in a while when they came and it was not a guest cabin. I am afraid it would end up the same way unless you physically modify it. Like the one we did on Long Lake, they physically had to redo things.

Buitenwerf responded the challenge we see in the department is the ordinance allows a bathroom in an accessory structure. There is nothing precluding laundry, the same way. It gets very difficult to say draw the line between a dwelling use and non-dwelling use. That is something I have been asking the State to take a look at, getting at the environmental protection they are seeking through the guest cottage language in some other way that is more enforceable. But that is going to be a long, slow process, if it does materialize. The practicalities of enforcement are daunting when it comes to guest cottages.

Krueger asked Grob are you leaning towards approval with some mitigation?

Grob replied I was just throwing that out. I wanted to make sure we had that discussion.

Krueger clarified would one of the areas of mitigating be removal of the structure by the lake?

Grob responded the two mitigations, to me, would be to get rid of that accessory structure and put a condition that it could not be used as rental property. Those are the things that would preserve it. But I understand the complications of trying to answer those findings of fact. If Buitenwerf feels comfortable that the Environmental Services Department can specify what has to be done so it is no longer usable as a guest cabin. I just want to make sure we had that discussion.

Krueger stated it is number two on the findings of fact where I have trouble. This is a unique circumstance. So number three, could probably get that one. For number four, I think the problems were created by the landowner and the County. There is more than just the landowner. It is number two so far that I still have trouble moving over, if you can convince me of that.

Grob clarified the question referring to reasonable use you mean?

Krueger replied yes.

Grob commented that is why I was asking about bedrooms. The main cabin has Jack and Jill bedrooms and a main thing. There is not much living space in the main cabin. That would be the only thing that it was his intent with these extra bedrooms. He could have added on to the house so it was more bedrooms. He is kind of deprived of reasonable use because he cannot use the bedrooms he put there.

Johnson clarified being deprived of reasonable use for the approval of it? He would not be deprived reasonable use because of the property having the use of it for 25 years.

Grob responded I guess that is the best argument against what I have been advocating. Yes, it will lose some value and it will affect some people in some ways. But he has had it for 25 years and he did all that he could, he got the value out of it.

Buitenwerf remarked point of information for the Board, as you are considering options with a motion, as far as the suggestion of the condition that the boat house on the shore be removed, which is a possibility mitigating condition for approval. I would advise gathering more information that would give you the confidence of knowing the exact age of that structure before we would pursue that option. Just because if that is a legal structure that predates the ordinance, we can get into trouble of there not being a sufficient nexus, meaning a legal connection between that structure and the guest cottage. I think we would want to know for sure when that boat house came into being before you consider that. If it came in afterward, where it should have had a permit and it did not, then obviously that would be a violation of the ordinance and it would be appropriate to have it removed or go through another after-the-fact variance process.

Grob stated it is my assumption that it is relatively new and it is in violation of the ordinance. But if it is grandfathered, I understand that.

Buitenwerf replied we just do not have sufficient information at present to know that for sure.

Krueger commented the storage building is not grandfathered so why could that not be used as a mitigating condition? I could see where the owner needs to be here.

Buitenwerf mentioned if the owner would be present and say I voluntarily agree to that as a mitigating condition, that might be a different situation. But since the owner is not here, we cannot.

Johnson asked Buitenwerf do all of the findings of fact need to be answered yes in an after-the-fact variance?

Buitenwerf replied one through six do.

Petersen asked Buitenwerf on the first finding of fact question, the department's answer in the first sentence, it seemed to me, where it says the landowner knowingly converted the structure. To me, from what I have seen here, I would have said constructed rather than converted. Was that a typo or do you feel it was converted?

Buitenwerf answered it could be either. I guess I was taking his letter at face value. The 1990 letter where he said he would not use it in that matter. I could totally understand how somebody would say I do not buy that he was being sincere with his statement in that letter and that he built it from day one as a guest structure.

Grob made a motion to deny the variance application and adopt the staff report findings of fact except for questions 7 and 9 for which the Board of Adjustment provided an answer.

Petersen seconded the motion.

#### Findings of Fact:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes ( ) No ( X )

Why or why not? The landowner knowingly converted the structure permitted in 1990 as a storage shed into a guest cottage after writing a letter to the Environmental Services Department in 1990 that said the structure would not be used as a guest cottage and would thus comply with the Shoreland Management Ordinance's (SMO) guest cottage regulations. The guest cottage is 1232 sq. ft. in footprint and 20' high which is 76% greater in footprint than the 700 sq. ft. footprint allowed in the SMO and 33% higher than the 15' maximum height allowed in the SMO. The structure is thus the size of a second main residence rather than a guest cottage. The 48,787 sq. ft. lot area and ~175' width exceed the minimum lot size and width requirements of 40,000 sq. ft. and 150'. The structure complies with the 100' ordinary high water mark setback.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes ( ) No ( X )

Why or why not? There is a primary residence on the lot as well as a detached garage in addition to this guest cottage. The lot is 48,787 sq. ft. in size, ~175' wide, and relatively level with largely forested vegetative cover comprised of a mixture of conifers and deciduous trees – which provides ample room for recreational enjoyment of the lot. The lot also has a dock on the lake and can be used for accessing the lake for its recreational opportunities. The illegal guest cottage structure can also be used for other things such as the originally permitted "storage structure" use. All of these items are reasonable uses currently occurring on the property.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes ( ) No ( X )

Why or why not? The lot is 48,787 sq. ft. in size and ~175' wide and comprised of relatively level forested upland. The alleged difficulty is not due to circumstances unique to the property, but rather the landowner's constructing a structure that greatly exceeds the maximum footprint and height thresholds in the SMO.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes ( ) No ( X )

Why or why not? The landowner created the practical difficulty by knowingly converting the structure in question into a guest cottage after having been informed by the Environmental Services Department (ESD) in 1990 before the structure was constructed that it could not be used as a guest cottage and writing a letter to the ESD in 1990 that states he would not use the structure as a guest cottage.

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

Yes ( ) No ( X )

Why or why not? The lots to the north and south of this lot are currently in seasonal recreational residential use and have solely single family structures on them that are similar or smaller in size than the primary residence on this lot. Having two residences on this lot that are each on the large end of the residence sizes in the neighborhood does not fit with the surrounding single residence seasonal character of the neighborhood.

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

Yes ( X ) No ( )

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

7. Why did the applicant fail to obtain a variance/or comply with the applicable requirements before commencing work? Did the applicant act in good faith?

Why or Why not? The landowner did not act in good faith. The documentation, including the 1990 letter, supports that. There is no way to know why the owner did not abide by the requirements. It is very clear that the landowner did not act in good faith and follow what he promised to do.

8. Did the applicant attempt to comply with the law by obtaining the proper permits?

Why or Why not? No. The landowners were informed in 1990 by the Environmental Services Department that the issued building permit was for a storage shed and did not allow a guest cottage to be built. The landowner then sent a letter to the ESD within a month of receiving the ESD letter stating the structure would comply with the SMO and not be used as a guest cottage. No variance or accompanying guest cottage permit were sought thereafter by the landowners.

9. Did the applicant obtain a permit from another entity that violated the law? Provide explanation below.

The Board of Adjustment is not aware of any other permits from any other entity.

10. Did the applicant make a substantial investment in the property? Provide details below.

Yes, a substantial investment was made in the guest cottage structure as it is 20' high, two-story, and 1232 sq. ft. in footprint.

11. Did the applicant complete the repairs/construction before the applicant was informed of the impropriety? Please provide details below.

No. The 1990 letter from the ESD to the landowners was written prior to the structure being constructed (only the excavation for the basement had taken place at the time of the letter) and the landowner's reply letter in which he stated the structure would not be used as a guest cottage was written 18 days after the ESD letter...which was prior to the structure being completed.

12. Are there other similar structures in the neighborhood? Please provide details below.

No. The neighboring lots to the north and south of this lot do not have guest cottages on them. The neighboring lots only have primary residences on them that are the same size or smaller than the primary residence on the lot involved in this variance application.

13. Would the minimum benefits to the county appear to be far outweighed by the detriment the applicant would suffer if forced to remove the structure? Why or why not?

No. The structure does not have to be removed. Its use as a guest cottage can be discontinued and it can then be put to a different use such as the originally permitted intent of functioning as a storage structure.

14. In light of all of the above factors, would denying a variance serve the interests of justice? Why or why not?

Yes. Having two residences of the size present on this lot does not fit in with the surrounding neighborhood that is comprised of smaller seasonal single family residences. The landowner knowingly violated the ordinance by making the structure into a guest cottage after having been informed by the ESD that it could not be a guest cottage and then writing the ESD a letter in which he said it would not be used as a guest cottage.

The motion carried unanimously 5 – 0.

**Miscellaneous:**

**Communications:**

Buitenwerf stated for February I have passed out copies for the proposed Animal Control Ordinance that will be on the agenda for Planning Commission business. Sherriff Aukes presented that to the County Board last Tuesday. The County Board directed the Commission to consider the draft and make a recommendation on it. There is also currently one variance application on February's agenda. But the application deadline is next Monday, so there is the possibility we might have a few more.

**Adjournment:**

VanKempen made the motion to adjourn.

Petersen seconded the motion.

The motion carried unanimously 5 – 0.

The meeting adjourned at 7:15 p.m.

Respectfully submitted,

Paige Nulliner

Recording Secretary