

HUBBARD COUNTY

Planning Commission/Board of Adjustment Meeting Minutes

6:00 p.m. on Monday, July 22, 2019

Chairman Mark Petersen opened the meeting with the following additional members present: Ken Grob, Tim Johnson, Veronica Andres, and Mike Kovacovich. Also present were Environmental Services Director Eric Buitenwerf and ex-officio Planning Commission member and County Board Vice-Chair Char Christenson.

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

Planning Commission:

Approval of Minutes: June 24, 2019

Kovacovich made a motion to approve the minutes as presented.

Andres seconded the motion that carried unanimously 5 – 0.

Old Business: None.

New Business:

Preliminary Plat Application of Paradise Point by Burton Manz: Part of Government Lots 6 and 7, Section 22, Township 143, Range 34, Lake George Township on Lake George, a recreational development lake. Parcels 17.22.00700 and 17.21.01410. Applicant is proposing to subdivide 51.9 acres into 10 riparian lots.

Burt and Debra Manz, applicants, and Matt Murray, surveyor, presented the application.

Murray stated as indicated, the plat proposes 10 lots each exceeding the minimum lot size standards. Each lot will have access by an outlot, a private road. Each lot serviced by the outlot will have an undivided ownership interest in the outlot. Lots 4 and 5 specifically will have access by both the outlot and also an alternative means of access by an existing private road that currently serves a cabin at the end of the road. There is steep terrain on lots 4 and 5 as we near the old railroad grade and this will just give some more building options for those lot owners while still meeting the requirements for access under the Subdivision Ordinance.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Andres asked do you ever propose that the road be taken over by the township?

Murray replied not at this time. The right-of-way width would be there and it would be most likely a matter of entering into the township with a road agreement of what their specs would be and then incurring that cost to bring the road up to their specs for the township to take it over.

Johnson said I would like to make a comment that the owner advise any potential new owners of Lot 7. To make them aware of the designer's warnings about that lot.

Grob asked do you expect most of these lot owners would want to have access to the lake or try to provide themselves access to the lake?

Manz answered I would think most of them would not.

Grob continued the question I have, especially for the six lots to the back, which is 6-10, did you consider the possibility of a common space with access to the lake and a common dock. It seems with the large distance, up to maybe 300' – 400' through wetlands, it is very problematic. I think the lots might be more attractive, if people want lake access, if there was a maintained path where they could maybe drive a golf cart or ATV down and then a common dock. Did you consider that at all as a possibility?

Manz replied I am not sure. You are talking about a shared boardwalk?

Grob said if you think about it, if there has to be 10 boardwalks and some of them hundreds of feet long, a common space with a boardwalk and common dock at the end would be much more friendly to the lake and the wetlands. Did you consider that at all as a possibility?

Murray stated we did talk about that quite a bit and we see that as always being an option, but we don't want to necessarily limit the lots to that. As buyers come along we talked about giving them that option. In which case Manz or the future owner would then construct it. As the lot owner they would then be able to set the easements and establish that common access. I don't know how practical it is for all six lots to have access just at that one point. Five and 6 probably make the most sense for that. The other lots, 8-10 specifically, it is not a long distance to the shore and part of it is a spruce swamp. I can walk through that right now without getting my feet wet. There is an area right at the toe of the slope where it is wetland, but turns into a spruce swamp area that you can walk through. That does not necessarily apply to Lots 5, 6, and part of 7. We did discuss it, but we didn't want to limit that option.

Grob asked how about Lots 1-4? Is that walkable also?

Murray replied the wetland, at least right now is dry. I did walk through it. There is an ice ridge in the middle, you can see the wetland delineation line that splits up the wetland from the lake. Right at the lake it is not delineated on the plat, mainly because it did not affect the residential lot suitable area, but there is a pretty substantial ice ridge out there that varies in width from a couple feet to maybe eight feet in width. So it does create a nice landing opportunity for a dock. The shoreline there is quite a bit different from Lots 5-10. Much more suitable.

Petersen asked if you were to do a shared boardwalk for more than one of these lots, would that require an amended plat here to show an easement for something like that? Would that have to go back to the drawing board?

Murray answered most likely it would just be created by a separate easement document. Any easement shown on the plat is generally limited to a utility or drainage easement and this would be a private access easement, so it would make more sense to do a separate document to establish that easement and then any restrictions that would go along with it.

Grob added the thing is that all the lots are about 150', which is standard. As soon as you start to cut one, they end up losing a lot I think.

Buitenwerf said the ordinance no longer allows what you would considering, which is a controlled access lot. That was removed from the ordinance a few years ago. That would not be an option that could be entertained, the only thing that you could look at would be a shared boardwalk on property lines between two adjoining lots. That would be the extent of it.

Grob explained these all already have access to the lake, they are not outlots; which is what I thought controlled access lots allowed. Since they all had access, I did not think that applied.

Andres made a motion to approve the preliminary plat application as presented to the County Board.

Grob seconded the motion that carried unanimously 5-0.

Board of Adjustment:

Approval of Minutes: June 24, 2019

Kovacovich made a motion to approve the minutes with one correction on page 48. Beach Avenue should say Beach View Road.

Grob seconded the motion that carried unanimously 5 – 0.

Old Business:

[Variance Application 14-V-19 by Jon and Tina Boughner](#): Part of the NE ¼ of the SW ¼ and Government Lot 8, Section 36, Township 143, Range 32, Lakeport Township on Kabekona River, a Tributary. Parcel 19.36.00213. Applicants are requesting a variance from Section 502.7 of the Shoreland Management Ordinance for an after-the-fact request to place an accessory structure within the 50' road right-of-way setback.

Petersen stated we tabled that item last month and we will not be addressing that item this month so we will move on.

[Variance Application 15-V-19 by Hubbard Township](#): Part of the NW ¼ of Section 20, Township 139, Range 34, Hubbard Township on Long Lake, a recreational development lake. Parcels 14.20.02041 and 14.20.02011. Applicant is requesting a variance to

intensify a nonconforming use, alter vegetation in the shore impact zone, exceed permissible volumes of earthen material movement within the ordinary high water mark 100' setback, and increase the impervious surface area.

Jerry Brosdahl, Chairman of the Board for Hubbard Township, Terry Kimball, Supervisor for Hubbard Township, and Zach Tommo and Keith Cannon of Karvako Engineering, presented the application.

Tommo stated the purpose of the project is to improve the boat landing at Long Lake. Right now it is gravel and we are hoping to pave the road and the boat access. We are trying to mitigate any stormwater impact with our infiltration swales and improve the site.

Grob asked the swales that you have there, are those depressions for collecting the water?

Tommo replied correct. The purpose of those would be to collect any runoff that would come from the impervious surfaces. They are designed so that they will drain within 24 hours and they will hopefully collect and infiltrate all of the water.

Grob said if I look at Beach View Road that runs all the way down, that is parallel to the lake. Does all of the water run off of it directly into those swales?

Tommo answered no. The south side will drain up into the ditch and then that will filter through the ditch into the grass. There will be a centerline crown. The south side will drain into the ditch and go through the grass which will act as a swale also and that will go under an existing culvert and go into the lake from there. The north side of the road will drain towards the lake through the grass and then make its way to the swales.

Kovacovich asked what kind of review do you have on this project with the Department of Natural Resources (DNR)?

Tommo replied the DNR does not have to review this project, but they have looked at it. They took a look at it and didn't have any major comments. They looked at the infiltration and the earth moving permits (EMPs) that we have for stormwater prevention.

Andres asked on the tree removal, do you have a post-construction vegetation plan?

Tommo answered right now any place that is disturbed will be restored with native vegetation. We don't have any proposed trees, there is not quite budget for that. We are keeping as many trees as we possibly can. There is not a whole lot of room to plant trees even if we would have the opportunity.

Andres asked when is the proposed construction plan scheduled?

Tommo replied we are hoping to start in August.

Andres asked when will it end?

Tommo answered 15 days is the proposed schedule. It looks bigger on the plans.

Grob stated my only concern is stormwater runoff.

Tommo said I can walk you through it. On the lakeside of the parking lot, we have a drive over curb the whole way to try to catch any runoff that will come from the pavement. The right half will run into that infiltration swale to the right and then anything on the left half will run into that bigger one on the left. The swales are sized so that they will catch runoff.

Cannon stated I would like to add that during construction when everything is exposed and dug up, we have developed a stormwater management plan and we have what is called redundant BMPs along that lake. Before anything is disturbed we are putting two barriers between what we are about to disturb and the lake, which is a silt fence and bio roll, just to ensure that nothing gets into the lake. And that doesn't come down until the turf is 80% established.

Grob asked how many parking spots does it end up at?

Tommo replied we have the parking in the parking lot itself and then along the road on the south side.

Brosdahl stated I believe approximately 16.

Grob asked is that an increase over what was there?

Tommo answered 6 or 8 I believe. There weren't any designated parking spots there to begin with.

Brosdahl added people were parking up on the grass. If you have ever been down there on a busy weekend, they are all over the place.

Kovacovich stated it will be much more organized with this plan.

Brosdahl added if I may, you had the GIS image on the screen, you can see right there what we are trying to prevent. You can see through the years the silt that has filled in the lake right where the dock is. That is what we are trying to get taken care of is all of that runoff that is going on right now. It is a highly used access. The north access is less than desirable so most people come down to the south access. We are trying to improve upon that.

Petersen opened for public comment.

No oral public comment was given.

Written public comment was received by:

- Betty Larsen, 17166 Dream Catcher Drive, Park Rapids, MN 56470
- Sharon Natzel, 13623 County 20, Park Rapids, MN 56470

Petersen closed public comment.

Andres stated we did have some public comment last month. There was a neighbor across the street. They were thinking of having an access to Beach View Drive, so if he

does that and you are going to have parking there, how is he going to establish an access point instead of on 87?

Tommo replied I think that everywhere we had the parking was pretty steep. There is a bank right behind it. The parking does not extend all of the way to the road so he would have that opportunity to go further to the left on the plans as it sits there.

Brosdahl asked do you happen to know which parcel is his?

Andres answered yes he has it pulled up on the screen there.

Grob asked what is his concern?

Andres replied his concern last month was that his access right now goes right onto State 87 and he is looking in the future to have a driveway onto Beach View Road. If there is parking there his concern is how that will affect the location of his driveway.

Tommo answered I don't know without having the actual drawing of how wide it is there, but there is room directly south of the parking there. Otherwise where we have the outlet there is a fairly decent amount of room there. It is all his parcel there where he could construct a culvert and driveway. We are not changing the grade of the road too much. I don't see it being much different than as it sits today. Where he would want to construct it would most likely be outside of the parking area.

Andres added the only comment I have is that maybe we put a condition on it that a post construction revegetation plan consisting of trees and shrubs be planted in the shore impact zone meeting Environmental Services approval be applied.

Kovacovich asked how much disturbance in that zone is there going to be?

Tommo replied I guess I don't have the exact number in the shore impact zone. I have the existing impervious and pervious.

Cannon asked what is the setback?

Andres replied 50 feet. To my knowledge you are removing pretty much everything there.

Tommo asked what type of tree or shrub requirements would that be then?

Andres answered that kind of depends on the Environmental Services Department.

Petersen asked would you have any feelings on that Buitenwerf?

Buitenwerf responded what we would be looking for would be restoration of as many native species as possible and recreation of whatever current cover there is as close as possible. If there are difficulties in having enough room for trees that may not be feasible, but certainly getting something that would provide aesthetic screening.

Johnson asked you plan on taking every one of those trees along that shoreline to the culvert?

Tommo replied any trees that you see on this drawing are staying. The only trees that we will be removing are on the removal sheet. We are trying to keep as many trees within the shoreland as we possibly can.

Johnson said on this map it doesn't show any trees.

Brosdahl stated I believe sheet eleven is what you are looking for.

Tommo explained I believe they have an older set. Only the trees with "X"s will be removed. I guess we don't show every single tree in our plans. The bottom of the page there our surveyors determined the tree line was, so anything there is more dense than we would need to survey every single tree. All of the trees lakeside of that would be left alone. We are trying to keep all of the mature trees. We did try to keep as small of an impact area as we could while allowing for boats to turn around. We don't want it to be congested and we want it to be user friendly. That is about the minimum area that we could have taken to be paved. Also we wanted to have infiltration before it ran into the lake. It does impact a little bit, but we tried to keep it as small as we could.

Kovacovich made a motion to approve the variance application with the condition that Hubbard Township must work with the Hubbard County Environmental Services Department to implement a post-construction revegetation plan for the shore impact zone and to accept the staff report findings of fact.

Andres seconded the motion that passed 5-0.

Findings of Fact

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

Yes (X) No ()

Why or why not? The project's purpose is to improve the stormwater management capability of the property which will provide greater protection to 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 project purpose is to improve the property's stormwater management and improve the access' ability to hold up to the vehicle traffic it receives. Also, the project seeks to provide improved parking space which will facilitate more orderly traffic flow which will then facilitate improved stormwater management by limiting traffic to places designed for it and not allowing it to go wherever.

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 soil type on the property is the Graycalm-Menahga complex which is susceptible to water erosion due to its slope (which averages 8.5% on the property) and loose sandy composition. There is 18' of elevation rise from the lake to the NW corner of the property over a ~215' horizontal distance. The only way to safely stabilize the ground to withstand the quantity and type of vehicle traffic associated with a public access is to pave the surface and then install the stormwater infiltration basins as proposed in the application. The variance is needed in order to grade the site in a way that protects it from eroding into the lake.

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

Yes (X) No ()

Why or why not? This access has been here for many decades. The proposal will, if anything, be an improvement to the locality's character and lake by better treating the stormwater running through the property and better organizing the traffic flow and parking.

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

Yes (X) No ()

Why or why not? Economics are not stated as the sole difficulty in the application.

New Business:

Variance Application 18-V-19 by Steve and Tammy Pullar: Part of Government Lots 4, 5, and 6, Section 20, Township 141, Range 34, Lake Emma Township on Potato Lake, a recreational development lake. Parcel 16.20.01290. Applicants are requesting a variance from Section 902.2 of the Shoreland Management Ordinance for fill needed to bring the lowest floor of a proposed residence 3' above the seasonal high water table.

Steve Pullar, 17299 County 40, Park Rapids, MN, presented the application.

Pullar stated back in November of last year I filled out a Wetland Conservation Act joint application to cover the wetlands with William Lee of the Hubbard County Soil and Water Conservation District. He ran that area through for the Corps of Engineers, the State Wetland Conservation Act with the Department of Natural Resources, I am assuming; but anyone who would have concerns with fill going in that area. That was all approved by all of those entities. I also had Nick Phillips, a Hubbard County Environmental Specialist, and he flagged the 100' setback from the ordinary high water mark. As I understand it, the variance isn't really to put the fill in, the fill has already been approved. I think the variance is to get approval to put the building on the fill that has been approved.

Kovacovich asked Buitenwerf will you confirm that is what the variance is? I understand that it is the separation, but without the variance he can't build on this spot?

Buitenwerf explained that would be correct. The southeast corner of the proposed building site, the existing grade is at the highest known water level of the lake. The ordinance requires the lowest floor of any structure to be at least three feet above that elevation. Then the ordinance also states that if fill is needed to be brought in in order to meet that separation requirement, then that requires a variance. The reason behind that is that it assumes, as is the case here, that you are dealing with an area that has been a wetland at some point.

Kovacovich asked have you considered pulling that house back? I was looking while we were there, it appeared to me that you could pull that house back 30'-40' closer to the driveway and eliminate the majority of the fill needed.

Pullar replied I respectfully disagree. I think pulling it back wouldn't give us room for access to the existing garage that we have right now and give us enough separation to back in vehicles or boats or a vehicle with a pontoon. I think I can put fill in there no matter what, is that correct Buitenwerf?

Buitenwerf clarified as long as it would be in areas that have been verified to not be wetlands; that would be correct.

Pullar continued I have done that, so I am going to fill it in regardless. I would like to build on where I fill in.

Kovacovich said where he is proposing to put the fill has been determined to be a wetland at one time, so he can't put the fill in without a variance regardless of whether he is building or not. Is that not correct?

Buitenwerf said not exactly. The soil borings that my staff performed in the building location show that it has been a wetland in years past. This whole stretch along Potato Lake has been filled in to some degree over the years. Where the proposed house would be located, the Soil and Water Conservation District made a determination that they don't feel that there is a wetland there. I don't fully agree with them, but that was their determination.

Kovacovich asked he could in fact fill there even if there was no building going on, and not need anything from the County?

Buitenwerf replied correct.

Grob added I am still not buying the fact that you couldn't move that back and minimize the amount of fill. Moving it back at least 20' or maybe 30' would have no impact to your ability to access your storage garage. The garage that you are adding to the house, you would drive directly straight in from your road and it seems to me that there is more than adequate space to turn around and back a pontoon into there.

Pullar explained the two buildings overlap by about 25'. Basically it takes out the big stall of the existing garage. It really would not allow that. Right now the separation between the two of them is about 50'. That may sound like a lot, but not when you have a truck and a pontoon.

Grob said look at this drawing, I see 30' on the sketch. Thirty feet brings you back to the current major driveway there and the garage is displaced to the top of this drawing, to the east. I can't believe that you can't turn around in there.

Pullar replied the building has moved to get that septic in, that we talked about also. The building has already shifted to the top of that page another 10'. I am going to fill it in regardless, so I would really like to be able to build on it. If I fill it in, it will be part of my yard. I would like to leave it up to the architect that designed a building for that spot. I didn't understand that a variance would be needed. His drawings fit that footprint really nice right now. I would really like to stick with that.

Grob asked if he is allowed to put that fill in no matter what, what is the variance for?

Buitenwerf explained the ordinance would allow fill to be placed as long as you are behind the 100' setback without the need of a permit so long as you are not placing it in a wetland or doing the work in a steep slope or a bluff impact zone. From what I gather, Mr. Pullar is indicating that he has changed the building location slightly to the east. We don't have that information in the application. That may affect the potential to put fill if he is shifting the home laterally to the east. The determination of whether that is or isn't a wetland hasn't been made. Assuming that it is not a wetland, he would be allowed to place fill in that area. In order to place a structure where you are unable to meet the 3' vertical separation from the highest known water table, that is what requires a variance.

Pullar added what you reviewed is what it is. That is where the stakes were when you came out and then we talked to William again and he determined that it was still acceptable because I actually moved further away from that corner than when William was out there. I have actually moved further away from his concerns. I am confident that I am still approved to fill in. Because I am going to put a building on it, I need the variance. Is that a good summary, Buitenwerf?

Buitenwerf replied for the most part in this situation, yes.

Andres asked have you put any thought into moving it at all to the east side where there is not any wetland?

Pullar responded I am trying to limit overlapping the two buildings.

Andres continued you are overlapping 25' now. You are creating a 33' high structure so you are going to be blocking your views.

Pullar replied not from the guest part of the garage.

Andres added part of the quarters is supposed to be strictly storage, not living quarters.

Petersen clarified the guest part is the lower level, east corner. Is that correct?

Pullar added and the bedroom above it.

Petersen said you would still have a view there.

Petersen opened for public comment.

No oral public comment was given.

Petersen closed public comment.

Written correspondence was received from Darrin Hoverson from the Minnesota Department of Natural Resources.

Johnson asked did you talk to your designer at all about that tank location?

Pullar replied I did. He said he has room there and he is confident in the design.

Johnson asked he will be able to meet the setback from the side lot line?

Pullar answered both the building and the setback.

Grob stated my perspective is that it could easily be moved back some distance without affecting things and minimize the amount of fill. I think it was wetland at one time, the borings indicate that it has that character. With the amount of space on that lot, I don't see why we couldn't ask them to move it back.

Pullar replied my plan is to fill it in regardless, I am just asking to put the building there. I have all the approvals, I am going to fill it in. I would just like the building there. I hired an architect to draw up a building that fits that perfect so that when you come down the driveway you get the view that we have always wanted. Any adjustment that we make would change that. The fill is going in anyway.

Petersen added in my mind, these are two separate things. Whether the fill goes in there or not, I think the variance is based on whether you put a building there with that fill. Did you consider what I wanted you to consider during lot viewals; soil borings and suitability for building there? Did you take that into consideration at all?

Pullar replied I did and we had another conversation on that. He is comfortable that it is going to be suitable for building.

Petersen clarified your foundation person?

Pullar responded correct.

Kovacovich asked Buitenwerf if we were to approve this, can we put conditions on it that no fill be allowed in that area? What I am asking is, if the building were moved back, he wouldn't need a permit then if it is completely out of the fill area?

Buitenwerf replied if the area where he would place the structure would not need fill to meet the 3' separation requirement, then it could be done by permit. I have not evaluated other locations on the lot to know if there is a spot that would meet that 3' criteria.

Pullar added I understand if I wasn't putting a building there, I could fill it in. I don't need any permit or permission from anybody else. I have done my due diligence. The surprise to me was that I couldn't put the fill there and then put a building on top. I am outside the 100' setback, I am outside of wetlands. I am good to put the fill. What I am asking you is to allow me to put the building on the fill that is going in. I can't do it without the variance because I need that 3' separation.

Grob asked the area that you show that was filled in the past; that entire area would be subject to water levels. That area on the drawing up there, was that not dirt that was pulled and you had filled in further down and you were required to take it out? That was filled in on top of fairly wet land?

Pullar answered the hill that you are talking about now, when we were out there? A portion of that hill existed. I did fill in closer to the lake and was told by Hubbard County to move it back to that hill. I stayed way further back than where they told me to at that time. Yes, some of that is fill I brought in.

Petersen stated I see these as two separate issues. Whether you fill or not if you didn't have a building there doesn't matter to me at all. I see the ordinance as a protection for you, putting a building there or not. In my mind I will struggle, if we make a motion to approve this, coming up with the findings. Knowing from my past as a builder, I always feel like the biggest enemy I had in construction was water. I am struggling myself with allowing you to do this because of what could happen.

Pullar replied I can only rely on the experts and the people I am hiring to do that work are people that have lived here their whole life and they are highly regarded in the community. They did borings and they are telling me it is suitable. That is a risk I would have to take. That isn't anyone else's responsibility.

Johnson asked would anybody want to go through a couple of these findings and see what an answer would be?

Discussion ensued about developing the findings of fact answers for questions 1-3.

Andres added I want to see you building a home on that lot. I agree with Grob that you could move it a little bit so that it is not in that wetland area. I also know that you are going to fill it anyhow, which is permissible that you can fill it, I just think that there might be alternatives that you can relocate it just a smidge. I do understand Johnson's view as well that you are going to fill it. It is unique. You are still going to want to put a house on the lot to live there all year.

Petersen asked if you were faced with a denial or possibly making a compromise, do you have any feelings about how you would go there? I have laid out for you what I am thinking and it is using the ordinance to protect you. I am just wondering what your feeling is on a compromise if we were to move to approve it with a condition that you move it back?

Pullar replied I would be very disappointed. We would have to get it redesigned again. We spent \$6,000 getting the first one. I don't know that we would go through that again.

Grob said if we, to minimize the fill, ask you to move it back 20'-30', why would you have to redesign it?

Pullar explained right now it is an L-shape that fits the high water mark and the wetlands. If we moved it back, the garage is where the boat trailers are parked now. There are trees there. If I moved it back, I would have to move it that way too.

Grob said I paced it off when I was there and I can't say that moving it back 20' affects anything. If you just slid it straight back. It isn't affecting the whole big area to the east there where you want to turn around.

Pullar replied if you say that you want me to move it to minimize the fill, it is not going to minimize the fill.

Petersen said for the 3' separation for the home. Regardless of what you do with the rest of it outside the footprint of that house.

Grob added the idea is to protect you from potential issues, I can't see why they would have to redesign it.

Pullar stated I think that for protecting me, I appreciate it, but that all goes to me and the people that I hire to build the building. They have reputations here and they are not going to put a building up that is not supposed to go there.

Discussion ensued about the findings of fact answer for question 3.

Johnson made a motion to approve the variance and adopt the staff report findings of fact for questions 4-5 and provided the answers for questions 1-3.

Grob seconded the motion that passed 4-1 with Petersen voting nay.

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

Yes (X) No ()

Why or why not? It is in harmony because he is allowed to do the fill based on Hubbard County Soil and Water Conservation District's assessment and with the added fill he would meet the 3' separation. It is a small area needing the fill.

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? Building a year round home on this size lot is reasonable.

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

Yes (X) No ()

Why or why not? The lot is challenging to have a building spot due to that fact that it is a low, flat lot with a steep hill and topographic challenges.

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 dwellings of similar size that appear to have been constructed in compliance with the 100' OHW setback. The proposed structure would thus 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.

Variance Application 19-V-19 by David and Cheryl Terhaar: Part of Government Lot 2, Section 18, Township 140, Range 33, Nevis Township on Lake Belle Taine, a recreational development lake. Parcel 21.18.00200. Applicants are requesting a variance from Sections 502.2, 507.1, and 902.2 of the Shoreland Management Ordinance and Article V, Section 1.01 of the Subsurface Sewage Treatment System Ordinance for a proposed residence that will not meet the 100' ordinary high water mark, 10' septic tank, and 20' drainfield setbacks and require fill to be used to meet the 3' vertical separation required between the elevation of the house slab and the highest known water level.

David Terhaar, 22449 200th Street, Nevis, MN, presented the application.

Terhaar stated my lot is very long and very narrow. The footprint of the house has to be very exact to get the 53' setback. It also has to be very close to the mound. I am asking for the 53' setback since it is so narrow and then the mound being within 6' of that. It is a very unique situation and I don't think the house could fit anywhere else. The Board approved a variance with the same dimensions from 2011. We couldn't build fast enough to have the sunset clause stay in place. I am going off of the same dimensions as the last variance.

Grob stated I realize that you have tried to duplicate what was approved before. I realize that between the road setback and the lake you are squeezed. That 53' setback is something that you are going to have to deal with. The garage size seems very excessive for the property. A nice garage is 24' x 32' for a two stall and storage. Is there any reason that you couldn't cut down that garage size? Maybe even shift the whole building to the east. You would be pulling it away from the mound. Try to convince me that you need a 49' x 32' garage.

Terhaar answered I think as far as moving it, Buitenwerf could talk about that. It would be a tremendous amount more for fill that we would have to bring in to move that.

Kovacovich clarified what Grob is saying is that if you cut off a portion of that garage and moved everything that far, you are not impacting any other ground to the east, you are just going to end up with a smaller garage. I believe that is what Grob was asking.

Terhaar explained we were just thinking boat storage.

Kovacovich asked is there an alternate septic mound drainfield system on this lot as proposed?

Johnson added being an existing lot like this, it wouldn't be required for building.

Buitenwerf replied correct, but there is no alternate site available if the current system would cease to be compliant.

Kovacovich asked if that house was moved 24' to the east, would there then be room for an alternate?

Johnson replied yes. That was going to be my comment to the applicant. It is not a deal breaker to me but I would certainly recommend that you hold out a spot for an alternate septic site. There is not one planned here. Eventually your mound will fail. To tear it out and put a new one in that same location, according to the State of Minnesota, it would be an experimental system. It is preferred to be on new, natural soil.

Petersen asked do you understand if that system would fail, would you have a spot to put a new one? It does not seem you would with the current layout. Do we know how old that current system is?

Buitenwerf stated let me check.

Andres added while Buitenwerf is checking on that, I did want to clarify that Mr. McDougall that did the variance application back in 2011, his proposal was for a smaller house and smaller garage. We have the documents with us. His proposal was only 2,940 sq. ft. to where yours is 3,488 sq. ft. His house is 28' x 44' including a 14' sunroom which makes it 28' x 58'. Yours is 32' x 60'. The garage that Mr. McDougall had was 28' x 47' and yours is 32' x 49'. I do have concerns with the proposed garage being excessive. There are storage facilities available for your boat to be stored in, because your lot is so small I think the building itself is a little bit extreme.

Grob asked Johnson if he had to have an alternate spot for a second mound, would the best placement be to the west? Would it be best if you move the whole structure to the right and then he would have a mound that would go perpendicular to the current one?

Johnson replied that is exactly where it should be.

Grob added 24' x 32' is a nice size for a garage considering the size of your lot.

Terhaar asked do we change the dimensions right now?

Grob asked Buitenwerf if he was willing to accept that size garage, we could make a motion to approve the variance with the condition that the dimensions change?

Buitenwerf replied yes you could approve the setback and then specify the dimensions of the structure that would be allowed at that setback.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Petersen asked Johnson how much room do we need to gain here?

Johnson replied he could bump into that dike a little bit of that mound because it is sand. The use is pretty much straight down. Final dimensions on the mound alongside of there, I would do it 20' x 30', but go in about 5' into that existing dike of the existing mound.

Discussion ensued about reducing the footprint to allow a secondary septic site.

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

1. The proposed house dimensions cannot exceed 60' wide x 32' deep.
2. The garage dimensions cannot exceed 24' wide x 32' deep.
3. The west side of the house must be 55' from the west property line.
4. The proposed house cannot exceed the bedroom allowance for which the existing septic system was sized.

Kovacovich seconded the motion that passed 5-0.

The Board adopted the staff report findings of fact.

Findings of Fact

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

Yes (X) No ()

Why or why not? The lot lacks sufficient depth to be able to place a residence and attached garage on the lot in a location that meets all setbacks. The proposed house location is placed as far back from the lake as is practical while still leaving sufficient distance between it and the existing septic tank and mound drainfield to allow them to be maintained and not impacted by the structure.

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 lot is unimproved aside from a well and septic system. The proposed residence and attached garage is a reasonable use of lakeshore property.

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

Yes (X) No ()

Why or why not? The lot is ~168' deep on its west side and ~130' on its east side. With a 100' OHW setback and 20' township road right-of-way setback, there is very little room on the lot to fit a house, garage, well, and septic system. The lot was created in 1969.

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 dwellings, an undeveloped government lot immediately north of the property, and a commercial resort that is two lots to the west of the property. The dwellings on these lots sit at similar ordinary high water mark setbacks to that proposed in the application. The lot is also the second to the last lot on this dead-end township road.

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-19 by Pam Raden: Part of Government Lot 3, Section 28, Township 141, Range 32, Akeley Township on 11th Crow Wing, a recreational development lake. Parcel 01.28.00510. Applicant is requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed structure to be located within the 100' ordinary high water mark setback.

Pam Raden, 23899 Gray Wolf Drive, Akeley, MN, presented the application.

Raden stated what I would like to do is to replace a 40 year old trailer with a new structure that is a little bit bigger, so I am asking for a variance on one side of my lot for the additional 5' closer to the shoreline. My current structure is with the deck. I am putting on a 26' x 56' new modular home and pulling off the 40 year old trailer.

Grob said I think with the information that we received there is a potentially proposed deck.

Raden replied I put that in after further reviewing it. I am putting it off the front 12'. I had a future possibility so I decided if I choose to do it, I might as well get it done here.

Grob clarified that deck is officially part of the variance request now?

Buitenwerf responded I did receive the sketch that is on the screen along with another sketch from Raden on Friday. We did not get a written narrative to accompany it to

officially amend and explain that it is an amendment. I would just ask her to clearly say that she is amending her application to include that deck that is shown on the sketches that were submitted Friday.

Petersen asked could we get you to state that?

Raden stated I would like to officially amend my proposal to add a 12' deck off of the front of this building. We have to do a 4' landing platform to the side.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Kovacovich made a motion to approve the amended variance application that includes a 12' deep x 30' wide deck on the north side of the proposed house and a 4' wide wrap-around deck along part of the west side of the proposed house as shown on the submitted application sketches.

Andres seconded the motion that passed 5-0.

The Board adopted the staff report findings of fact.

Findings of Fact

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

Yes (X) No ()

Why or why not? The structure will be placed on the spot of the existing trailer which is the only real location where a residence can be placed on this lot due to the location of the septic system and the 22% slope that occupies the southern 1/3 of the lot. The proposed structure is moved back as far as is possible and practical on the lot given its topography, existing improvements, and fronting the lake on its north and west sides.

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 mobile home was placed on the lot in 1982. It has served beyond the average mobile home life expectancy. Replacing the mobile home with a modular home 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? There is a 22% grade steep slope that covers the southern 1/3 of the property which prohibits placing a structure on it. The north 2/3 of the lot is flat and conducive to placement of a structure. The lake fronts the property on its north and west sides which leaves insufficient lot depth (lot is ~150' deep east to west) for a structure and septic system to be placed in compliance with the required 100' and 150' OHW setbacks.

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

Yes (X) No ()

Why or why not? The locality consists of seasonal single family dwellings on relatively large lots that range in size from 1.75 to 22 acres. The adjacent lot to the east has a residence on it at a similar ordinary high water mark setback. This adjacent residence is the closest to the proposed new modular home and is a bit over 100' away. The nearest residence to the west is ~475' away and the nearest residence to the south is ~640' away. The new structure will be in essentially the same location as the structure it will replace. No issues with its placement have been brought to the Environmental Services Department's attention since the structure was built in 1982.

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 the fact that the north and west sides of the lot front the lake and the lot depth is ~150' from the west shoreline with the south 1/3 of the lot consisting of a steep slope of around 22% that makes siting the structure on it prohibitive.

Variance Application 21-V-19 by Ryan Manselle: Part of Government Lot 1, Section 5, Township 140, Range 34, Henrietta Township on Ingram Lake, a natural environment lake. Parcel 13.05.01100. Applicant is requesting a variance from Section 701 of the Shoreland Management Ordinance for a proposed addition to a nonconforming structure devoted to a nonconforming use.

Ryan Manselle, 17523 County 18, Park Rapids, MN, presented the application.

Manselle stated there was a structure that was there when we bought the building. It was unsafe and decaying really bad. We pulled it down and I am just wanting to build it just a little bit bigger.

Petersen asked you are describing the entry way?

Manselle replied correct.

Andres said I am supportive of the request to improve the entrance and safety of the patrons.

Grob asked Buitenwerf the issue here is the fact that this is a nonconforming structure. There are no setback issues from the road or from the lake. If we were to approve this, it includes the patio that is on the back of the structure?

Buitenwerf answered the request concerns the entry way that faces County 18. The reason that the variance is required is because the use is non-conforming. Section 701 of the Shoreland Management Ordinance requires a variance in order to do any modifications to a structure that is devoted in part or in whole to that use.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

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

Grob seconded the motion that passed 5-0.

Findings of Fact

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

Yes (X) No ()

Why or why not? The new entry will occupy roughly the same area as the existing entry and will meet all setback and height requirements. The only reason a variance is needed is because the use predates the ordinance.

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

Yes (X) No ()

Why or why not? Replacing the existing unsafe customer entry into the bar with a safe entry is a reasonable property use.

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

Yes (X) No ()

Why or why not? The business use predates the ordinance and is thus a nonconforming use. Section 701, Nonconforming Uses, of the Shoreland Management Ordinance requires a variance in order to add onto or alter a structure devoted in part or whole to such a use. The ordinance is the reason for the variance need which is beyond the current or prior landowners' control.

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

Yes (X) No ()

Why or why not? This commercial property is surrounded by large residential lots ranging from 6 to 20 acres in size that are mostly year-round residences. The nearest residence is 300' to the south and the next nearest is 840' to the east. This business has been in this location for decades and had very little, if any, exterior changes. The remodeled entry will not harm the locality's character in any way.

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 22-V-19 by Keith and Sherry Kriesel: Lots 2 and 3, Block 1, Stewart's Golden Acres, Section 14, Township 139, Range 33, Crow Wing Township on Bladder Lake, a natural environment lake. Parcel 06.56.00300. Applicants are requesting a variance from Section 502.1 of the Shoreland Management Ordinance for a proposed structure to be located within the 150' ordinary high water mark structure setback.

Sherry Kriesel, 10315 277th Avenue, Zimmerman, MN, presented the application.

Kriesel stated we would like to remove the 40 year old trailer that is sitting there right now and build a permanent home on the property. We have a power line running through that we have to be 50' away from. It is a natural environment lake so we are supposed to be 150' setback. With a 4' sidewalk, the southwest corner of the sidewalk will be at 135' from the lakeshore.

Grob said I think the issue that came up is that you indicate that you have to be 50' from the easement for the power line. It is not clear to us that it is a requirement at all. You can build right up to the easement point. You don't have to be 50' from the easement. Is that correct Buitenwerf?

Buitenwerf replied in terms of the Shoreland Ordinance requirements; that is correct.

Kriesel said we were told that we had to be 50' from the power line easement to build. The edge of the structure had to be 50' from the easement.

Kovacovich asked who told you that?

Kriesel answered the neighbors. They said they had to be 50' from the easement of the power line.

Grob added you should check with the power company.

Kriesel stated no one can tell me who that is. Itasca Mantrap said it wasn't theirs.

Kovacovich asked if we looked at the corner of the building and had to push it back so that it would meet the 150' setback, it appeared to me that we would be moving considerable amount of that hillside to accomplish that.

Kriesel replied yes.

Andres said currently you have a deck on there and in your proposal, you are just showing a sidewalk and not any type of deck. Is that correct?

Kriesel replied correct. We are up in age and it needs to be handicap accessible.

Kovacovich asked you are proposing to build it on slab?

Kriesel agreed. Slab on grade.

Grob added you are making the point that even if the 50' weren't required, that the lay of the property and pushing back another 10' into that hill doesn't seem to make a lot of sense.

Kovacovich replied that is my point. Moving that amount of fill to accomplish that, it does not appear that it would be affecting the drainage into the lake by allowing it to be 15' closer.

Grob added there is a good buffer along the whole lake. We have a choice, we could table this and ask the applicant to establish if the 50' setback is in fact a requirement, or we could proceed forward.

Kovacovich asked would it be your intent to remove the two RVs from the front side of that lot so that there is nothing within the 150' setback?

Kriesel replied yes.

Kovacovich added in my mind that would have to be a condition of granting the variance.

Kriesel repeated yes. They will both be removed once the house is built and livable.

Petersen asked if you were to find out that the 50' setback from the easement was not a requirement, are you opposed to moving the proposed structure back to meet the setback?

Kriesel stated the south end would then need to move, so I have the pole building/garage there and I would lose my chance of having a covered breezeway where I can park my car to get my husband into the house.

Johnson asked how many bedrooms is the new house?

Kriesel replied two.

Grob asked when you talk about a breezeway, what are you talking about doing?

Kriesel answered extending the roof of the pole shed onto the house so that I would have a covered area to get him into the house.

Kovacovich added you are proposing that a driveway on the lake side of the pole shed up to the edge of the new house? Is that what your intent is?

Kriesel responded no. The north side of the pole shed. We have to dig out and take out trees.

Kovacovich asked so it is the back side, away from the lake?

Kriesel answered yes.

Andres clarified you are wanting to propose putting the two together?

Kriesel replied eventually that is the plan.

Johnson asked are the RVs being used during the time you have had the trailer there? Have all of them been being used at one time?

Kriesel replied yes. The kids have their camper there. They will have the second bedroom in the new house. I have the old camper, that one is mine. I can't be in the mobile home due to mold. My husband and the dogs live in the mobile home. We need to get the mobile home out of there.

Petersen opened for public comment.

No oral public comment was given.

Written public comment was received from:

- Dennis and Anita Stroklund, 26737 136th Street, Nevis, MN 56467
- Elizabeth Kurtz, 26751 136th Street, Nevis, MN 56467

Petersen closed public comment.

Andres added we have received a couple of written comments concerning your camper and RV location, so whatever is proposed tonight I believe a condition would need to be placed of no RVs or campers can be placed on the lake side of the property.

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

1. The two recreational vehicles must be removed from the property once the new house is built.

2. No recreational vehicles will be allowed on the lake side of the house once it is finished.

Grob seconded the motion that passed 5-0.

The Board provided answers for the findings of fact questions 1-4 and adopted the staff report finding for question 5.

Findings of Fact

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

Yes (X) No ()

Why or why not? Moving it back would increase the amount of excavation that would be done and offsets the 11' closer to the lake that it is going to be. I would rather see that hillside remain as is. They currently have a good buffer along 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? I believe that being 11' closer is worthwhile because it minimizes the amount of excavation needed in the hillside to put the structure in.

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? By minimizing the amount of excavation into the hillside I believe we can answer yes to this question.

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

Yes (X) No ()

Why or why not? By removing the trailer and the two RVs and putting in a house, it does not change the 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.

Variance Application 23-V-19 by Crow Wing Crest Lodge: Part of Government Lot 1, Section 15, Township 141, Range 32, Akeley Township on 11th Crow Wing Lake, a recreational development lake. Parcel 01.15.00710. Applicant is requesting a variance from Section 701 of the Shoreland Management Ordinance to alter, expand, and add to a structure devoted to a nonconforming use.

Kim Bowen, 31159 County 23, Akeley, MN, presented the application.

Bowen stated we have an old cabin built in the 20s and it is time to rebuild it. Department of Health requires that the bedroom size be 120 sq. ft. for two people and that would make it a much bigger footprint. We are thinking it would be cheaper and look better if we built up instead of out. While we were doing it, we were thinking about adding a third bedroom because we now have the septic to accommodate that. We would like to go up and pretty much keep the same footprint. There is a deck already on there and I am wondering if I should make it all of the way across the front of the new structure.

Grob added the protocol is that the drawing you make is what becomes the official record.

Bowen asked do I need to amend that?

Grob said your drawing does not show a deck.

Bowen agreed it does not show a deck at all. I can say for cleaning purposes, the more deck we have, the less tracking in there is to clean up. I would imagine that we would probably use the same piece of decking that is existing and maybe add both sides so it is all the way across.

Grob asked do you know what the lakeward dimensions are?

Bowen said I would say it is about 8' x 12'.

Grob asked Buitenwerf could she amend her application to include a deck that is 8' deep x the width of the cabin. Can she do that verbally or should she have a drawing for that?

Buitenwerf replied it can be done verbally. I would always recommend that we have a drawing of what is being proposed. Given the simplicity of the proposal, if it is approved, I think the dimensions specifying that it would be 8' lakeward and the width of the proposed replacement cabin would box it in sufficiently.

Petersen clarified we need her to state that?

Buitenwerf answered it would be good to have it stated that it is an official amendment to the application.

Bowen stated so let it be said that I would love to amend the variance application to include a deck that is about 8' deep by the width of the proposed cabin, which is 34 feet.

Grob said can I add that the deck would be on the lakeward side of the cabin.

Bowen replied of course.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Grob made a motion to approve the variance application with the addition of the 8' x 34' deck proposed in the oral application amendment made by the applicant during the July 22, 2019 public hearing. The applicant is allowed the option to move the entire proposed structure up to 15' closer to the lake than the proposed ordinary high water mark setback shown for it in the application. Grob placed a condition on the motion that no additional cabins will be allowed in Tier 1.

Petersen seconded the motion that passed 5-0.

The Board adopted the staff report findings of fact.

Findings of Fact

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

Yes (X) No ()

Why or why not? The cabin location is 45' further from the lake than the required 100' OHW setback. The footprint of the cabin will only change a few hundred square feet and the height increase to 18' is still very reasonable. The number of dwellings in the resort is not changing. The cabin sits in the middle of the property that is over 1000' wide and 1200' deep so it will not negatively impact any neighboring landowner or pose any aesthetic impacts to people using the lake. It makes sense to increase the cabin size to allow it to meet code requirements and accommodate customers with disabilities.

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? Increasing the size of a 1920s cabin so that it is able to meet various code requirements is a reasonable use of the property...especially when the proposed cabin will use the same footprint as the existing and it is located 145' from the ordinary high water mark.

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 ordinance requires a variance to alter a structure that is a part of a nonconforming use. The resort use predates the ordinance. The ordinance requirement was not created by the current or prior landowners.

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

Yes (X) No ()

Why or why not? This resort has been in operation for decades. The proposed cabin replacement is located in the middle of the property which is just over 1000' wide so the proposed location will not affect any neighboring properties. The cabin sits 145' from the OHW and is screened from the lake by several mature trees on the property so the added 9' of structure height will not pose any aesthetic issues for parties recreating on the lake. The property is also nearly ¼ mile deep so the increased structure height will not impede the lake view of any back lot landowners as there are none.

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 the sole difficulty.

Variance Application 24-V-19 by Roger Neutgens: Part of Government Lot 6, Section 18, Township 140, Range 32, White Oak Township between Hay Lake, a natural environment lake and Ham Lake, a recreational development lake. Parcel 28.18.00700. Applicant is requesting a variance from Section 502.1 of the Shoreland Management Ordinance for a proposed accessory structure to be located within the 150' ordinary high water mark setback.

Roger Neutgens, 2981 Patton Road, Roseville, MN, presented the application.

Neutgens stated I am proposing to build a garage after 35 years. There is not a very good area. We are in a condensed area and tried to do the best we could.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Grob commented given the fact that he is squeezed in by Hay Lake and Ham Lake, he has probably picked the best location for the garage, which is still over 100' back from Hay Lake. His shoreline has a nice ice ridge which would prevent any runoff issues even with the additional structure.

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

Grob seconded the motion that passed 5-0.

Findings of Fact

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

Yes (X) No ()

Why or why not? The lot is roughly 270' deep between the two lakes. The two lakes' OHW setbacks leave very little room on the lot where anything could be placed in terms of a structure by permit. The application proposes a reasonable, standard sized detached garage that would be placed in the middle portion of the lot – roughly midway between the two lakes. Everything the applicants have thus done in the application is in-line with the ordinance's intent of maximizing setbacks and minimizing environmental impact.

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 detached garage on a residential property is reasonable and the 24' x 28' footprint proposed for the garage is also reasonable. The proposed garage is reasonably placed roughly equidistant between the two lakes.

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 located between Ham and Hay Lakes and only 270' in depth between the two lakes. The lack of lot depth causes the practical difficulty and is not due to the current or prior landowners' actions.

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 mostly seasonal residential use lots of similar or slightly larger size than this lot that are also sandwiched between Ham and Hay Lakes and possess similar lot depth to the subject lot. Several of the

nearby lots in the neighborhood have detached garages at similar or closer lake setbacks so the proposed garage will blend in with the existing locality.

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 the lot being ~270' deep and located between two lakes which have OHW setbacks of 100' and 150'.

Variance Application 25-V-19 by Roger and Diana Ettel: Lots 7 and 8, Block 3, Buena Vista Beach, Section 19, Township 141, Range 34, Lake Emma Township on Potato Lake, a recreational development lake. Parcel 16.48.01700. Applicants are requesting a variance from Section 702 of the Shoreland Management Ordinance for a proposed addition to a nonconforming structure located in the shore impact zone.

Roger and Diana Ettel, 1249 Tiller Lane, Arden Hills, MN, presented the application.

Ettel stated we are asking for a variance of Section 702 of the Shoreland Management Ordinance. Our main concern is the entrance to the cabin. There are a lot of steps going down to the cabin and the last tier especially is very difficult to navigate. It is also very hard to keep clear of ice and snow and slippery in the rain. Number one request would be to add an entry way that would reduce the number of exterior steps and a landing that would be easier to clear. The second request would be to add a half story addition with dormers to gain a third bedroom and bathroom for nieces and nephews and grandchildren. We tried to design it so it meets those needs while minimizing the impact of the lakeside view. Lastly, as a part of the remodel, we would ask for a shoreland alteration permit to increase the access along the other side of the cabin. There is two feet right now, just to move it back 5' to allow easier maintenance as shown on the cross section.

Petersen opened for public comment.

David Thomas, 16070 Garnet Drive, Park Rapids, MN, stated I live within the 500' of the Ettels. Many of the properties along there are closer than 100' to the lake and I rise to speak in favor of what they want to do. I do not think it changes the character of our lake at all.

Petersen closed public comment.

Andres stated I am supportive of the application. The need for a variance is due to the structure being built prior to the Shoreland Management Ordinance and looking at the winter photos supplied by the applicant, I can see where this addition would be reasonable to gain a safe winter access.

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

Grob seconded the motion that passed 5-0.

Findings of Fact

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

Yes (X) No ()

Why or why not? The proposed addition is largely going up in the form of a second story rather than out in the form of an expanded footprint. The height increase to ~22' will still not be obtrusive to parties recreating on the lake because there is existing mature tree cover between the addition and 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 proposed covered entry to gain safe winter access to the structure which is awkwardly positioned into the slope leading to the lake is a reasonable request as is the second story addition in order to gain a third bedroom.

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

Yes (X) No ()

Why or why not? The structure was built prior to the shoreland ordinance being enacted in what is now the shore impact zone (SIZ). The ordinance requires a variance to add onto any structure in the SIZ. Thus, the need for the variance is not due to the current or prior owners' actions.

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

Yes (X) No ()

Why or why not? The locality consists largely of seasonal single family residences with a few year-round residences. This structure sits at a similar ordinary high water mark setback to the structure on the adjacent lot to the west and two lots to the east. The adjacent lot to the east is undeveloped. The subject lot and adjacent lots are heavily wooded which will greatly lessen the aesthetic impact of the addition as will the lay of the land as the structure is built into a slope and the rear of this and

the other lots is higher in elevation so the addition will appear to be a single story ground level addition when viewed from the rear of the 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 difficulty is caused by the structure having been built in the shore impact zone prior to the shoreland ordinance's enactment.

Variance 85-8 revocation consideration.

Petersen asked do we put that to a vote?

Buitenwerf replied you could, or else the revocation is related to the next agenda item. If you have questions you can direct those to the folks seated at the presenters table.

Nadeen Everson, P.O. Box 3174 Bemidji, MN, presented the application along with Casey Olmstead and Lindsay Anderson.

Olmstead stated we are on Far Little Wolf Shores and we are filing for an 8' x 8' addition on the cabin entryway and also a 4' x 15' addition for a bathroom on the existing footprint.

Johnson asked did you talk to any contractors about that specifically about the bathroom?

Olmstead replied we are doing the work ourselves. As far as the septic and plumbing goes? Not necessarily. We are in search of bids on it after we get approved.

Johnson continued I was just curious if you had any contractors give you any opinions about the job and plumbing in that existing concrete.

Olmstead answered I have talked to Kevin Bosch from Anytime Plumbing in Grand Forks. He thinks that is doable to drill through the concrete and trench or dig beneath the concrete being that it is only 4' from the plumbing to the edge of the concrete it seems very doable to go under the slab I believe.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Andres made a motion to approve the waiver and revocation of Variance 85-8 by Nadeen Everson and Roger Olmstead by officially declaring it null and void.

Grob seconded the motion that passed unanimously 5-0.

Variance Application 26-V-19 by Nadeen Everson: Lots 12 and 13, Little Wolf Shores, Section 1, Township 145, Range 33, Farden Township on Little Wolf Lake, a recreational development lake. Parcels 07.42.01200 and 07.42.01300. Applicant is requesting a variance from Section 702 of the Shoreland Management Ordinance for a proposed addition to a nonconforming structure located in the shore impact zone.

Nadeen Everson, P.O. Box 3174, Bemidji, MN, presented the application along with Casey Olmstead and Lindsay Anderson.

Andres stated during the lot viewal you mentioned at one point that you would be looking at relocating your structure further back on the property. Have you thought about the idea of relocating this structure further back from the lake to meet the ordinary high water mark setback?

Everson replied no we have never considered moving this one.

Olmstead said it is just an existing cabin, existing slab. Evidently it is grandfathered in to some degree because of the age of the cabin. I guess we have never considered moving the little one. My mother's cabin right now is on Lot 14. That is the one that would possibly be transferred over to Lot 13 behind the setback at a much later date.

Grob asked have Lots 12 and 13 been officially combined?

Buitenwerf replied as much as they can. Since they are platted lots, short of replatting and creating one lot from the two, they have indicated that in the application and that is how the Department is viewing the property.

Grob asked do we have to do anything to ensure that they are always treated as one lot?

Buitenwerf replied no.

Grob stated the thing that we are struggling with is that existing structure is so close to the lake and so close to the property line. What you are proposing to do puts it on the property line, making it more nonconforming. It seems that either moving the structure or building a new one would be a much better use of the property.

Everson said I would like to add that where the property is now, we would have to tear that down and disturb that. Moving that back further on the lot, that would be taking down a lot of trees and disrupting the vegetation.

Olmstead added large white pine trees.

Everson continued the existing structure wouldn't have any more concrete. The foundation is already there it would just be more building on that slab.

Petersen asked Buitenwerf if they were to replace that structure with another one, would they be allowed to just leave that one there?

Buitenwerf answered that would depend on how the structure is used as well as how any additional structures would be proposed in terms of use. There wouldn't be the ability to use both of them as a dwelling.

Grob stated 85-8 that we just voided basically allowed them to build another structure at 85' from the lake and this had to be only for storage and not living quarters.

Petersen explained what Grob was referring to just a moment ago about your setbacks, either away from the lake or the property line. We are bound by these findings of fact and answering them in some reasonable way. I am struggling with going right up to the property line on one side with that bathroom. It makes it difficult for me to have a way to answer these positively in order to grant you this variance.

Everson asked would you feel better about the bathroom being on the south side versus the north side?

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Everson added or on the back where the larger slab is?

Anderson stated the well is already located on the west side so it would minimize the plumbing. We would have the kitchen sink right by the well and it would be convenient to have the bathroom right on the other side of the wall.

Grob asked the well is inside of the cabin?

Anderson replied yes.

Everson said we explained what we would like to do to our neighbors on the west side and they are fine with it. They do know that this is a temporary thing.

Olmstead added also the existing slab that is there right now is approximately 2 ½ feet from the property line right now. The eave would slightly hang over the slab. We would still be a foot or so off of the property line. As far as water runoff, if that is a concern for anyone, it would still be basically the same.

Grob asked the 8' x 8' addition on the front, is that an entrance?

Olmstead replied basically an entryway or breezeway. So when you open the existing door to the north in the wintertime you get blasted by the wind. The door will be on the east side preventing that issue and then a little more storage as well.

Grob asked there is not a bathroom in the structure now?

Olmstead said there is not.

Grob continued the well that you have, where does the grey water from the kitchen sink go?

Olmstead answered we rarely use the well. We haven't for years actually. We have water from containers right now.

Anderson added we don't have a kitchen sink.

Olmstead commented no working drains whatsoever.

Andres asked Everson can you please clarify what you meant by "this is temporary".

Everson explained in the future I plan on moving or building down the road. But Olmstead and Anderson would like to build up on the back of Lot 14. This is just a temporary financial way to reach that goal.

Andres clarified this current structure does not have any septic in it and does not have a bathroom, does not have a sink, does not have any grey water exiting. You do only have a well on the interior.

Olmstead replied correct.

Everson said it has a small sink, but we don't use it.

Anderson added there is no water hooked up to it.

Andres explained I believe the struggle for us here is because there is not really an existing home per say, it's not a cabin with water or septic or anything. That is where we are struggling to add to it when it could potentially be relocated since it doesn't have any of those items already hooked up to anything.

Petersen added also the idea that you have put forward that it might be a temporary spot. You might do something different later on. Adding to its nonconformity now seems more difficult in my mind given those findings of fact that I mentioned earlier. Knowing that in the future if you build something else, now I have added to that nonconformity.

Olmstead asked in terms of future, it could be five or ten or twenty years.

Petersen said I don't think I would take into consideration how many years. I just know that if eventually you are going to do something different, to add to its nonconformity now seems more than I can see fit to do.

Anderson added in the future we would be on Lot 14, so it wouldn't be on this lot that we would be doing something.

Petersen said I understand that.

Johnson asked you have been using this in the winter?

Olmstead answered off and on. We travel a lot for work and we have stayed there in the winter.

Johnson asked you have used it without plumbing?

Olmstead replied yes.

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

Petersen seconded the motion that passed 5-0.

Findings of Fact

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

Yes () No (X)

Why or why not? Allowing a nonconforming structure that is 8' from the OHW to be enlarged, its height increased 50%, and its side lot line setback to be reduced from 6' to 1.5' would not be in harmony with the ordinance's intent. The structure can easily be moved back out of the shore impact zone and then added onto by permit or a new residence can be constructed on the lot at a conforming location as there is plenty of usable room to do so.

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

Yes () No (X)

Why or why not? Increasing the size and height of a structure that is 8' from the OHW and reducing its side lot line setback from 6' to 1.5' is not a reasonable use of this property when there is ample room to move the structure out of the shore impact zone and add onto it by permit.

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

Yes () No (X)

Why or why not? There is ample room on the lot to either move this structure outside of the shore impact zone and then add onto it by permit or construct a primary residence at a conforming location by permit and thereby provide the desired living and storage space. There are no topographic limitations to placing a structure at a more conforming or fully conforming location on the lot with a permit.

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

Yes (X) No ()

Why or why not? The locality is a mixture of year-round and seasonal single family residences on lots of similar or smaller size than this lot. The residence on the adjacent lot to the west complies with the 100' OHW setback. Allowing this structure height to be doubled, its side lot line setback reduced to 1/5', and its footprint increased by 33% when it sits only 8' from the OHW would not maintain the locality's character, but rather harm it.

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

Yes (X) No ()

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

Variance Application 27-V-19 by Shawn Gray: Lot 1 and part of Lots 2 and 3, Block 2, Kola-Tee-Park, Section 10, Township 141, Range 35, Arago Township on Hay Creek, a tributary. Parcel 02.38.01000. Applicant is requesting an after-the-fact variance from Section 702 of the Shoreland Management Ordinance for additions to a nonconforming structure and deck.

Brian Gray, 26146 County 89, Park Rapids, MN, and Marc Sugden, attorney for applicant, presented the application.

Gray stated I would like to apologize to the Board for any past preconceived or conceived perceptions that Foxy's has been unwilling or slow to react to the County Environmental Services. If we gave you that impression, we are sorry for that. This application demonstrates that. We have some newly discovered nonconformities that have been pointed out to us by Buitenwerf and the Environmental Services, with our deck. We are here this evening to try to take care of those discrepancies. It was our understanding that the prior owner of the bar obtained a building permit for our deck in 2005. The building permit did not allow specifically for a deck. The deck was constructed and we just recently were informed that the smaller portion of the deck was a nonconforming issue. This variance application addresses that issue plus the fact that additionally in 2016, we did build a short staircase from the back of the deck down to the ground to facilitate ingress and egress for our customers. We have a 60 year old building and in the news you hear about restaurants and bars that catch fire and people can't get out. We only had a front door and that was put in place for safety. We did not realize that would need a separate permit. If we had known that we would have applied for the permit, but that is the purpose and the reason that was built. We are working to try and correct whatever deficiencies we have.

Grob said you have a lot of tables in the grass area. Is that always occupied too?

Gray clarified the tables in the grass area were there from the last couple of summers. They are rarely occupied anymore.

Grob asked if I understand, you have agreed to get rid of the Tikki bar structure?

Gray answered there have been negotiations to remove the Tikki bar structure, yes.

Grob said I am not so sure what you are asking for in terms of the after-the-fact that it makes much difference for impervious surface or runoff. That said, I frequented your place for the last 15 years probably off and on. Every time I go there, having been very much involved in the lake protection, I look at that parking area and I wince because all of the water would appear to runoff right into Hay Creek. If we were to agree to these variances, is there any way to mitigate the potential runoff from that parking area? I think it is more than a buffer zone. We can't talk about putting grass there, I just don't think it would grow. Is there any way that a little berm could be built between the end of that parking lot and where you walk to your docks that would direct the water into the grass area and not into Hay Creek?

Gray answered I am not sure about exactly what you are proposing there, but yes there are. When the County regraded and resurfaced 89, the level was actually raised. Not as much right in front of the building but on the other side of the building. I have proposed to Shawn Gray to fill in all that and, if it would be ok with Environmental Services, to put a bunch more grass in there to help it. We have some other ideas in mind, but we are trying to get to where everyone is satisfied at this point.

Grob commented looking at the soil there and the idea of letting grass grow, I don't think it would do much. It just wouldn't grow that well. Is there any way with the topography, to direct the water more into the grass area as a mitigation for the runoff from your deck and from the cover on the deck? That is my biggest concern.

Petersen asked Buitenwerf do you have ideas about what you would like to see there? I notice some notes here in the staff report, but you have certain feelings on what you think would help to mitigate that runoff into the water?

Buitenwerf replied certainly with that parking area being that close to the creek, and in the shore impact zone, it has an impact. Things like just allowing the grass to be taller in the existing buffer would go a long way.

Grob stated it is still pretty thin.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Petersen asked Buitenwerf they would best be served by working with you to propose something with your Department?

Buitenwerf answered that would be wonderful if they were to do that and we can make sure to guide them appropriately with the ordinance and what it would and wouldn't allow.

Gray added we are trying to work on any issues and move forward with anything that needs to be accomplished.

Andres stated we did receive correspondence from your attorney I believe about removing the Tikki bar. Do you have a date that you are going to remove that?

Gray explained my understanding was sometime in the fall.

Sugden stated I don't recall a specific date, Buitenwerf correct me if I am wrong, but we can certainly work with your office to facilitate that.

Buitenwerf confirmed a date has not been established.

Petersen asked Buitenwerf would we want a date, if we were to entertain the idea of approving this?

Buitenwerf replied that would be helpful, yes.

Petersen asked is the applicant open to that? If we were to entertain a motion to approve and we gave you a date, are you open to that suggestion?

Gray responded I would assume that is correct.

Sugden stated just for clarification that shed is used for storage purposes currently. It is pretty limited on site for storage, so we would like to have an opportunity to explore additional options for storage. If we could have through the end of the busy season before we had to move that shed.

Petersen asked are we talking about the Tikki bar?

Sugden clarified Tikki bar/shed.

Petersen asked do we have a picture of that?

Grob added there was one with a stainless steel table in front of it if I remember.

Petersen asked the end of summer?

Gray replied yeah if we could get through summer, so the end of summer. Would October 1, 2019 be reasonable?

Andres asked what is the capacity currently on the deck?

Gray answered I suppose approximately 20. Sometimes less and sometimes more. There are approximately 20 seats there, and that would be four months out of the year and the rest of the time it would be prohibited.

Andres asked is your septic system then designed to facilitate those extra 20 patrons?

Gray responded our septic system was designed by Mr. Girtz. He told me at the time that he had oversized it by a 1/3 as to what we needed because of the trailer house located on the property. I believe it was a State regulation that they consider a bedroom or two trailer house to have a couple hundred gallons of water a day going through the septic tank system and that is going right into our system. At no time really since we have

owned the bar has there been someone consistently living there. There is someone storing stuff there now, but they work in the cities. That 200 gallons of water does not happen. If we are over designed by 1/3 and we are not putting that 200 gallons a day, that is 70,000 gallons of water a year that doesn't go into that septic system. I am quite sure that we are adequately designed. The deck usage has not changed in the 15 years since it has been built. I am quite sure that the septic system is sufficient. Buitenwerf mentioned getting readings from the water meter so that we can make sure that is adequate.

Grob added in reading the documentation there was some agreement that you were going to be doing a water usage study during the course of the summer. That probably should be one of our conditions to make sure that is done to establish that the septic system is capable. Is the trailer a short term rental?

Gray agreed. It is a short term rental, the people moved their stuff there and then got a job in the cities so they are not around hardly at all.

Grob asked that adds a washing machine and dishwasher?

Gray replied there is no dishwasher in there. It is short term storage I believe until September 1st.

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

1. Water usage information to determine if the existing septic system is properly sized must be submitted to the Hubbard County Environmental Services Department by the previously agreed-upon September 27, 2019 deadline.
2. The Tikki shed accessory structure must be removed from the property by October 1, 2019.
3. The property owners must work with the Hubbard County Environmental Services Department to look for ways to reduce or eliminate any deck and parking lot runoff into Hay Creek.

Petersen seconded the motion that passed 5-0.

The Board adopted the staff report findings of fact for questions 1-5 and 1-4 of the additional after-the-fact findings of fact questions while providing the answers for additional questions 5 and 6.

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 stairs addition to the deck is off to the side of the deck and does not encroach waterward beyond the existing deck. The roof over a ~12' x 12'

portion of the deck only barely increases the impervious surface area where its overhang extends over the edge of the deck.

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 set of stairs to provide access from the deck to the ground is a safety consideration for a business and is thus a reasonable use of the property. Similarly, having a roof over a portion of the deck to provide shelter from the sun and rain for customers and the external structure entrance onto the deck is a reasonable use.

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

Yes (X) No ()

Why or why not? The structure to which the deck is attached predates the Shoreland Management Ordinance and does not comply with the 150' ordinary high water mark structure setback.

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

Yes (X) No ()

Why or why not? The subject property is a commercial use surrounded by seasonal and year-round single family residences. The extent of the roof (~144 sq. ft.) and deck expansion (~30 sq. ft.) is relatively small and 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 the sole difficulty.

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

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

Yes () No (X)

Why or why not? The applicant did not check with Environmental Services staff before constructing the stairs addition to the deck. A prior owner constructed the roof over part of the deck and is not available to be able to be asked this question. That owner did obtain a permit for the deck, but did not inform the County of his plans to construct a roof over part of the deck.

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

Yes () No (X)

Why or why not? The roof and stairs combined did not cost that much to build – maybe a few thousand dollars in materials and labor.

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

Yes (X) No ()

Why or why not? The County did not identify the violations until after their construction was completed.

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? Although the surrounding properties are put to residential rather than commercial use, there are several structures that were also constructed prior to the Shoreland Management Ordinance at nonconforming ordinary high water mark setbacks that have lakeside decks.

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? When the violation was identified, the applicants have been very willing to work towards finding a solution.

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 benefit of removing that roof and those steps would have no impact to the lake.

Miscellaneous: Buitenwerf stated we are a week out from the deadline so I don't have a good handle yet on what the August agenda will look like. We just took one today that was found complete, but there are a couple others that are in various stages of getting there. Under the Planning Commission agenda you will have a proposed amendment to Section 1105 that deals with conditional use permits to entertain a similar requirement to what we already have for a variance application that says once an application is denied, it can't be resubmitted for a year from the date of denial unless there is new information or circumstances that warrant that. You will be seeing that in August to make a recommendation back to the County Board.

Grob clarified that would be a change to the ordinance?

Buitenwerf replied correct.

Communications:

Adjournment:

Petersen made the motion to adjourn.

Andres seconded the motion.

The motion carried unanimously 5 – 0.

The meeting adjourned at 8:52 p.m.

Respectfully submitted,

Staci Harvey

Recording Secretary