

HUBBARD COUNTY

Planning Commission/Board of Adjustment Meeting Minutes

6:00 p.m. on Monday, July 23, 2018

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

Krueger 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: June 25, 2018

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: June 25, 2018

Krueger said we do have some minutes and I know there are some corrections to make on that. I will start with the ones I had myself, I don't know what page it would be on, but this is the Terry Seter one on Dayspring, then there is one where I said that 50' is to the rock and then it is unintelligible, I believe I meant to the rock ring on that.

Grob added it is Variance 12-V-18.

Krueger added going down to the next line where it says unintelligible, you didn't know who it was, that was me that said that. Go down to the next unintelligible one that was me that said that. That was all I had. Anyone else have anything?

Grob said on the next page, just a little bit down, same variance, where it says Grob added, the unintelligible I think is pathway or walkway.

VanKempen said on the next page on the fourth paragraph, it says Krueger said I am starting to develop the same pattern of thought, if you were to reduce it down to, I believe it is supposed to be 15', not 25'.

Van Kempen said I also have a correction for the Merrick application, on the third page of that Merrick's, fifteenth paragraph and I am not sure about this, it says, "Johnson asked

how far is that from the parking lot, it looks like 6 feet?" I believe it should say property line.

Krueger asked any objection to changing that?

Johnson answered yes that is correct.

VanKempen continued go four pages to the unintelligible. I believe that was me. And then two paragraphs down.

VanKempen made a motion to approve the minutes with corrections.

Krueger seconded the motion that carried unanimously 5 – 0.

Old Business:

Amended [Variance Application 14-V-18 by Eric Thesing](#): Lots 2-4, Block 1, and Lots 1-2, Block 2, Wildwood Retreat First Addition, Section 21, Township 140, Range 34, Henrietta Township on Long Lake, a recreational development lake. Parcel ID 13.47.40200. Applicant is requesting a variance from Section 506 of the Shoreland Management Ordinance for a proposed guest cottage to be located on a lot that does not meet the required 40,000 sq. ft. minimum lot area.

Eric Thesing, 9100 N Douglas Ave., Carlos, MN, presented the amended application.

Krueger stated Eric, we tabled this last month for you to come up with a proposal for the variance which would then include changing from a playhouse to a guest cottage, and then I also believe you are moving back 100' from the lake.

Thesing replied yes.

Grob asked can you, for the record, define exactly what the footprint is of what you are proposing? Because the write-up states 16'x32'x15' and there is a drawing that shows 20'x36'. So could you please describe exactly what you are proposing?

Thesing replied yes, I can. When I was in contact with Buitenwerf, to try and learn by definition on this guest cottage, my understanding is that you can go 700 sq. ft. of floor plan. So I apologize if it is confusing, but I am finding a 16'x32'x15' floor plan with an additional 2' eaves on it. That is how we get to 20'x36' is with the eaves. So, the 16'x32' is the floor space, which gives us 512 sq. ft.

Grob continued the actual inside is 16'x26'?

Thesing responded exactly. We are going to have a 6' porch on the front.

Grob said so the footprint is 16'x26' plus a 6' porch and 2' overhangs?

Thesing agreed 2' overhangs.

Grob asked for the record, remind me what it is you proposed when we were here last month. The size of the structure?

Thesing replied it was 12'x32' with 2' overhangs.

Grob said the 32' was the same 6' porch and 26', so what you have basically done is, you are proposing a 4' wider structure of the same length.

Thesing replied yes. And the reason being, that everyone I have talked to in this project says 12' was too narrow. Originally when I started this, I wanted to be able to just put it on skids and load it up if I wanted to, but now if I have got the option of going up to 700 sq. ft., if I make it 4 feet wider, then it's just 2 sheets of plywood and no waste.

Grob said my understanding is that you do not intend to do any plumbing, septic system, compost toilets or anything like that, just a basic structure.

Thesing replied no, just a basic structure, we will put electricity into it, naturally.

Petersen asked have you arrived at a final amount for how far you are going to be from the side lot line with your neighbor?

Thesing responded with Mr. DeLaHunt? Yes we put a tape measure on it that day of the viewing and I was at 20' from the lot line and we moved the stakes to the west 5' so I am now at least 25' from Ed's lot line or our adjoining lot line, 25-30' away from there.

Johnson asked have you checked and found the end of your drainfield to see that the new dimension would meet the 20' setback?

Thesing replied yes I did, that was the first thing when my wife and I came up Friday night and there was a couple stakes there in the yard already, and I found the print, and I measured it and the drainfield is 40' out that way and 20' puts us, you guys were out there and looked, there is that other driveway that comes in, 20' puts us just on the other side of that driveway and even by moving it ahead 5', I am at least 26' from the end of my drainfield, plenty far away from my drainfield. It will fit in there very well.

Krueger asked for public comment.

Ed DeLaHunt, 18095 State Hwy 34 East, Park Rapids, MN, stated I have been talking to Eric about this and I have a problem, not that he is asking for a building, I have no problem with that at all, I think that is just fine, my problem has always been with the placement toward my property line. We have adjusted that, we measured where the end of the septic tank was and where the end of the drainfield was. There is still a few more feet he could move, to the west but he prefers to have it exactly 3'-4' from the edge of that approach and I guess I have no problem with that. The reason I got upset about this whole thing to start with is because I have dogs. And when the new folks moved in, and I did not meet this gentleman until just now and I don't know how many years Eric has been there, I just met him this last time, I have seen him a couple times, but I have never had any contact. My concern was, when the new people moved in, I put in a pen for my dogs so they wouldn't be going in the neighbor's yard. Now with a place next to my place where someone might be sleeping at night, my dogs are very inquisitive and very vocal at 6:00 every morning, and I could just see if there are a bunch of people that are sleeping there, the Sheriff's phone will light up and I will be causing a nuisance. Now I know this is

very real, I worked for the Hubbard County Sheriff's Office when we first came to Park Rapids and I handled all the nuisance calls. Being too close to my dogs' pen, they are naturally going to bark when there's movement. Now if we can, in this same process, allow me to put up a fence if I have to. If I have to put up a fence, I don't want to have one like the Ordinance says, part of the fence, open, part of the fence, open. Because that is not going to keep the dogs from barking. If you have a complete fence across the back of Eric's building and my dog pen, chances are they will see no movement and chances are they will be quiet. And if anything else, it will be sound deadening. And I want to be a good neighbor to him. I don't want him to have a problem. I want him to have the building, but I don't want to have the Sheriff calling me all the time saying your dogs are barking. I have lived there for 60 years, I think I've got squatters rights and I don't think I should have to all of a sudden modify my whole life because we have a new situation that could be very volatile. Eric's a decent guy and I am sure he will try not to call but I don't know who is going to visit his house and will sleep in that building, the dogs will be barking and the phone will be ringing at the Sheriff's Office. Other than that he has moved it over some more feet and I am happy about that and I will go along with what he has decided.

Krueger asked Buitenwerf, that fence that would be constructed, if it is greater than 50 percent, would require a variance on its own if it is within 100'-right?

Buitenwerf replied correct.

No public comment was given.

Krueger closed public comment.

VanKempen said you have an existing easement on your property there and you are looking into getting that removed?

Thesing said I made a phone call is all I did, and I talked to the gentleman today, but I don't like to pay a lawyer anymore than anyone else does, and I said we would just wait and see what happens tonight and go from there. It doesn't hurt anything, but it does cut down a lot on my square footage of property, but to me it doesn't hurt anything, but it would have to be investigated to get removed.

VanKempen said your variance request is because you are short on your square footage you need for a lot and if this easement was removed, it would add to your property. You would still be short, but not much.

Thesing replied not much I don't think.

Johnson asked how are you going to create a foundation for this?

Thesing replied I am going to do pillars, just sono tubes. Six of them, per stringer and then 6'x6' poles that the floor would sit on and then the poles would sit on sono tube poles.

Johnson said the reason I asked is because it looks to me about your furthest spot away from the lake, so it looks like it would be an alternate site. So if you were going to put it

where you are going to put it, I would use more of a temporary, rather than disturbing the soil.

Thesing replied that thought has crossed my mind too, I was looking at cost. If I do it this way, it is 4 cubic yards of concrete to go 3' in the ground, 18' in diameter. I guess for my business we built a hoop building and that was the way that was done, and then I can do the cement work myself and it worked very good. It was a lot bigger and they were 4' diameter pillars and we went 7' deep just to get below the frost. My cousin is a carpenter and he said as long as I make them all the same, it is basically like a floating slab, they should all move the same.

Johnson continued I am not totally in favor of a condition of no plumbing, if it was to be approved. Only because I know the intent of it is to not have it be a VRBO or a rental, so I would rather see a condition of none of that. It might be pretty convenient to have a toilet and a sink in there if you had someone stay in that guest house.

Thesing agreed it would be a convenience, but it is an expense. And maybe someday down the road it would be nice to put in, but there is no plan of that now. I wouldn't mind if there is not a condition against adding down the road.

Grob said you have to keep in mind that this lot does not meet the minimum requirements for a guest cabin. In the meeting a month ago, because of the size and the fact that you weren't going to make it into a fully outfitted guest cabin, and moved it back to 100', we were willing to consider it, even if you had that road vacated, you still would not meet the minimum, so the point is that there should be some compromise for us to allow him to have a guest cabin on a lot that doesn't meet the requirements. That would be my comment against allowing it, and it brings up the issue of we were amenable to you doing this, we were expecting you to move it back, the same size 12'x26' and you have asked for something larger so we should have that discussion as to whether that is ok. Understanding he is still well under the 700 square feet, that would be allowed.

Johnson said I think the oversized width can offset that small amount that he is short. And also, those same people are going to use the bathroom in the house, whether it is in the house or in a guest house.

Thesing replied exactly, and to your comment Grob, I originally had it 18' high because I wanted to loft it, but because it is a guest cabin, I already adjusted it down to the 15' and got rid of the loft, so I am losing that space and I am going a little wider, so I guess I feel I have already compromised, as long as I stay under 700 sq. feet, I feel I have already compromised, I have already moved it away from the lake, so I have lost that view. But after we met last month, I did go out there, and while I am fortunate enough I have Mud Lake across the road, if I clean out a little bit of shrubs there, I will have a view of that lake. And I haven't totally lost the other view, but it is not going to be like it was when I wanted to build it kind of on the bluff. I have already lost the loft area and that part of it, I was myself looking at that as being a very fun place for the grandkids and a huge part of this whole project, but if I am going to squat it down, I am gonna push it out a little bit. I have already lost a little floor space.

Krueger added maybe one thing to consider about having a toilet and a sink in there is that having it there would prevent whoever is sleeping there from having to get up in the middle of the night and possibly stirring DeLaHunt's dogs. That way they can just stay right there in the building.

Johnson asked Thesing how many bedrooms are in your existing home?

Thesing answered three.

Johnson continued and do you own the adjoining lot towards Park Rapids, or is that all the land that you have, is what we see?

Thesing replied what you see, yes. My son-in-law and daughter own the other cottage. That was kind of why we purchased this one when it came up for sale, is because Adam and Jen own towards Park Rapids, that was Adam's grandfather's cabin and he purchased that several years ago, before he married my daughter, and that was when this came up for sale, we watched it on the market for about three years and then purchased it, I believe three, might be four years ago already.

Johnson made a motion to approve the application with the condition that it can never be used as a VRBO (vacation rental by owner), and that the structure cannot be expanded beyond 16'x32'x15'. The Board provided answers to the findings of fact for questions 1 and 2 and adopted the staff report findings of fact for 3, 4, and 5.

VanKempen seconded the motion that carried unanimously 5-0.

Grob added I just want to make sure it's clear that the structure definitely meets the 100' setback, including the overhangs, that's what 100' would be, so your 2' overhang has got to be 100' from the lake.

Thesing agreed.

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 meets all the setbacks and the conditions that we have added offsets the undersized lot minimum.

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 building a guest cottage on a lot that meets all the setbacks and that is a reasonable request.

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 wide and shallow. It exceeds the required minimum lot width by 55%, but is a bit over 7000 sq. ft. deficient in meeting the minimum lot area. The lot is a combination of platted lots that were created in 1962 prior to the ordinance's initial enactment date. The proposed guest cottage complies with all applicable regulations except for the minimum lot area requirement that is beyond the applicant's control.

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

Yes (X) No ()

Why or why not? The locality is made up of a mixture of year-round and seasonal single family residences. Neighboring lots are of similar area to this lot and structures on them are located at a similar ordinary high water mark setback. The neighboring residences range from being smaller to larger than the home on this lot. The proposed guest cottage with the conditions placed on the variance will not harm this residential character of the neighborhood. Its location is well screened by existing mature trees and from the lake by a steep slope that runs up from the shoreline before the lot levels out where the structure will be located.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as a difficulty. The difficulty is caused by the lot's smaller size and its being sandwiched between the lake to the south, Highway 34 to the north, and substandard lots on the east and west such that there is no potential for adding additional area to the lot.

New Business:

Variance Application 17-V-18 by Walter and Renee Johnson: Lots 7 and 8, and the East 33' of vacated alley, Belletaine Park, Section 9, Township 140, Range 33, Nevis Township on Belletaine Lake, a recreational development lake. Parcel 21.51.00700. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance for: Part 1: A proposed accessory structure to be located within the 10' side lot line setback and Part 2: A proposed addition to a nonconforming accessory structure that will not comply with the 10' side lot line setback.

Renee Johnson 20374 Fairwood Drive, Nevis, MN, presented the application along with Bob Lindow, 20281 235th Ave, Nevis, MN, as Renee Johnson's contractor.

Renee Johnson said when I found out a couple years ago that my husband and I were able to put a toilet in our existing garage, I immediately thought of our niece, who grew up

in Nevis, and I wanted to do a handicapped accessible toilet so there is a need for a variance because of the closeness to our property line in order to make a 8'x10' bathroom for handicapped accessibility. And also a storage shed, we would like to replace a temporary unit that we have in the back with a cement slab. We got skunks under our storage shed and we would like to put a cement slab under the storage shed in the back.

Krueger asked so that temporary building would be removed from the property.

Renee Johnson replied it will be removed.

Krueger asked when you add that bathroom in there, what is the distance from that one corner to the property line? It is hard to read on the map, it says 2' some kind of inches. Is that 2' 6"?

Renee Johnson replied 2'.

Grob said going back to the variance of 2009, you moved the current temporary shed from a location to its current location. The drawing kind of shows a dotted line, did you explain the garage at that point? Did you push out that section of the garage or was the garage always the size that it is now?

Renee Johnson replied the garage was always the size it is now.

Grob continued because it shows a dotted line here, I was wondering whether that was part of the original variance. And the current shed is 8'x12'?

Lindow replied yes the storage shed is.

Grob said that is what the original variance said, I was just trying to confirm that your current one is 8'x12' and you are wanting to expand it to 12'x22'.

Renee Johnson replied yes with a cement slab.

Grob asked do you expect to use that as a garage for parking a vehicle?

Renee Johnson replied no, for storage. We have a lot of bikes, we ride by the trail. I would like to actually get a handicapped bike for my niece, but we use it for bike storage.

Grob continued so it is not intended to be a garage, it is a shed.

Renee Johnson agreed shed.

Grob said also for the record, could you explain why you couldn't try to put a handicapped restroom inside the current garage envelope?

Renee Johnson said we talked to our plumber and we could, there is a space towards the lake, but he said for drainage we would be way better off putting a small addition because it is much better for the sewage drainage to our septic.

Grob continued it is a fairly good sized bathroom and I understand for a handicapped situation, what do you intend to put in that restroom?

Renee Johnson replied a toilet and a sink.

Grob said just a toilet and a sink, no bathing facilities, showers, bathtub or anything like that?

Renee Johnson replied no, just a toilet and a sink.

Tim Johnson said I read the letter from Richard Bipes, your neighbor. Are they here?

Renee Johnson replied no.

Tim Johnson continued, I read the letter and I don't see where they agree to the 2'. I am sure they meant to.

Renee Johnson said for the bathroom?

Tim Johnson replied for encroaching on the property line.

Renee Johnson said we got that actually a couple of years ago when we started thinking about it, so I know he is fine with it. He has seen what we are going to do, we talked to him. His daughter is here this weekend, he is not here. He has never expressed any problem to us about it, if that helps.

Tim Johnson continued and they are the same owners next door?

Renee Johnson replied yes, we have been neighbors since we have owned the cabin in 1993.

Krueger asked Buitenwerf when you sent out your notices within a certain radius, do they also get this sketch?

Buitenwerf replied no, the public notice gives them directions on how they can go online to access the application that way.

Krueger said you are saying that he understood what exactly...

Renee Johnson replied yeah, Walter and Rich have looked at it and he told him what he wanted to do and staked it out and he was fine. We had an official survey, the two of us, a couple years ago and he was just fine with everything.

Tim Johnson asked I don't understand exactly what is meant by the easy drain from the new spot vs where you are talking about but, I could understand it if he said it was an easier installation, because then you wouldn't be jack hammering cement.

Lindow replied that is true.

Tim Johnson asked is that what was meant?

Lindow replied I believe so, yes. Because if they do it in this corner, they can just come around and connect to the sewer. If they do it inside, where it would be optimum, they would have to bust a trench almost all the way across the concrete floor.

Renee Johnson said and the space we looked at, this is a nice big space for Missy for her wheelchair. She has got a 2 yr old. It is much better space for her.

Tim Johnson said so there would be an opened up area for somebody to come through the lakeside, through the garage?

Renee Johnson agreed her wheelchair fits through the lakeside door but she would need a handicap accessible bathroom door as well.

Grob said I think I understand all your reasons or logic for what you are doing. My observation in being there was that currently the garage is not being used as a garage. That it is being used more as a living area, with a refrigerator, table and couches and things like that. My concern in adding a bathroom, you in essence turn that garage in to a guest house and I do not believe your property or setbacks meet the minimum requirements for a guest cabin. Can you respond to that?

Renee Johnson said having a garage fridge I don't think makes it into a cabin, we just have extra beverages and food, overflow. I have a garage fridge at my home in Fargo. You probably didn't see we have a lot of bikes, we have a Burley for our grandkids, a big stroller, all of that was in there, you probably didn't see that. It is a place we can gather, we don't use it as a cabin, but we do have it, especially when my niece is in town, it is the only way for her to gather. For nine months out of the year it is completely used as storage, and in the summer, we do use it on occasion, just as a gathering space. But it isn't like we use it consistently. But when we do have a family get together, they may go out and sit there at night, but it is not used consistently as another guest house or anything like that. It is a garage, for nine months out of the year, it is used for storage.

VanKempen asked there are no sleeping quarters in the garage?

Renee Johnson said there is no bedroom, it is just a garage.

Krueger added I think the main question to ask if it is used for sleeping.

Renee Johnson replied on occasion my son has slept out there, we used it more like a screened porch. As you can see, we have a screen and we open up the garage door and we use it like a screened porch.

Petersen asked is it just open inside, I didn't get a chance to look in.

Renee Johnson said it is just a garage inside.

Petersen continued there are no rooms framed in there or anything like that?

Renee Johnson answered no.

Krueger said I did take a glance in there and to me it looked just like clutter, like you said for nine months out of the year for storage. That is what it looked like at that moment I looked inside.

Renee Johnson said we use it like a screened porch in summer, I can't deny that. And my son will sleep out there just to get away from the crying grandbabies that wake up at 6 a.m. We use it like a screened porch, we used to have a screened porch in our old cabin and I missed it so we have screens on it and we open it up like a screened porch. We sit out there at night sometimes. And it is really nice when my niece comes and her family from Nevis and we can gather there because it is very accessible for her except for the bathroom. I can say we had a bridal shower in the garage because it was the only place we could meet with her handicap.

Grob said I am still struggling with why would we not classify it as a guest cabin, the expansion of your shed now provides a lot of storage so you wouldn't have to use that space as storage anymore so it could very easily, with the restroom facilities, could very easily fit the category or requirements of a guest cabin. That is my view.

Krueger added I think maybe you are getting an understanding that if at some time you do use it for sleeping quarters that you are going to need an after-the-fact variance.

Renee Johnson agreed.

Krueger continued so it is a garage right now.

Krueger asked for public comment.

No public comment was given.

Krueger closed public comment.

Tim Johnson added to remind the Board that she wouldn't need to be here for a permit or a variance or any permission to put a bathroom in her garage. And I don't think adding on to the garage is going to hurt the lake, in that pocket where she is asking to be.

Krueger added it is in the back corner.

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

VanKempen seconded the motion that carried by a vote of 4-1 with Grob voting nay.

Findings of Fact:

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

Yes (X) No ()

Why or why not? The neighboring owner is supportive of the proposed side lot line setbacks from the shared lot line and the addition to the garage is small in scope (8' x 10') and will fill in the corner of the garage that is furthest from the lake. The shed will meet the 100' OHW setback.

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

Yes (X) No ()

Why or why not? Relocating the shed onto a concrete foundation to address “critter” issues is reasonable as is being able to create a handicapped accessible bathroom in the garage for the owners’ niece to use when she visits.

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 pie shaped with the tip of the pie piece being the lot’s rear. There thus is not much elbow room with which to work with the lot being ~190’ deep and a house, detached garage, shed, and septic system needing to fit into this narrow portion of the lot. The lot is a combination of two platted lots that were first created in 1963 prior to the ordinance’s enactment.

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 primarily of seasonal single family residences and a few year-round single family residences that are located on similarly sized lots of the same plat as this lot. The other lots have similar outbuildings and residences on them located at similar OHW setbacks to the structures on this lot. Relocating the existing shed to a slightly different spot in this corner of the lot and squaring off the garage corner with an 8’ x 10’ addition along a property line whose adjacent owner is supportive of the request will not harm the locality’s character.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as a difficulty. The difficulty is caused by the lot’s pie shape and lack of depth/area in which to place structures that are typical for a residential riparian lot.

Variance Application 18-V-18 by Dennis and Joan Benson: Lot 4, Red Wing on Shallow Lake, Section 4, Township 140, Range 33, Nevis Township on Shallow Lake, a natural environment lake. Parcel 21.50.00200. Applicants are requesting a variance from Sections 502.1 and 801 of the Shoreland Management Ordinance and Article V, Section 1.01 of the Subsurface Sewage Treatment System Ordinance for a proposed drainfield that will not comply with the 10’ rear lot line setback.

Dennis and Joan Benson presented the application.

Benson stated we are planning to make an addition to our cabin, we currently have two bedrooms and a bathroom and we have eleven people that come at certain points in time and we just don't have enough space or bathroom capacity especially. When we met with Environmental Services, they indicated that we needed to investigate whether our septic was large enough for the addition of the bedrooms and bathroom. We had a gentleman named Don Umthun look at the situation and measure where it currently was. He provided a plan to add to the drainfield. The variance is because we are inside the 10' setback to the rear lot line.

Krueger added it says here one foot.

Benson said yes it is one foot from the unplatted road.

Krueger asked did you measure from the side lot line? It's going to be ten feet from there?

Benson replied yes it says 10' 4".

Grob said I think our observations there definitely indicated that it did not encroach on the easement line.

Krueger asked for public comment.

No public comment was given.

Krueger closed public comment.

Grob said I think we need to point out that the approval of this does not imply the approval of the addition. You realize it is another variance open to whatever kind of discussion, you are trying to enable it, but clearly you understand from this approval, that it does not automatically approve an addition.

Benson replied right, I do understand that. We do have a letter from our neighbors to the south too. It was handed to us in the last couple days. If we could enter that.

Krueger asked is it short? You want to just read the letter?

Benson read the letter from Joann Zerwekh, 21009 Fairhill Drive, Nevis, MN.

"To the Board of Adjustment, My name is Joann Zerwekh and I own the property south of the Benson's parcel. I am aware of the Benson's plan to extend the existing cabin and modify the drainfield so that a portion of it will be located within the 10' setback from my north property line. I have no objection to the proposed plan and support the Benson's application. Sincerely, Joann Zerwekh."

VanKempen made a motion to approve and adopt the staff report findings of fact.

Grob seconded the motion that carried unanimously 5-0.

Findings of Fact:

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

Yes (X) No ()

Why or why not? There is only ~166' between the lake shoreline and northwesterly edge of the road surface. Thus, the rear lot line is even closer to the lake. There is not much room on the lot. As long as the rear lot line location is accurately known such that the drainfield will be installed on the lot and not in the ROW, the proposed drainfield location maximizes the OHW setback to the drainfield.

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 landowner is proactively planning ahead for a proposed addition to the residence that will increase its number of bedrooms and thus require an increase in the septic system's sizing.

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? There is only ~166' of depth between the shoreline and the northwesterly edge of the road surface at the lot's rear. The rear lot line is thus closer to the OHW than this. The lot is also only 100' wide so there simply is not much room on the lot as the drainfield OHW and public road setbacks overlap on the lot.

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 primarily of seasonal single family residences and one year-round single family residence that are situated on similarly sized lots within the same plat and whose structures are located at similar OHW setbacks. All the lots in the stretch face the same issue of insufficient lot depth and overlapping OHW and road ROW setbacks.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as a difficulty. The difficulty is caused by the lot's lack of depth and its having been created by plat prior to the Shoreland Management Ordinance's enactment.

Variance Application 19-V-18 by John and Dawn Vaadeland: Part of the NE ¼ of the SW ¼ and part of Govt. Lot 6, Section 1, Township 140, Range 35, Todd Township on Fish Hook Lake, a recreational development lake. Parcel 27.01.01900. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed lakeside deck that will not comply with the 100' ordinary high water mark structure setback.

John and Dawn Vaadeland, 21272 Fable Trail, presented the application.

Vaadeland said we are in need of replacing our current deck. We need more room first of all because our current deck is small, but what we want to do is wrap the deck around the front of the house which would be lakeside. And it would encroach on the 100' setback on Fish Hook Lake. The reason for wanting to wrap around the front of the house, we have a lot of woodpecker damage and we need to re-side the house. We want to use maintenance free siding on the house. So the new deck we are hoping to put on would also be maintenance free decking so it would match the house siding once we accomplish that. And it would allow us to maintain the house and the windows. On the lake side of our house, we have a walk out basement, but it is 20' from the bottom, where the walkout is to the actual front edge of the eave. It is too high up to get at to do any maintenance as far as cleaning gutters and washing windows so if we were able to put on a deck around the front of the house, we would be able to access that a lot easier. Keep the gutters cleaned out. What has happened is, we didn't put covers on at the time that we built and they would get clogged up quite easily with tree seeds and leaves and whatever else. I think because of the design on the house, the bay window that we have, the front edge of the bay window is flush with the front of the eave and I think some of the water that overflowed on the gutters has gotten down in behind that in the bay window area. So we have several windows that need to be replaced as well. So this is a phase one of a three step project here. We would like to be able to put an A-shape overtop the bay and extend it out to protect that bay, then redo the gutters and replace the windows, but then it would also allow us easier access to wash the windows and any other maintenance that we might need to do because it is just so high right now and with the slope, the walkout basement, it is almost impossible to work off that safely.

Krueger added so are you saying your practical difficulty is to be able to clean your gutters and wash windows?

Benson replied and maintain any of the siding where the damage has been done by the pileated woodpeckers.

Krueger said I hate to be a little nitpicky, but with that as the practical difficulty, how is the addition 4' for the octagon shape, how does that lend itself to the practical difficulty?

Benson replied it just adds aesthetics really. Makes it look nicer I think, from the lakeside.

Krueger added maybe one other comment, an observation that we made while we were out there is that the house is kind of centered on a plateau and you are going down sharply on both sides of your house, that is an observation I made while I was out there.

Petersen asked in this remodel that you are doing, did you describe that over the bay area, you are adding a gable over that, on the roof line?

Benson said what we would like to do, when we get to that point, is to extend, that could be several years down the road, it is not part of this. It is a multi-phase project, but we felt the first phase was to put a maintenance free deck on so we would be able to work off it easier. Investigate the feasibility and what it would take to do an A-frame or anything like that.

Grob said I am struggling with the logic as to why we have to build lakeward and extend into the setback zone. There are several ways to solve the gutter problem with gutters that don't get clogged up and there is no real exit from that side of the building. I don't see a real practical difficulty, a reason why it is necessary to build a deck around that front side of the house.

Krueger asked Buitenwerf this house was built in 2000, was there a change in the ordinance as far as measuring a distance, or has it always been to the deck. Or has it been at one time to the house?

Buitenwerf replied as far setback is concerned, it has always been measured to the nearest point, the ordinance did formerly have a setback measurement to the exterior wall of the structure and that was modified several years ago to be the nearest point of the structure which would typically be the eave overhang.

Krueger asked would that, when they built this in 2000.

Buitenwerf replied back in 2000 I believe the ordinance setback was measured to the exterior footprint, or wall. Not the eave.

Krueger said so it would be very possible for someone who is building a home then, to think that we are building at 100' and then sometime later we can add a deck. And then the ordinance got changed on them.

Buitenwerf commented decks would have still needed to have met the 100' setback.

Krueger replied ok, just wanted to make sure I was clear on that.

Benson said the contractor we had lined up to build the deck, they only build decks so we had to contact them back in February to get on their list to build because they do a good job and they are popular so in order to get a spot on their list, we had to contact them quite early. And we had read through everything online, we thought we understood everything according to what was laid out. But the one thing, I think it was houses prior to 1971, and we didn't recognize that or see that our house didn't meet that requirement. Because I think if it was built prior to 1971, then we could get a building permit without going through the variance, is that correct? And you could go into 85% of the setback? I thought that is what it was. Within 15% of the setback to the lake, which is 100'. When John came in and talked to Buitenwerf, that is when we found out we needed a variance. So we pushed our contractor off because both of us thought that we would be able to just come in and get a building permit, that we wouldn't have to go through a variance, we didn't know we were

going to have to do that until a month and a half ago I guess. So we pushed off our contractor and I suppose it was an oversight on our part, but we didn't realize that it was going to take all this.

Krueger asked for public comment.

No public comment was given.

Krueger closed public comment.

VanKempen asked so your current deck, shown in the picture here, is that 14'x24'?

Benson replied it is 12'x24'.

VanKempen continued so you would just be adding a couple of feet.

Benson said it would only be a couple more feet that direction, on the west side.

VanKempen added I myself in the last couple of years have built a wrap-around deck on my home for the same thing as far as maintenance, painting, cleaning windows and gutters and everything else, but on two of my sides I only went 6' out and it was more than adequate. So I see what you are proposing, you are probably going to add about 600 sq. ft. of deck and I guess I see that, especially being lakeward, I see that as excessive.

Benson replied I was under the assumption, you are pointing out the front of the eave, the distance from the closest point to the lake. I think it states that we are at 102' so as far as I know, the actual wall of the house is 104' back and the narrow part of the deck would only encroach into the setback of the lake by 6'. But what we did, we altered the depth of it to match what the side walls are so it just would flow a bit better. As far as the octagon in the corner, what we are looking at as far as the deck around the actual front of the house and on the west end side of the house, they would be the same height. The octagon would be a step or two down, so it would basically be at ground level on the west side. Then because of the slope down to the walk out door, there would be a little bit of elevation there. And if it is 18', that was just kind of like Dawn said, it was more aesthetic value, we have a nice house with a nice view and you can't just put a tiny little ugly deck on it. So we tried to design something that would be aesthetically pleasing for the house as well. Even with that octagon at 18', that is still 14' at most into the setback of the lake. And the majority of the deck is only 10' or 6'.

Petersen said looking at your existing deck, have you considered at all just the possibility of pushing that way with your expansion. I know you have talked about the maintenance items on your home that are tough to get at, but in the remodel situation, I think contractors could deal with those windows and the like, as far as replacing or repairing, I don't think they present any huge obstacles for people in construction to do those. So if you just pushed the existing deck out to the side, you could keep the setback at your 100' as opposed to coming into the setback in the front.

Benson replied we will still need to wash the windows because it seems the minute you wash a window it rains or the wind blows or whatever. When we built it was 18 years ago,

we were a lot younger at that time too, your fear isn't as much. The older you get, I have a 16' extension ladder and I can't even reach with it right on the very bottom of the ground, right in front of the walkout, I still can't reach the top windows. So you still have to have a squeegee with a long extension and you are standing up on a ladder trying to do that. It's not safe.

Krueger said I am kind of balanced between agreeing with what VanKempen said about the decking and that is why I started out with the question of why you would need that octagon there, it's a little bit of excessive decking that you are requesting. At the same time I understand your need to safely clean the windows and the gutter so to me, there needs to be a balance.

Johnson said the way it is being proposed, we are going to struggle with our first finding of fact. What size would you be more in favor of VanKempen?

VanKempen replied well I guess if I was in this situation and the house is 102' feet back, the overhang it looks like, if it was me in this situation, knowing what I know of my current deck, for me a 6' across the front only puts me 2' into the setback and I would skip the octagon part and build whatever I need to west of the home.

Benson continued we just don't have that much yard space, lawn area to the west of the house either. If we build into that, we even have less room, we don't have any access basically to the east side. Like you said, the house sits on top of a hill, we have a slope on both sides and the back side of the house, there is quite a hump there too. There is a property line. The only long space we have is right there to the west of the house as you come up to the garage. So we really didn't want to eat into that either.

Grob added if we are only trying to solve their ability to wash their windows, and you are implying maybe 6', is that enough room to give you a safe ladder angle?

VanKempen responded I was able to put 16' long steel on the roof of my house off of a 6' deck. So I believe there would be plenty of room.

Johnson said I think about it and I'm thinking the 6' in that setback, how much of an impact is that on the lake? I know that number is the number, but how much of a negative impact is that, and seeing where they built, I totally agree where they built and they couldn't really go back further and it's not an oversized house.

Krueger added that is why I am leaning towards a balance, between an allowance for a deck, scaled down from what they want.

Benson asked would it be agreeable to remove the octagon, extending out farther than the 14' and keep that or are you talking about going back to the 6' on the lake side? Or only doing on the west side? I am not following your train of thought.

Krueger said personally I am kind of bowing towards VanKempen and that 6'. And then you can get more decking space on that west side.

Benson responded the 6' then, attached to the west side deck, so we can come 6' out from that all the way across to where the existing deck is then? That is agreeable?

Krueger said to me it is, yes.

Benson said it would be better that what we have right now. We have that erosion on the hillside and all that other stuff, but yeah, it would be a lot better that we have. I know you can put caps on gutters to prevent that, at the time that we put the gutters on, we didn't think we were going to need covers, we didn't think anything would get in there that bad. But it did and now I am thinking we have water damage from it, so it doesn't really pay to redo anything with the gutters until we can actually put an A-shaped type thing out over that bay window to protect it and then redo the gutters and re-route the water that comes off there. But right now when they clog up, and it overflows, it's washing the dirt down away from the side of the house as well. One thing is just kind of dependent on another.

Grob added if the Board is leaning toward a 6' deck on front, I still see absolutely no reason for the octagon area at all. It does not solve the problem that they are implying we need. Clearly our goal is to follow the ordinance as best possible and that is meet the 100' setback. This is a relatively new home, that could have been considered. Clearly the octagon serves no purpose which is the major argument and that is the ability to service that front side of the house. I clearly would not be in favor of including that at all if the Board decides it wants to push for a 6' wide walk area.

Krueger added that is what I was leaning toward myself, 6' in the front going all the way out to the west and to the west side of the dock, extending to that 6'. The octagon would not be in there at all.

VanKempen said there has got to be some clarification if they are going to alter their plans or if they are going to stick to their original plans?

Benson responded we would alter our plans to meet whatever you recommend.

VanKempen asked Buitenwerf what is the procedure there? Do they have to state that they will only go 6' lakeward from the home?

Buitenwerf replied the two options would be to either deny the original request if that is apparently the way the Board is leaning and then consider action to grant an amended deck layout, or the alternative would be for the applicants to specify exactly what their amendment is and then you take action on that amended application. Those are the two options.

Grob asked would we do the amended one tonight or would we defer it to the next meeting?

Buitenwerf replied that is up to you on what you are comfortable with for information, how clearly, easily it is to be defined, to a point that you are comfortable with it.

Grob said so we could do it tonight then.

Krueger stated I have to ask you, do you want to amend your variance?

Benson replied if we can add a deck on the lake side, we would want to amend it to meet whatever, if it's something or nothing, I would approve something.

Krueger added it sounds like several on the Board at least are leaning towards no more than 6'.

Benson responded if I understand right, then it would still be 2' into the 100' setback? Is that correct?

Krueger asked you have a 2' overhang, correct?

Benson replied it is a 2' overhang and I think that wall of the house is like 104'. So if you are 6' from the house, it would be 2' into.

VanKempen said that is what I am kind of wondering, it looks like the 102' setback is to the edge of the roofline, so then taking that into consideration, if it is a 2' overhang, you have got 2' and another 2', you are at the 100' mark and then yes, another 2' making 6' would be 2' into.

Benson said so you are talking 6' from the house itself, not from the edge of the eave.

VanKempen said or I could say 98' back from the lake.

Krueger asked so you amend your variance to where you cannot build a deck beyond the 98' setback?

Benson replied we would be fine with that.

VanKempen made a motion to approve the amended variance application to allow a 98' ordinary high water setback which should allow a 6' deck on the lakeward side of the home. The Board provided an answer to questions 1 and 3 of the findings of fact and adopted the staff report findings of fact for questions 2, 4 and 5.

Krueger seconded the motion that carried unanimously 5-0.

Findings of Fact:

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

Yes (X) No ()

Why or why not? To have access to the lakeward side of the home for general maintenance and to only extend 2' into the setback is in harmony with the ordinance. The intent of the ordinance is to protect the health, safety and welfare of the general public and this is protecting their safety by allowing them a safer way to clean their gutters and windows.

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

Yes (X) No ()

Why or why not? Having a lakeside deck is a reasonable use as is having a deck along this lakeside exterior wall of the house that has two stories with the walkout basement to make it easier to maintain this exterior side of the house.

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 home is on a plateau that does not allow the house to be set too many feet further away from the lake and to have access on the lakeward side of the home for maintenance is in harmony with 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 is made up of a mixture of seasonal and year-round single family residences that are located at similar OHW setbacks except for a couple cabins to the west that are at a lesser OHW setback. Lakeside decks are a typical accessory feature on single family dwellings on lake lots so this deck would not be out of place.

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

Yes (X) No ()

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

Variance Application 20-V-18 by Richard Thuleen: Lot 3 and part of Lot 2, Block 1, Summer Mountain Estates, Section 26, Township 141, Range 34, Lake Emma Township on Big Sand Lake, a recreational development lake. Parcel 16.71.00300. Applicant is requesting a variance from Section 503 of the Shoreland Management Ordinance for a proposed addition to a nonconforming structure located in a bluff impact zone.

Richard and Carol Thuleen, 23729 Glory Trail, Park Rapids, MN, presented the application.

Thuleen stated we are adding a laundry area, a ¾ bath, a bedroom and garage to our cabin. We had applied for a variance and received a variance to add a laundry area and a garage, pretty much the same area, but we also had a room above the garage and it would have created quite a few stairs between coming up from the garage and up to the upper level. What we are proposing now is, we would like to keep the bedroom and

laundry area all in the same level. We are pushing the garage back by 16' than what was originally proposed and then putting the bedroom in the location where the garage was. We are asking to make the laundry area just a little bit bigger so that the doorways and the hallways could be larger.

Krueger said you have added some more lake frontage since you got your 2004 variance is that correct?

Thuleen replied yes, quite a bit.

Krueger asked how much more?

Thuleen answered I think there is another 80' of lakefront. It's maybe 240'.

Krueger continued and your 2004 variance also allowed for a sunroom on the other side?

Thuleen said it does and we're planning on building that sometime in the future. Our cabin was built in 1987 and at the time we met all the setbacks that were in place, but since then the bluff setback has come into place, I don't know what year, so we are no longer compliant with that because we are pretty close to this ridge. When we designed the home in '87, we have hallways and doorways in the center on each side of the cabin for future additions. So that is why we are adding the laundry room and garage where we are.

Krueger added so you are saying that at this time you are going to preserve that 2004 variance for that sunroom then?

Thuleen replied yes. The laundry space would now be 2' closer to the bluff than what was previously approved. That is an area that is 12' wide, and the rest of the addition, another 26' would be 2' further back from the bluff. We have a drawing that shows the old footprint and the new footprint. The other reason is to eliminate all the stairs.

Grob asked I am trying to recall from the visit, I don't know if I walked around to the front, do you mow your lawn right to the edge of the bluff on the front?

Thuleen replied pretty close to the edge, within a few feet of it.

Grob asked would you be amenable to a restriction on mowing, allowing the grass to grow higher as a buffer area for this change.

Thuleen said I would be fine with that, how far back would we need to?

Grob asked how close are you to the edge of the bluff?

Thuleen answered the addition would be 15'. The cabin varies from 15'-19' from the bluff.

Grob said I would say at least 10' then. A no mow area for 10' to the bluff and if you are a good gardener, even some nice little growing shrubs.

Thuleen responded that would be alright.

VanKempen added as I recall, you have pretty much from the bluff all the way to the lake is undisturbed except for the pathway down to the dock.

Thuleen replied yeah it is just a stairway that goes down, everything else is undisturbed.

Krueger asked for public comment.

No public comment was given.

Krueger closed public comment.

Petersen asked Buitenwerf the 2004 variance vs what we are here to consider tonight, is there any conflict there or is that variance still open?

Buitenwerf replied yes.

Grob asked could we add a condition that this new variance, the current one 20-V-18 would rescind any of the provisions of the previous variance 66-V-04 for the garage and bedroom on the north side of the house. If I am saying that right, in essence, keep the old variance in place except for that part which is being replaced by this. The implication is, you can never go back and redo what you originally, if that was left open, sometime in the future someone could. I doubt they would ever do it. But just to clean the paperwork up, a condition would be to rescind that part of the previous variance that dealt with the addition on the north side of the house. It leaves the, I think you put an entry way gable into your house as far as that variance and you want to keep the sunroom on the other side and I am trying to state it in a way that those stay in place, but anything that was to be done on the north side of the house is not rescinded. Is that reasonable, or by definition going to happen by what they are doing.

Buitenwerf commented I would say just from a practical standpoint, if you would entertain approving the current application that if they construct that they in effect have taken care of that. The two, as far as the department is concerned, the two proposals, the '04 that was approved, as well as the current are close enough to one another that I don't see a significant enough difference.

Grob said so you don't see the need to try to clean up that detail?

Buitenwerf replied no and I can't think of a very easy way of doing that.

Grob continued I was trying to do that earlier today and that was my best attempt.

Petersen added to Buitenwerf the reason I ask is that Grob's suggestion of a no mow zone in front on the bluff, that was not in the language of the 2004 variance?

Buitenwerf replied that would be correct.

Petersen asked do we have a conflict there is what I am wondering. What supersedes the other? Does one? Do you understand what I am saying?

Grob replied this variance adds that condition.

Buitenwerf added if the Board would so choose, they can place that type of a condition on any potential approval this evening and then if the landowners wish to exercise a permit per tonight's variance, then that condition would need to be honored.

Grob made a motion to approve with the condition that the owner would maintain a 10' no mow zone from the top of the bluff toward the house and accept the staff report findings of fact for questions 2-5 while providing their own answer for question 1.

Petersen seconded the motion that carried unanimously 5-0.

Findings of Fact:

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

Yes (X) No ()

Why or why not? The current proposed structure is very similar to the construction presented in the 2004 variance and is a better situation and has no impact on the bluff or the lake.

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

Yes (X) No ()

Why or why not? The existing structure is 28' x 38' in footprint and a 12' x 20' + 26' x 28' addition is proposed that would add a laundry, bathroom, bedroom, and attached garage.

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 applicants built the house in 1987 which was four years before the bluff impact zone regulations were added to the ordinance. Thus, the fact that the structure is now in a bluff impact zone and a variance is needed to add onto it is a situation that was not created by the landowners.

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 primarily of seasonal single family residences and a few year-round single family residences some of which are located at similar OHW setbacks and others of which comply with the bluff impact zone setback (the bluff is the same along this stretch of the lakeshore.) The lots are

large – ranging from 2.4 to 3.25 ac. in size and are well vegetated so there ought to be little to none aesthetic impact caused by the proposed addition.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as a difficulty. The difficulty is caused by the house to which the addition would be made having been built in 1987 which was four years before the bluff impact zone language was added to the ordinance. Thus, the house is located in the bluff impact zone and a variance is required in order to add onto it.

Variance Application 21-V-18 by Eric and Kathy Gibson: Part of Govt. Lot 1, Section 36, Township 141, Range 34, Lake Emma Township on Little Sand Lake, a recreational development lake. Parcel 16.36.00120. Applicants are requesting a variance from Section 702 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residence located in a bluff impact zone.

Kathy Gibson, 401 SE Main Street, Minneapolis, MN, presented the application.

Gibson stated we have a cabin that was built in 1985 by the previous and original owners that was built completely in a bluff impact zone before that ordinance was put into place. We are looking to, the previous owners had added a deck off to the south side of the cabin and then after they built the deck, they built an addition on top of it with a glassed in porch area, we would like to remove that whole structure and replace it with an additional 8'x18' on the one side and keep the other area as a mud room to allow us to have additional kitchen space, currently there is no space for a dining room table because the area they put it in is too cold in the winter, there is no heat in that area at all.

Krueger said when we were there we did take a peek in the kitchen and it was very small. I can understand that.

Petersen asked Buitenwerf can you go back to that previous drawing that showed the...what is described on the drawing is an 8'x8' addition, is that a deck?

Gibson replied it won't be a deck. But 8'x8' is what we are proposing so the current structure is on posts so this will also not have a dug in basement or anything it will be built on posts. It will just be extending an additional 8' off to the side. Not any closer to the lake, which is 200' away. But because the whole structure is in a bluff impact zone, anything that we would do to it, including raising the roof a little bit, would have to require a variance.

Petersen said the addition is a deck, on the lake side of the existing structure, I am trying to remember that roof line, do you have gutter out there?

Gibson replied there is no gutter out there.

Petersen responded ok.

Gibson continued the roof also needs to be replaced, so we would do that also, because half the roof is cedar shakes, the other half is asphalt. The original owners had a tree fall on that structure and they only replaced half of the roof. So at that time, we could add gutters which would help with the water flow, keeping it away from the lakeside.

Krueger asked Buitenwerf in your comments you were suggesting mitigation measures to be done. I know when we were out there looking at the lot, that is probably about the best looking lot that I have seen as far as maintaining natural conditions so I am just wondering Buitenwerf what you have in mind after having looked at it.

Buitenwerf replied I would probably say gutters on the finished structure would be the most helpful, assuming the down spouts are placed and directed in ways that don't cause any erosion issues, directed into the existing natural vegetation that is being allowed to grow.

Gibson added the deck won't be part of what we did and we would take your suggestions as to where you would want those gutters to go down. I think being we have Heartland Construction working with us and so I think Joe has, we haven't drawn anything up yet just because we are waiting to see if we are allowed to do it. Definitely replacing the roof, putting in gutters and the way we look at it too, it's not taking up any bigger footprint really, it's just kind of moving that out a little ways.

Krueger asked for public comment.

Larry Bexell, 22984 County 7, Park Rapids, MN, next to the Gibson's on Little Sand Lake. I would like to support the Gibsons in their endeavor to do this, to make this house livable. In the winter, everybody's gonna sacrifice, you're up there in that glassed in area that is cold. We used to go over for dinner with the previous owner and all of us knew in the neighborhood that if you went there to eat in the cold time of the year, or when it would be below 32 degrees, you dressed with a long sleeved shirt, a sweater or maybe a vest and have about four or five pieces just to be able to keep warm. Another thing is that the home is an excess of 200' from the lake and I think that should be really taken in to consideration because I can't imagine any water or runoff from even if it is the bluff zone, it's never going to get there. We live on a similar lot to the north of this and, you were out at the lot so the only thing you are walking on is a gravel path to the lake. We would just like to have you consider approving their request because that would just make the home much more livable.

Krueger closed public comment.

Grob asked there is no gutter currently on that thing at all?

Gibson replied no.

Grob continued I think you were saying you haven't done a design yet. It looks like you do your very best at keeping natural vegetation and it didn't appear to be erosion with your path down to the lake. I don't know whether we put it in as a condition but very clearly with your bump out, we expect you to do something with gutters or something to as best you can control the stormwater.

Gibson agreed.

Grob made a motion to approve the variance as submitted, both the 8'x18' addition as well as the replacement of the porch and adopt the staff report findings of fact with additional information added to include the 8'x18' addition for questions 1 and 2 and accepting 3, 4 and 5 as proposed.

Krueger seconded the motion that carried unanimously 5-0.

Findings of Fact:

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

Yes (X) No ()

Why or why not? The house was built in 1985 before the bluff language in the ordinance was implemented. The 12' x 32' addition is experiencing water-related damage. Replacing it and increasing its height slightly to provide for normal 8' high sidewalls is reasonable. The 8'x18' addition is reasonable to achieve all season capability and the additional space is warranted considering the size of the current home. It does not appear to have any impact to erosion on the bluff.

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? Rebuilding the 12' x 32' existing covered, enclosed porch, extending its eave over its entry door, and raising the sidewall height to standard 8' walls is reasonable especially when the application states this portion of the structure is experiencing water-related damage. The 8'x18' expansion is reasonable considering the desire for an all season area on the cabin.

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

Yes (X) No ()

Why or why not? The house was built at the crest of a bluff in 1985 which was six years before the bluff language was first added to the ordinance. The fact that the ordinance changed and now requires a variance to add onto a structure located in a bluff impact zone is not the landowners' doing.

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 primarily of year-round single family residences and a few seasonal single family residences that are located at similar OHW and bluff setbacks. The nearby residences range in size from being smaller than the Gibson cabin to larger than it. The lots are all 150' wide and range in size from 2.5 to 3 ac. There is thus enough space between the structures and there is ample tree cover and understory vegetation on the lots between the homes that the proposed addition ought not to be visible to the neighbors or persons recreating on the lake.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as a difficulty. The difficulty is caused by the structure having been built by permit in 1985 right at the crest of a bluff which was six years before the bluff language was added to the ordinance.

Variance Application 22-V-18 by Trenton and Esther Simon: Part of Govt. Lot 1, Section 34, Township 141, Range 33, Mantrap Township on Spider Lake, a recreational development lake. Parcel ID 20.34.00300. Applicants are requesting an after-the-fact variance from Section 502.2 of the Shoreland Management Ordinance for a residence constructed in 1972 by permit that does not comply with the 100' ordinary high water mark structure setback as required by the permit.

Trenton and Esther Simon, 22993 S. Getaway Drive, Nevis, MN, presented the application.

Simon stated we purchased the property, I brought Jeff out to do a site evaluation, at that point he had a building permit. At the time that he measured it, it was 69' back from the lake. That was ok by Ed on a building permit (we don't know who Ed is) so we are here with a variance for that structure built in '73.

Krueger added we went out there to look at it and did notice quite a bit of erosion. Do you have any mitigation ideas in mind there?

Simon replied after the variance I will be able to get a permit to build a deck at that point and at that point I will be able to work that erosion and push that water from the driveway hopefully into the wooded area, up at the driveway level and whatever else comes down that hill behind, be able to push that over to that wooded lot area.

Krueger stated there are some that may want a condition on the variance too, because it was pretty severe.

Simon responded you have to realize we had 2½ inches of rain the day before you guys came out there. There will be gutters on the house, gutters came down and put soffit and fascia on so all the gutters are brand new gutters going back up. So in that process, when those gutters were in place, we hadn't had erosion like that.

VanKempen added it looks like some of that came from the driveway too, water coming down the driveway. Are you going to do some landscaping there to help direct it to the south wooded area?

Simon replied it would be the south wooded area. I have to keep it from my drainfield so it's not into my drainfield there so it's kind of going through the gauntlet there to get into that wooded area. I have had Scouton out there twice trying to get it worked out.

Krueger asked for public comment.

No public comment was given.

Krueger closed public comment.

Grob added I think in reviewing the report from staff, and considering this is fairly close, 69' setback, we would like to consider a couple conditions. One is that if we approve the variance, other than the decks you are proposing, that in the future you can't enlarge the existing cabin or rebuild it, if it ever came to rebuilding, you would have to move the structure back to 100'. Do those make sense to you?

Simon replied no. It is 69', it has been there. To be able to have the same structure, to not be able to rebuild in the same spot at the time, if it burnt down, I don't think that is reasonable at all. The fact of not making it bigger, the only place we would go if we ever wanted to make it bigger, would be back away from the lake. So it would be outside that impact zone. So I think those conditions, I would have no problem coming back and doing a variance at that time. We can go through the process, depending on what that might be. It is only 800 sq. ft., the size of the home at this time. It's not a large home.

Krueger added you have some pretty severe erosion. I would like to see something mentioned as a condition for correcting that.

Simon stated I have no problem with something correcting erosion because we have been trying to work on that already.

Krueger asked Buitenwerf what kind of language would best suit your office?

Buitenwerf responded I agree that the erosion was significant, but I don't know if it is attributable to the structure, which is the subject of the variance, so as far as there being a nexus between the request and that issue, I don't know if there is a sufficient connection.

Krueger said I disagree with you on the nexus because if the house was at the 100' setback, you probably wouldn't have had that erosion.

Simon replied it still would have been in the middle of that hill.

Krueger responded the erosion started pretty close to that 100' area.

Buitenwerf replied I hadn't thought of that, but that is a point to consider.

Krueger asked but you have no problem with, you know you have to do something.

Simon replied obviously I am doing something about the erosion problem already, once I get the process of this. I don't want water running down my road. I don't want it to look like that, just like anybody else. Whether it's a wall, a retaining wall there to push it into that, to stop it and get it into those woods. That's where I want it. I don't want it running by my house anyways. If you wanna say to correct the erosion problem, I have no problem with that but it's going to be corrected no matter what just in the process.

Krueger added I personally think it does have a nexus with this after-the-fact variance because it is after-the-fact.

Simon said I did not have an erosion problem prior to taking the gutters off, I can tell you that. So there is a hole right there where that water goes down through from those gutters and with having the gutters down to put new fascia and soffit on and with the amount of water we have had in the last few months, few weeks of when we were doing that, that is when that erosion problem happened.

Krueger made a motion to approve with the condition that they do what is necessary to mitigate the erosion problem and adopted the staff report findings of fact with the exception of the Board provided an answer for question 1 in the first set of questions and question 6 in the second set.

VanKempen seconded the motion that carried by a vote of 4-1 with Grob voting nay.

Findings of Fact:

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

Yes (X) No ()

Why or why not? The house was constructed over four decades ago by a previous owner at a 69' OHW setback instead of the required and permitted 100' OHW setback. With the house over there for four decades already, I don't believe it would be in harmony with the intent of the ordinance to have to tear down and move it back to 100'. The house has not caused problems over the years, the erosion was just recently and we are going to require you to mitigate that problem.

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 current owners are seeking to make a matter right by asking for a variance to bring the house into compliance with the ordinance. The two proposed decks will not go closer to the water than the lakeside exterior wall of the cabin, will meet side lot line setbacks, and are a typical accessory feature on a riparian lot home.

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? There is no information to suggest that this was caused by the prior landowner vs. a mistake by a contractor or some other party. The applicants did not own the property at the time the house was constructed. They did not acquire the property until May 2017.

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

Yes (X) No ()

Why or why not? The area consists of seasonal and year-round single family residences located on lots that range in size from .23 to 5.7 acres. The area around the house is well vegetated. The house has been in this location since it was constructed in 1972 or 1973 and there have been no complaints submitted to the Env. Services Dept. concerning its OHW setback. The two proposed decks will meet setbacks and are typical accessory features on lake lot residences.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as a difficulty. The difficulty for the applicants is that the house was constructed by a prior owner over four decades ago at an OHW setback that did not comply with the 100' OHW setback stated on the building permit that was issued.

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

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

Yes (X) No ()

Why or why not? It is not known if the owner at the time the house was constructed is reachable or even still living to be able to ask for reasons why the house was not built in compliance with the setback. The owner in 1972/1973 did obtain a permit, but the structure was not built in compliance with the permit. The applicants made application for an after-the-fact variance to bring the structure into compliance with

the ordinance shortly after being made aware that the structure did not meet the 100' setback.

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

Yes (X) No ()

Why or why not? The applicants purchased the property on May 22, 2017. The structure's not complying with the 100' OHW setback was determined on July 3, 2017.

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

Yes () No (X)

Why or why not? The structure was constructed over 45 years ago during a prior owner's ownership. The applicants made application for an after-the-fact variance to bring the structure into compliance shortly after having been made aware of the noncompliance issue.

4. Are there structures, circumstances, or conditions in the area similar to those that are the subject of the variance request?

Yes (X) No ()

Why or why not? This cabin is average in size relative to the other neighboring residences and is situated at an OHW setback that is similar to the two residences on the two lots to the north of this lot. The house on the lot immediately south of this lot complies with the OHW setback.

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

Yes (X) No ()

Why or why not? The applicants did not construct the house. It was built over 45 years ago. The applicants made application for an after-the-fact variance to bring the structure into compliance once they were made aware of its not meeting the 100' OHW setback.

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

Yes (X) No ()

Why or why not? The county would not benefit at all. It has been there for forty years, it would be quite detrimental and expensive for you to reconstruct at 100'.

Variance Application 23-V-18 by Kathleen Reinarz: Part of Govt. Lot 2, Section 9, Township 143, Range 32, Lakeport Township on Garfield Lake, a recreational development lake. Parcel ID 19.09.00500. Part 1: Applicant is requesting a variance from Section 502.2 of the Shoreland Management Ordinance (SMO) for a proposed new residential structure to be located within the 100' ordinary high water mark (OHW) structure setback. Part 2: Applicant is requesting a variance from Sections 502.2 and 801.2 of the SMO and Article V, Sect. 1.01 of the Subsurface Sewage Treatment System Ordinance for a proposed septic drainfield that will not comply with the 150' OHW setback.

Kathleen Reinarz, 1751 147th Ave. NE Hatton, ND, acting as an agent for her sister, Jaquelyn Parker, presented the application.

Reinarz said we are seeking to demolish the existing cabin that was built pre-1968, that is 20'10"x36'10" and then build a new one bedroom cabin that is 26'8"x42'8". Because the lot size is so small, there is no possible way to get a 100' setback for anything. That is why we need the variance for the cabin and for the septic system.

Krueger asked and you have a shared well with the lot...

Reinarz continued we have a shared shallow well with the neighbors. It was an old resort, so there are three cabins on that shared well.

VanKempen said it appears that the new cabin, one corner would be, that would be the southwest corner I believe, would be basically in the same area, but the opposite corner on the lakeside would be moved farther back from the lakeshore.

Reinarz answered it's the northwest corner that is lakeside and that would remain the same, same setback, and then the south corner would go farther away.

Johnson commented the septic setback that we were looking at, that they have at 70' and administratively can be allowed at 75', that setback I see no standing water that was growing vegetation, it's a pretty high year for water. The lake actual water was like 80', I believe.

Krueger asked for public comment.

No public comment was given.

Krueger closed public comment.

VanKempen made a motion to approve the variance and adopt the staff report findings of fact with the condition that "Shed B" be removed.

Johnson seconded the motion that passed unanimously 5-0.

Findings of Fact:

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

Yes (X) No ()

Why or why not? The lot size is so small at .25 ac, 105' deep, 74' wide, and with the open water channel immediately north of the lot, the OHW setbacks from it and the main lake overlap on the lot. There is no room on the lot to meet all setback requirements. A variance of some kind is needed. The application has done as good of a job as is possible to fit the house and new septic system onto the lot and maximize as many of the setbacks between these items and the OHW as possible.

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 applicant is seeking a little more elbow room in the cabin as she will be spending increased time at the property (i.e. summers) as opposed to an annual vacation to-date.

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 .25 ac. in size, ~105' deep, ~74' wide, and has an open water channel immediately north of it from which the OHW setbacks must also be met. It is not possible to meet the required setbacks on the lot as they overlap. The lot was not created by the applicant.

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 mostly seasonal residential lots with a few year-round residential lots. The lots range in size from .25 ac. to 1.26 ac. Most have similar lot depths to the subject lot. The proposed change in location/size of the structure will not harm the locality's residential character. The neighboring cabin to the south is 52' away and the neighboring cabin to the north is 173' away from the existing and proposed cabins on this lot.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as a difficulty. The difficulties are the small .25 ac. lot size and the fact that an open water connected channel is located immediately north of this lot from which the OHW setbacks must also be met. There is no room on the lot to be able to meet the OHW setbacks from the main lake as well as the channel.

Variance Application 24-V-18 by Tim and Nikki Clancy: Part of Govt. Lot 3, Section 10, Township 141, Range 35, Arago Township on Island Lake, a recreational development lake. Parcel ID 02.10.01600. Part 1: Applicants are requesting an after-the-fact variance from Sections 502.2, 903, and 904.6 of the Shoreland Management Ordinance for a vehicle parking lot that does not comply with the 100' ordinary high water mark and 10' side lot line setbacks and causes the property to exceed the 25% of lot area impervious surface area threshold. Part 2: Applicants are requesting a variance from Section 904.6 of the SMO for a second vehicle parking area that causes the property to exceed the 25% impervious surface area threshold.

Nikki and Tim Clancy, 26333 Icon Drive, Park Rapids, MN, presented the application.

Krueger said this has two parts, let's deal with one part at a time. Let's do part one first and this is for the parking lot that is going into the shore impact zone. I would kind of like to hear your side of the story about how that got started and everything.

Nikki Clancy replied so we're actually in some land disputes right now with our neighbors and a judge awarded an order that took quite a bit of space away from us, which we still are in litigation on, but we needed to relieve that problem and what we did is, part of that area was used for parking already, but we extended that down just a little bit. So that is kind of the long of the short story of how it became.

Krueger asked how did it get to closer than 100' to the lake and also to the 10' sidelot?

Nikki Clancy said because we didn't realize that there was a 10' setback and then also the 100', we didn't realize where that actual mark was.

Grob asked how many parking spaces did you have before the dispute? And how many do you actually need for the restaurant?

Nikki Clancy answered well, any given day I guess at the restaurant we could use 100 spots, depends on the nights and just events, big events or not. We probably lost 12-15 spots.

Grob continued the question is, you said you were not aware of the 10' side and the 100' setback from the lake.

Nikki Clancy said the 100' we were aware of, we thought the 100' was at the edge of the hill.

Grob stated my impression from the Environmental Services staff is you were alerted ahead of time to possible violation of the 100' setback and you are saying that you were not aware of it, where it was?

Nikki Clancy said we weren't aware of where it was and at that time Buitenwerf, they hadn't come out at that time either. And it wasn't ever marked. We had already taken down the trees.

Grob asked why didn't you have them come out and mark it ahead of time. That is a major violation of the Shoreland Ordinance to do what you did. Push 35' into the shore zone and not being willing to even look and think about it. If you knew the 100' setback, you easily could have measured that. It's not pretty what you did.

Nikki Clancy responded okay, I guess I mean we were in such a panic at that point too, just because we are so busy and we just did it. We did it, so.

Krueger added I believe that the responsibility of meeting that 100' setback from the lake and the 10' is yours. There is really no excuse not to.

Nikki Clancy said I guess we don't have a problem moving that back just a little bit and then on the 10' side, we can definitely take care of that and go back that 10' on the side.

Petersen said I am wondering with what you did create out there, that we looked at the other day, how many spots did you expect to pick up there? I don't know if I saw anything there or not. What were you anticipating or hoping to gain there in parking spots?

Tim Clancy answered we probably gained 15 spots there. If they went up to the trees to the hill, but now it is just to the 100' setback. So we probably only gained...

Krueger continued so to the 100'; if you maintain that 100' setback, do you know what you would gain there in parking?

Nikki Clancy answered that would be the 15 spots or so. But now with the 100' setback it's probably 6.

Grob asked are you here proposing that you keep the parking lot as you have created it now? What is it that you want with the variance?

Nikki Clancy said if the variance, if we could keep it at where it was graded to, that would be great only because it does give us a lot more parking abilities.

Grob clarified keeping where it has been graded to now? That is what you are asking for?

Nikki Clancy replied yes.

Grob continued because we are supposed to be ruling on whether we want you to have your lot within about 65' of the lake and 2' of the sidelot.

Tim Clancy added this is the way it was before.

Nikki Clancy said it was all grass and we have replanted grass there now too.

Tim Clancy said they had a big mound there with a 50' motor home parked on the side. All we did was level that out.

Grob stated that area presented water runoff from your lot into the lake and you have taken away that buffer bump at this point, right?

Nikki Clancy responded I would say no because we have actually replanted grass too and we have also put up the silt fence. And we are planning on doing some other mitigations.

Tim Clancy added water used to run off the end of that mound. Huge. It ran.

Nikki Clancy said this is probably better now.

Tim Clancy said now it is a lot slower even with the big rains that we've had.

Nikki Clancy added I think I sent Buitenwerf the picture before, I don't know if it is part of this application, but I did send you a picture of what it was before.

Krueger said for myself I can only decide on what I see right now.

Nikki Clancy said we would be willing to do, with some guidance from you guys, we are willing to put it back to the 10' and if we have to go back to the 100' we are willing to do that. It does give us less parking, but we would like to, it's just going to be a grassy area anyways. We don't plan on paving it.

Grob added if you are going to put grass there and use it as parking, it is going to be, and you get a lot of water, it's going to be a mud hole eventually. It's not going to serve a purpose of preventing runoff from the lake, if that's just grass and people are parking on it continuously. At least I don't think so.

Grob continued my only comment is I don't see that we in good conscience can allow this to be any closer than 100' to the lake and have some kind of stormwater plan that prevents runoff to the lake.

Krueger asked for public comment.

Dan Elsey, Vacationaire Estates, said we are the ones they are in dispute with for the land. We owned a portion of the paved area, we went to court, the judge made a ruling that we own that land. They had to stay off of it. They continued to park on it so we roped it off. Shortly thereafter there was a dispute about who owned what even though we had a judge's ruling and it was very clear to us what we did own and the judge ruled on that. So approximately three to four weeks ago, I came in to apply for a permit to put sand on our beachshore and in doing so I saw that they had a backhoe and some other equipment up there. They were getting ready to do something on the property. It's their property, they can do what they want. And I called Environmental Services and told them, asked them, if they were aware that Clancy's were getting ready to do something on their property. They

said yes they were aware, but they didn't specify what that was. So I had to come back in to pick some paperwork up, went back to the cabin and I called and I think it's Nick that works for Environmental Services and I wanted to clarify that he was aware of what they were doing. That there wasn't a permit that was pulled, but they knew that they were doing some work. They took down approximately 12-13 large trees within that impact zone of 100', they brought in class 5 rock, they completely graded it out, they brought in additional sand and rock, didn't put up any fence whatsoever. We had rain, we had runoff into our property and it's just a continuation of non-compliance that they continue to do and then expect you to approve it after-the-fact. And it has impacted our property drastically, it has impacted our lives drastically because we have been dealing with this for two years and they just continue to push into our property and not have any consideration for Environmental Services and/or their neighbors. And I would not approve anything today in consideration to what they have done to Environmental Services and their neighbors and that is what I would like to see done.

Nikki Clancy responded this is our first ever violation with Hubbard County Environmental Services for the record. As far as the trees go, it was six trees that were removed and there were zero trees, maybe one tree within the 100' setback right there that was removed.

Eric Flamm, Vacationaire Estates, said my wife and I purchased a cabin in 2007, we are very embedded in the area and then my parents also bought a house, 26344 Icon Drive, which borders their property on the north, to give you an idea of how imbedded we are, in Vacationaire, Park Rapids on Island Lake. My parents would love to be here, but unfortunately my dad is in hospice for bone cancer and my mom is by his bedside, otherwise they would be here tonight. This area, I grew up, learned to water-ski on Island Lake, I know the property backwards and forwards as I have explored every inch of it. And what has been going on up there since the Clancy's have purchased, is a travesty. And what they have done to that property, including this recent immediate retaliation to losing the lawsuit, where they were trying to take our property by adverse possession, the judge reaffirmed that we owned the property and they turned around and tore up a dozen old growth trees and graded it out and I can assure you that I have been coming up there my entire life and that was not set up for a 50' trailer, it was a beautiful area next to the restaurant. It was treed and wooded and I am sure we could come up with pictures if you guys need to see it. But I can tell you that at civil trial, Tim and Nikki testified that they did no due diligence, they didn't look at property lines, they didn't look at financial records, they didn't look at surveys, they had no idea what they were buying. \$820,000. The problem is, as their neighbors, we've beared the burden of them not doing due diligence. They are building a new motel and it appears by the looks of the motel, they didn't take in to consideration that, hey, we need more parking. It's like they just looked at our property and said, we're just going to take theirs. And this is a pattern that continues. There is no violations that have gone on, but they have been caught. They built illegal apartments in the basement of their lodge and had people living there. Then when they got caught on that, they built a shack out in their backyard for their cook to live in. They got in trouble for that because they didn't pull a permit. They said that it was going to be moved because it was a friend that was building it, yet they hooked it into their septic system and moved their full time employee into there. So this is a consistent pattern that continues on and on

and all of us that are their neighbors have borne the burden and as my dad, his last two wishes, and he's at the lake right now, where he wanted to be at Island Lake, and he wanted to make sure that his three sons don't let the Clancy's push my mom out of our property. Which is what they have been attempting to do. So, the damage is already done, you guys saw it. In order to repair that, it's going to take, I don't know how old those trees were, it's going to take a very long time to bring it back. And you can see cars parked from the lake, even if it's off 100'. So, granting this variance to them is just going to continue to add to the level of burden that we have already taken on as their neighbors. As you can see there is a pattern of defiance that they don't even ask for permission and sadly enough they don't even ask for forgiveness. They just deny and say we didn't know. I've got 60 pages of testimony where they said we didn't know. So that doesn't seem to be something that is important to them before hand. That is what I had to say, I appreciate your time.

Kari Peters said I own the cabin directly to the north side of Clancy's, so we border where the new parking lot area is. I guess my request would be pretty simple, whatever is granted, this has pretty traumatically altered what we see when we go out of our house and out on our screened porch. Before where it was grass and trees and kind of a nice view, now it's gravel and cars. So I guess I have just a couple of requests, that it definitely is not 2' away from our property line because that is just too close for all those vehicles to be (unintelligible) our yard. That the gravel and sand and everything that has washed into our yard be cleaned up, because there is a significant amount of stuff that has just kind of come over, and that whatever they are allowed to put in, that we be given the consideration to be able to install a 6' privacy fence so that we don't have to look at the lights and gravel when we go outside, because part of the problem is when we were using our space in the evenings, we get blasted by headlights every time someone comes or goes, which is of course, not pleasant. So I guess that would be just our request is that we are allowed to fence off and block that view and that the clean up and the 2' is not permitted.

Darrel Watkins, cabin owner at Vacationaire Estates, 9505 40th place NE, St. Michael, MN, I have one of those speech defects so bear with me here, first thing I want to say, as far as the trees being cut down in the impact zone, there is a photograph that Buitenwerf got of several stumps this big around that are below the 100' setback. They could have been buried under the fill but they pushed over the top of it. There is no sediment system in this whole property they have there, it's saturated, the property is overdeveloped. To allow any more hard surface or parking area is just, I don't see how it could possibly be done. With winter coming, the Clancy's have a 12' wide space running to the north and then it turns to 24' around the rest and then it goes to the next property owner. The court had order that they maintain that and keep the snow off of it. And nowhere to push the snow without pushing it on someone else's property. It's probably going to end up in this area right here and the rest of the parking lot where it stores all that highway debris that comes off the cars. Where is that snow going to get pushed all winter? In the past they have pushed snow onto our property, we don't want that to happen anymore.

Tim Clancy added there has been snow pushed there for sixty years. That is where it's pushed, right up to that fence line to the lake. Every year. For sixty years.

Bonnie Elsey, New Hope, MN, but we have a cabin in Vacationaire Estates, and what I would just like to say is, I constantly hear this is the way it has always been for sixty years. The resort was closed in 1999. The property was subdivided, cabins were sold off individually. It is no longer a resort. What they bought was a restaurant and a motel. There is no resort. It was subdivided and we can't change the way it was subdivided, but it really ceased to exist in 1999.

Darrin Hoverson, DNR Hydrologist at 101 First Street, I have been speaking to a number of folks about the project. I told Buitenwerf I would be in attendance tonight, if there was any other questions or things that you guys would have for the DNR on these matters as well. You received a letter as far as your project here from Tom Groshens who is the District Manager for the DNR. Some of the concerns that have been discussed are similar to what Grob was speaking of. Setbacks, impervious coverage exceedance and storm water. The DNR definitely sees unique situations the Clancy's are in with some of the recent rulings as well as the need for parking. Again, that is a difficult situation, it is a commercial property, they do need parking spaces and understanding what that need is, what they currently have and evaluating that so that there is a minimum or no impact to the adjacent neighborhood and the lake is clearly within your guides to understand and rule towards. I am willing as I said before with Buitenwerf and his staff, if there's conversations needed with the DNR for assistance, feel free. I will be here throughout this evening here as well for a conversation, but not to rehash the letter there, but essentially when I look at it, it comes down to setbacks. It seems unreasonable to have a parking lot in the shoreland setback. That is very clear in the statewide standards, that has been clear across the board for parking lots and roadways in shoreland. It also seems very reasonable to make sure that a setback is met from the side lot setbacks. 2' would not be reasonable for a parking lot. It wasn't a practical difficulty. It was one that was done upon what was a perceived need by the Clancy's. Impervious surface coverage gets a little more complicated. Normally when we review anything above 25%, those impacts should be avoided and minimized and mitigated as much as possible. That normally includes some manner of stormwater management. That could be retention basins, that could be landscaping or changes in the landscaping to direct water to current locations and definitely not into locations where it previously went. So with that, the summation of the letter we provided the Board here, and if you have any questions, feel free to ask.

Krueger closed public comment.

Krueger asked for any responses for any of the comments you have heard?

Nikki Clancy answered a lot could be said at this time, but the legal matters are different than what this is, and so I don't think that was necessary for some of that to be brought up tonight. We are good people and we continue to be great people and we are just trying to run a successful business is all we are trying to do.

Tim Clancy added it's not our fault that they bought next to a resort, and it's been a resort for God knows how many years, you know that, every one of you. So you can't say it's not a resort.

Nikki Clancy said but that's not what we are dealing with, we're dealing with a parking issue.

Krueger added we're dealing with Part 1 which is that parking lot.

Grob asked Buitenwerf, the ordinance with regards to vegetation removal in the setback zone, help me out if I understand the first 50', the shore impact zone, they would not be allowed to take trees down. What can they do from the 50' back to the 100' setback? Can they do clear cut or, help me out with, what is the wording? I seem to remember you can't substantially affect the visibility. I am trying to get a sense for what right they had to number one, take down those trees and then move on to the setback and other things.

Buitenwerf responded that language is found in Section 901 of the Ordinance. That would be on page 47 and what it says is that when you are beyond the shore impact zone, you may remove trees and shrubs so long as you maintain a well distributed stand of trees and shrubs and that is further defined as a tree and shrub canopy covering at least 50% of the area. And then a ground layer of predominantly perennial vegetation such as grass, flowers, forbs or preferably native plants shall be preserved, established or maintained in that area.

Grob said so they, in fact, what they did in the 100' setback to the 50' was a clear violation of the ordinance. They did not have the right to completely clear cut those trees out of that area based on the ordinance. The canopy is gone. The vegetation on the ground is gone.

Buitenwerf responded I am not sure if you are asking me a question Grob.

Grob replied yes I am asking the question. I am trying to summarize what you just read. And that is they did not have the right to clear cut that 50' area from the shore impact zone back to the 100' setback.

Nikki Clancy said I think that is wrong, excuse me, may I speak? Only because I had spoke to Buitenwerf and he did say that they tree removal could be done. Of the trees that...

Tim Clancy said this was farther than 50'.

Grob asked all of them? Because that says retaining a canopy, which is gone. And reasonable vegetation.

Nikki Clancy continued and if you have more than 50% on our property. Which most likely we do. Do you understand what I was trying to say? I don't think to my knowledge, I don't think we are in violation of the tree removal.

Grob asked you said trees?

Nikki Clancy responded correct.

Grob stated you are by having done construction in the shoreland zone.

Nikki Clancy responded well only with the grading.

Tim Clancy added the class 5 is all removed.

Nikki Clancy said we removed that and planted grass.

Petersen said I think Grob, are you asking simply is the removal of the trees alone a violation of that ordinance, is that what you are asking?

Grob replied yes.

Petersen asked Buitenwerf would that be your understanding that just the removal of the trees, barring anything else, was a violation of the ordinance?

Buitenwerf responded in terms of the trees, it is difficult for us to say because I don't have good documentation of what was there prior to their removal.

Petersen replied okay.

VanKempen added prior to the class 5 being in place, it was grass?

Tim Clancy responded it was basically pine needles, hardly any grass.

Nikki Clancy said there was a few clumps of grass is what it was before. And where that hump was, where the motor home was placed, was all black dirt so when we dug into that, it was all black dirt. And literally the hill sloped, probably a lot more at a bigger slope than what it is right now.

VanKempen continued I guess what I am getting at is, right now, you said the class 5 is gone though.

Nikki Clancy responded yes.

VanKempen said because with this picture, basically this is impervious surface.

Tim Clancy replied this is before the class 5 was gone.

Nikki Clancy said yeah, and we removed it now.

VanKempen added I guess that's what I am getting at is that, that was part of the issue was the amount of impervious surface you had on your lot. So with that in place of course it took away some of the pervious areas, and if you say this is gone now and it has been reseeded, then...

Tim Clancy replied right, when you guys were out there. It was gone. And I put a silt fence up. I didn't put a silt fence up because I was told to stop.

VanKempen said when I was out there I thought this was class 5 on the ground.

Tim Clancy replied no it's gone.

Nikki Clancy said we've removed it all and it went over to our house on the other side of the new motel.

Grob added it was pretty hard scrubble, you could see some grass seeds but it didn't seem awful pervious.

Tim Clancy said this is pretty much all the hill that was there, the old motor home out and the cars put in. It was just spread out.

Johnson added I agree with Grob and everybody about keeping the 10' off the property line and nothing closer than the 100', we have the problem of the rest of the parking lot, all sloping towards the lake. And I have been to other counties at variances and in this sort of circumstance, they have required a storm water management plan from a licensed engineer, somebody that knows how to take care of this, and prevent runoff from the lake. So myself, I would have to see that and a plan that would be beyond the 100' and a 10' setback from the property line.

Krueger stated I agree with Johnson on that. Even at the 100' stakes and back, it slopes towards the lake. That is where the runoff is going to go even if you are at 100' back.

Tim Clancy added that is where it has always went.

Nikki Clancy said I can bring him some photos I guess, to show you what it was before.

Grob stated you can say that is how it's been, but if there were trees and grass there before, there is a lot more potential for runoff now than there was before.

Nikki Clancy said right and we are mitigating that at this point.

Grob continued the ordinance is very clear about the construction was at 100'.

Krueger added this picture we are looking at right now, that does not look like the way it has always been to me.

Nikki Clancy said well that just happened after...

Tim Clancy added that is the back corner. That is not even hardly touched.

Nikki Clancy said and after that rain, that's when we got that three inches of rain.

Tim Clancy asked as far as those trees there? That whole corner, that picnic table, none of that stuff is touched.

Nikki Clancy said no, those aren't gone.

Grob stated basically the variance issue is related to impervious surface. That we are ruling on and picking up on what Johnson said, for us to allow you to exceed the impervious surface, we would have to put conditions and I think Johnson stated them and I would like to reiterate them. That is 10' setback from the neighbors, 100' from the lake which implies grass and repairing what is there and a stormwater management plan that for sure does not allow runoff into the neighbors property.

Krueger said I have to also consider the after-the-fact items too and it looks like the Clancys just clearly proceeded with a violation that they were told not to proceed. I am

going to lean more towards a denial and then if they want to come back with another application sometime in the future for this Part 1, they can do so with your stormwater management plan in place. To have that as part of a condition, they may not ever do it, in my opinion.

Nikki Clancy asked can we submit the, instead of paying another application fee and stuff like that, can we get the stormwater management plan to you?

Krueger responded we would have to be tabling it then.

Grob added we could table it and then come back with a stormwater management plan and a plan that reflects the 10' setback and the 100' setback and what you will do to mitigate the area that has been disturbed.

Johnson said as long as you are going that far you might as well have them include the motel, as long as they are on the site.

Grob clarified for the storm management plan?

Johnson replied yes.

Krueger added we can get to that one next, we're doing Part 1. When we get to Part 2, we can put that same condition on that.

Krueger continued is there a motion to either deny or to table?

Johnson said I will make a motion to... well maybe I won't. Do you agree to do that or would you rather us act on what you had proposed?

Nikki Clancy replied I would rather that we can try to figure this out so that we can get a variance. We need more parking and it would, even at the 100' setback I believe Buitenwerf, it would go over the 25% impervious surface.

Buitenwerf replied I would have to double check.

Nikki Clancy added I am almost positive, so regardless, changing the setback to the 100' and the 10', I believe we still need that parking anyways. So if we could be in agreement to resubmit some new plans to you plus the stormwater management plan.

Grob said what you are saying to us is, when we come back to it, you are still likely to have a plan that is going to slightly exceed the impervious surface.

Nikki Clancy responded it will.

Grob continued and I think we understand that.

Johnson asked so we wouldn't be in any trouble with having to deny the original one, make a motion. I am going to make a motion to table.

Buitenwerf added no, the main thing to keep in mind with tabling would be, even if the county extends its review to the maximum 120 days available from the date of application,

the absolute latest we would then be able to consider an amended application with additional information would be at the September meeting. So we would have to have that information in time for the September meeting.

Krueger said unless they agree to extend their...

Buitenwerf replied correct.

Krueger asked so do you have a form for them to sign if they are willing to sign it to extend beyond September?

Buitenwerf said yes.

Johnson said I would just recommend that because of the availability of somebody qualified to do that job.

Krueger added they might be having everybody scheduling and you might not be able to get them right away. Are you willing to sign that form extending beyond September?

Nikki Clancy replied yes.

Johnson said I make a motion to table the...

Krueger interrupted we are not going to vote until we have a signature.

Johnson replied okay.

Krueger added and this is just for Part 1. Of course we are going to want a storm management plan for that so we might as well just go ahead and make that form for both parts then.

Buitenwerf responded that is what I was going to suggest.

Krueger clarified you know we are going to be considering Part 2 separate, but your signing this will be for both parts. Because I am pretty sure the way this Board is leaning we're going to want the stormwater management plan for both.

Buitenwerf added if I might make a suggestion, maybe the Board discusses Part 2 and then entertains a motion for both. You could do those separately, but then you would have all the information in case one affects the other and that allows me to give the Clancys the form and let them read it and consider it and potentially have time to think about it and sign it if they wish before you would get to that point.

Krueger said okay, let's hold off on Part 1 and move to discussion and questions on Part 2. Part 2 has to do with the parking lot in front of the motel. Give us a little description of what you need there.

Nikki Clancy replied so the old motel was basically set almost directly up to where the black top was when you drive in the parking lot. That is where the old motel was that burnt down in February. And so we have made it as an L-shape and that L-shape will require for

our guests to come in and park at an angle inside there, which therefore puts us over our 25% impervious surface.

Krueger said one of the reasons why I was going want to see on this Part 2, also see a stormwater management is because it looks like the water is going to both run right towards your motel, somehow has to get around it and then also go down the street and then go up towards the lake.

Nikki Clancy responded it does now.

Tim Clancy said it does now, but they're gonna landscape it.

Johnson asked are you going to be able to plow your parking lot to that area? Around the back side of that somehow?

Nikki Clancy said by our house on that, no we can't because we can't drive back there because of the drainfield.

Tim Clancy said the drainfield is back there. So all that snow gets pushed up in the trees to the east. Believe me, it goes into the trees to the east and it goes, for years it's how we've always piled it up in that lot that we just looked at, it all got pushed toward the lake, the snow did. That is where they put it, they pushed it all down the hill down our road to the sides. That is where it all went. When the piles would get so high we would take a bobcat and plow it more, load it, dump it. Wherever.

Grob asked the parking lot, how many parking spaces do you intend to have in the lot and concerned that the parking spots are such that the cars are not causing any kind of safety problem with traffic coming in. I don't know how many parking spots you expect in a 50'x50' area.

Nikki Clancy responded I think eight.

Tim Clancy said no, you can get at least ten cars in there, one for every unit. And they can actually park on the back side of the hotel too, on the south side of it, once it's all graded and done.

Grob continued I guess the question is as part of coming back with a plan, it would be nice to know what your intent is for parking for the motel. Because if you can park from the motel, not in front of it, that could be overflow parking for your restaurant, couldn't it?

Nikki Clancy replied well it would be used as both at this point. So like if we don't have guests staying and if we're not full well then clearly people can park inside there so it's a multiuse.

Grob said which takes pressure off the lot you are going to use for the restaurant.

Nikki Clancy replied right.

Johnson stated that is a good suggestion Grob and also include in the plan, a parking plan for the proposed behind the 100'. We're adding up some things, we almost need to write

this down. So we're suggesting that we have a plan for parking for the motel and the potential new parking lot beyond the 100' setback, some sort of plan for snow removal, whether it be a skid steer and you haul it away and shovel it out of a pick up or something, and a vegetative buffer by a qualified person, I don't know if they do the same thing, Grob would know more about that.

Grob asked what were you talking about there.

Johnson responded between the proposed parking lot and the lake, where it has been disturbed, to be recreated.

Grob said that was part of it was going back to the 100' and I thought I said in terms of what they were doing to repair what they have done there.

Krueger added that stormwater management plan would take into account the motel area?

Johnson said the entire project.

Krueger opened for public comment.

Eric Flamm said we own the property directly north of the motel. I did want to just point out a couple things. The old motel was approximately 30-35' off the property line. They have now moved it to 10'. At least they claim 10', but I think with the soffit they are probably going to be a little bit closer than 10', but all we ask as far as the parking lot for the motel is that they are required to maintain a 10' setback with the drive and the parking from the property line, because right now where they have it graded, they are well within 10' of our property line.

Dan Elsey, Vacationaire Estates, said part of it is a question, if you are considering continuation to look at this project that they are working on, there is currently class 5 there, a portion of it was taken off the top and then placed over by their house. There is still class 5 there, they are still parking on it. So if they are planting grass, there is still class 5, you still have runoff, and you still have debris running off into our property. I would like to know what the correction and what the plan is for taking care of the action now.

Darrell Watkins said I just wanted to reiterate the problem with that property is saturated, they have a conditional use permit that allows 185 people in the restaurant building plus they have motel units in the restaurant building they have the new motel, they have a new house which was just approved here a short time ago and they have the living quarters up there, I don't know what the standards are for parking requirements for 200 people, but I just hope that is all taken into consideration when they do this plan for parking.

Tim Clancy added there is no apartments.

Nikki Clancy said we don't have any apartments in the building.

Tim Clancy said there is no one staying in the restaurant.

Krueger closed public comment.

Krueger asked Buitenwerf I have a question as to what one of the gentlemen back there said, if we were to table this and to extend the time out, what kind of immediate action plan would you like to see done. To prevent erosion of what is already happening.

Buitenwerf replied we would want to see grass actually come up and be thriving and viable. It was roughly a week since it was said to of been planted. I didn't see any evidence of any sprouting of grass seed and it also, staff has said they have seen spots where the soil is, not just class 5, but visually to me during the lot viewal it did look like there is still a fair amount of class 5 surface there that is not conducive to the establishment of grass seed. So if this is tabled, the Department would continue to want to see grass taking root there in the next week or so and would want that area fully vegetated and not be receiving reports of vehicles being parked on that in the interim until the variance application can be heard.

Grob added there is the runoff wall or bags or whatever it is, towards the lakeside, I can't remember, there is none that prevents it right now from running off into the neighbors-right?

Nikki Clancy responded we put up a silt fence all the way around.

Johnson made a motion to table the variance application in order to allow the applicants time to submit a revised application that must include the following items:

1. A stormwater management plan for the entire property prepared by a Minnesota licensed professional engineer. The plan must take into account all existing and proposed vehicle parking and impervious surface areas.
2. An amended variance application that shows all proposed vehicle parking areas complying with the 100' ordinary high water mark (OHW) setback and 10' side lot line setback.
3. A vehicle parking plan for the entire property.
4. A written snow removal plan for the entire property which includes Icon Drive.
5. A vegetative restoration plan for the portion of the illegally installed vehicle parking area that is located between the 100' OHW setback and the lake.

Also, the following two conditions were placed on the motion:

1. All current Shoreland Management Ordinance violations on the property must be corrected to the Environmental Services Department's satisfaction.
2. The sediment from the illegally constructed vehicle parking lot (located north of the restaurant) deposited on the neighboring property to the north must be cleaned up.

Krueger seconded the motion that passed 5 – 0.

Miscellaneous: Buitenwerf stated we do have items for the August agenda which will include Planning Commission business as well. There are two minor subdivisions and then we don't have a lot for variances yet, but I imagine we will have an equivalent number to what we have this month.

Communications:

Adjournment:

Grob made the motion to adjourn.

VanKempen seconded the motion.

The motion carried unanimously 5 – 0.

The meeting adjourned at 9:05 p.m.

Respectfully submitted,

Staci Harvey

Recording Secretary