

HUBBARD COUNTY

Planning Commission/Board of Adjustment Meeting Minutes

6:00 p.m. on Monday, March 26, 2018

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

Ken Grob, member, and ex-officio Planning Commission member and County Board Vice-Chair Dan Stacey were absent.

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: February 26, 2018

VanKempen stated on page 4, in the second paragraph, it should say \$300,000, not \$3,000.

Krueger stated on page 1, in the second paragraph, it should say Krueger, not Grob.

VanKempen made a motion to approve the minutes as discussed.

Petersen second the motion that carried unanimously 4 – 0.

Old Business: None.

New Business: None.

Board of Adjustment:

Approval of Minutes: February 26, 2018

VanKempen made a motion to approve the minutes as presented.

Petersen seconded the motion that carried unanimously 4 – 0.

Old Business: None.

New Business:

Variance Application 3-V-18 by Gerald Iverson: Part of Government Lot 5, Section 33, Township 141, Range 33, Mantrap Township on Spider Lake, a recreational development lake. Parcel 20.33.00600. Applicant is requesting an after-the-fact variance from Section 502.2 of the Shoreland Management Ordinance to rebuild a detached garage at less than the required 100 feet ordinary high water mark setback.

Gerald Iverson, 24130 Grosbeak Dr, Nevis, MN, presented the variance application. Last Memorial Day we had a fire that burned down the existing garage. We found out we needed a variance. We had a building permit before. We just want to rebuild the same structure on the slab that already exists. We did not know at the time you could do a hardship variance. I guess there was a way you could do some type of hardship variance that if you lose it to a fire, they will let you build it back on the existing permit or something. But I knew none of that.

Krueger asked so the time probably lapsed then?

Iverson replied yes, it was like three or six months or something.

Petersen stated when we were out there the other day, you could not see the slab very well with the snow. It looked like it was set lower than the grade around it, like it was in a depression.

Iverson responded just on the two corners, at about 24 inches.

Petersen commented okay. Are you planning on doing any additional grading or will the contours stay the same?

Iverson replied it will stay the same. We figured out the whole basement used to be out of treated green. The issue was if we built it on slab with all block that it could possibly cave in. We are going to build it out of treated green reinforced two by sixes. That way we could just ease the sand right back into it and it will basically look exactly the same as it was, minus a few trees that burned down. It should be returned to same grade level as before.

Krueger stated I see from your measurements that it is 80 feet from the lake and only 12 feet from Grosbeak so you could not have build it 100 feet from the lake anyway.

Iverson remarked there is no where to build it. The township does not want us any closer to the right-of-way and it is pretty much where it has to be. That is even why realistically you would have it so you can drive straight in. It had to be built the way it was, that you go up and make a 90. It is just kind of a quick drop off on the right side there. The township has no problem with me building on the existing slab. I had to get a letter from them saying they have no issue with it.

Johnson - was it ever determined what started the fire?

Iverson answered no.

Shirely Iverson stated we had the state inspector there, the insurance inspector there. There was a storm that night, but as far as they know there was not any lightning in the area. All of it pointed to it being hit by lightning. It burned everything down, all our tools and lawnmower, everything just to pieces of metal. It was all gone.

Krueger asked for public comment.

No public comment was given.

Written correspondence was received from Paul Anderson, 24028 Grosbeak Dr, Nevis, MN, in support of the variance application.

Written correspondence was received from Nathan Marlett in support of the variance application.

Krueger closed public comment.

VanKempen made a motion to approve the variance application including a variance from Section 502.2 of the Shoreland Management Ordinance for relief from the road right-of-way setback and adopt the staff report findings of fact as presented.

Petersen seconded the motion.

Findings of Fact:

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

Yes (X) No ()

Why or why not? The lot is only 200' deep at its deepest point. The portion of the lot east of the house is not buildable as the lot depth is only ~53' and 33' of this depth is road ROW and the ROW and OHW setbacks overlap. The SSTS drainfield is located southwest of the house so the garage cannot be moved east to benefit from the greater lot depth present there. The only viable location for the garage is where the original foundation sits. It strikes a good balance between the OHW and ROW setbacks.

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

Yes (X) No ()

Why or why not? The lot lacks depth. There is no place on the lot where the OHW and road ROW setbacks can both be met. There is no other garage on the property – just a house and an accessory shed. Having a garage given the climate we have here is a very reasonable use of property.

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

Yes (X) No ()

Why or why not? The lot is much wider than it is deep. A small area 100' wide x 200' deep is the most usable portion of the lot. The rest of the lot is much less deep with the eastern half being an average of 50-55' deep. The rear lot line extends to the centerline of Grosbeak Drive which has a 66' ROW. When the 100' OHW setback and 20' road ROW setback are applied to the lot, and the location of the existing house and SSTS are considered, there is no place on the lot where a garage can be placed without some form of a variance from one or more of these setbacks.

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

Yes (X) No ()

Why or why not? As mentioned in the answers to the previous three questions, the difficulty is caused by the very unique lot shape that lacks depth to have any permissible locations for the proposed garage. The site of the previous garage that was placed at a nonconforming setback in violation of the issued permit is the most feasible location for the proposed garage.

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

Yes (X) No ()

Why or why not? The area consists of year-round and seasonal single family homes on residential use lots – many of which have attached or detached garages. The garage will be placed on the previous garage foundation. No complaints were filed with the County over the two plus decades that the prior garage existed.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as the sole difficulty. The difficulty involves the lot's lack of depth coupled with the OHW and road ROW setbacks that overlap on much of the lot.

The motion carried unanimously 4 – 0.

Variance Application 4-V-18 by Mark and Terri Mann: Parts of Government Lots 1 and 8, Section 31, Township 143, Range 32, Laporte Township on Kabekona Lake, a recreational development lake. Parcel 19.31.01710. Applicants are requesting a variance from Sections 502.2 and 506 of the Shoreland Management Ordinance for a proposed guest cottage that will exceed the maximum allowed 700 square feet footprint and not comply with the required 50 feet road right-of-way structure setback.

Mark Mann, 27766 County 37, Laporte, MN, presented the variance application. We are looking into building a senior housing facility for my folks alongside the pole barn you all saw when you were there. Previously, we had a permit or variance to build a much larger pole barn, but chose to go smaller. We are trying to just side a nonpermanent structure, whether a frame or beams we can pick up and move eventually. Not a permanent foundation in other words. It would be to house them in summertime only. We have extra wide county road right-of-way there when they built that road. It is actually double what it normally is. We actually fall within that by about 40 feet. We are still in the process of finding exactly what we want, but the one they have chosen they like is about 60 feet over what is allowed. It is a little larger than one they say we can have for a carriage house on the lake. We would like to see if you can get that extra 60 square feet as well.

Krueger commented I see you are going to be putting in a holding tank? Did you already work out all those details with the Environmental Services Office?

Mann replied it is already installed and approved.

Petersen asked did you install that holding tank specifically for this guest cottage?

Mann answered yes and no. They originally planned to live in an RV, but they are in their 80s now. They tried it last year and it did not work very well for them. It was originally intended for an RV type spot. Now we need something a little more permanent and more handicap accessible so that is why the change from last year.

Petersen asked I thought I heard you say they were open possibly to a smaller size if necessary on that guest cottage?

Mann replied correct. We have looked at buildings between 640 square feet and 760 on the big side. We have a couple of plans that are 710 square feet right now.

Petersen asked do these buildings come in predetermined sizes or is it built to your specifications?

Mann answered I have offered them the choice. Do you want a framed one of this size or could we move in a tiny home? There are modular homes out there that are similar and very nice. We want to find out what is doable and then give them a choice, this is what you have to work with.

Petersen commented on your pole barn, originally you asked for a larger variance, but then you reduced the footprint from what you requested. The drive that is shown on the site drawing - is that paved to that pole barn?

Mann replied no. It is all just gravel.

Petersen asked did you need that variance because of the road and the original length you were proposing there?

Mann responded even with our current building we needed it because we are within the right-of-way. We are too close.

Petersen asked with the 48' by 48' you have there, you did not think to pull that closer to your existing garage? I thought maybe it was because originally you were going to go to twice the length.

Mann answered correct. I never thought to pull it, I fit it in between the trees so I had to cut the least amount down. That is why I put it here. Originally if we had gone with the 96 foot long structure, we would have gone towards the holding tank and house we are looking for. We would have had to cut down more trees there.

VanKempen asked how accurate are the numbers? I believe the 48' by 48' pole shed and that 58 feet is probably correct. But when we were out at the location, it appeared as though you were proposing to put the guest cottage actually further away from the road

than what the plans are showing. It shows the holding tank and the edge of your existing pole building. You were kind of talking between the trees, so would you actually be a little bit farther than what you have here?

Mann responded yes, that would be the closest point to the building. We would actually set it at more of an angle. That would be the closest point to the pole building, about that measurement.

Krueger asked for public comment.

No public comment was given.

No written correspondence was received.

Krueger closed public comment.

Krueger asked you did say you were considering 710 square feet, but you have various plans so are you capable of keeping it below 700 square feet?

Mann responded we will try our best. We are trying to find something so they have enough room so they can get in there with a wheelchair, so it is handicap accessible.

Krueger clarified you need more space, more square footage for handicap purposes?

Mann replied correct.

Johnson asked if in the request it asked for 768 square feet and it was approved to grant the right-of-way setback, could we make a condition that it is only 700 square feet? Or do we need to deny this application and redo it? In the application, he is asking for 768 square feet. Would we have to straight up deny that if I wanted to make a motion to approve this application except make it 700 square feet instead of 768?

Buitenwerf replied the cleanest way would be to then make a motion to deny the original request. Once that is acted upon you could make a motion to approve whatever alternative you are comfortable with.

Johnson commented that was my thought. Did any of you look at the minutes of when we approved the original building? We based the big building on findings of facts that could be used the same for the guest house.

VanKempen stated we have had a lot of people asking for guest cottages and quite a few wanting to exceed the 700 square feet. We have been pretty strict about sticking with that 700 square feet or less. We do not want to set precedents and start allowing people to exceed that. I guess my feeling is the same as what Johnson was saying. If it was at the 700 square feet and you could get as far away from the road as possible and the existing building there, I think I could pass that.

Mann replied I have no issue with that.

Petersen asked VanKempen in your mind, as long as we set the limit on the square footage, you are fine with the right-of-way setback they are proposing.

VanKempen responded yes because I think where he was pointing it out, it would end up being a few more feet farther than he is actually asking for.

Petersen asked Mann have you ever considered an alternate spot for the guest cottage? Say for instance, in front of your pole barn, between that and your existing garage. Is that something you have considered?

Mann replied that is where most of the drainage from our yard runs through. By blocking that it does cause me some issues for drainage.

Petersen remarked I am asking that because I was struggling how to answer some of the findings of fact.

Johnson made a motion to deny the variance application and instead approve a guest cabin not to exceed a 700 square feet footprint and allow a 28 feet road right-of-way setback.

VanKempen seconded the motion.

Findings of Fact for Denial:

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

Yes () No (X)

Why or why not? The application states no practical difficulty why the proposed guest cottage must be 768 sq. ft. in footprint instead of the required 700 sq. ft. The 1.77 ac. lot already has a 30' x 50' residence, 32' x 52' detached garage, and 48' x 48' pole shed located on it. There is room meeting setbacks to add onto the residence to provide additional living space. There is a location between the detached garage and pole shed where the proposed guest cottage could be placed and meet the 50' ROW setback. There is another potential conforming location on parcel 19.31.00110 that was recently made a part of this lot. Granting a variance when permissible options exist would not be in keeping with the ordinance's intent.

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

Yes () No (X)

Why or why not? The lot is 1.77 ac. in size. As mentioned in the response to question 1, there are two available locations on the lot where the desired guest cottage could be placed and meet all required setbacks. The lot already has a 30' x 50' residence, 32' x 52' detached garage, and 48' x 48' pole shed located on it – all of which provide several reasonable uses of the property. The property can also be used to access the lake for recreational purposes and provides a means to enjoy the outdoors which are additional reasonable uses that presently exist.

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

Yes () No (X)

Why or why not? The lot is 1.77 ac. in size and as stated in the answers to the two preceding questions, there are two viable locations on the lot where the desired guest cottage could be placed and meet all required setbacks. Nothing about the property is causing a practical difficulty warranting building a 768 sq. ft. guest cottage instead of a 700 sq. ft. guest cottage. Permittable options exist where a guest cottage could be placed and there is no reason for needing to exceed the 700 sq. ft. threshold as there is room to add onto the residence by permit and 700 sq. ft. of living space is more than reasonable for seasonal use during the summer months.

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

Yes () No (X)

Why or why not? The application provides no stated practical difficulty(ies) and the burden of proof rests on the landowner. The proposed guest cottage size is due entirely to the landowner and has nothing to do with the lot size. There are two permittable locations where the guest cottage could be placed on this 1.77 ac. lot.

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

Yes () No (X)

Why or why not? The area is comprised of year-round and seasonal single family residences. Allowing a 768 sq. ft. guest cottage to be 18' from the ROW when two viable locations exist to be able to meet the 50' ROW setback would alter the locality's character as most of the structures on neighboring lots comply with the setback. There already are three large structures on this lot and a commercial business. Allowing a guest cottage to exceed the 700 sq. ft. maximum footprint as well would make this lot stand out as being overdeveloped with buildings relative to surrounding lots that have much fewer structures on them.

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

Yes (X) No ()

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

Findings of Fact for Approval:

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

Yes (X) No ()

Why or why not? The guest cottage will be as far back from the lake as possible.

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

Yes (X) No ()

Why or why not? Yes, the lot is large enough for a guest house and a guest house for his aging family on his property is reasonable.

3. Is the stated practical difficulty due to circumstances unique to this property?
Yes (X) No ()

Why or why not? Yes, there is a larger than average road right-of-way because of the gradual corner of the road.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?
Yes (X) No ()

Why or why not? Yes, the road was created by others.

5. Will the issuance of the variance maintain the essential character of the locality?
Yes (X) No ()

Why or why not? Yes, there are several structures at this distance and closer to the road right-of-way.

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

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

The motion carried unanimously 4 – 0.

Variance Application 5-V-18 by Hubbard County Parks and Recreation: Parts of Government Lots 7 and 8, Section 33, Township 144, Range 32, Hart Lake Township on Garfield Lake, a recreational development lake. Parcel 10.33.00580. Applicant is requesting a variance from Sections 502.2 and 801.5 of the Shoreland Management Ordinance to place a platform within the 100 feet ordinary high water mark setback and a portable privy on the platform within the required 150 feet ordinary high water mark setback.

Chip Lohmeier, Hubbard County Land Commissioner, presented the variance application. We have had requests from users of the beach area to put up a portable toilet at the beach area. We kind of figured this would come at some point in time when we took over the beach area. We did not put any parking area off the beach area. We closed off the former parking area which is now basically used for the beach users. They cannot drive on there and have to park back on the parking area and walk alongside the township road to the beach area. We are feeling that it would be a detriment to try and have the users, small children or whatever, have to walk back to the parking lot, if we put the portable toilet there. This way, rather than going in weeds or bushes, or out on the lake, they will have a spot to go.

Krueger remarked that answered the one question I had. When you were here last year with the conditional use permit, you said any portable toilet would go out by the parking lot. I do think safety is an issue there. Can you pinpoint where exactly you are going to put it?

Lohmeier responded it would be just as far back, on the far edge, of the sandy beach area. In the old parking area as close to that gate on the west edge as we can get it. That way when the pumper truck comes in, we would not have to unlock the gate and have him drive in there. We could just run a hose from behind the gate and pump it that way. That was our intent, to try and keep it as far back as we can, leaving as much of that open beach area open for use.

VanKempen remarked that was my thought too, trying to get as far back from the lake as possible. That would be my only stipulation.

Lohmeier commented we do not want to use the beach area. We are assuming at some point in time the kids may be down on the beach, the parents may be up on the higher, flat area, doing whatever. We want to keep that portable toilet as far back and out of the way as we can. That way it is accessible to the pumper trunk and out of the way of everyone else who is using the beach.

Krueger asked for public comment.

No public comment was given.

No written correspondence was received.

Krueger closed public comment.

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

Krueger seconded the motion.

Findings of Fact:

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

Yes (X) No ()

Why or why not? The property is unique in that the swimming area is over 500' from the vehicle parking area due to a large forested wetland lying between the two. The proposed platform and privy OHW setbacks are as far from the ordinary high water mark as is physically possible because the ground drops off 4' right behind their proposed location into a forested wetland that would be an impractical location in which to place the privy.

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

Yes (X) No ()

Why or why not? Having a privy available for citizens using the public swimming beach in this County Park is a very reasonable use of the property. The alternatives would cause users of the beach to seek very undesirable alternative means of relieving themselves that would only cause public health risks which the Parks and

Recreation Department seeks to avoid at this park where the primary use is that of a swimming beach.

3. Is the stated practical difficulty due to circumstances unique to this property?
Yes (X) No ()

Why or why not? A former township road bed lies right behind the swimming beach. It was constructed along the shoreline because an expansive forested wetland lies right behind the shoreline. Because of the wetland, the park's vehicle parking area is over 500' from the swimming beach – making it an impractical location for the proposed privy. The privy will be located as far from the OHW as possible on the old road bed right before the ground drops off into the forested wetland behind it.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?
Yes (X) No ()

Why or why not? The difficulty is due to the unique terrain on the property that is described in the answers to the previous questions. The property is made up of a large forested wetland that occupies the first ~300' landward of the OHW and then an open old field for the rest of its depth. Right behind the swimming beach is a vacated township road bed that is built up ~4' above the OHW and the wetland behind it. There is no other place to put the privy unless it would be at least 300' away from the beach on the east side of the wetland – which would be impractical for beach users to access.

5. Will the issuance of the variance maintain the essential character of the locality?
Yes (X) No ()

Why or why not? This site has been used as a swimming beach for decades before it became a public park last year. Newly created residential lots lie to the south of the park and have not yet been fully developed. There is a large, undeveloped tract of land to the northwest of the park that is also made up of the same forested wetland complex. Having a privy nestled in front of the forested wetland at this swimming beach will not harm the locality's character at all. If anything, it will fit in as one would not find it at all uncommon to see a privy at a swimming beach. Most people would expect to find such there.

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

Why or why not? Economics were not cited in the application as the sole difficulty. The difficulty involves the fact that the property is a forested wetland for the first ~300' back from the OHW aside from the former township road bed that lies right behind the shoreline. The platform and privy will be placed as far back from the OHW as possible without infringing upon the wetland. Placing the privy behind the wetland further to the east would make it impractical for beach users to make use of it as they would need to walk over 300' to reach it.

The motion carried unanimously 4 – 0.

Miscellaneous:

Communications:

Buitenwerf stated we will have two variance applications and likely an amendment for a conditional use permit. Northern Oaks RV campground, on the Westside of 5th Crow Wing, they are looking to do an amendment to one of the conditions that stipulates how their dock is supposed to be arranged.

We will also have the Sign Ordinance for you. Shortly after we adopted it last year, a situation arose where we found out from MnDOT that they have a requirement for scenic byways that there can be no exceptions to the requirement that there not be allowed any offsite advertising signs. The ordinance has contained since its inception, exception areas on either side of municipalities or certain key intersections that allowed offsite signs to be located there. There is nothing in the record that indicates why those exceptions originated in the first place or if MnDOT was consulted back then or not. The point being, now MnDOT says nope you cannot have those exception areas. That was the driver for the amendment and while we are editing that, there were some other housekeeping items that arose including updating my title as well as the variance and appeals section. We might as well do the same to it as what we are working on with the Subdivision Ordinance, SSTS Ordinance, and getting those to reference the variance section in the Shoreland Management Ordinance. If and when amendments are required, we will only have to amend one ordinance instead of opening them all up. We also found out that for all of these years the scenic byways section had some errors in it. For example, the Great River Road on the official map for the ordinance had County 3 north of Becida going up to Beltrami 7 listed as the byway. That is not the case. It actually follows 9 a few miles east of Becida and then goes up 10 to Beltrami 7. That edit needs to be made and then on the Lakes Country Scenic Byway, which is Highways 34 and 71, the only portion of 71 that is in that byway is from intersection with 34 in Park Rapids up to its y-intersection with Highway 200 just before 71 curves to the east. For whatever reason, our map has from that section by the y-intersection listed as byway when it should not have been. Similarly, Highway 71 south of Park Rapids to the Wadena County line was erroneously shown as byway when it is not part of the scenic byway. We are hoping to make those clean-ups as well.

Other updates, for the public hearings the County Board is holding next meeting, April 3, the Animal Control Ordinance will be going for public hearing for adoption. The SSTS Ordinance amendments, Shoreland Management Ordinance amendments, and Subdivision Ordinance amendments will also be having public hearings for adoption. We got word back from the PCA with some recommendations for some minor tweaking with the SSTS Ordinances which I was in agreement with. I will present those to the County Board. I have not heard from the DNR on the Shoreland Management Ordinance. It has been sent to them for review and comment. Nobody has to weigh in on the Subdivision Ordinance. We got word back from the Board of Water and Soil Resources giving final

approval to the Buffer Ordinance. They had similar comments to what they made in the initial review. That is the update on where the ordinance process is at.

Adjournment:

Krueger made the motion to adjourn.

VanKempen seconded the motion.

The motion carried unanimously 4 – 0.

The meeting adjourned at 6:52 p.m.

Respectfully submitted,

Paige Nulliner

Recording Secretary