

HUBBARD COUNTY

Planning Commission/Board of Adjustment Meeting Minutes

6:00 p.m. on Monday, July 27, 2020

The Hubbard County Planning Commission/Board of Adjustment (PC/BOA) held its regular public hearing and meeting on Monday, July 27, 2020 at 6:00 p.m. remotely by electronic means with one or more PC/BOA members present in the Hubbard County Government Center – County Board Room # 324.

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

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

Planning Commission:

Approval of Minutes: None.

Old Business: None.

New Business:

Minor Subdivision Application by David and Marion Town: Part of the E ½ of the NE ¼, Section 8, Township 139, Range 35, Straight River Township. Parcel ID 25.08.00100. Applicants are requesting to subdivide 52.7 acres into 3 tracts. Property was previously subdivided by administrative subdivision in May of 2019.

No applicants were present at the meeting.

Grob asked Buitenwerf if I read the report correctly, this particular application meets all of the requirements of the Ordinance for a minor subdivision application.

Buitenwerf answered that is correct.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Andres stated the information provided in the application does meet all of the requirements to proceed. All proposed tracts have public road frontage and Straight River Township, in which the property is located, does not have any zoning requirements. I am in support of approving the minor subdivision application.

Kovacovich made a motion to approve the minor subdivision application.

Andres seconded the motion that passed unanimously 5 – 0.

Board of Adjustment:

Approval of Minutes: June 22, 2020.

Grob made a motion to approve the minutes as presented.

Petersen seconded the motion that passed 5 – 0.

Old Business: None.

New Business:

[Variance Application 13-V-20 by Justin Young](#): Lot 5, Block 1, Cool Ridge, Section 26, Township 141, Range 34, Lake Emma Township on Big Sand Lake, a recreational development lake. Parcel ID 16.73.00500. Applicant is requesting a variance from Sections 503 and 702 of the Shoreland Management Ordinance for a proposed addition to a nonconforming dwelling located in a bluff impact zone.

Justin Young, 19743 Granite Drive, Park Rapids, MN, presented the application.

Young stated I am requesting to build a screened porch off of the south side of the cabin, a little bit lower than the existing roof line, with footings and all the proper building techniques.

Grob asked if I understand from the drawing, you have a pitched roof. One side pitches towards the lake, the other side pitches landward. What is your intent with regards to rain gutters on the addition?

Young replied I was planning on having the water from the lakeside facing gutter direct the water to the east, away from the lake. Off the backside of the new addition, I am not sure if I would put a gutter at this stage or not.

Johnson asked are you going to have an entry and exit through the existing cabin into the porch?

Young answered at this stage, no. The entry will come from the west facing wall, just a screened-in door entrance from there. I am not planning on entering into the existing structure.

Johnson continued what portion of this is going to be screened? Is there going to be a solid wall up so far, and then screen?

Young responded at this stage I am planning that the walls will be all screened minus any support structure that we would be building in. There won't be any walls specifically at this stage.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Andres commented during the lot viewal I noticed that there was quite a bit of difference in elevation from where I parked to the cabin's location. I am inclined to think that most of the stormwater will not be an issue as much of it is not going towards the lake, but rather back inland. Although, I am open to Grob asking about the gutters and to possibly put a condition on that. There is also a vegetative buffer between the cabin and the lake. The request is not lakeward and reasonably sized in relation to the cabin. At this time, I am in favor of approval of the application and the staff's recommendation. If Grob is proposing a condition with the gutters, I would be in line with that. The applicant has stated he is open to that as well.

Grob made a motion to approve the variance application with the condition that the runoff from the roof be guttered on the lakeside and downspouts be directed so that no runoff goes toward the lake.

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 cabin was constructed before the ordinance in what is now a bluff impact zone. The cabin is 20' x 26' in size and the proposed screened-in porch addition is 10' x 16'. The addition will be ~20' from the bluff crest. There is ample mature tree cover screening the cabin and proposed addition from the lake. The addition will be to the side of the cabin and not go waterward.

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? A 10' x 16' screened-in porch on the side of a 20' x 26' single story cabin is a reasonable use for a seasonal lake cabin – especially considering Minnesota's summertime mosquito population.

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 variance is required because the cabin was built pre-ordinance in what is now a bluff impact zone (BIZ) and the ordinance does not allow additions to structures located in a BIZ without a variance to do so.

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

Yes (X) No ()

Why or why not? The cabin is one of 10 cabins in a residential planned unit development that is ~6.5 ac. in size. This cabin lies in the middle of the 10 cabins and is thus equidistant between the north and south property lines. The neighboring land to the north is undeveloped as is the large 17+ ac. tract of land to the east of the property. A year-round residence occupies the adjacent lot to the south of the PUD. The small 10' x 16' porch addition will not alter the area's largely seasonal residential/undeveloped land nature.

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

Yes (X) No ()

Why or why not? The application does not mention any economic issues as being reasons for requesting a variance. The need for a variance is due to the cabin being located in a bluff impact zone and having been constructed before the ordinance.

Variance Application 14-V-20 by Charlotte Huisken: Lot 3, Lot 4, and part of Lot 2, Block 5, Buena Vista Beach, Section 19, Township 141, Range 34, Lake Emma Township on Potato Lake, a recreational development lake. Parcel ID 16.48.02700. Applicant is requesting a variance from Section 901 of the Shoreland Management Ordinance for a proposed shoreline recreation use area to be devoid of a ground layer of vegetation and instead covered with sand.

Kurt Huisken, the applicant's son, 1437 West Waterstone Drive, Sioux Falls, SD, presented the application.

Huisken said as was stated in our application, we have the next generation of toddlers here at the Huisken cabin. We have seven great grandchildren under the age of four. Of course, kids like to play in the sand and in the water. In 2018 my mom asked if I would work on her behalf to get a beach. I farm in southwest Minnesota. Whenever I work on water projects the first contact is Soil and Water Conservation District. I was not aware of the Hubbard County Environmental Services at the time, so I contacted William Lee at the Soil and Water Conservation District. I met with Lee on site in the spring of 2019. He took soil samples at the water line where we are proposing to put a beach. We filled out a WCA MN interagency water resource application, which Lee helped me complete. Lee did not mention anything about Hubbard County Environmental Services, so at that point I was not aware that we needed to get you guys involved at the front side. I apologize for that, it was not my intention to exclude you from that application process. But, the application did include Soil and Water Conservation District, William Lee, Water Quality and Resource Specialist. It included the BWSR, Matt Johnson, the State Wetland Specialist. He was also on site. The LGU, Bryan Haugen, the Assistant Director for Hubbard County Environmental Services. Then DNR

member, Darrin Hoverson, with MN DNR Area Hydrologist, and then the US Army Corps of Engineer Project Manager. On May 9, 2019 we received the Wetland Conservation Act notice of decision stating that the application was approved with conditions, and it was approved as a no loss determination. The conditions that they approved, on page 2 of 3 of the WCA application, mentioned that we would need approval from Hubbard County Environmental Services. This was the first time that I had heard of this governing body. In early May I contacted Nick Macklem. Nick emailed me the Shoreland Management Ordinance 17 and told me to review Section 901 and 902. As I read through Section 901, most of the Section did not appear to apply to what we are requesting. We are not planning on any intensive vegetative clearing. Our shoreline is not considered to be a steep slope. We are not looking to add any structures, sidewalks, lifts, or landings. However, 901.2.C states that a ground layer and understory of native vegetation is preserved, maintained, or established in the area. Allowed exceptions from this requirement are stairways, sidewalks, lifts, or landings expressed in Section 507.2 of this Ordinance. I believe that is what we are requesting to change. 901.2.H does state only one shoreline recreation use area shall be allowed on each residential lot and shall not exceed the following dimensions, which is outlined in H, which stated recreational development areas not to exceed 20' x 15'. In closing, here are a few reasons that we believe this should be approved. 901.2.H appears to give landowners the rights to a 20' x 15' recreation area provided that the proposed area is not a steep slope. It is our opinion that our variance application is within the spirit and the intentions of 901.2.H. We have the approval from MN DNR, Soil and Water Conservation, US Army Corps of Engineers, and the LGU, which in my opinion should be a factor in approving this variance. They are all on board with this proposed beach. In fact, when Matt Johnson was out and we were showing him the beach, he made the comment that this would be a great spot for a beach. In the WCA notice of decision, it stated in their findings the LGU discovered only a few inches of top soil and organic matter on the soil surface, followed by sand from that point past where the soil had reached over 1' with top soil and/or organic material. We would not remove or add more than 5 yards of material, which I believe satisfies the requirements spelled out in 902.1.A. On steep slopes or shore impact area, up to five cubic yards of material may be moved per year without a permit. Historical documents and photos indicate that this area was once a beach when this property was Pine Rest Resort. My mother has spoken to the neighbors on both sides of her cabin, and they are supportive of our intentions to add the beach to the property. I believe in your information there are letters from the neighbors, and some of them are on the call with us today. We have no intentions of adding any sand to the lake, as the lake is already very nice stable sand. Potato Lake water level is controlled by a water control structure on the Potato River, so water fluctuates very little on this lake. There is only about 12" of elevation difference between the OHW mark and the land that we are proposing to build a beach on. The neighbor's property on both side of Char have beaches, so this beach would fit in with the surrounding properties. Also, to the north of the proposed beach, out on the lake, there is a very thick row of bulrushes that knock down a lot of the waves before they reach the beach. We feel there is very little concern for beach sand ending up in the lake due to erosion. Two last points, and then I will be done here. The Huisken family has demonstrated our commitment to water resources in Minnesota. We have sustained a history of strong stewardship and water resource conservation. An example of that, we entered into a voluntary program with MN DNR, and the US Fish and Wildlife, to build a Topeka Shiner

minnow oxbow along streams that run through our farm properties. We have also installed buffer strips between the fields and the rivers to protect the water resource. If this variance is approved, we will commit to Hubbard County Environmental Services that we will do everything in our power to ensure that we keep beach sand on the beach and not in the lake. We will commit to maintain this beach in such a manner as to continue to protect the Potato Lake water resource. If approved, we will work with Hubbard County Environmental Services, and Soil and Water Conservation, in any manner that you desire so that all parties see this project as being successful. Last, but not least, we just want a great place for our little grandchildren to play in the sand and enter the water. If there are any questions, I would be happy to answer them.

Grob stated they are close neighbors to me, just a few homes down the street. I have known them for 20 years. I am also President of the Lake Association. I will be recusing myself when the vote comes up because of that. I will participate in the questioning, but I will recuse myself for very appropriate reasons when it comes to the vote.

Andres replied thank you, Grob, for your input and for recusing yourself.

Grob stated I will wait to hear any questions from colleagues before I ask any.

Johnson stated you said you wouldn't be doing any disturbance in the water. It didn't look like anything that my grandchildren would want to go into, unless it was nice sand. Pencil weeds, and rocks, and silt, and lake bottom. I can assure you my four year old granddaughter wouldn't go in there. But, she would love to play in the sand. Why would you need the sand there and not further back from the lake?

Huisken answered our neighbors to the east, Rick and Cheryl Ostlie, have got a beach. When their kids are playing on the beach, they have their buckets of water and they are carrying it up and making little dugouts for their toy boats and making sand castles. You are right, as you walk into the lake it has been undisturbed because no one has been swimming in there for about 10 or 12 years, but now that we have these little kids, they do want to be in the water and they do want to play. There is something about having a nice slope entering into the water from the shore.

Petersen asked Buitenwerf similar to Grob, the Huiskens are neighbors of mine, and I am not sure what your advice would be on recusing myself also on a vote.

Buitenwerf replied that would be up to you on whether you felt any personal relationship that you have with them would potentially influence your vote.

Petersen stated I would elect to recuse myself on this vote. I do have a question, those pencil reeds, or bulrushes, that I saw in front of the area that looked marked off for the beach, do you intend to remove any of those, or leave them as is?

Huisken responded this morning I did call Darrin Hoverson, the Area Hydrologist. I told him we have a zoning meeting tonight and we are going to talk about the possibility of a beach, but we would like to put a dock in as well. I explained to him that there were bulrushes out in front. He sent me all of the applications to remove 15' of bulrushes along the side of the dock. What our plans were, and I talked to him about this, was to place the dock right along

the edge of the flagged area of the beach. We can remove 15' of the rushes. If the beach is 20' wide, according to the recreational area, we would have 15' wide along the dock without weeds. He sent me the application and he said that it would be approved.

Grob mentioned you already have a dock on the beach in an area where it would not affect any of the in-water vegetation. My concern would be if you move it now to this location where you want to put the sand, and therefore would remove a lot of the pencil reeds, that is going to substantially increase the probability to erosion on your shore. If you are doing this for the kids to play in the sand and have easy access to water, why would you move the dock over there? Where it is now is very appropriate.

Huisken answered the dock that is there now is not on our property. That is not our dock, we don't have a dock on this property.

Grob stated I did not realize that. I thought the property line was between your dock and the Ostlie's dock.

Huisken responded those docks are owned by the Ostlie's.

Andres opened for public comment.

Kurt Huisken said as I said in our statement, we are willing to work with Hubbard County Environmental Services. If there is a better plan here, we are willing to do that.

Zach Huisken, 630 Hickory Lane, Harrisburg, SD, grandson of applicant, said we have a new daughter now that is one year old. She is just getting to the point where she is enjoying playing in the water and getting her feet under her. Having a beach that allows safe access and slope into the water, so she is not tripping or falling over rocks into the water, and obviously just a safe place to play. We would be very grateful for the approval of this beach.

Rick Ostlie, 15854 Garnet Drive, Park Rapids, MN, stated I would like to speak strongly in favor of this. I have nine little grandkids that play on our beach all of the time. They might be in the sand more often than in the water, but they have their buckets and they carry water back and forth and build sand castles. I think it would be a very positive thing. Secondly, I farmed for 45 years and am very conservation minded. I build up organic matter on my farm. I look at this, and it looks to me like originally this was a sandy beach. By not being used for a long time, the grass has crept onto the sand. If you peel the grass back a little bit, it looks like beach sand underneath that grass. Again, my wife Cheryl is here with me, we both are strongly in favor of allowing Char to have this small beach there.

Jim Hopkins, 15812 Garnet Drive, Park Rapids, MN, stated we are next door neighbors to Char, to her left as you look at the lake. We have been neighbors with the Huiskens since their property was pulled from being a resort. We find them to be (unintelligible) environmentally safe, and we are entirely in approval of a beach for their kids. We think it would be an asset to the community and their property.

Andres closed public comment.

Grob asked why do you need a 20' x 15' sand area? Small kids, sand castles, a little area maybe 5' x 5', or 6' x 4', would seem more than adequate. Part of the reason we are bringing that up is, I think by Shoreland Ordinance, you are restricted to only a 20' x 15' recreation area on your entire shoreline. If you use it up all with the sand beach, your fire pit and any of the shoreline on either side of it would have to be put into buffer area, according to Ordinance. I am questioning why you would propose such a large sand area. The second questions that I would have, you have a little bit of a berm there now, and the step off into the water probably is as conducive as any shoreline I see. In a couple years your kids will be old enough and it won't matter. It seems like this is a pretty extensive change on a shoreline for a short period of time and then to completely use up your entire recreation area on your shoreline.

Huisken replied I think that we would be more than willing, if we were given an approval for a beach, to put the rest of it into buffer. I think we would put the rest of it into buffer if we could get a beach in there. The reason we chose the 20' x 15' is because that is what the Ordinance states, that a recreational area can be 20' x 15'. I certainly can agree with you Grob. I don't know if 4' x 5' is quite big enough, but I think we can probably take a look at downsizing that a little bit. I would say that typically we try to do things as a family. My children, and my brother's children, are just entering that grandchildren phase. I am hoping that I get at least a few more. Right now we have seven. I think this is going to be going on for more years. When we are all up here and everybody is down at the beach, moms are with the kids. We could probably downsize that a little bit and restore some buffer if we are allowed to have a beach.

Grob stated I have a very similar shoreline just down the way a little bit. The grass grows right up to the shoreline, and then the lake bottom is very sandy, which I think is very similar to what they have. My experience is that if you would have sand right up to the edge of the water, it will erode, especially because there are a lot more wakeboard boats and other wave actions that are occurring. I know Huisken mentioned that the water level on Potato is stable. I can tell you that 15-20 years ago it was a foot higher, which would wash completely up onto the beach. All I am saying is, a large sand area right up to the edge is going to end up with erosion. In a few years, your kids are just going to be in the water, not playing on land.

Andres said I would just like to add from my lot viewals, I noticed the land from the residence to the lake to be very gradual, with little or no slope to the water's edge. The shoreline is very low. After observing the length of the neighbor's boat dock, reviewing the aerial footage on Pictometry, and the information from the applicant, it appears the water is fairly shallow for many feet out. You have a much larger recreation area, as Grob has also pointed out, along a large portion of the entire shoreline. Your stewardship is very much appreciated, not only in our community and the surrounding states as well, but unfortunately at this time, I support the staff's recommendations. I cannot support such a request because it is not in harmony with the Ordinance. We have five findings of fact questions to answer affirmatively on this variance, and I cannot answer them in that manner. The shoreline is very low and your access to the lake is nearly effortless. Personally, myself, I am not sure about the other Board members, but that is where I sit with this.

Johnson added I agree with Andres. Many times on brand new developed lots, the best they get is to remove the small berm. They are allowed to make that 15' x 20' look just like what you have your whole yard look like. They only get 15' x 20' with a 6' wide path and a 4' walkway. That is all they get. I am not in favor of a beach.

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

Kovocovich seconded the motion that passed 3 – 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? Having a 20' x 15' area devoid of vegetation along the shoreline would not be in harmony with the ordinance's intent of having this critical shore impact zone area in permanent vegetation to guard against overland and wave-caused erosion and provide a key buffer to stormwater before it enters the lake.

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? There is no reason why the proposed area cannot be covered in permanent grass cover which is the accepted and preferred means of protecting the soil in this area from erosion. Having a 20' x 15' area devoid of vegetative cover right along the shoreline is not 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 () No (X)

Why or why not? The variance request is solely driven by the applicant's wanting to have a sand beach. There is no need for a sand beach because of property characteristics.

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

Yes () No (X)

Why or why not? Such a beach area would be very noticeable to parties recreating on the lake and would stick out as this stretch of shoreline is very low, wet, and well vegetated.

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

Yes (X) No ()

Why or why not? The application does not mention any economic issues as being reasons for requesting a variance.

Variance Application 15-V-20 by Schneeman Cabin LLC: Part of Government Lot 5, Section 14, Township 141, Range 34, Lake Emma Township on Lower Bottle Lake, a

recreational development lake. Parcel ID 16.14.01600. Applicant is requesting to modify cabin dimensions approved in Variance 35-V-10.

Julie Gough, 5729 Giddings Avenue, Hinsdale, IL, presented the application.

Gough stated I am a member of the Schneeman Cabin LLC. We had obtained a variance about 10 years ago to remove a shed and a small cabin, which we call Cabin 1, and then build a single cabin to replace it. We are thinking about starting this building process. We were looking at some of our plans, and we were thinking that maybe we would rather enclose part of the front porch into living space. We are not asking to change the footprint of the original variance at all, it would be the same exact footprint, but we would take about 18' of that front porch and turn it into interior space. We would also like to bump up the roof to 24', instead of 20', and then we added a little bit more square footage in the second floor. Instead of about 300' in the upper floor, we wanted to have about 360'. Again, the variance that we have currently, we don't plan to make any changes in the footprint or the site location. That would all stay exactly the same as the original variance that we have.

Grob said I just want to confirm, for the record, that the footprint of what you are proposing is exactly the same footprint area as was approved in the 35-V-10 variance, and you will again set that back about 15' from the original Cabin 1 area.

Gough responded that is right.

Grob continued what you are doing is basically reducing the porch size so that you can have about another 100 sq. ft. of living space?

Gough replied correct.

Kovacovich stated this is fairly large acreage, I believe it is 13 ½ acres. Has there been any thought of moving the cabin within the property to meet all of the setback requirements of the Ordinance, and then build by permit rather than variance?

Gough answered when we got variances for all of these little cabins 10 years ago, we wanted to try to keep them where they are. We also have the ability to move them if we wanted to move them back further in the woods. This seems to be the most accessible and it keeps the cabins together in a cluster that we like. It is all brothers and sisters that have it together. We thought that if we set it back further from the lake, we can't go back much further because the road runs right through the middle of our property. It was our preference as a family to keep that cabin in about the same location, so we keep all six cabins together.

Johnson asked Buitenwerf can you bring up the picture of the proposed main floor? You are going to fill in that covered porch in the upper left, right?

Gough explained the former variance had that front porch running all the way across the front. The whole front of the cabin, all 30 feet, was a covered porch. Now we would just like to take 18' of that and turn it into living space on the inside. The cabin will be winterized, and we thought we might use the interior space a little bit more than the outside covered porch in the fall and the winter months.

Johnson asked you don't have any plans of creating a bedroom out of that?

Gough replied no.

Johnson said I looked up the septic sizing, and the sizing for this cabin was for two bedrooms.

Gough answered correct.

Andres opened for public comment.

No oral public comment was given.

Written public comment was received in favor of the request.

Andres closed public comment.

Andres added I would just like to add for the Board members that I did make a call to the ESO office earlier about the sunset clause. Because this variance was approved prior to the sunset clause, which took effect on July 27, 2011, the applicants can still utilize that variance at this time.

Kovacovich stated that was my next question.

Grob said I was involved with the Board of Adjustment when the 35-V-10 variance was approved, and after going back there ten years ago now, this property has virtually not changed. The character is the same, the cabins are the same. Although it is desirable to meet some setbacks, replacing the two old buildings with a new one, with the same kind of character, would retain it. This family has been exceptional at retaining the character of the area. I would be ready to make a motion.

Andres added I have mixed feelings towards this as the applicant is able to build the proposed structure in full compliance and meet all setback requirements, or they could utilize the approved Variance 35-V-10. I have not yet been able to fully answer the finding of fact questions knowing that there are some permissible options available, and the previous approved variance.

Grob made a motion to approve the variance application with the condition that the current Cabin 1 and the other structure labeled "shed" in the application are removed, and the new cabin be built exactly as shown in the variance application plans.

Petersen seconded the motion that passed 5 – 0.

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

Findings of Fact

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

Yes (X) No ()

Why or why not? The proposed cabin is identical in footprint to what was approved in Variance 35-V-10. The porch is smaller, the setback is the same as the previous variance, which is 15' from the lake. They maintain the road separation that was originally desired. The 24' vs the 20' is not a significant impact, therefore I believe the proposal is consistent with the general purposes and intent of the official controls.

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

Yes (X) No ()

Why or why not? It is identical in footprint to the original Variance 35-V-10.

- 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? Replacing Cabin 1 was approved by Variance 35-V-10 with a 60' setback from the lake and maintaining the road setback, those were the circumstances identified previously.

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

Yes (X) No ()

Why or why not? The proposed cabin is a replacement for one of seven dwellings on this 13.5 ac. property – six of which are small old fishing resort cabins that are located within the 100' OHW structure setback. The proposed cabin location would be in-line with the other existing cabins' OHW setbacks. There is a large tract of public land to the west of this property and seasonal and year-round single family residences on smaller lots ranging from a bit over 1 ac. to a bit over 2 ac. to the east of the property.

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

Yes (X) No ()

Why or why not? The application does not mention any economic issues as being reasons for requesting a variance.

Variance Application 16-V-20 by Mark and Beth Olsen: Lot 3, Block B, First Addition to Pine Haven Beach, Section 17, Township 139, Range 34, Hubbard Township on Long Lake, a recreational development lake. Parcel ID 14.38.40500. Applicants are requesting a variance from Section 702 of the Shoreland Management Ordinance for a proposed lakeward addition to a nonconforming residential dwelling unit located in the shore impact zone.

Mark Olsen, 110 ¾ Road, Shelby, NE, presented the application.

Olsen stated my wife and I purchased this cabin two years ago this fall after spending a couple years before that getting acquainted with the place again. Her parents used to own the cabin to the north of us for about 15 years. We were familiar with the lake, the area, the town. We did this as a pre-retirement for when I retire during the next few years. As far as the scope of the request, I will cover that. One thing we did do was to visit with the neighbors around us, some of which we already knew. All were glad that we were trying to fix the

place up. When we were there during Memorial Day week, my son was walking around the deck outside and it was soft in the middle. He stepped down through some of the rotten wood that was on there. When we purchased this I knew there was some work that needed to be done to fix the place up. We ended up tearing off some of the joists, the deck boards weren't too bad, but underneath all the joists were rotten. We ended up tearing those off and hauled them to the dump. I had been into the Environmental Services last year and tried to find out if we made improvements, what is the process we had to go through. I talked to the guys there about some different things. What we would like to do, I think it is on the diagram. We want to replace our deck. You can see on the diagram with the drawings, the existing deck came out 10' and then the steps were on there. There is a step and rail. I don't know how long this deck has been there. What we would like to do is to bring the deck out to the end of the steps, and then our steps would come in from the side of the cabin you are looking at, and we would come up to the deck from there. We would bring the deck out 12' instead of 10'. On one of the other plots you can see the deck does not go all of the way across the front of the cabin, previously it didn't. We want to bring it all of the way across the cabin, which is another 5'. Then we can put a roof on there and just attach the roof to the existing gable roof that is there and bring that out 12'. Basically, we would have a 12' x 20' deck that we would rebuild and put on there. We would screen in the deck. Initially we may put some walls and siding around it, but the intent would be to use that as a deck for eating, for family, for kids, for grandkids that are coming up there. What was there was definitely not safe. With the eaves that are on there, we would extend the eave. There are gutters on there. We would extend them out to the end of the deck and still have gutters there for adequate draining around the cabin. We would come into the deck from the north side and not have stairs out in front. We would like to go all of the way out to where the end of the stairs have been for years, and then bring another 5' onto the south side of the deck, which would line up with the edge of the cabin that has been there for years.

Grob said I want to confirm, if I recall, there is a pretty high berm, or ice ridge, to the front. Clearly any water runoff from the structure would not enter the lake from that side. I don't recall when I was there as to what the topography is on the little lagoon, which would be to the right of the cabin. Do we have a picture there?

Olsen replied it slopes down towards that, and everything would drain off into there.

Grob clarified water would drain into that lagoon?

Olsen answered yes.

Grob added there is a pretty good grass buffer there.

Olsen replied there is, and along the edge of our property, where the tree line is, it is up a little bit higher there too.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Kovacovich asked Buitenwerf would they be allowed to rebuild the deck as it was? Do they need a variance for that, or because it was already existing they could do that?

Buitenwerf replied the existing deck would have been able to have been rebuilt to the exact same dimensions due to the fact that it was a legal, nonconforming deck.

Grob asked Buitenwerf can you show the picture where you can see the neighbor's property to the left as you face the lake? The neighbors have a deck out the front.

Olsen added one thing I might note, as the shoreline goes along here, it angles towards the northeast. Everybody's properties are set back. As you look at this picture here, they are all kind of set back in a row there. That is one of the things, if someone built something and it was in my view, I wouldn't like it. In our case, there isn't really anyone on the south side of us that we would impact. And we wouldn't impact the neighbor to the north of us.

Kovacovich stated I have a hard time being able to answer the findings of fact to approve this kind of request so close to the lake. It doesn't seem to be in the spirit of the Ordinance for me.

Kovacovich made a motion to deny the variance application and adopt 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 () No (X)

Why or why not? Allowing a nonconforming structure located mid-way into the shore impact zone to be expanded another 12' waterward would not be in harmony with the ordinance's intent. The cabin is on a block foundation and has sill plate rot. The lot is 280' deep and roughly 50' wide and has a gradual slope that leads down to the lake. There is room to move the cabin away from the OHW to increase its setback which is what would be required in order to entertain an addition of this scale relative to the overall cabin's size.

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? The cabin sits 24' from the OHW. Allowing a 12' waterward addition to the cabin is not reasonable when there is room to place the addition on the northwest (non-lakeside) wall of the cabin or the entire structure could be moved further from the OHW because it is conducive to such as it is on a block foundation and there is room to move the cabin further from the lake.

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? As mentioned in the answers to the preceding questions, the lot is 280' deep, 50' wide, and sits on a gradual slope with no obstructions that would prevent the addition from being made to the structure's NW exterior wall and thereby be further from the lake. Or the cabin is conducive to being moved further from the water so it would be outside of the shore impact zone which would then allow the structure to be added onto by permit.

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

Yes () No (X)

Why or why not? The area is a mixture of seasonal and year-round single family residences located on lots of similar size to the applicants'. The neighboring cabins are of similar size and generally also located within the 100' OHW setback. That said, the proposed addition going 12' closer to the water and thereby reducing the structure's OHW setback from the main lake shoreline by 1/3 would create a structure that would not fit the locality's character.

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

Yes (X) No ()

Why or why not? The application does not mention any economic issues as being reasons for requesting a variance.

Variance Application 17-V-20 by Richard Peterson: Part of Government Lot 8, Section 36, Township 143, Range 32, Lakeport Township on the Kabekona River, a tributary. Parcel ID 19.36.00212. Applicant is requesting a variance from Section 502.7 of the Shoreland Management Ordinance for a proposed accessory structure to be located within the 150' ordinary high water mark structure setback.

Richard Peterson, 32887 State 200, Laporte, MN, presented the application.

Richard Peterson stated I am seeking a variance to construct a 24' x 28' garage adjacent to the existing residential structure.

Johnson said I would just like to make a couple corrections for the record. The public comment submitted by the adjoining property owner, Jon and Tina Boughner, testified that the prior owners of this property were given a permit to build a garage. I checked with the records, and checked with the Environmental Services Office, and that never happened. For the record, there was never a permit for the garage. The second thing is, the applicant states in his explanation for the request, the last sentence says: "This variance is substantially similar in nature and scope to the variance and subsequent land use permit granted to the owners of the neighboring parcel (Parcel ID 19.36.00213) in August 2019." That variance was withdrawn, so there was not a variance next door, just for the record. Also, Mr. Peterson, when I was on the site, I didn't see any flagging of the right-of-way at the 100'. How far out from the north side of your existing building was the proposed garage going to go towards the right-of-way?

Richard Peterson replied roughly 10'.

Johnson said I had checked out the survey that you actually sent. It was so hard to read that I obtained another copy of the survey that was larger and had some measurements put on it as a clarification for the Board. If you look at this survey, this is from a surveyor with his measurements from the existing house to the road right-of-way. That road right-of-way is at 100'. This property was at 200' before, but 100' has been reconveyed, so now the existing house is at a 60' setback. From the ordinary high water mark to that road right-of-way is 161'. This overlaps the ordinary high water mark setback and the setback from the right-of-way of 50' also. But, right now his request falls into the measurements that are given. Because there was no flagging there, I just wanted to show the Board. Do you agree with the measurements, Mr. Peterson?

Richard Peterson replied if I am understanding the measurements correctly, the house is 60' from the right-of-way. So, if the garage is about 10' back from the house, then it would be 50' and within the setback?

Johnson responded correct.

Richard Peterson answered I would agree with the measurements then.

Grob asked are you telling me that the right-of-way, shown in this drawing as 60', is really 160'?

Johnson answered no. That right-of-way line, from there to the house is 60', so he has 10' there. He has his 50' setback plus 10'. He is asking to be 75' from the ordinary high water mark. Our question is going to be, if you are in favor of it, which is more important, the ordinary high water setback or the right-of-way setback, or even approve at all. That is what I am explaining.

Grob clarified so he could move the garage back 10' and keep the 50' right-of-way?

Johnson explained he is already at that. He is right at it. But, the way he drew his drawing shows that he is 50' from Highway 200. If you look at his drawing, it is a little confusing there. Do you understand why I did that, Mr. Peterson?

Richard Peterson replied I do.

Andres opened for public comment.

Gary Kennedy, 34146 331st Ave., Laporte, MN, stated I am two properties down from Mr. Peterson. Just some clarifications that I am concerned about, I didn't hear on the ordinary high water mark, if that is the one that is designated. He wants to be 75' from the 2019 mark that was set by the DNR. I want to make sure that it is that one. The building, I would like clarification if that is a two story building with living quarters in it or not. Just based on other past practice, in different areas and variances that I have been around, is there any other land that this garage area could be built on without a variance? As a neighbor, as long as everything is met, I don't have an issue I guess. I need one other clarification, how far into the ordinary high water mark is he requesting? I didn't pick that up.

Andres asked can you address other questions that you had?

Kennedy asked the other clarification on the ordinary high water variance, is that for the whole property line, or just for where the garage goes?

Johnson responded the ordinary high water mark is the new ordinary high water mark that was established recently by the DNR. The front of his proposed garage is 75' from it. The setback is 150'. So, he is 75' into the ordinary high water mark setback with this proposal.

Grob asked why don't you build the garage attached to the house? Is there any reason why? It is so close. It looks like it could be attached in some fashion. Why do you choose not to attach it? Second question, what is the purpose of the door on the second floor that comes down those steps?

Richard Peterson replied to answer your first question, to be quite honest, it is just to avoid mission creep. We have a lot of projects going on right now with a new job, a lot of work going on there. We have a new baby coming, so we are preparing the house for that. We have a number of projects, replacing some of the deck boards on the dock, having to stain some of the wood outside the house and the shed. We have a lot going on, so we are trying to keep things bare minimum for the moment. That is why we are not attaching it to the house at the moment. Also, we want to maintain the current stairway. On the inside of the house, the only access to the second floor is a spiral staircase. That existing staircase is critical if you want to move any large piece of furniture up the stairs.

Grob clarified your only access to the second floor is a spiral staircase inside?

Richard Peterson answered that is correct. So, if you want to move something like a mattress or a box spring, it would be impossible to do it via the spiral staircase.

Johnson added for some history of this, the property was sold as three bedrooms. That is what the septic is sized for, three bedrooms. For him to attach the garage, because of the potential living quarters on the top, that would probably require a variance to enlarge the septic system. We would be creating a variance by attaching potential living quarters.

Andres closed public comment.

Andres added during the lot viewal, the applicant informed me that the garage is meant to be detached, not attached. There will be some clarifications in the findings of fact if we go that route. I am in support of the application. It is a reasonable request to have a garage. The need for the variance is basically due to the DNR establishing that ordinary high water mark back in 2019. I do support the staff's recommendation at this time.

Johnson stated I would be more in favor of it encroaching into the right-of-way setback, which is a little more useless to the County, being that it is such a jig sawed right-of-way back and forth. Increasing the setback from the ordinary high water mark, especially setting precedence for the entire river. I would be more in favor of encroaching further there, which he didn't ask for. He is asking to stay at the 75'.

Mark Petersen asked Johnson do you have a recommendation on what you would be looking for if you went that route?

Johnson added in 2011 this property was actually given a variance to have a camper set 3' from the right-of-way. That was before I was on the Board. It was for a camper to be 3' from that 200' right-of-way. The septic was put in. The way the setback was measured, by the technician from the County, was by using vegetation identification for the setback. There was no ordinary high water mark established, so they went by classification of vegetation. So, there was a septic there and the previous owner was granted a variance to be 3' from the road right-of-way when it was at 200'. After he was granted that, he reconveyed the 100' and submitted a new application to the County using my setbacks. I was the one that actually put the septic in for that system with the prior owner. You can see how you would have a difference in the 150' setback then to what the 150' setback is now.

Mark Petersen stated I understand the scenario that you just laid out for me, but are you suggesting that the applicant go with something that extreme?

Johnson explained I was thinking, myself, that the front of his garage should be into the road right-of-way setback so that the front of it is more even with the back of the house. Maybe even being able to keep the loop road that he has.

Grob added if he moved 50', right up to the road right-of-way, the 100' right-of-way, would he be able to meet the 150' setback from the ordinary high water level?

Johnson answered no. He would be short by about 15'. The entire dimension from the ordinary high water mark to the road right-of-way is 166'.

Grob clarified so there is ultimately no way to meet, without encroaching into the right-of-way, there is no way to meet the 150'. You come closer, but you wouldn't be able to meet the 150'.

Richard Peterson stated I understand what you are saying, my only concern there is if we were to push it back we would be required to excavate and destroy a significant portion of the natural landscape that is there now. Our hope was to maintain it in the current location, because it has already been excavated and is relatively level. We wouldn't have to disturb the natural environment. If we do push it back as suggested, there might be an issue with the existing propane storage tank that is about 15'-20' away from the north end of the house.

Johnson added I hook up propane tanks. That would not be an issue for moving it back. The trees were pretty insignificant when the front of it was developed on this lot.

Grob said the garage has a loft in it. What is your intent for that loft, or second floor, in the garage?

Richard Peterson answered the intent for the loft is for additional storage. The current residential structure is built with a monolithic slab, so we do not have the benefit of a basement storage. We are hoping to make up for that with a loft in the garage.

Grob asked how will you access the second floor?

Richard Peterson replied there will be a stairway built within the garage.

Grob asked besides electricity, do you intend any utilities, water or anything, in the garage?

Richard Peterson answered we do not intend to run water to the garage. We only intend to run electricity and potentially propane depending upon what style heating system we decide to install.

Grob asked Buitenwerf if they build this and at some point in time would like to connect, let's say out of that second story door, connect into the garage, would that be allowed? Obviously that would require some sort of variance, but would that be an allowable change to make?

Buitenwerf responded that would potentially depend on any motion to approve this might be worded. Probably the best way that I can answer that is the existing residence, if this was proposed to be added onto it, because that existing residence is a legal, nonconforming structure in terms of its ordinary high water mark setback, if this proposed garage was moved 10' to the east and attached to that house, it would be able to be built by permit because it would meet the road right-of-way setback and side lot line setback.

Grob clarified he could build this, attached to the house, by permit right now?

Buitenwerf answered correct.

Kovacovich made a motion to approve the variance application and adopted the staff report findings of fact after omitting the word "attached" in questions # 2 and # 4.

Grob seconded the motion that passed 4 – 1 with Johnson voting nay.

Findings of Fact

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

Yes (X) No ()

Why or why not? The house was originally built by permit in 2013 in compliance with the OHW as then located. In 2019, the DNR established an OHW elevation for this basin which caused the house to become nonconforming in terms of its OHW setback. The applicant has done a good job in siting the proposed garage outside of the 75' shore impact zone while complying with the next nearest setback which is the 50' road right-of-way setback from Highway 200 and thereby maximizing the proposed garage's setbacks – which is right in line with the ordinance's intent.

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

Yes (X) No ()

Why or why not? A 24' x 28' garage is a very reasonably sized garage. Having a garage given the duration and severity of Minnesota winters is also very 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? As mentioned in the answer to question 1, the need for the variance is due to the lack of lot depth caused by the Minnesota Department of Natural Resources establishing an OHW elevation in 2019 that was significantly landward of the previously visually determined OHW which made the house nonconforming in terms of its OHW setback and reduced the lot depth on the south side of Highway 200 so much that there is no spot that is able to meet the 150' OHW and 50' road ROW 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 a low-density mixture of seasonal and year-round single family residences. Because of how the river curves, the nearest residence to the west of this lot is roughly a half of a mile away. The nearest residence to the east is ~400' away and was built at a similar time and OHW setback as the house on this lot. This adjacent property has two detached accessory structures at this same pre-2019 OHW setback. The proposed garage will thus fit in with the surrounding character.

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

Yes (X) No ()

Why or why not? The application does not mention any economic issues as being reasons for requesting a variance. The difficulty is caused by the OHW changing in 2019 and moving landward of the pre-2019 OHW location determined visually.

Variance Application 18-V-20 by Aaron and Michelle Mullenbach: Part of Government Lot 1, Section 18, Township 140, Range 33, Nevis Township on Lake Belle Taine, a recreational development lake. Parcel ID 21.18.01100. Applicants are requesting a variance from Section 702 of the Shoreland Management Ordinance to replace an existing nonconforming accessory structure located in the shore impact zone with a new structure.

Aaron and Michelle Mullenbach, 19600 Emerald Drive, Nevis, MN, presented the application.

Mullenbach stated we want to replace the existing structure with an A-frame building, slab on grade. The building is going to be used for storage. The structure would have an 8' sidewall and 8' rafter. It would be slightly different than the existing structure, which isn't very practical. The round end of that building makes it almost impossible to put a door on and make it useful.

Andres commented I am having a little difficulty receiving all of your information. I am not sure if you are very close to your computer or phone at this time. I might suggest you try speaking a little closer to the computer microphone. I am not sure if I am the only one having issues.

Grob agreed I could not understand.

Andres asked the applicant to repeat the information.

Mullenbach repeated I am replacing the existing building with an A-frame building, slab on grade. Dimensions of the current building make it somewhat difficult to add a door to use it as storage.

Andres stated unfortunately myself and the members of the Board are having difficulty getting any communication from you at this time. Are any other members having problems?

Johnson stated I couldn't hear him. Maybe they have two devices on.

Andres asked do you have more than one device on this conference call that we are getting interference from?

Discussion ensued about the technical difficulty.

Aaron Mullenbach repeated his address and stated we are looking to replace our existing structure with an A-frame building with an overhead door on one end and a walk in door on the other end. Slab on grade, 8' side walls with a 2 ½' rafter.

Andres commented I notice that we are still having some feedback.

Aaron Mullenbach said I am trying to fix the problem.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Andres asked will this structure have any living quarters in it?

Mullenbach replied no it will not.

Grob asked several years ago, Belletaine had issues with high water. What would your property be like if that kind of high water returned?

Mullenbach responded this cabin is probably the highest point on my property. It wasn't affected by any of that water.

Grob asked is it higher than this structure? When I was out there I thought that this storage shed was on higher ground than your house?

Mullenbach agreed. Yes is it on higher ground.

Grob continued if it were moved somewhere on the property, where else would there be high enough elevation that it wouldn't be affected by really high water?

Mullenbach answered I don't know that there would be a better place for it that wouldn't be affected by the water. I would say that is probably about the highest point on my property.

As we get down towards that point, the northwest, it is similar in height. There again, it is narrow there too.

Grob asked you have a lot of trees around the current structure, which screens it from the lake. If this was to be rebuilt in the same footprint, would you preserve those trees such that the view of the structure from the lake is protected?

Mullenbach added there are a few trees there. A couple of them are questionable, I think they are dying. I would remove those trees for sure. I really hate losing those ones, especially that large pine and the other ones in front. I am afraid that they might fall on the new structure. I would have them removed. We plan on using it. I would replant some trees.

Andres stated I had the same questions as Grob. I was wanting to know if there was a different location to rebuild the structure, but with the water situation I could see it being built there. He also had the same question I had about the screening.

Grob asked why is it so desirable to retain that location? I noticed it looks like you have plans for a fairly large garage right next to the house. What do you store there that it needs to be in that location, so close to the lake?

Mullenbach replied I do have an attached garage planned. However, we tried for a variance a year and a half ago and were denied the garage addition. Right now, this building is in increasingly rough shape, and I want to just preserve the building before it is completely gone.

Grob asked what do you store in it? What would you store in it?

Mullenbach answered I have a lawnmower, beach equipment in the winter, a chainsaw. Stuff that you would normally put in the garage.

Grob asked can you recall for me, what were some of the arguments against approving your garage originally? I don't recall that.

Mullenbach explained we had a three stall garage with a loft above that was going to be the third bedroom. It was below the high water mark. We were too low. That was my understanding.

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

Johnson 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 structure footprint is staying the same as is the maximum height of 11'. The sole change is the slightly increased airspace occupied

by the structure due to using modern trusses for the roof in replacement of the no longer commonly used existing semi-circle rafters.

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 structure with a new structure of the same footprint and maximum height, but with slightly increased airspace occupance due to the use of modern vs. older roof design is a reasonable use of the property as there currently is no additional accessory storage structures on the lot.

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

Yes (X) No ()

Why or why not? The structure was constructed prior to the ordinance at what is now a nonconforming OHW setback. The only reason a variance is needed is because the applicants would like to use a modern roof system vs. recreating the existing, no longer commonly used semi-circle roof system...which is understandable as the former option is considerably less expensive and time consuming to build.

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

Yes (X) No ()

Why or why not? The structure is well screened by a good clump of existing mature tree cover and the 2' height increase seen over a majority of the structure will have a negligible aesthetic impact as the structure is viewed from the water. There are no nearby adjacent residences that might be affected by the structure because it is located on a point that juts out into the lake.

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

Yes (X) No ()

Why or why not? The application does not mention any economic issues as being reasons for requesting a variance. The difficulty is caused by the structure having been built before the ordinance at what is now a nonconforming OHW setback that causes the structure to be located in the shore impact zone.

Variance Application 19-V-20 by PLB Revocable Trust: Part of Government Lot 8, Section 20, Township 141, Range 33, Nevis Township on 5th Crow Wing Lake, a recreational development lake. Parcel ID 21.20.05100. Applicant is requesting an after-the-fact variance from Section 902 of the Shoreland Management Ordinance for grading/filling on a steep slope and within the 100' ordinary high water mark setback that exceeds permissible volume.

Patrick Briggs, Endhaven Trail, Nevis, MN, presented the application.

Briggs stated we were fairly detailed with our narrative, so we will try to be brief because of the amount of applications you have this evening. We are requesting a variance for fill/excavation and obstruction of erosion as well as a natural rock wall on a steep slope to prevent continued erosion on our lot. We came into Hubbard County on April 8, 2015 prior

to the purchase of the property. It was our impression that we had approval at that meeting. We understand there has been some significant change over in staff and the invitation that was offered, if deemed necessary, to come out for a follow up visit as well was never taken upon. We learned last year, based on a stop work order, that we had to apply for a variance to Section 902. That brings us here.

Grob said in your application there were at least 10 letters of recommendation and citing that you follow code. How is it that you assumed that you could make major construction alterations to that area within the setback without checking with Environmental Services with regards to code? It is hard for me to understand someone with your track record, and those recommendations, that you wouldn't know to do that. Along with that question, who was your contractor that actually did the alterations and grading?

Briggs answered the answer to your questions is, if you go back to the first picture of the map, we did come into the Environmental Services on April 8, 2015 at 11:00 to confirm that we were able to come in and build a cabin and do the clearing there without needing additional permits. We were offered a building permit for that, but we weren't offered a permit for any additional work, grading or retaining wall. That is the reason. We did come in to that office for a face-to-face meeting. Secondly, the construction that was done by a landscaper as well as my father-in-law that builds bridges for PCI Roads, in charge of the road construction as well.

Kovacovich asked when you were in on April 15, 2015, did you specifically state to the people in the Environmental Services Office that you wanted to excavate down to the lake?

Briggs replied we did specifically state that we excavated, clearing and grading. We did not talk about doing any excavating into the lake or down by the lake.

Kovacovich clarified did you specifically talk about grading that hill down and building retaining walls?

Briggs answered we did not talk specifically about a retaining wall.

Greg Graton, architect for PLB, stated I spent a little time up here this summer. I went to the site and walked around there. I would like to say, I can tell from the GIS systems, you can see that there are prominent features within the landscape that you can tell there was an opening. Between the property line, to the east there is a pronounced outcropping of land there. There is an opening in between. It made a lot of sense just to situate the cabin where that opening existed and then to take that prominent and cut it back and retain that soil in there for erosion protection from the site. It seemed to make a lot of sense. It was based on what is happening with existing land forms there, as well as locating it in a way that it is central in the property. It gives the neighbors a little bit of a buffer on the side as well. I think from an architectural standpoint, and a land use standpoint, it made a lot of sense having the opening where it ended up.

Briggs added just for clarification, our focus and our goal was to stop the erosion versus allowing it to continue doing what it has done. It wasn't something that we were excited to do, or wanted to monetarily spend the money to do it. It was strictly to stop a problem from continuing to occur. I hope that answers part of the question.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Grob stated from the pictures that I had in my packet, it appears to me that even after the stop work order was placed on July 24, 2019, and then from subsequent pictures from about a week later, that substantial movement of boulders, and leveling and grading was continuing to finish out what you intended, including violating a wetland alteration. What comes to my mind is that your real intent was to grade so that you could build a cabin at the 100' setback, as opposed to looking for a real solution to the erosion. What you have now is a very erosion oriented situation. What you have built is a nicer place to put your cabin, not just solving an erosion problem. There are a lot of other ways to solve the erosion problem if you were to consider placing your cabin farther up the hill. That is my personal view from trying to review all of the pictures.

Andres commented I do appreciate the numerous referrals in the application from the past 15 years, but I am baffled by the delayed response to your violation letter. Hubbard County had placed a stop work order on July 24, 2019. Can you please tell me why you waited nearly an entire year after the deadline to try to bring your violations into compliance?

Briggs answered first I want to answer Grob's questions. There was absolutely no work that was done after that violation order to a boulder wall. There was absolutely no work that was done to that boulder wall after that violation came out.

Grob said it seems to me there was a whole pile of boulders right where you go down the hill. The hillside on the east had more boulders put on it afterwards, and you filled in the terrace and leveled out the area on the east side of the ravine.

Briggs replied no. That boulder wall that you have pictures of is the exact same boulder wall that is out there today. The proposed cabin is 30' from that retaining wall, and the proposed cabin could also be shifted another 10' or 20' to the west. So, the boulder wall that was done was not related to the necessity of that proposed cabin to be placed right there. There is additional room to do that at the 100' mark, as this is a recreational development lake, which is what we were approved for when we came into the Environmental Services Office. The situation for us was to put together the amount of credentials that were required to explain this in great detail. That is why it took the amount of time necessary to put together this package. It was in the fall and then we got into the spring for 2020. I was in the middle of a very extensive project in the city of Monticello at the time, and knowing that we were not able to do anything throughout the winter and that we had the spring to apply for this and to get this done. Going through the application, we felt that it was too thin and that we needed more supporting documentation. We felt, based on the application, that we had to substantiate with soil engineers recommendations and get more information from the neighbor to the east as well. That was the reason for the timeframe with the application.

Andres said I would like to back up for a little bit to ask a question about your landscaper. I know that you mentioned that one of them was a family member, but the other landscaper,

if known from the area locally, if they were a licensed landscaper, they would have known that permits were going to be needed to remove that much vegetation and grading.

Briggs replied it wasn't a local landscaper. It was a landscaper from down in the city. With me going to the Environmental Services Office, there wasn't a discussion about that at all.

Kovacovich stated I have a questions for Buitenwerf. It is my understanding that we also have a wetland violation that is being dealt with by a different agency. Will that have to be restored? If, in fact, this variance is denied, what is the restoration obligation of the property owner?

Buitenwerf answered there was a notice of violation letter that the Soil and Water Conservation District sent recently concerning the Wetland Conservation Act violation along the shoreline. One potential remedy there would be to remove the fill and bring the area back to its prefill conditions. As to the slope matter before you this evening, if the variance application would be denied, the restoration of the slope to its original state and revegetation of that slope would be the required remedy.

Kovacovich made a motion to deny 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 () No (X)

Why or why not? Removing a large swath of the top ridge of a steep slope located within the 100' OHW setback is not in harmony with the ordinance's intent of protecting such steep slopes and the vegetation protecting them from erosion.

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? Removing this large of a portion of the top of a steep slope located within the 100' OHW setback and clearing it of all vegetation for no apparent reason is not a reasonable use of shoreland 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 () No (X)

Why or why not? The project seems to have been done because it was a "want" of the applicant. If erosion control was truly the applicant's objective, restoration efforts to restore and safeguard the affected area would have been undertaken instead of removing this amount of soil and vegetation.

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

Yes () No (X)

Why or why not? The altered area is very visible and its unsightly aesthetic impact is exacerbated by the boulder retaining wall that is partly installed. This slope extends over 700' to the southeast of this lot and no other similar cuts exist in the slope.

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

Yes (X) No ()

Why or why not? The application does not mention any economic issues as being reasons for requesting a variance.

Variance Application 20-V-20 by Joel and Rhonda Pierce: Lots 1 and 2, Block B, Second Addition to Pine Haven Beach, Section 8, Township 139, Range 34, Hubbard Township on Long Lake, a recreational development lake. Parcel ID 14.38.50600. Applicants are requesting a variance from Section 702 of the Shoreland Management Ordinance for a proposed expansion of a nonconforming accessory structure located in the shore impact zone.

Justin Pierce, son of the applicants, 7111 Maryland Drive, Urbandale, IA, presented the application.

Pierce stated we are coming before you for our nonconforming structure. It is a boathouse on the shoreline measuring 7' wide, 16' long, and 5' high. We will be applying for a permit for restoration of the boathouse with the same footprint, but we will be moving it back from the shoreline 2'. A variance application is necessary because we are requesting to increase the height of the boathouse, which is now 5' high. We request this variance permit adding two courses of concrete block. This will increase the height approximately 16". With the slope of the lot, the new height of 6' 4" would enable the top decking of the boathouse to be above ground level after being moved back the 2' from the shoreline. Otherwise, keeping the present height will result in more of the top decking being below ground. We believe that these changes will be beneficial in stabilizing the boathouse, the shore impact zone, and the shoreline, while maintaining the essential character of the locality.

Johnson added I measured across the top and I got 8' x 16'. Maybe the blocks were 7' wide, but the top was 8' x 16', the existing.

Pierce replied that is correct, the wooden top actually measures 8' wide, but the concrete block structure and the concrete pad that it will be founded to is 7' wide. But, yes, with the wooden deck on top it does extend to 8'.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Andres commented during the lot viewal it was apparent that the boathouse is in desperate need of restoration, and I am supportive of the application. Moving it 2' back with the 16" difference on the height, I am supportive of.

Grob made a motion to approve the variance application and adopt the staff report findings of fact with a correction to the answer for question # 4.

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 (X) No ()

Why or why not? Statute and the Shoreland Management Ordinance allow a nonconforming structure to be rebuilt to the same dimensions by permit and moved so that it becomes more conforming – which is what is proposed. The 1’ 4” height increase is a reasonable exchange for the new structure moving away from the lake 2’ as that allows the roof to not fall below grade given the slope in which the structure sits.

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? Statute and the Ordinance allow the structure to be rebuilt by permit aside from the 1’ 4” height increase that is requested. Increasing the structure’s height by this amount so that the roof does not fall below grade as the structure is being moved 2’ further away from the lake and thus further into the grade 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 boathouse was constructed before the ordinance was enacted along the shoreline such that it does not meet the 100’ OHW structure setback and the ordinance requires a variance to increase the airspace that it occupies. The need for the additional height on the structure is caused by the slope in which it is located and the need to increase the structure height to keep its roof at grade as it is moved 2’ further into the slope which makes it more conforming in terms of its OHW setback.

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

Yes (X) No ()

Why or why not? The restoration will maintain the essential character of the locality and would be negligible difference as the increase would be offset by moving the structure further from the lake by 2’.

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

Yes (X) No ()

Why or why not? The application does not mention any economic issues as being reasons for requesting a variance. The difficulty is the boathouse is a legal

nonconforming structure located within the 100' OHW setback that was built before the ordinance was enacted.

Variance Application 21-V-20 by Robert and SueAnne Borell: Lots 1, 2, 3, and 4, Block C, Oliver Beach, Section 18, Township 140, Range 33, Nevis Township on Lake Belle Taine, a recreational development lake. Parcel ID 21.44.00100 and 21.44.00200. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed accessory structure to be located within the 10' property and 20' road right-of-way setbacks.

SueAnne Borell, 3495 Eldridge Ave. NW, Maple Lake, MN, presented the application.

SueAnne Borell stated our request is to build a new garage that would be 4' from the neighboring property line to the east.

Grob asked just for clarification, the 4' includes a 3' overhang on the garage, and the 10' violation is because of a 6' walkway easement on the east side of your property, is that true?

SueAnne Borell answered that is correct.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Kovacovich asked why can't the garage just be moved further away from the lot line? It certainly appears that there is enough room, maybe not to meet the walkway situation, but the lot line situation. It seems like it could be moved a little bit.

SueAnne Borell clarified your question is whether we could move it to the west? That would not be possible because when we come down our driveway, you will approach the garage on the west side and then turn into the east. We don't want to encroach on where the septic or the drainfield is.

Grob asked is that 20' easement road to the west, is that still a valid easement?

SueAnne Borell replied yes. We did check and that one is still valid as well.

Grob asked is either one of those ever used?

SueAnne Borell answered no they are not.

Grob asked did you ever seek trying to vacate that 6' walkway, which seems very redundant? Did you ever try to work at vacating that?

SueAnne Borell responded we talked to Tom Walz at Nevis Township, and he said the timeframe to do that would be at least a year. We probably will continue to do that after we are able to do our garage, because you are right, it is redundant.

Grob stated it seems to me to push them or force them to move over 6' where it starts sloping downhill towards their septic system, just to get away from an unused block of easement, it seems not necessarily worth the action.

Johnson asked Andres do you know if we received any written correspondence from the neighbor to the east? Any opinion?

Andres replied I don't believe we have any written comment except from Nevis Township. They are in favor of approval. They found no issues granting the variance.

Andres said I need a little clarification. When I was out there and I noticed you had stakes that marked the property line, and then you had a stake that was for the edge of the garage. When I measured it was nearly 26' apart. Is that accurate?

SueAnne Borell asked can you say that again?

Andres repeated during the lot viewal, when I was out there, on the side with the Hillman Lane Walkway sign, you had a couple of stakes out there that said property line, one towards the back end of the garage and one towards the front. Obviously stated as the property line. When I measured from that property line to the stake of the corner of the garage, I came up with 26'. In that 26', does that include the walkway?

SueAnne Borell explained the 6' Hillman Lane Walkway was not marked out at all. Is that what you are asking?

Andres stated that is part of what I am asking. The marker that you had that says the lot line, is it 26' from the edge of your proposed garage?

SueAnne Borell answered no. Are you saying the edge of the existing garage?

Andres stated no, from the property line to the first marker of the corner. It was an orange corner marker.

SueAnne Borell replied I am not sure where you got the 26'.

Andres said I will back up a little bit. Exactly what is the distance from the property line to the proposed new construction?

SueAnne Borell explained from the property line to the proposed new construction is exactly 4'. That would be where the overhang starts.

Grob added I am with you, Andres. The stakes were very confusing to me, as to where they were and they seemed to conflict with each other. I had a difficulty with that also.

Johnson stated I thought the same thing. With all of the trees that were cut down, were trees cut down that were in that 6' pathway?

SueAnne Borell replied only the ones that the tops had been broke off of.

Johnson said they looked like pretty live trees. I assumed that it must have been your land for all of the logging that had been done.

Robert Borell explained we took out six trees that were on our property and two that were on the walkway. When that storm came through, it damaged the tops of two of them.

Grob stated I agree with Johnson. It was my observation that a couple of those stumps were in the walkway.

Grob made a motion to approve the variance application with the condition that the east eave of the garage must be 10' from the east edge of the 6' platted walkway that runs along the east side of the applicants' property.

Kovacovich seconded the motion that passed 5 – 0.

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

Findings of Fact

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

Yes (X) No ()

Why or why not? Nevis Township has no issue with the encroachment. The 6' pathway is not used, and there is an alternate 20' pathway on the opposite side of the property. They picked the best location for size and access.

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? A new garage is reasonable, since it is replacing another garage and a second structure.

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

Yes (X) No ()

Why or why not? The 6' that was never used as a walkway was created when the area was platted.

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

Yes (X) No ()

Why or why not? It is wooded on both sides. It should not affect neighbors on either side of the property.

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

Yes (X) No ()

Why or why not? The application does not mention any economic issues as being reasons for requesting a variance.

Variance Application 22-V-20 by Terrence and Bridget Vitali: Part of Lot 34, Pine Beach, Section 9, Township 140, Range 33, Nevis Township on Lake Belle Taine, a

recreational development lake. Parcel ID 21.37.03000. Applicants are requesting: Part 1 - An after-the-fact (ATF) variance from Section 703 of the Shoreland Management Ordinance (SMO) and to modify the design approved in Variance 47-V-12 regarding a lakeside deck and platform; Part 2 - An ATF variance from Section 904.6 of the SMO to exceed the 25% of lot area impervious surface area threshold; and Part 3 - A variance from Section 506 of the SMO for a proposed guest cottage that does not meet the required 100' ordinary high water mark structure setback on a lot that does not meet the minimum lot size requirements.

Terry Vitali, 12613 Stearns Street, Overland Park, KS, presented the application.

Vitali stated we bought the cabin two years ago. I will get to the after-the-fact, but the original intent of the request was to add the second floor, or the guest cottage, on top of the existing garage. The point of it was to add sleeping quarters and a bathroom. We are on the Nevis Township sewer, so we have their approval to tie into that for the bathroom. We wanted to put the living space on top of the garage, so not to increase the footprint or impervious surface. That was the original intent. As we work through this, unbeknownst to us as new owners, we came across the other after-the-fact issues that turned out to be with a variance that was approved in 2012 for the deck, which is the 47-V-12. It was approved, but the prior owners did not follow through and build what was approved. Then the second after-the-fact was on the exceeding 25% of the impervious surface. Again, the driveway was put in without approval. As I work through this, as a new owner, I didn't know about the first two things. In working with Bryan and Eric, we needed to make those as right as we can make them before we talked about the second floor. Let me stop there and field any questions.

Grob asked since this is pretty complicated, my suggestion is that we deal with each of these things individually, rather than trying to clump any of them together. They are uniquely different and different possible outcomes. That is my suggestion.

Andres replied I have the same feelings. I would like to separate all parts, 1, 2, and 3, if everybody else is inclined to do so.

The Board agreed.

Andres stated we should just go in order.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Grob stated I have some comments and observations to make that are relevant to this. If you go back to the original Variance 47-V-12, the deck that was approved, based on Buitenwerf's calculations, was 366 sq. ft. That was approved, but at that same time there was a screened in porch structure that was removed. That was another 140 sq. ft. that was taken away as impervious surface. The reason that I am bringing that up is that when I look at what is there in the front, it looks nice and seems reasonable, but not according to the variance. However, if you do the calculations, you will find out that what is currently there

is about 400 sq. ft. of surface area. What was removed before is about 478 sq. ft. Even if you put the walkway to the lake added back in, there is still less surface area covered by the current construction that what existed back at the time of Variance 47-V-12, and it appears that underneath the deck, it looks like it is kind of constrained and would probably end up absorbing moisture that came off the deck. The point I am trying to make, I am trying to think of what the implication is of tearing all of this up, and I don't see a lot of advantages, especially in light of the fact that what exists today is less solid surface area than what existed when the original variance was approved back in 2012.

Andres said as far as the Part 1 after-the-fact variance I am in line with Grob, as I don't see any need to remove that back deck or patio. In Part 2 I might have some other suggestions, but working on Part 1 at this time, with just the deck and patio, I am supportive on retaining it.

Part 1:

Grob made a motion to approve the after-the-fact variance request and provided answers for the first five findings of fact questions, and chose not to answer the 6 additional after-the-fact questions.

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 (X) No ()

Why or why not? Although the construction is not consistent with the original variance application, the setback and total area of all structures is less than that which was approved with 47-V-12 and the removal of the screened in porch.

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 deck and platform are a reasonable use on the lake. The lot is narrow and small. There is no alternative for placement.

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 size of the lot and prior owner actions are consistent with what should be done.

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

Yes (X) No ()

Why or why not? Lots in the area are all small with structures close to the lake.

5. Does the stated practical difficulty involve more than just economic considerations?
Yes (X) No ()

Why or why not? Economics are not cited as a reason for the variance.

Andres stated we will proceed to Part 2.

Grob said when I was there and made the observation that the driveway is a major part of the impervious surface issue. When I looked at water runoff of that part that went towards the lake, there was a nice channel that directed it past the house and down into that flat, which appeared to me to be up to a foot below the berm area next to the lake. You could see from the really heavy rain we had just recently, a lot of the dregs that get washed down were laying there in that ditch area, which means they were not washed into the lake. The water running off of that driveway appears to be held in a little depression area which is very sandy.

Vitali stated I actually sent Buitenwerf a picture. It rained the next day. That picture showed exactly what you are talking about. It showed a big puddle.

Grob added I measured almost an inch of rain that day, so I assume that was similar to what you got.

Vitali agreed.

Andres asked how would you decrease the impervious surface on your lot at this time?

Vitali replied I was talking to Grob about taking out some of the driveway. I don't have a problem with taking out some of the driveway to bring it down. It was a matter of where you can take it out. If I take it out at the end towards the street side, Grob said that doesn't really help my impervious surface because that is going to flow the other way. The area in this picture is kind of at a crest of a little hill. Behind you that water flows the other way, back away from the lake. I am open to helping with the impervious surface. I don't know what the best option is to do that.

Grob added I looked at that and I think the right number, or close to it, he is at about 1,000 sq. ft. over what would bring him into compliance with the 25%. I don't know exactly, but when I looked at the calculation, if you took the crest of the driveway back away from the lake, and did the calculation of that length, I was guessing somewhere in the 800-900 sq. ft. The point I am trying to make is that he could tear up that driveway and meet the impervious surface requirement, assuming that what is left over is impervious surface, and you wouldn't have any effect on what is running into the lake. Technically, he could meet the requirement, but at the same time wouldn't be doing anything to correct the situation with the lake.

Andres stated I have similar questions directed to the Environmental Services Office as well. If removing some of the asphalt, but still class 3 is left over, it would still be impervious surface. My question for the applicant was going to lean more towards removing some of the platform patio that you have non-lakeside between the house and the garage, and the walkway that goes around the house. How much impervious surface would that decrease?

Vitali clarified are you asking me the measurement on that?

Andres explained not necessarily the measurement, but if you would be open to decreasing that part of the impervious surface. That would decrease it somewhat. That is quite a large platform patio back there, plus all the walkway from the driveway to the patio, the walkway from the patio to the garage, and the walkway around the house.

Vitali replied I think we could work on something there to help out. I don't have an issue with that. I don't know exactly what it would be, but we could figure something out. You mentioned it the other day, and I hadn't even thought of it. I would need to put some thought into how to best address that. But, I am open to help out.

Kovacovich asked Buitenwerf could you scroll down one more picture? My question is, I understand the patio next to the house, what is the purpose of all of those walkways? Where do they lead to?

Vitali answered you would have to ask the prior owner. To your point, the stairway right in front of you is coming off the driveway and it is headed towards the left, into the house. As it bears to the right, it heads up to the garage. The other little walkway veering off towards the upper right, is heading towards the north side of the house and around that way. There is a walkway, a really small one of only a few stones, that one isn't as big of a deal. That was all the prior owner, and they felt they needed walkways there. One thing, that patio does pitch towards the house a little bit. If rain does fall on it, it sheds back towards us.

Kovacovich clarified so you are saying it drains into where those walkways are, in that little garden?

Vitali responded yes, because it is pitched back towards where we are looking from.

Grob added when I look at the calculations, if you took out that patio there, you get a couple hundred square feet, which makes only about a 20% dent into the overall impervious surface issue. It is not clear to me if you took that out, that you would do anything with regards to runoff into the lake.

Vitali agreed. Because of the way it is pitched back, it does help.

Petersen asked Grob are you seeing no areas where you think removal of any hard surfaces helps our runoff at all?

Grob explained I think the biggest thing you can do is to tear up the driveway. Once you tear up the driveway, and put down Class 5, that is considered impervious surface. You are still going to get the same runoff. I can tell you from experience with lakes, runoff from Class 5 gravel is not a pleasant thing to be pushing into the lake. All you would be doing would be washing it down into that little rain garden area that he already has. The second thing is, you could get another 1,000 feet off of it if you took the part of the driveway that is furthest away as you enter, but that is just going to be more Class 5 gravel runoff in the other direction. Do you see what I am saying? I don't like the 31% impervious surface, but given what is there, when I look at where the water goes, how it gets collected, and what you gain by tearing that up, I don't see an advantage. I don't see a solution that makes it any better than what he has right now.

Andres commented I am under the impression that the previous owner may have put down the walkways and the platform due to the tree coverage that they have. Maybe there is no grass that was growing. The grass is kind of sparse in that shaded area, but that is just an opinion.

Vitali added in addition to it is just so sandy, and it is hard to grow grass in there at all.

Part 2:

Grob made a motion to approve the after-the-fact variance request and leave the current impervious surface “as is”, as well as providing the answers for the findings of fact questions 1-5. The Board chose not to answer the 6 additional after-the-fact questions.

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 (X) No ()

Why or why not? The impervious surface violation was due to the previous owner’s actions, but the runoff from the driveway is controlled lakeward by the low area to the left of the home and slope on the entry portion of the driveway directs the water away from the lake. The intent of impervious surface rules are to prevent lake runoff. The current construction accomplishes that.

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? Paving of the driveway and home entry on a small lot seemed reasonable when the impact to the lake is mitigated.

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 conditions were not created by the current owner.

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

Yes (X) No ()

Why or why not? Pavement is not unique to the area for these small lots.

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

Yes (X) No ()

Why or why not? Economics are not sited as a reason for the variance.

Andres stated we are now moving forward to Part 3.

Grob said I would like the applicant to restate exactly what their intent is with the variance.

Vitali stated the intent was to add some more sleeping quarters and another bathroom above the garage. We were trying to not increase the impervious surface. We could have tried another structure a little bit on the other side of the driveway and it probably would have met the 100'. That didn't seem reasonable anyway. Our family is growing and we need more sleeping space for the grandkids. The intent was to put it in a place that was tucked back. That garage is tucked back from the lake. You can't see it that well. Again, we didn't want to disturb the general look of the property. I think it is basically summer quarters with an open bunkroom and a bathroom.

Andres commented the garage was built at the setback per variance 63-V-08. The footprint does comply with the 700 sq. ft. allowed for the guest cottage, and from the lake the second story construction to create the guest cottage would most likely be screened and not visible from the lake. It is to my understanding that the second story is not going to add any additional impervious surface. During my lot viewal I did not see any gutters currently on the garage. I would definitely put a condition on that if this were to be approved. I have a couple conditions that I had in mind, gutters was number one, to be placed on the garage or guest cottage to divert the stormwater away from the lake. The other condition would be to have the patio removed, but we have already done that, so I just have the one condition at this time if we do go forward with this request.

Petersen asked is the garage built on a slab?

Vitali replied yes.

Petersen continued you already contacted a contractor/builder about putting a second floor on that garage with a slab?

Vitali answered yes. I talked to Matt Lindow. He stopped by just to see if it was possible. He said yes, we could definitely raise the roof. It is sound to build up. He didn't have any concerns with it. It was a pretty informal conversation.

Petersen stated I was curious about that, putting another floor on that slab and how the slab was constructed. It was really a construction question. It doesn't sound like you have gotten too far along in that process.

Vitali responded no I haven't. He came over and looked at it. He said he did not see any issues. We should be able to do it. I said before we get too far down the road, let me get my ducks in a row with Hubbard County before making plans.

Petersen continued it looks like you would continue with the hip roof?

Vitali replied the same style.

Petersen asked Andres you want gutters all the way around? Is that what you are looking at?

Andres answered gutters all around would be very sufficient to help with runoff. I don't recall where that little depression was the Grob was talking about. It is not on that side, is it?

Petersen replied I don't think so. I am trying to recollect the grade again to see if you did put gutters, where would you run it?

Vitali added if you go back to the picture, now that I understand what you are looking for of the garage. I would suggest that we put gutters on the front. It actually runs out behind the garage, not towards the lake. I think I would run it basically to the northeast of the lot. If you go back to the picture of the garage, I would run that out to the right where that birch tree is. I think I would pull any water that I could towards that birch tree and out towards that little evergreen out to the right.

Grob stated with the Ordinance change recently for us being a little bit more flexible with guest cottages, by restricting size, we have been pretty rigid about not altering our opinion with regards to that. The point I am making is, even though this meets the square footage and height requirements over a garage, the lot is only half of the size of what we would allow. The guest cottage is only 60' from the lake. Two major conflicts, or barriers, to granting a guest cottage. A small lot and close to the lake. We have been pretty rigid about not allowing that to happen in many cases. As you can probably tell, I am not on the side of granting this alteration, just because of the major variation from what we have allowed in general and consistently with guest cottages over the last few years.

Andres added that is a very valid point that you made there. I was really only thinking of the 700 sq. ft. I was not thinking at the time about the size of the lot.

Johnson said on the other side, I am more in line with Andres. The existing cabin is a 1958 cabin that is only 24' wide. When I was there Saturday I saw what the yards look like when they don't have a guest cabin. They put up tents and campers everywhere.

Petersen asked Buitenwerf can you tell me again what the minimum square footage of a lot needs to be for a guest cottage.

Buitenwerf stated it has to meet the single family residential lot dwelling standard. Because this is a sewerred lot, meaning it is connected to the City of Nevis sewer system, the minimum lot size would be 30,000 sq. ft. for the lot, 15,000 sq. ft. for the suitable area, and 100' on the width. The lot is, according to GIS, 19,533 for square feet.

Grob said as you can tell, I am not supportive of this. I am sensing my colleagues may be more in favor of it.

Kovacovich corrected I am with you on this.

Grob explained I am reluctant to make a motion on this if there is sentiment to approve it. If not, I would make a motion to deny it.

Andres added with the calculations of the sewerred lot that Buitenwerf just gave us, it appears that the lot size is substantially less, by 10,467 sq. ft. That is 1/3 basically.

Grob commented and the cottage is 60' from the lake.

Part 3:

Grob made a motion to deny Part 3 of the variance application and provided the answers to the findings of fact questions.

Kovacovich 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? The lot size is 50% smaller than what is allowed, and the guest cabin is only 60' from the lake.
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? Lot size and location relative to the lake is not 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? This is a very small lot and there is no alternative for any place else on the lot.
4. Will the issuance of the variance maintain the essential character of the locality?
Yes () No (X)
Why or why not? There were no observations made about other guest cottages in the area.
5. Does the stated practical difficulty involve more than just economic considerations?
Yes (X) No ()
Why or why not? Economics are not cited as a reason for the variance.

Variance Application 23-V-20 by Steve and Rachel Fisher: Lot 2, Loch Vista Beach, Section 35, Township 141, Range 34, Lake Emma Township on Little Sand Lake, a recreational development lake. Parcel ID 16.52.00200. Applicants are requesting a variance from Section 904.6 of the Shoreland Management Ordinance to further exceed the 25% of lot area impervious surface area threshold.

Bernie Gartner, 603 North Central Avenue, Park Rapids, MN, authorized agent for the applicant, presented the application.

Gartner stated we are looking to make additions to the house with a kitchen and dining room addition, and adding on an attached two stall garage to the existing home. There is a detached two stall garage on the property right now that we would move in conjunction with this. One storage shed on the property would be removed and the other would be relocated on the parcel. The existing asphalt driveway would be removed. New access to the garage

would be from the Township road and would be a shorter driveway out of that. There would be a shorter driveway than what was on the plan submitted.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Grob said there is a very nice size garage, in good shape, sitting there already. What is the advantage to moving it closer and attaching it to the house? What is gained by doing this?

Gartner explained the existing garage looks very nice on the exterior, the interior is starting to be in disrepair. It is going to be a year round home, so they would like the attached garage onto the house for convenience.

Grob asked how much additional living space in this addition is gained by moving the garage here?

Gartner replied the additional living space would be a 14' x 26' kitchen and stairway area, so it would be 426 sq. ft. added onto the existing home. The remaining would be the garage. It would be a 26' x 28' garage. Then the laundry room, so it would be 928 sq. ft. of that.

Kovacovich asked could you explain to me in the figures where the total existing impervious area is. The existing house is listed at 1,242 sq. ft. Then down below on the proposed, the existing house is listed at 1,169 sq. ft.

Gartner responded I think the first one was the calculation without overhangs. I think that is just an error.

Kovacovich stated both of them say with overhangs.

Gartner answered I know originally I had the square footage without the overhangs, so I may have just forgotten to change it on the new one. I thought I corrected that, but apparently I didn't.

Andres asked Johnson if and when the septic fails, will the new drainfield be placed in the same location, in your area of expertise?

Johnson replied I am not positive about that, but this is the one that just had some septic repair in the front, am I correct on that?

Gartner answered yes, I believe it was something with the tank out on the lakeside. A pump in the tank is what I believe it was.

Johnson stated I don't know how that would be handled. This is on the Township right-of-way. They would probably allow a new spot if this one failed, I would imagine.

Andres added it appears there is a possibility that if it failed, the Township could also deny that possibly. According to the staff report, the Township can revoke that at any time with written notice.

Grob stated I didn't realize until looking at your drawing again, you are adding sideways to the house. 14' in addition to the garage. I thought it was all away from the lake and it was part of the back end of the garage, but you are adding 26' x 14' addition to the house and the garage?

Gartner replied that is correct.

Grob added the other thing that I observed when I was there was that all of the downspouts go into piping and are oriented around the house. The piping runs down underground into the lake. So, all runoff from the house goes directly into the lake. Is that correct?

Gartner replied that is correct. I would note that the entire lot runs towards that lake from the road. With the garage addition, we could divert it off to the right side where the old garage was. The entire lot slopes towards the lake, so there is no sloping away from the lake on any of that area. It would have more filtration between if we ran it off towards the old garage. It would have more filtration area, but it would all still drain towards the lake.

Grob asked Buitenwerf if the garage stayed where it is and they just wanted to do that addition horizontally, other than impervious surface, would that be allowed to be added?

Buitenwerf answered are you are talking about excluding the attached garage and just adding the living space?

Grob clarified if you left the garage where it is and you just added that 26' x 14' addition to the side of the house, would that be allowed by permit?

Buitenwerf replied I would have to do the calculations to see if that would cause an increase in impervious surface. If it did, there would still be a need for a variance.

Grob asked if there wasn't an impervious surface issue, would it be allowed based on setbacks?

Buitenwerf answered yes. The only issue would be the impervious surface area.

Johnson added I actually did have notes that I found. There is the possibility of going with an experimental system if they had to. I didn't get to talk to Buitenwerf about it, but there is one in Kabekona. A system made in Germany. Have you heard of that one, Buitenwerf?

Buitenwerf replied I am familiar with it.

Johnson explained with pumping oxygen into it and actually being able to drink it after it has went through less than 2' of soil treatment. I will talk to that later. There is a remedy, but it is experimental.

Grob asked there are two structures to the left as you come into the driveway. Are both of those going to be removed? I think there was talk about tearing down one, but just moving the other. Where I am headed is, what is the square footage of those two structures? If they were completely gone, what would be the equivalent square footage?

Gartner replied the one would be removed. That is 8' x 12', so that would be 96 sq. ft. The second one is a fairly new structure that was installed with a permit. That is 12' x 14'. That is the one in the picture right in front. That would be the one that we are proposing to move to a different location between where the existing garage is and the house. That would be meeting the 10' side lot line setbacks and the 100' ordinary high water mark setback.

Grob continued where else on the property would you put that?

Gartner explained between the existing garage and the house. It is on the site plan sketch if Buitenwerf has that up there by chance. In the green outlined area, that is the proposed spot for that shed.

Grob said ok, I see now. So we don't gain much by taking 96 square feet away.

Gartner replied the 96 sq. ft. is part of the plan. We were intending on removing the small shed. It would be the 12' x 14' shed, so that would be 168 sq. ft. If that were totally removed from the property, it would be 168 sq. ft. less.

Kovacovich asked on the driveway that is going to be removed, what is going to be put there?

Gartner responded it is just going to be seeded and back to lawn area.

Kovacovich questioned would measures be taken to loosen that all up? It has been compacted for many years. What would be done to make sure that it is still not an impervious surface, even if you put some black dirt and grass seed on top of it?

Gartner replied we could certainly remove any Class 5 that is underneath it and get down to loosen soils, plant seed, and make something grow in there.

Kovacovich asked did we do public comment yet?

Andres stated yes we did. Were you maybe leaning towards, if they remove the driveway to free up some impervious surface and possible removal of the sheds, they could still build by permit?

Kovacovich responded no I wasn't going there. I was just curious. The numbers still don't add up in my mind.

Kovacovich made a motion to deny 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 () No (X)

Why or why not? The application proposes to increase the lot's impervious surface area from 30.6 to 34.8% without any mitigation measures designed to handle the additional stormwater such an increase will generate. Increasing impervious surface area on a lot to nearly 10% above the maximum allowed 25% of lot area would not be in harmony with the ordinance's intent.

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

Yes () No (X)

Why or why not? While additional living space and an attached garage is reasonable to want, having such at the expense of nearly 35% impervious surface area without any plan to treat the additional stormwater generated is not 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 () No (X)

Why or why not? While the lot is small in size, the applicants are attempting to develop it to a scale that exceeds the lot's carrying capacity. There already is not room for the septic system drainfield which has been located in the township road right-of-way since 1994.

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 homes of similar to slightly larger size than what is proposed on this lot. Many of the neighboring homes have attached garages. Neighboring lots are of a similar size and depth to this lot.

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

Yes (X) No ()

Why or why not? The application does not mention any economic issues as being reasons for requesting a variance.

Miscellaneous:

Communications:

Adjournment:

Kovacovich made the motion to adjourn.

Grob seconded the motion.

The motion carried unanimously 5 – 0.

The meeting adjourned at 9:55 p.m.

Respectfully submitted,

Staci Lee

Recording Secretary