

HUBBARD COUNTY

Planning Commission/Board of Adjustment Meeting Minutes

6:00 p.m. on Monday, June 25, 2018

Chairman Tom Krueger opened the meeting with the following additional members present: Ken Grob, Ted VanKempen, Tim Johnson and Mark Petersen. Also present was Environmental Services Director Eric Buitenwerf and ex-officio Planning Commission member and County Board Vice-Chair Dan Stacey.

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

Planning Commission:

Approval of Minutes: May 21, 2018.

Grob made a motion to approve the minutes as presented.

VanKempen seconded the motion that carried unanimously 5 – 0.

Old Business: None.

New Business:

Minor Subdivision Application by Don Guida: North ½ of Southwest ¼, Section 30, Township 139, Range 35, Straight River Township. Parcel ID 25.30.00810. Minor Subdivision Application to adjust property line between two tracts. Said application is required per Section 4 of Subdivision Ordinance as a previous administrative subdivision was approved last year and the Ordinance only allows one administrative subdivision within a five year period. Subsequent subdivisions within this time period must be done by a minor subdivision or plat.

Applicant was not present.

Grob stated the information provided meets all the requirements for proceeding with it.

Krueger asked for public comment.

No public comment was given.

Krueger closed public comment.

VanKempen made a motion to approve the minor subdivision application.

Johnson seconded the motion that carried unanimously 5-0.

Board of Adjustment:

Approval of Minutes: May 21, 2018

VanKempen made a motion to approve the minutes as presented.

Johnson seconded the motion that carried unanimously 5 – 0.

Old Business: None.

New Business:

Variance Application 9-V-18 by David DeLaHunt: Lot 4 and Part of Lot 5, Wildwood Retreat, Section 21, Township 140, Range 34, Henrietta Township on Long Lake, a recreational development lake. Parcel ID 13.47.00400. Applicant is requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed addition to a nonconforming accessory structure that will encroach on the 10' side lot line setback.

David J. DeLaHunt, 18602 Estate Drive, Park Rapids, MN, presented the variance application.

Krueger said we were out there to look at it, but could you give us a brief description of what you are looking for?

DeLaHunt responded yes, on the west side of the detached garage, I am looking to add a lean-to, to cover basically where I store my wood. It would encroach on the 10 foot setback. That is why the variance is requested. It would pretty much be open air, so that air moves and keeps the wood dry. There is already an existing slab from the old garage that used to be there prior to my occupancy of the property. That is 6 ½ feet wide and that is a perfect spot to put it. Seems to be the best spot throughout the property to locate it. And there is a nice hedge bush along the property line, so it would be screened and the neighbor to the west is fine with it.

Krueger stated we did receive a letter from him. That is written in your record that he is fine with it.

Krueger asked for public comment.

No public comment was given.

Krueger closed public comment.

Krueger asked for any additional comments from the Board.

VanKempen asked, the red shed that is sitting on that space, you plan to remove?

DeLaHunt responded yes, as a matter of fact it is gone already.

VanKempen said I was going to ask if one of the conditions we would need is to have that shed removed and you have already done that. Did you remove it from the property or just move it to a different location?

DeLaHunt responded we tore it down, the whole floor was rotted out of it.

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

Grob seconded the motion that carried unanimously 5-0.

Findings of Fact

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

Yes (X) No ()

Why or why not? The purpose of the side lot line setback is to guard against structures being built on the wrong property and provide sufficient room to construct and maintain structure exteriors without having to impinge on neighboring property. Here, the side lot line is well-defined by a mature hedge row that has clearly been in place for many years. A small shed in the general area of the proposed lean-to will be removed and thus reduce the lot's impervious surface area. The lean-to will be placed over an existing concrete platform so no additional impervious surface area will be created.

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

Yes (X) No ()

Why or why not? Having a lean-to along the side of an accessory structure under which firewood will be stored is a reasonable property use often seen on lakeshore properties.

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

Yes (X) No ()

Why or why not? There is an existing concrete platform on which the lean-to will be constructed. This platform was part of the foundation/apron of an old garage that previously existed in this location. It makes sense to construct the lean-to and store wood on this existing platform rather than the other side of the garage which would interfere with the septic system drainfield and be much more visible to the landowners as well as the neighbors than the proposed location.

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 permanent and seasonal residences located on a mixture of lot sizes and lots – many of which have accessory structures similar in size to this detached garage with its proposed lean-to addition. The lean-to will meet the 100' OHW setback and be totally screened from the adjoining property owners' view by the mature hedge row that runs along the side lot line.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as a difficulty. The difficulty involves the garage's location relative to the side lot line and it making sense to take advantage of the existing concrete slab on this side of the garage that originated as part of a previous garage located in this part of the lot rather than construct something new elsewhere and add to the lot's impervious surface area.

Variance Application 10-V-18 by Olaf and Kay Netteberg: Lot 4, Block 1, Jane's Subdivision of Pine Cone Camp, Section 35, Township 141, Range 34, Lake Emma Township on the Sand River, a tributary. Parcel ID 16.88.00400. Part 1: Applicants are requesting a variance from Sections 502.7 and 503 of the Shoreland Management Ordinance (SMO) for a proposed structure to be located in a bluff impact zone and within the required 30' top of bluff setback. Part 2: Applicants are requesting a variance from Section 502.7 of the SMO for an accessory structure to be located at less than the required 150' ordinary high water mark structure setback.

Olaf and Kay Netteberg, 19765 Grouse Road, Park Rapids MN presented the application.

Krueger said the first question I have is, on site you said that Part 2, as far as the accessory structure, you would like to remove that.?

Netteberg replied I would like to cancel that request.

Krueger said we had to get that down for the record. So we will move along to Part 1 of your request, which is that 15' encroachment on the 30'.

Netteberg answered correct.

Krueger commented one thing I observed is that bluff goes in both directions, towards the lake and the other is towards the house.

Netteberg replied correct.

Petersen asked tell me again why you would not have been able to move that home back 15 feet, I think it is 15 feet you would of needed to make this porch in compliance.

Netteberg answered correct, if we could have the previous screen, maybe that sketch would help illustrate it. The reason for it was based on advice of our excavator and our septic contractor, and the setbacks for the pressure bed septic, the setback for the tank, or the spacing between the tank and the attached garage. Upon his advice, we need to have the home as close as possible to the bluff impact zone. The variance application is for a covered porch, which would not have a basement or foundation, similar to a deck it will be on posts.

Petersen said I am wondering when we were out there, the pour that we saw for the footings, that did not include the garage?

Netteberg replied no, the garage, those footings would be forward. Once the basement of the home is erected, then that portion would be backfilled and then excavation would take place for the garage. Obviously the garage footings would not have to be as deep as the basement footings. So there is a large pile of sand where the garage will be located, and also where the tank would be located.

Krueger said that garage is going back the opposite side as that covered porch would be, on what I would call the back side.

Netteberg answered correct.

Petersen said Johnson, I have a question for you. Does a pressure bed require an alternate site, just like the drainfield?

Johnson said then I would have a question for Buitenwerf, Is this an undersized lot? I think by administrative decision, he can allow it without an alternate.

Buitenwerf replied it appears the lot meets the minimum lot size. It was done as a plat, so I imagine at the time it was platted, it complied with the ordinance requirements then.

Johnson stated the answer is that if there would be room for one, you would want one. So a designer would have put it in there if one would fit.

Krueger said it adds more limitation to that space back there.

Grob asked why didn't you include the porch in the original building permit?

Netteberg replied the original building permit, what we gathered from the advice of Environmental Services, the original building permit was for the structure itself, so that the structure would be 100% compliant. The covered porch would be nice to have. Jeopardizing permission for the structure to be built, based on a variance. We proceeded with the structure and the home in compliance without a variance being necessary.

Grob said you were aware when you did it that if you came back for that porch, it would require a variance?

Netteberg answered correct.

Johnson added Grob, since you weren't there, I will just explain that no excavation on the hillside that goes away from the bluff. So they are on the opposite side of it, and it's pillars, is that going to be open and not enclosed?

Netteberg replied correct, not enclosed.

Johnson continued so this would just be no living area, is just an open...

Netteberg said covered deck.

Johnson said if the Board felt that it could be approved then, you wouldn't mind a condition that it could never be living?

Netteberg replied that would be fine. And our understanding concerned with eaves, and drainage and runoff, that is why we are requesting permission for a variance, to be completely compliant.

VanKempen asked do you have any plans for gutters on the home?

Netteberg replied no I had not initially, if that is something you would choose to require that would be acceptable. Upon your visit, the orientation of the ridge line, of the eaves and the ridge line, the intent is for the water to shed, what would feel like North and South as opposed to the water to drain off of the roof into that bank to then drain back toward the structure.

Krueger asked for public comment.

No public comment was given.

Krueger closed public comment.

Grob added I wasn't at the actual viewal, but I am very familiar with the area and I have driven by. How far along are you in the construction process? Have you laid the footings?

Netteberg replied the footings for the home are in.

Grob clarified the footings are in?

Netteberg answered yes.

Grob continued so if you had to move it or change the design, that would void current footings?

Netteberg replied the entire structure. The structure as-is is completely compliant without the necessity of a variance. If that answers your question.

Grob said if we were to hold to the 150' and you still wanted it for setback, the setback that you have to have to that porch, and you still wanted the porch, and had to move the house to keep the porch, the footings would have to be redone.

Netteberg replied correct. It wouldn't fit if we moved it back because of the pressure bed, and septic system. It has to fit at the bottom.

Krueger said that is one of the considerations I am taking into account right now, is the limited space back there, and you had to reserve space for an alternate pressure system site. I think that something perhaps that would be unique to this property is like I started out saying, in that you have got that slope heading both directions, on a ridge there, and the intent of the ordinance is to prevent for that 30' setback, in my own opinion, is to prevent erosion water flowing down towards the lake or stream, and in this case that would not be happening because of that slope from the ridge down to the house.

Grob responded I am familiar with the property.

Krueger asked for any other thoughts or comments?

VanKempen said it is a challenging lot, if you look at the picture here, from the bluff down to the river, takes up at least half of the lot. So you have half to work with. If you were going to have a deck or something, on one side of the house you are close to the property line. The other two sides you are looking at roads, so this does makes sense. As Johnson and Krueger have commented to, it seems that the crest of the bluff is the high point and of course, then it goes down to the river and then down towards the house too.

Johnson asked Buitenwerf can they do any brushing of any kind between there and that creek on that bluff? Of any kind, the smaller brush?

Buitenwerf responded they are beyond the structure setback, let me check.

Johnson said my next question was if you are planning to do any of that?

Netteberg replied no. And I don't recall if you are the one who asked at the time, but the vegetation that's there right now, this time of year when there's a lot of traffic, it dampens the sound and the sight and it provides privacy. However in the winter and when the leaves are off, it's gorgeous. And that is really the view that we are after there. Our intent at this time is to leave that slope as is.

Buitenwerf clarified as long as they leave a ground layer and understory of natural vegetation, they can remove trees, as long as they maintain a 50% screening of the structure when viewed from the water during summer leaf on conditions. Section 901 of the ordinance.

Grob asked but the 50' shore impact zone is still not to be violated from a vegetation removal? You are talking about the trees, vs anything from the creek say back 50'? Or 75' in this case, is still supposed to be untouchable, right? Except for viewing.

Buitenwerf explained with a vegetative alteration permit you can remove trees within the shore impact zone.

Grob clarified with a permit?

Buitenwerf responded yes.

Johnson made a motion to approve the variance and adopt the staff findings of fact answers for questions 4 and 5 with the following conditions:

1. The porch could never become a living area.
2. No vegetation ever be removed on the bluff.

Krueger seconded the motion that carried unanimously 5-0.

Findings of Fact

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

Yes (X) No ()

Why or why not? The porch will be installed with sonotubes so there will be virtually no excavation and it's on the back side of the bluff with the slope directing the flow of drainage away from the bluff. The intent of the bluff impact portion of the ordinance is to prevent that erosion going down the slope, which would not happen in this situation.

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 construction will not affect the bluff with any runoff, and the vegetation screen will remain.

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 layout of the property, the topography, the house, the garage and septic need to be in a row the way they are. That pushes that porch in to the bluff impact zone.

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

Yes (X) No ()

Why or why not? The locality is made up primarily of seasonal residences that are located at similar OHW and top of bluff setbacks and vary in size from being much larger than the prior and proposed house on this lot to somewhat to much smaller. The proposed house will thus fit in with and maintain the locality's character.

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

Yes (X) No ()

Why or why not? The alleged difficulty has much to do with the landowners' desired house and garage plans and the locations of these two proposed structures. Economics were not cited in the application as a difficulty.

Variance Application 11-V-18 by Joe and Nancy Jansen: Unit 7, Common Interest Community No. 7, Village in the Pines, Section 19, Township 141, Range 34, Lake Emma Township on Potato Lake, a recreational development lake. Parcel ID 16.39.90700. Applicants are requesting a variance from Section 702 of the Shoreland Management Ordinance to raise and rebuild a nonconforming lakeside deck located in the shore impact zone 25" higher than the existing deck.

Joe Jansen 24317 Hidden Village Loop, Park Rapids, MN, presented the application.

Krueger asked for the record, give us a description of what you are requesting.

Jansen said as described, we are looking to raise and rebuild a nonconforming deck materially in the same footprint with the exception of the upper deck being raised to a level walkout which is approximately 25 inches higher than current. Now material is changing on some little unnecessary steps.

Krueger asked now the square footage remains the same as far as the upper deck and the lower deck where the stairs go through?

Jansen answered as measurements, yes.

Krueger said you decided to put in more stairways then?

Jansen agreed more stairways. And the stairways, today they are uneven stairways, so they will all be to code.

Grob asked you are bringing the deck up to the threshold level of the door? You're not leaving at least a little step down, like 6 inches or so?

Jansen replied, no step down, it would be whatever the standard is now, a 2 inch gap.

Grob responded you are not worried about any snow melting and runoff coming back in?

Jansen said we were a little bit, we'll put eaves up to help at least in the spring and summer.

Grob added I live about 4 streets down from you and I got a lot of snow built up and drifts on the front side of my house. It faces the same direction.

Jansen said I have a family member that is an architect so we talk a lot of weather proofing approaches behind the deck.

Krueger said when we were out there, where the deck meets the house, there is a lot of rotting woodwork, are you planning to put a gutter in to keep that from happening in the future?

Jansen replied definitely.

Krueger asked for public comment.

No public comment was given.

Krueger closed public comment.

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

VanKempen seconded the motion that carried unanimously 5-0.

Findings of Fact

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

Yes (X) No ()

Why or why not? If the deck's elevation was kept the same, the deck could be replaced by permit. The 25" height increase will not have any negative aesthetic impact for parties recreating on the lake. Nor will it have any negative environmental impact.

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

Yes (X) No ()

Why or why not? Raising the existing deck's height 25" to eliminate a step down from the sliding glass door that faces the deck is reasonable from a safety and usability standpoint. The Ordinance requires a variance because the deck height is increasing while the footprint will stay the same.

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 cabin to which the deck is attached was constructed in the shore impact zone in the 1960s prior to the Shoreland Ordinance's enactment.

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

Yes (X) No ()

Why or why not? The locality is comprised of seasonal and year-round single family residences – many of which have lakeside decks. The existing deck has been in place for decades and the proposed replacement deck will be the same footprint. Many of the other neighboring cabins in the residential planned unit development are located at a similar ordinary high water mark setback and also have similarly sized lakeside decks on them.

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

Yes (X) No ()

Why or why not? The difficulty is due to the cabin having been constructed in the shore impact zone in the 1960s before the Shoreland Ordinance was originally adopted. Economics were not cited in the application as a difficulty.

Variance Application 12-V-18 by Terry and Sharilyn Seter: Govt. Lot 1, Section 29, Township 140, Range 34, and Part of Outlots 3-5, Shady Point, Section 28, Township 140, Range 34, Henrietta Township on Long Lake, a recreational development lake. Parcel ID 13.44.00600. Applicants are requesting a variance from Section 502.2 of the

Shoreland Management Ordinance for a proposed platform to be located within the 100' ordinary high water mark structure setback.

Terry Seter 17976 Dayspring Drive, Park Rapids, MN, presented the application.

Krueger stated we did get an updated application drawing and I believe it is now 50' back from the lake.

Seter responded that is correct.

Krueger continued and that 50' is to the rock ring right now.

Seter replied yes.

Krueger said that goes in the ground.

Grob said with the drawing there is additional pavers for the walkway, off your existing walkway that goes to the platform area.

Seter said that is correct. There would be a 25' addition to that sidewalk. 4' wide.

Krueger said I saw a picture of that fire place you are planning to put in there, how high is that?

Seter replied it is 2 ½' high I would guess.

Krueger asked is that gas?

Seter responded yeah it is gas, propane.

Grob asked your house is currently 100' back from the lake. Under the ordinance, Buitenwerf, he would be allowed to build some kind of platform or deck, towards the lake, up to 15% of the setback. Is that true?

Buitenwerf responded that is only applicable in cases that the house predates the original enactment date of the ordinance which was July 12, 1971. I would have to look at the file to see if that applies to this structure or not. Or you could ask Mr. Seter.

Grob asked when was your home built?

Seter answered in 2005 it was moved in.

Grob said it was built brand new in 2005?

Seter replied it was an existing house that was on the Ponsford prairie, we moved it in 30 miles.

Grob said I was not out to see the property, but 25' seems to be an excessive size to add to what I think is a fairly flat area that should be reasonably okay for sitting. That is what...475 square feet or so. That is a lot of area to make impervious surface and to build in the setback zone. Maybe you could try to convince me that 25' is necessary vs 12 or 15 feet. Enough for one row of chairs, a few chairs.

Seter replied I want to make it handicap accessible. My wife has stage 4 cancer, and she may be in a wheelchair.

Grob added but with your pathway that would be accessible. Even at 15' setback that would still be doable, wouldn't it?

Seter answered I don't know that for sure. I can't tell you that.

Petersen asked can you tell me again that setback from that lake to the front edge of the paver?

Seter responded it is 50'.

Petersen said 50' now and the diameter total is 25, that is what you are proposing?

Seter replied that is correct.

Petersen asked what is the diameter of the fire pit itself?

Seter replied I am not certain of that. I think there is a picture of it.

Grob added it is maybe 3' diameter.

Seter added I think that one is bigger than the one I have. They just sent this picture, this is a generic picture they had.

Grob said you mentioned maybe some physical limitation for your wife. Why wouldn't you consider building a platform like that right next to the house that would be more easily accessible? Rather than down in the yard farther, into this setback zone.

Seter responded where this is we have a view of the whole lake, 9 miles long.

Grob stated a fire is usually at night, you can't see the lake anyway.

Seter responded it is going to be more than just a night firepit.

Krueger asked for public comment.

No public comment was given.

Krueger closed public comment.

Grob commented you have a large lot, 3 ½ acres or something like that, is there not someplace else on your lake that meets the spec or requirements on your property where you can meet the setback requirements and have the visibility that you want?

Seter replied we have other firepits on the lot already. Up on the hill. After you leave this lot that we are putting this on, it is a side view, you can put it on a side view, at the top of the hill I already have one up there. This is a resort, we have 5 rental units and all the guests use the one on top of the hill. This is just going to be basically for our personal use.

VanKempen asked the remnants of your old fire pit that was by the lake there, I was guessing that was maybe like 12' in diameter. I guess I am in agreement with Grob, I wondered why you needed a 25' in diameter fire pit paver area, plus my thought too was why not build connecting to your existing walkway, especially if you are going to be 50' from the water when it starts and then 25' in diameter, in a sense then you will be 25' then from the house.

Seter commented we can make it smaller, it really doesn't matter.

Johnson said that was my thought too. It could be a little bit smaller and closer to the sidewalk.

Krueger said I am starting to develop that same pattern of thought, if you were to reduce it down to 15' then you could be 60' from the water. Your intent is mainly just to put chairs around it, isn't it? You can do that in a 10' strip can't you?

Seter replied maybe, I guess I don't know that.

Johnson asked Buitenwerf is there enough excess, would it be ok to put a condition of no other fires lakeward from this variance, if this was to be approved, any closer than 50' from the lake? Open pit fires, which the County is ok with. Just keeping soot or any runoff into the lake. Or is that too much to ask?

Buitenwerf said I am not sure I can give you a definitive answer without the opportunity to confer with legal on that.

Johnson replied I am not thinking that is what I would do, I was just asking.

Petersen asked Krueger can you tell me again what you were thinking, an alternative.

Krueger replied reducing in size. Take 10' off of the diameter of it, at least 10'.

Petersen asked like a 15' diameter?

Krueger replied yes and whatever you take off, you add to the distance from the lake.

Peterson asked would that be something you would be open to?

Seter replied that is fine.

Krueger said if I make a motion, I would want to have a set diameter for that. So what would be a diameter that you can bring it down to?

Seter replied you suggested 15'? As long as there is room to put chairs around it, I don't know how big it would need to be.

Krueger asked what would that make it from the lake then, 60'? 15' diameter platform and 60' from the lake?

Seter replied that is right.

Krueger made a motion to approve a 15' diameter platform that is 60' from the lake.

Buitenwerf suggested asking Seter if he would be willing to amend his request to that so that you would then act approve his request, if he is not so inclined, I would recommend taking action on the original application first, which would be to deny it based on your application, then doing a second motion in the manner which you just proposed.

Krueger asked do you want to amend it to the 15' diameter and 60' from the lake?

Seter responded yes.

Krueger's motion stands.

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

Findings of Fact

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

Yes (X) No ()

Why or why not? It will be out of the shore impact zone. It is resort property and resort guests do like fireplaces. The reduced size is one that is acceptable. Impervious surfaces are below the required threshold.

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 reasonable use is a fireplace. Official controls require it to be 100' back.

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

Yes (X) No ()

Why or why not? There are some limitations, existing trees and driveways, sidewalks. It is a reasonable place to put it out of the shore impact zone.

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

Yes (X) No ()

Why or why not? Fire pits are quite common on the lakeshore properties.

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

Yes (X) No ()

Why or why not? The application does not state any alleged difficulty and the burden of proof lies with the applicant to prove his/her difficulty. Economics were not cited in the application as a difficulty.

Variance Application 13-V-18 by Tina Amiot: Lots 18-19, Block 3, Portage Beach, Section 4, Township 140, Range 35, Todd Township on Portage Lake, a recreational development lake. Parcel ID 27.44.03000. Applicant is requesting a variance from Section 902 of the Shoreland Management Ordinance to remove a permanent ice ridge and more than the permissible volume of earthen material in the shore impact zone.

Applicant was not present.

Krueger said we were out there to look at it and her request was to remove just about the entire ice ridge, is that correct?

Buitenwerf replied I believe it was about 120' of the lot width starting from the east side and the lot is 166' wide.

Krueger added in some circumstances we have approved around 10' so they can have a decent dock (unintelligible) ingress and egress.

Buitenwerf said I have seen the Board take such action in the past.

Grob asked is there space or location on the lake where a dock would be taken in or out without having to affect the ice ridge? I wasn't there unfortunately.

Krueger stated in my own observation I see a need, this is a 3 foot drop off, for a small amount to be taken out like we have done before, about 10 feet. Definitely not 120'. That is what this application is for, she's not present.

Krueger asked for public comment.

No public comment was given.

Krueger closed public comment.

VanKempen commented I agree that 120' is excessive, a 10' cut into the ice ridge would be more than sufficient. Without the applicant here at this time, it is kind of hard to pinpoint a location especially when we were at the lot viewal, there was no marking as to where she was going to cut out the 120'.

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

Petersen seconded the motion that carried unanimously 5-0.

Findings of Fact

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

Yes () No (X)

Why or why not? The application states no practical difficulty nor does it show any. Removing 120' of natural shoreline that is well vegetated with trees/shrubs and grading it at an angle to the water and planting it to grass is just asking for shoreline erosion to occur.

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 application provides no reasons why 120' of shoreline must be altered. It would be reasonable to ask to alter ~10' of shoreline to allow a boat and lift to be installed/removed, but 120' of nicely naturally vegetated shoreline for no stated reason 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? Asking to alter 120' of natural shoreline that is typically present on shorelines of lakes in the county is not a unique request. The alleged need for the variance is due to the landowner's wanting to have a lawn like shoreline for three-fourths of the currently natural shoreline.

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

Yes () No (X)

Why or why not? Most of the shoreline on neighboring lots in the locality is natural or minimally broken up with artificially manipulated areas. Allowing 120' of shoreline to be converted from natural to smoothly sloped lawn grass would significantly change the locality's character in a negative aesthetic way.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as a difficulty. The application does not allege any practical difficulty.

Variance Application 14-V-18 by Eric Thesing: Lots 2-4, Block 1, and Lots 1-2, Block 2, Wildwood Retreat First Addition, Section 21, Township 140, Range 34, Henrietta Township on Long Lake, a recreational development lake. Parcel ID 13.47.40200. Applicant is requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed accessory structure to be located within the 100' ordinary high water mark structure setback.

Eric Thesing 17969 State Highway 34 Park Rapids, MN, presented the application.

Krueger said I believe we got an updated plan that says your requested building is going to be 15' x 36'?

Thesing replied 16' x 36', that is with the overhang. When I drew it, I just did what I wanted for the floor. In talking to my cousin who is a carpenter, I want to go log siding, and he recommended 2' overhangs on the structure.

Krueger asked can you explain your reason for wanting to place it 60' from the lake?

Thesing replied like I said that day, when we were out there, my backyard in the winter time, we put five lifts up there, that we store in the wintertime. With the hill, we can't put them lakeside, so we barge them out. In the winter time, I need that backyard for storage. My daughter owns the lot next to me, and Wayde and Kim, we barge his lift out also so he doesn't have to put it on shore. We do come up in the winter time and the gentleman that plows snow, he plows snow back there also to remove the snow off the driveway.

Grob asked I think your application states that this is a playhouse?

Thesing replied playhouse/bunkhouse. For my grandkids, yes.

Grob said and bunkhouse?

Thesing replied yes.

Grob continued ok, the second part of my question is that it looked excessive for a playhouse, do you have other intent with it?

Thesing replied the house is quite small, we like it cozy. There is only three very small bedrooms and I have six grandkids and they love to come to the lake, and I want them to keep coming up here with us to enjoy the lake. Actually I have one grandson that calls it his cabin, he always wants to come to his cabin.

Grob asked Buitenwerf does this property qualify for a guest cabin, area wise and lake frontage wise?

Buitenwerf responded I will have to look at that for a second, because this is the first I heard that was being proposed.

Krueger added your application does say playhouse.

Thesing replied they will be able to sleep in there. That was the whole plan was to give them a playhouse. When we were kids, we had a rather large playhouse and we played house in. It was on a farm, but we had several cousins come over and hopefully in time, they will have friends coming, and then they will be married and gone and everything.

Buitenwerf added looking at the GIS it is showing the lot as being 32,795 sq. ft in size, which would be less that the required 40,000 sq. ft to have a guest cottage.

Grob said plus the 100' setback it required.

Buitenwerf continued it would meet the square footage required, the structure would be 3 feet over the allowed 15 foot max, and wouldn't meet the 100' setback either. You would need to consider those variances as well, in light of the statements made.

Grob asked what is the height limit-15'?

Buitenwerf responded correct.

Grob said it is 12' x 30' but he added to it so it is 16' x 36' x 18', is what you were proposing.

Thesing replied yes with the overhangs.

Grob asked height wise and area lot size, a guest cabin does not meet those requirements. Is there any way you can move it back to 100'?

Thesing replied tonight I actually put a tape measure to it, because I have not measured it. Measuring it, I am probably closer to 70' than to 60' where it is at now. You guys seen where it was staked out, I can move it over 5' and still be comfortable. And that puts us at about 80'. And the height, I put down 18', I am not a carpenter, I don't want it high either, I want it low but I don't want, about 2/3 of it, I want to loft it, I don't want to, you're not going to be able to stand up in there anyway, but I want it at least so you aren't crawling on your hands and knees to get to a bed. We're gonna vault it. I wanted to put a height on it not to exceed. I would love to make it 15' if we can do that. With 8' ceilings, and then a couple foot in the wall, then 10 and with the vaulted rafters that I had laid out, I think we are going to be real close to that 15'. I am not really a carpenter, I am guessing on height. I want it as low as possible also.

Grob asked is your difficulty to meet the 100' setback, the fact that you have to have space to store your boat lifts and docks and stuff like that?

Thesing answered just the lifts, the docks do stay lakeside.

Grob continued you don't have room, because you have kind of a second driveway or road that comes up to your property off of 34. Could they be put on that little road and give you the space?

Thesing answered they could be. We could even put Wayde and Kim's on his property, when we had all that room, it was just handy and easy just to back up and we slide them off a trailer, and we winch them on. Actually that is my occupation in Douglas County, Lake Service Provider, so it made it easy. That driveway goes down, to start putting lifts on a decline, and then trying to load them up onto a trailer. I am not saying that they couldn't go there, but the disadvantage there too, we hope to get up here. That is one reason, we like the area, we used to come up here snowmobiling every winter and with that other driveway, if we ever bring the snowmobiles up in the winter time it would be nice to circle out with a trailer.

Johnson added Grob, when we were on site we did a step-off and we figured the 100' could be met if a big basswood was removed on the property.

Thesing said and I have thought of that too but we cut down a mess of trees last year and I am not one to cut trees down, that is what we liked about the place too. It shades the backyard. But yes, that huge bass tree, if that was gone would still allow us to put lifts on the other side. I didn't want to cut that down unless I had to.

Grob asked now that you indicated that there would be possibly bunks, do you intend to have any water or sewer utilities to it?

Thesing replied no. Electricity and that's it. Just for lights, no water, no sewer. Nothing of that. And it sounds big, but what I had staked out there, it doesn't look big. And the 2' overhangs, floor space is only 12' x 32'.

Petersen asked Buitenwerf, you said the square footage on this lot does not qualify for a guest cottage?

Buitenwerf replied yes that is correct.

Petersen continued so would this application have to be amended as far as what they are asking for, or can we simply address that on our end?

Buitenwerf said you would have a couple options. One would be to table the matter based on that new information if you felt that giving notice would be appropriate for the surrounding owners, neighbors. Since that is different than what the original request was. That said, you also would have the option of adding additional variances to a possible approval if you wanted to this evening. In addition to the request that was noticed for the ordinary high setback, you could add the additional variances needed for a guest cottage if you wanted to.

Krueger asked for public comment.

No public comment was given.

Krueger closed public comment.

Krueger added my own thought is that, you even said that you could have room to move back to the 100', and also adding a bunkhouse does change things a bit. So I feel in the radius of the general public, ought to have notice of a change like that. That is pretty significant to me. So that would be either a case of tabling it, or denying what you are requesting and you would come back with a new variance.

Johnson said I see no practical difficulty with a basswood tree being removed. And as far as for it being tabled, we as a Board should be able to give the direction of which way it should be. I hate for people to waste all their time.

Grob said if I look at it, the application is really one for a guest cabin, really, by our definition. By the Environmental Services, which the lot needs to be 150' frontage and 40,000'. And you said this was 30,000. So it falls a little bit short on the area wise, but it does have the lake frontage. Maybe to Johnson's point, maybe if you were to come back with a proposal for a guest cabin that met the 100' setback and 15' height. Then all we

would be dealing with would be the nonconformance of the area of the lot, not necessarily the frontage.

Thesing asked that is something we can't get done tonight?

Johnson replied personally, I think it should be a notice, only because of vacation rentals by owners is what things turn into. And I think the public should be notified.

Krueger added that is a pretty significant difference between a play house and a bunk house. That is where I think the public should be notified about that change.

Petersen said just to understand the procedure, would we be tabling it, or are we asking him to come back with a completely different application?

Grob added with a new drawing that shows the setback and a definition of the size. I think the point is that it is significant enough different that it is difficult for us to sit here and say that we will approve it if you do this and do that when in fact all the back documentation doesn't reflect what we might be asking you for and what you intend to do.

Thesing said the bottom line is still a playhouse for the grandkids, a place for kids to stay. Is there another fee to reapply, if this one is denied, is there another fee to reapply?

Grob asked Buitenwerf, if we table it and he comes back with an updated proposal in a month, there is not an additional fee for that, is there?

Buitenwerf responded no there would not be.

Krueger asked would there be public notice on a tabled item?

Buitenwerf replied in light of the information received this evening and the Board indicating that it would like to give notice, then we would certainly do that.

Petersen asked could that be handled in the next calendar month?

Buitenwerf said the July meeting would put us at 58 days from date of application so it would be within the 60. I would probably send Mr. Thesing a notice that we would extend review to 120 days maximum, just to be on the safe side. In case something would arise at that meeting that would cause us to want additional time.

Grob asked when would he have to have his updated application in to meet the July meeting? Or has he missed that already?

Buitenwerf replied the application deadline was at 2:00 today. So I would say within the next week we would still have time to get that copied and out to the Board in its packet for July.

Grob said so if you accepted the table and got your updated information in within the week, you could meet our July date.

Krueger made a motion to table this application and in tabling, we are requesting that you update your application to reflect your desire to have a bunkhouse. And I personally would like to see you at 100' from the lake.

Petersen seconded the motion that carried unanimously 5-0.

Variance Application 15-V-18 by Burton Manz: Part of Govt. Lots 6 and 7, Section 22, Township 143, Range 34, Lake George Township on Lake George, a recreational development lake. Parcel IDs 17.22.00700 and 17.22.00720. Applicant is requesting a variance from Section 4, Subdivision A.1.c.3 of the Subdivision Ordinance to allow a proposed ingress and egress easement to have a wetland partly located within it.

Burton Manz, 17146 344th Street, Park Rapids, MN, and Matt Murray, Murray Surveying, 304 3rd Street, Bemidji, MN, presented the application.

Krueger asked give us a little description of what you are requesting for in your variance application here.

Matt Murray said currently there is an existing roadway that is in place. Burton would like to divide 9 acres. In order to divide that property, it needs to have legal access. The proposal would be to grant an easement over that existing road, a portion of that easement would be within wetlands. It is a 33' easement, within that 33' there is a part that touches wetland. That easement would be to provide access to the proposed parcels. There is currently an easement in place, a 33' easement over this road already, that services parcel 17.22.00720. So this would just be basically overlaid that existing easement that would service property that is not currently benefitted by the easement. It is understood that the granting of this variance, if it is granted, would not provide any approval to impact wetland, however we did request that there be one condition that would limit the extent that the driveway could be expanded within the wetland, up to 26' which would be the width of a public road. It's not that it would have to be 26' but that is the number that we would like to go with. The driveway now is suitable for its purpose, serving one cabin, but if there are additional places back there in the future, it may need to be improved or widened, so we just don't want to limit that ability to be able to improve that road in the future, subject to the obtainment of the appropriate wetland permits that would be required.

Krueger asked in expanding the road out to 25', do you see a need to add more elevation to it?

Murray replied likely with the placement of fill to expand it, it would likely be raised or elevated a little bit, it is possible that maybe someday there would be a culvert placed under it.

Krueger continued whatever elevation you plan to raise it, do you think it will spread it out a little bit too far into the wetland area?

Murray said are you asking if the driving surface is 26', would the base be even wider?

Krueger replied yes.

Murray said likely it would be, but again everything would be conditioned on the granting of a wetland permit, which would mean going through the wetland advisory commission and getting approval for that wetland impact, so that would be handled on a case-by-case basis at that time.

Krueger asked do you think it would still be under that threshold of needing to apply?

Murray replied I don't know.

VanKempen said so you haven't had anybody come out and mark where the wetlands are, square footage and stuff like that.

Murray replied we have been waiting for a couple months and it hasn't happened yet.

Petersen asked Buitenwerf when we were out there, we looked at one specific area, that I understood to be the only area in question, is that the case that one dip there that we were looking at. Is my understanding correct that is really what we are dealing with here, as far as wetland area?

Buitenwerf replied yes that is correct.

Grob said where the two wetlands come together at a point, that is the area, the only area of contention?

Buitenwerf replied yes.

Krueger asked for public comment.

No public comment was given.

Krueger closed public comment.

VanKempen commented as we have stated, this is the only access road to the cabin that is being built back there right now, and in order to provide access for the potential three new lots, this seems to be the only place that you could really go through there and create the least amount of impact, if any, to both of those wetlands.

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

Grob seconded the motion that carried unanimously 5-0.

Findings of Fact

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

Yes (X) No ()

Why or why not? The easement is proposed over the existing access road. The property is unique in its topography that does not allow many options for providing an interior access road to the desired lots. The property is also unique in that there is a large wetland complex that nearly bisects the property except for where this access road runs through it. The existing access road is the most logical location for the proposed easement and there is no other possible alternative that would not result in a greater wetland impact beyond that which already occurred when the existing access road was created at some point in the past.

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 property has ~9.5 acres of land that is only able to be accessed via this access road that must run through the large wetland that bisects the lot. This road is the only way to access this large portion of the property along the shore. Any other location for the road would result in significant new wetland impacts and not allowing this road to be used for the easement to this part of the property would not be 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 responses to the first two questions, the property is unique in that it has very undulating terrain that severely limits potential routes for an interior access road. The location of the current road is about the only one that makes sense. There is a large wetland that bisects the property NW to SE and cuts off ~9.5 ac. of the property along the shore from the rest of the lot. The easement is proposed to run over the existing access road that crosses the wetland at its narrowest point and thereby minimizes the wetland impact.

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

Yes (X) No ()

Why or why not? The locality is made up of seasonal and year-round residential lots – three to the northwest of this property and a plat of a bit over a dozen lots to the south. Given the terrain, this access road is not visible from these other properties nor the lake. The road currently exists. It is just a matter of the Subdivision Ordinance requiring a 33' minimum width easement to run over the road that causes the easement area to impinge upon the wetland where the road crosses through it.

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

Yes (X) No ()

Why or why not? The alleged difficulty is due to the undulating terrain and large wetland complex that bisects the property and the wetland's dimensions/shape. Economics were not cited in the application as a difficulty.

Variance Application 16-V-18 by Janine Merrick: Part of Lot 12 and Lot 13, Idle Wild, Section 24, Township 139, Range 35, Straight River Township on Hinds Lake, a recreational development lake. Parcel ID 25.38.01200. Applicant is requesting an after-the-fact variance from Section 502.2 of the Shoreland Management Ordinance for two accessory structures both located within the 100' ordinary high water mark structure setback and the 10' side lot line setback.

Steve Peloquin, Peloquin Law Office, 602 Pleasant Ave., Park Rapids, MN; Janine Merrick, 12199 Blue Spruce Drive, Menahga, MN, and her daughter Kathleen, 2401 2034th Place Southwest, Seattle, Washington, presented the application.

Krueger asked would someone like to give us a little description of what you are planning on doing, or what you would like to do for your variances?

Peloquin replied actually it's not what we would like to do, it's what we would not like to do. My client has owned the property since 2014, 4 years. There were two problems with structures on the property. One is the screened part of the house, which is within the 100' setback and it is too close to the boundary line to the adjoining property. And there is a separate issue with regards to essentially the boat house shed which stores oars and watertoys, too close to the, about 18' from the, high water mark and again I think it is within the 10' setback on the other side of the property. She bought the building as constructed, which it happened 38 years ago, and I think she has done nothing to it since. The lots are pretty small, you went out there and looked at it, you got the sense of how close some of these are. There is nowhere else to go short of just ripping that structure down and she bought it having that part of it in mind with regard to the shed, that was also in place, as I understand it, it got moved from one side of the property to the other, to get it away from the neighbor to the south. And then they added the roof on there.

Merrick added we extended the roof so there was a little bit of an overhang to hang a child's swing from it underneath the protection of the roof.

Peloquin continued the bottom line is a complaint was filed and really until that happened, they were pretty much unaware of any of these issues. I think the only other thing that I could spot is that when they added that roof to the shed, that should have been a permit, and that was pretty recent.

Merrick added that was three years ago. We just didn't know that it needed to have a permit.

Peloquin said beyond that, they really can't use the property without the variance being granted, there is nowhere to, short of taking the house part down, it really denies her a reasonable use of the property. I think 88' back, that screened porch is, if I got the right number, from the shore. The neighbor is very close to the lot line too, I think they are

within the 10' setback as well, so both structures probably encroach. It's something that was built there 8 years ago and it's unique in the sense that all those lots are fairly small, there is not much room to move it. They are all like that. We can't really do much, besides use the structures where they are at. They didn't create the problem, that was the owner 38 years ago. Looking at the neighborhood, it is pretty consistent, there are some structures that are pretty darn close to the lakeshore there, but all the neighbors seem to be consistent in the placement on the properties. Even the house there is pretty close to the water as well, the neighbor. I think the practical difficulty here is more than just money, it's really just nowhere else to go and there really is no way else to enjoy the property except as it's located now. There is not a good faith violation here, they bought the property as is, didn't even think about these things, and it didn't come to our attention until shoreland management was out there for other reasons. They didn't really attempt to apply for the permits and it really was another person entirely who should of done this. There was a substantial investment made in this property, when they purchased it. The renovation, the shed was the most egregious in here in terms of violations. I think the detriment to Mrs. Merrick here to have to move anything right now is a lot greater than any detriment to any violation or encroachment or failure to follow setback requirements here, it really isn't going to harm anyone's use or enjoyment of this lake, nor the lake itself, if things stay how they are. My client is handicapped, if you said move the shed to the back of the lot somehow, if that was possible, it is really going to have an impact on her ability to use the shed. The kids use it a lot, that is the bottom line here, I'm not familiar with state law on that, I should have been familiar with that, but I think there is some requirement that the shed can be 20' back from the lake if I recall. For all those reasons that go right down the line here, I think justice is really served by allowing these after-the-fact variances to be granted and to give her the opportunity to bring herself in conformity with the requirements of the law. That is what she is asking.

Krueger asked for that one that is near the lake, that small shed that is near the lake, that was added on mainly for the purpose of the swing being attached to it?

Merrick said that is right.

Krueger continued but the way it was, it met your needs for a small storage building for your lake, lifejackets and things like that?

Merrick responded yes, pretty much so. We had a toddler and at the time that seemed like a really good spot, just to extend that roof line so we could put the hooks there and put a little swing underneath it.

Krueger said but the size it was before, it met your needs for a storage building?

Merrick replied yes. The size of the structure didn't change.

Krueger responded I thought you added more to it to have the swing.

Merrick said just the roof, the roof was extended out enough to put a beam across and the hooks down so that we could put a toddler swing on it.

Johnson asked Buitenwerf can you bring up the photo with that shaded part? Right there on that picture, the shaded part, just looking at the picture, you would think that is the property line, but when we were on the lot viewal, the property line is the power pole between the garage and that screened shed with the car probably splitting the property line, one on one side, one on the other.

Merrick replied that is not our vehicle. That is the neighbors'.

Johnson continued but it splits the property line?

Merrick replied yes.

Grob said I would like to suggest maybe could we concentrate on one or the other? Treat it independently. Let's deal with the shed on the lake and get through and decide and get back to this instead of bouncing back and forth?

Krueger asked any more questions about the shed by the water?

Grob asked as confirmation, that shed was moved and the roof, or extension put on it, that was done when?

Merrick replied three years ago.

Grob continued so the expansion that puts it in nonconformity occurred just a few years ago? And it is in violation relative to the property line to the east?

Merrick replied no, that would be north.

Grob said to the right, as I face the lake.

Petersen asked could you give me a clarification Buitenwerf?

Merrick added it is 10' off that line on the north.

Buitenwerf said the issues with the shed nearest the water, it does not meet the ordinary high water setback, it is larger than what would be permitted, in terms of square footage, and it was originally constructed without a permit and then moved in 2015 also without a permit or variance.

Johnson asked how far is that from the property line? It looks like 6'.

Grob added it also violates the property line.

Buitenwerf responded yes, thank you, it also is depicted in the application that states it is 6' from the property line instead of 10'.

Merrick commented that was my mistake.

Krueger said when we walked the property I envisioned where it would be at the proper 20' setback and just the shed itself, in other words meeting the 48 sq. ft. maximum

footprint and it looks like there is plenty of room and the fact that it was moved recently shows that it is a moveable building, fairly easily moveable.

Peloquin replied it could be done. That is a fair assumption.

VanKempen said we just recently altered the Shoreland Management Ordinance to allow a structure like this to be on the water, 20' setback with a maximum of 48 sq. ft., this building is currently at 88 sq. ft. and Krueger just made the comment that it has been moved. Or else with our ordinance, part of it was to have a vegetation screening that shed from the water so that it can't be seen from the water.

Krueger asked Buitenwerf can we split this into two parts then? Or do we have to do it as is?

Buitenwerf answered yes I would recommend and agree with what Grob suggested of separating the two structures out.

Krueger said we are dealing now with the shed by the lake.

Krueger asked for public comment.

No public comment was given.

Krueger closed public comment.

Krueger asked for further comments.

Peloquin asked I think VanKempen mentioned the screening from the lake and I am not familiar with that I've got to tell you right now, so I am not sure what that requires exactly but it seems like there is a number of sheds close to the lake that don't have any screening at all. I can see the 20', makes sense.

VanKempen replied if they were built pre-ordinance, which was 1971, then there wouldn't be that requirement. And this of course, being constructed after that, plus moved just a few years ago, so that is one of the requirements we have in the ordinance.

Krueger added if there was practical difficulty, like say you had a steep bank there and all you had was about 10' going down to the lake, or 20', maybe there could be a practical difficulty to put a shed there, but you have plenty of place to move it is my thought. And scale it down to 48 sq. ft.

Grob said so there are options if we were to deny this. Is to move it completely, and or reduce it to the 48 sq. ft., and back it up to 20' from the lake and 10' from the property line. Those are two choices.

VanKempen asked Buitenwerf if we had them move it to the correct setbacks and reduce the square footage and put up a screening, how would we do that? Would it just be an over the counter permit?

Buitenwerf replied yes.

Grob made a motion to deny the after-the-fact variance request for the shed on the lake and adopt the staff report findings of fact.

Krueger seconded the motion that carried unanimously 5-0.

Findings of Fact – shed on the lake

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

Yes () No (X)

Why or why not? The shed is 88 sq. ft. in size, 18' from the OHW, and 6' from the side lot line when the Shoreland Management Ordinance (SMO) allows a 48 sq. ft. maximum footprint water-oriented accessory structure to be located up to a 20' OHW setback by permit. The application states no practical difficulty in being able to comply with the Ordinance. There is room on the property to move the shed to a conforming location per Section 601 of the SMO, scale it down to 48 sq. ft. or less, and obtain a permit for it. Whenever a permissible option exists, it would not be in harmony with the SMO to grant a variance.

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? As stated in the response to Question 1, Section 601 of the SMO allows a water-oriented accessory structure to be placed at a 20' OHW setback by permit so long as it does not exceed 48 sq. ft. The original portion of the shed is 4' x 8' in size. If the covered roof portion of the shed that the application states was added to the structure in 2015 would be removed and the shed moved back 2' from the OHW and 4' from the north lot line, the enclosed portion of the shed could be permitted.

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 lot is 75' wide x ~230' deep and level with plenty of room between the OHW and residence on the lot to where the shed can be moved, reduced in size, and permitted per Section 601 of the SMO.

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

Yes (X) No ()

Why or why not? The area consists of seasonal and year-round single family residences located on lots that are similar in size/shape as this lot lies roughly in the middle of a plat that has at least six lots to the north and south of this lot. The shed has been in its current location since 2015 and allegedly in a similar location in the SW corner of the lot prior to then since its alleged original construction in 1980. The shed is close enough to the required size and setbacks and it has been on this part

of the property since ~1980 without objection until the complaint made in February 2018 that it fits the locality's character. There are similarly sized and situated water-oriented structures on other lots in the area as well.

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

Yes (X) No ()

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

Krueger continued we will move on to the screened building. Any questions or comments from the Board on that? I will make one comment, if we went back to that one picture, we can see that the neighboring property is just as close to the property line as the screened porch.

Merrick replied we think it is closer.

Grob asked in reading all the background material, is it correct for me to say that both of these pieces of property at one time were owned by the same person? And that the building of the structures close to what are now property lines, were in fact, approved and done by the previous owner?

Merrick replied mother and daughter. The previous owners were mother and daughter.

Grob continued so the 2' setbacks were created when it was in common ownership with no restrictions then. What is the screened in porch used for? I see lots of flowers outside, is it a flower shop?

Merrick replied we sit in there because it is screened in and you don't get the mosquitoes, we have picnics out there, and have dinner out there sometimes.

Grob asked does it have any facilities? Water, septic, anything like that?

Merrick replied it has a sink and a refrigerator and a toilet and a septic system.

Grob continued it is connected to the septic system?

Merrick replied yes, we had it inspected and included that in our application.

Grob said and the septic system is in compliance.

Krueger opened for public comment on the screened building.

No public comment was given.

Krueger closed public comment.

Grob asked why is that car parked right...

Merrick replied we have no idea.

Merrick continued when the people next door changed ownership, the people who bought that house, they drove the car up one day and parked it there and it hasn't moved in four years.

Krueger continued I take it they are the ones that filed the complaint?

Merrick replied yes, and as you can see, it is about split. It is about half on their property and half on our property and we just didn't want to ruffle feathers or cause problems so we always just kind of ignored it and let it sit, thinking that it would disappear on its own, but it hasn't.

Grob asked do both parties, do they agree that the power pole is the property line? Or do they think that the property line is more to the right? The power company said that was it. We have not conversed between ourselves so we do not know what they think.

Krueger continued when we were out there, we observed Keep Out, or some kind of signs, and they were right in the line with that power pole. So it would seem to me that owner recognizes that as the property line too. To put those signs right there.

Grob continued I was just going down that path to say, well is that property line really there, or is it in the building or next to the building closer? You are saying that you acknowledge the power pole is the property line.

Peloquin responded it is an understanding without opening this can of worms any further.

VanKempen said when we were out at the lot viewal too, the gentleman in the audience that showed us the buildings pointed to a stake, looked like a surveyor's mark perhaps on the probably where we were kind of standing where this photo was taken. So you can kind of see where the property mark was, and then again with the pole.

Krueger asked for any other questions or comments.

VanKempen asked Buitenwerf were there any permits on this building after 1980? It is my understanding that it was added on to the back of the home in 1989?

Buitenwerf answered there is a permit issued for the addition to the home, but no permits issued for the screened in porch.

VanKempen continued at that point in 1989 you weren't in office, so you have no reason or answer why nothing was brought up at that point.

Buitenwerf replied correct.

Grob made a motion to approve the screened in porch structure and adopt the staff report findings of fact except for questions 1, 2, and 3 for which the Board of Adjustment provided answers.

Krueger asked for a second.

Johnson added I would just like to make a point that we either make a condition or something in here that the shed is on their property and that property line is right. So whatever the request is, that is what it is off the property line then.

Krueger responded that would be like us taking responsibility for a survey.

Johnson replied what I am saying is not taking responsibility for it. We are basing that the property line is there, right?

Krueger said you mean subject to the proper...maybe word it to where it says that.

Johnson added just because we don't know.

Grob asked could I add that it is assumed it is in harmony based upon the property line being through the power pole, with a setback of 4'? How far from the power pole is the building?

Peloquin replied 7'. 3' to the garage. 7' to the screened porch.

Krueger asked did you actually measure it? If you are wrong then there is another after-the-fact variance. Did you want to say something like, greater than 4', to stay on the safe side?

Peloquin responded greater than 6'.

Krueger asked is that what you want in there?

Peloquin responded yes, greater than 6' off the line.

Dale Anderson added that the lot line is on the other side of the car. It isn't the power pole.

Krueger asked are you the owner of the other property?

Krueger reopened public comment.

Dale Anderson, 12223 Blue Spruce Drive.

Grob asked where is that relative to this property?

Anderson replied it is next door. We just purchased this land next door to the Merricks. And the building was there when we purchased the land. It's not right, it is within the 10' of the property line.

Johnson said so you are saying the property line includes your car, is all on your property.

Anderson replied yes.

Krueger said are you also saying that the property line is right to the side of your car and the screened porch is on the other property?

Anderson replied it is very close to the lot line. The power pole sits to the east of the building about 7'.

Petersen asked Buitenwerf could you pull up that shot again of the two properties from the road?

VanKempen asked how did you come up with where the property line is?

Anderson answered I measured over 10' from the house.

VanKempen said so it hasn't been surveyed, you didn't find any survey marks or anything like that?

Anderson continued I have got 75' on the front and 72' on the back. And you go from the lot line to the back lot line and that building is right on the lot line.

VanKempen asked which building?

Anderson said the screened in porch.

Johnson added that is why we should make that point.

Krueger asked for any other comments.

Grob asked is there any contention that the screened in porch is on your property at all? Are you contending that?

Anderson replied no I am not, but it is close.

Krueger said I think we can move on. Do you have anything other to say?

Anderson replied no.

Krueger closed public comment.

VanKempen seconded the motion that carried unanimously 5-0.

Findings of Fact – screened-in porch

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

Yes (X) No ()

Why or why not? It was built in 1980 and has been there in existence for a period of time, not been changed or altered. It is 88' from the lake on flat land, not clear to me that moving it another 12' would bring any advantage to the lake so I believe it is in harmony with the intent of the official controls based on the fact that it does not encroach on the neighbor's property.

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 small screened in porch is a fairly common item and it was approved and placed there by the previous owner.

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? It was created by a prior owner and unique circumstances I guess is that it has been there, there is no strong reason why it should be moved.

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

Yes (X) No ()

Why or why not? The area consists of seasonal and year-round single family residences located on lots that are similar in size/shape as this lot lies roughly in the middle of a plat that has at least six lots to the north and south of this lot. The screened-in structure has been in place since this 1980s without any objection to it until the complaint received earlier this year.

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

Yes (X) No ()

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

If the Board of Adjustment answers yes to all 5 questions for a variance in the first instance, thereby finding that all of the criteria set forth in Section 1103, Item 1, parts 1 through 5, of the Shoreland Management Ordinance are met, then the following additional

criteria may be considered and weighed by the Board of Adjustment in determining whether to grant or deny a request for the after-the-fact variance:

1. Why did the applicant fail to obtain the required permit or comply with the applicable official control before commencing work? Was there any attempt to comply with the applicable official controls?
Yes () No (X)

Why or why not? There was no attempt, but because of the previous owner who owned both pieces of property constructed the porch in its current location and there was no need for them to apply for a permit.

2. Did the applicant make a substantial investment in the property before learning of the failure to comply with the applicable official controls?
Yes (X) No ()

Why or why not? They bought the entire property on the assumption that the structure was on their property.

3. Did the applicant complete the work before being informed of the violation of applicable official controls?
Yes (X) No ()

Why or why not? The work was completed in 1980 before the current owners purchased the property.

4. Are there structures, circumstances, or conditions in the area similar to those that are the subject of the variance request?
Yes (X) No ()

Why or why not? There is a potential for the neighboring property, we don't know for certain without a survey but potentially the neighboring property is close to the boundary.

5. Based on all of the facts, does it appear to the Board of Adjustment that the applicant acted in good faith?
Yes (X) No ()

Why or why not? Because the County visited it on a previous permit and they didn't disclose anything.

6. Would the benefit to the county appear to be outweighed by the detriment the applicant would suffer if forced to remove the structure?
Yes (X) No ()

Why or why not? The structure is 88' from the lake, requiring a move of 12' would have very little change or affect on the lake or the surrounding area.

Miscellaneous:

Communications:

Adjournment:

Grob made the motion to adjourn.

VanKempen seconded the motion.

The motion carried unanimously 5 – 0.

The meeting adjourned at 8 p.m.

Respectfully submitted,

Staci Harvey

Recording Secretary