

HUBBARD COUNTY

Planning Commission/Board of Adjustment Meeting Minutes

6:00 p.m. on Monday, May 18, 2020

The Hubbard County Planning Commission/Board of Adjustment (PC/BOA) held its regular public hearing and meeting on Monday, May 18, 2020 at 6:00 p.m. remotely by electronic means with one or more PC/BOA members present in the Hubbard County Government Center – County Board Room # 324.

Chairman Mark Petersen opened the meeting with the following additional members present: Ken Grob, Tim Johnson, Veronica Andres, and Mike Kovacovich. Also present was Environmental Services Director Eric Buitenwerf.

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

Election of Officers: Chair, Vice-Chair, and Secretary.

Kovacovich made a motion to nominate Andres as Chair for 2020.

Grob seconded the motion that carried unanimously 5–0.

Johnson made a motion to nominate Grob as Vice-Chair for 2020.

Kovacovich seconded the motion that carried 4–0 with Grob abstaining from the vote.

Grob made a motion to nominate Kovacovich as Secretary for 2020.

Petersen seconded the motion that carried unanimously 5–0.

Planning Commission:

Approval of Minutes: None.

Old Business: None.

New Business: None.

Board of Adjustment:

Approval of Minutes: December 16, 2019

Kovacovich made a motion to approve the minutes as presented.

Petersen seconded the motion that carried unanimously 5 – 0.

Old Business:

Tabled Variance Application 12-V-16 by Nancy Watt Ramsey: Part of Gov. Lot 6, Section 1, Township 145, Range 32, Farden Township on Mud Lake, a natural environment lake. Parcel 07.01.00900. Applicant is requesting a variance from Section 4, Subd. A.1.a.3.c of the Subdivision Ordinance to create two tracts that will not comply with the requirement that all new shoreland tracts must have at least 75' of frontage on a public road.

No applicant was present at the meeting.

Grob asked who is the rightful owner now? Is it Neil Ramsey or Andrew? It seems that it started with Andrew and then went to Nancy and then to Neil and now the most recent goes back to Andrew. Do we have any idea who the real owner is right now?

Andres asked Buitenwerf I have seen different documents as well, do we have a current deed on file?

Buitenwerf answered I checked the recorded documents and the property was conveyed to Andrew Ramsey.

Grob asked Andres if we want to be technocrats, I think the Subdivision is really A.1.c.3.

Buitenwerf clarified that may very well be due to the amendment that was made to the Ordinance since this application was first heard.

Grob stated I don't know how you are proceeding here, but I have a couple questions. I noticed when I went out there that there is a realtor's sign at the gate. Has the realtor contacted you at all, Buitenwerf? Either the Ramseys or the real estate people? By any chance, would they have given that information to a real estate agent?

Buitenwerf answered I have not received any correspondence from the Ramseys or anyone claiming to represent them since the variance was first heard.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

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

Grob seconded the motion.

The motion 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? Allowing a property to be subdivided into two tracts – neither of which would have legal access to a public road would not be in harmony with the Shoreland Management Ordinance's and Subdivision Ordinance's intent that all new tracts either have minimum frontage on a public road or a 33' minimum width easement connecting the tracts to a public road. The applicant provided no information to show any attempt was made to request/obtain an easement over the tax-forfeited and private land on which the access road to the property is located.

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 applicant, now deceased, and her family have had four years to pursue the access easements over the private and public land needed to gain legal access from the property to a public road. The applicant, her heirs, and survivors have not provided the County with any information concerning any work made toward obtaining easement access. On the tax-forfeited land portion of the access road, the County Board normally will grant an easement for a standard price per linear foot. When easement access over a majority of the access road is available, waiving the requirement for legal access to a property when it is subdivided so that the property remains legally landlocked 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? The property is accessed via a ~3600' long forest road that runs through tax-forfeited land and a small stretch of private land. The landowner has no control over this access situation.

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

Yes (X) No ()

Why or why not? The area would remain in its undeveloped, forested state as most of the land surrounding this property is public land. The residence on this lot is the sole residence on the southwest side of Mud Lake. Nothing physically would change on the property or the properties over which the access road to the property runs.

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

Yes (X) No ()

Why or why not? Economic considerations were not cited in the application as a practical difficulty.

New Business:

[Variance Application 53-V-19 by Annie and Tim O'Neill](#): Part of Gov. Lot 6, Section 9, Township 140, Range 33, Nevis Township on Lake Belle Taine, a recreational development lake. Parcel ID 21.09.04300. Applicants are requesting a variance from Sections 502.2 and 702 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residence.

Tim O'Neill, 3537 W Fuller Street, Minneapolis, MN 55410, presented the application.

O'Neill stated my wife and I have owned on Lake Belle Taine since 2007. My wife grew up in the cabin next door. She has been going there for 40 years, so Lake Belle Taine holds a special place in our hearts. One thing that we don't like are the mosquitoes and the bugs, which didn't use to be bad, but during the last three or four years it seems like there have been more of them. We are proposing to add a screened-in porch that is approximately 11' x 16'. Most of this area already exists as our deck. We will be having Matt Lindow do this work, and I feel very comfortable with him. The Lindow family is very respected in Nevis for all that they have done. That is what we are proposing, and I would be happy to answer any questions. We are looking at the graphic looking towards the existing home, and that would be the screened in porch that would be open below it.

Grob said I just want to check some facts. There was an original variance for building the home in 1985 at a 75' setback. Was it built at that setback, and does the deck that was added after that encroach towards the lake another 9'? Is that correct?

O'Neill answered I believe that is correct. I am looking at the same diagram that you are. We purchased it in 2007, after that work was finished. Yes, I would think that would be correct.

Kovacovich asked how far beyond the deck, towards the lake, is this porch going to extend?

O'Neill answered the deck currently extends 9'. We would be an extra 7' towards the lake.

Grob asked did the applicant consider any other locations that would not move closer to the lake than the one they have chosen. I notice there is a deck all the way around the house. Did they consider any alternatives?

O'Neill answered yes we did. The reason why we chose this spot because this is the main living area in the home. That is the TV room, lounge room. The other portions of the deck, because we are on a bit of a peninsula, most of our deck extends towards the lake. The one entire side would be towards the lake. The only portion that wouldn't be towards the lake is off of our kitchen where there are appliances in place and just the logistics of having the walk flow through. It just wasn't a very viable option. We did consider it, and that is why we put in this request.

Grob stated you have several boardwalks. A Y-shaped one in the front of the house, you have one that comes around on the right hand side as you face the lake, and then one that goes down to your sand beach. What is the purpose of having those versus just normal steps or a path?

O'Neill replied those were put in by Jerry Lamp, who was the former owner. I know that he was very active in the lake. I am thankful that we have those. We have four little kids. The wood does get a little slippery, but those existed. They are nice to have as there are pine needles all over the place. They are the two main walkways. One pathway goes to the beach, and the other pathway goes to the dock.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Andres said I noticed there is a room on the backside of the garage. Are there living quarters in the garage?

O'Neill answered there are not. Unfortunately, I am not very handy. Jerry had a great workshop back there, but it is currently empty. It is now storage.

Andres added you mentioned that the boardwalk was already there, but during the lot views it appeared to me that some of the boardwalk is new.

O'Neill replied the walkway between the house and the dock was rotted, so that was replaced about two years ago.

Andres stated I would also like to note that the staff report states the desired porch could be constructed elsewhere on the house by permit, which is not waterward. The Ordinance currently requires a variance for any waterward addition to a nonconforming structure such as this one. If you do not exceed impervious surface, one may be constructed elsewhere by permit, as Grob mentioned earlier. Have you thought of any other location to place that instead of lakeward? On any other side of the house, maybe the garage side?

O'Neill replied yes. I have stepped through the one portion of the house where it is kitchen. That would not work. That would be the portion closest to us, it is the one that faces east when walking to the beach. It is the 40' dimension. That is kitchen. The other total side of the house faces the lake, so that presents the same problem. Obviously, the front, we would not want it there. That is a bathroom and a bedroom. The first window on the right is the kitchen. If you can show the other side of the home, that retaining wall. There is a bay window that faces the retaining wall, right there is a grand piano, and next to that is a gas fireplace. I guess I did not consider that as an option. One other thing I wanted to mention is the reason why we picked seven feet as the additional length beyond the deck. If you see the stairs in this picture, those actually extend further than what this variance, if granted, would extend towards the lake. So, those steps would be closer to the lake than this new screened-in porch. We were trying not to encroach to the lake too much. That is why we picked seven feet. We did look at other locations. It is the main flow of the home, and as you can see there is a door there currently. We walk in and out of it all the time. It is one of the main places that we like to enjoy on the lake.

Grob asked the new walkway that you have down to the dock, it is "Y" shaped. Was it that way originally, or was it a single one and you added the extra leg to the arm on the left. I don't see that in this picture here.

O'Neill answered it was originally a "Y". Jerry had it that way. I probably wouldn't have done it that way, but one of the pieces of the "Y" walks down from the stairs. To the right of the stairs is the door going into the basement. They are probably ten feet apart. So, those are the top portions of the "Y" coming down the stairs, and then coming out of the door of the house. Where they come together is the intersection of the "Y". Yes, it was a "Y" before.

Grob said in checking out all the water flow, stormwater runoff situation, I think I observed that all of your downspouts on the four corners of the house, the water from any rain runoff from your roof will go directly to the lake. Have you ever thought of any way to prevent that runoff from happening? I see that as something that will significantly increase with you adding an extension and more roof.

O'Neill replied I would be open to proposals. That is the one thing that Matt Lindow noted, that it would be a concern, the water flow issue. Whatever best gutter system we could add, or whatever you would suggest, I would be open to those ideas. We want to protect the lake as well. Matt did note that he didn't see a concern given that it would be open underneath the screened-in porch. I am open to how to mitigate any potential water issues.

Grob added my concern in looking at it, I saw no way to mitigate it at all with your addition. That was problematic to me.

O'Neill stated we did some shoreline erosion control between the beach and the dock. We put in some nice plants. I think Kovacovich noticed it when he was out. We did leave all of the shoreline as it is. We leave it overgrown to try and protect as much vegetation along the edge as possible.

Johnson asked does it need to be that extra size just because of the amount of people? You couldn't fit it on the existing area you have, going around the chimney? The chimney must not get too hot being that it is exposed out there.

O'Neill answered it was more the issue of having six of us, and my mother-in-law lives next door. I am from a large extended family as well. We often have people and family over. Only having the porch that would have been 11' x 9', it would have been a very small area. That is why we wanted to push it out just far enough so that the steps are closer to the lake than what the screened-in porch would be. We wanted it to be appropriate, but if we are going to do it we wanted it to be usable as well.

Andres stated I am having difficulty supporting any expansion lakeward, an additional 17' toward the water, knowing that you could do it by permit at a different location. I know you mentioned that it is not the best logical place for you, but you are already encroaching in the ordinary high water mark. I am having a hard time giving you more impervious surface lakeward.

O'Neill said I can appreciate that. I just wanted to clarify that it is not 17'. I believe it is just 16', and 9' of that is already currently our deck.

Andres said thank you for the clarification, I was just including the entire roof structure with the impervious surface, and the 1' overhang.

Johnson added it is the addition of the pitched roof that is different than a flat deck. It would be extending out 16' of impervious surface.

Grob asked could it be built on the side, rather than out the front? On the left-hand side as you look towards the lake? Not connected to the deck, but along the side. What would prevent it from being there? I think you can understand that we are viewing this as a house that was built by variance at 75', and the way that you are adding to it, in essence you are encroaching 17' more towards the lake, which is not in harmony with the Shoreland Management Ordinance requirements. Could it be built to the left, where that bump out is?

O'Neill asked do you mean to the right?

Grob clarified to the right as we are looking at the pictures, on the left side of the house as you look at the lake.

O'Neill replied right in that bay window sits a grand piano, I am a professional pianist. To the right of that bay window is a gas fireplace. Then there is the retaining wall there. I guess the distance between the fireplace and the end of the wall, it would be very tight. Replacing that grand piano, it wouldn't fit in front of the sliding glass door. There is also a door out the front of this room, which limits where that piano could be placed. That is the only place in the house that the piano would be placed, which I know is a small detail, but I do appreciate your concerns. I guess we wouldn't have proposed this if we didn't think it was the only point in the house where it could be supported.

O'Neill said I do have one question for the Board. My wife grew up on Belle Taine, and I know that this soil is very sandy. Is most soil in the area this sandy, or is that more particular to around this area on Belle Taine? Or maybe no one on the Board is familiar too, which is fine. I was just curious because I know that it is very sandy soil, which to me would mitigate any of the potential water issues, but it is more of a question as I don't know. Maybe most soil in that area is that sandy.

Johnson stated the sand does have absorption when it is thawed out, but when it is frozen, it doesn't. If we have 3' of snow and it is a fast melt, it does run to the lake.

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

Andres seconded the motion.

The motion 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? Allowing a residence that already lies at roughly 2/3 of the required 100' OHW setback to encroach another 17' lakeward would not be in harmony with the ordinance's intent of not allowing lakeward additions to nonconforming structures, but rather encouraging and allowing additions to such structures that do not increase their nonconformities. The desired porch could be constructed elsewhere on the house by permit.

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? An enclosed porch with a view of the lake is a common feature on residences located on riparian lots. The proposed 11' x 16' footprint of the porch is not excessive in general or relative to the house footprint.

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

Yes (X) No ()

Why or why not? The house was originally allowed to be constructed at a 75' ordinary high water mark setback from the old OHW per a 1985 variance. The ordinance currently requires a variance for any waterward addition to a nonconforming structure such as this one.

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 a mixture of seasonal and year-round single family residences that were largely constructed prior to the ordinance as they are located at similar or lesser ordinary high water mark setbacks relative to the applicants' house. The proposed enclosed porch would not harm the residential quality of the neighborhood or cause the structure to be out of the norm for the OHW setbacks of the primary residences seen in the neighborhood.

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

Yes (X) No ()

Why or why not? Economic considerations were not cited in the application. The application states the difficulty is the house's interior floorplan and the location of a retaining wall on the west side of the house.

Variance Application 1-V-20 by Wilbeth, Inc.: Lot 4, Block 1, Wilbeth, Section 31, Township 141, Range 34, Lake Emma Township on Potato Lake, a recreational development lake. Parcel ID 16.89.00400. Applicant is requesting a variance from Section

902.4 of the Shoreland Management Ordinance for a proposed alteration of a permanent ice ridge.

Eric Wolff, authorized agent for the applicant, 1217 1st Street East, Park Rapids, MN, presented the application.

Wolff stated I am here on behalf of Wilbeth, and I also have the buyer for the lot in the meeting as well.

Wolff said we are requesting a 15' cut in the ice ridge. The practical difficulty is not being able to see children down at the water, to be able to get docks in and out of the water, and also if anybody had any health issues there is no way that they could get over that ridge. It is pretty abrupt and it's about 4'-5 ½' tall.

Grob asked why did you pick that location where there is a lot of vegetation versus the area a little bit to the left facing the lake, where the ice ridge is smaller and it is a lot more open? Why didn't you consider the amount of vegetation removal that you will have to do at the proposed location?

Wolff responded we chose that location to maintain privacy for the rest of the lots out there. There is a house immediately to the north of this, and there are some undeveloped lots to the south. We just chose the middle to maintain the most amount of privacy for the neighbors.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Andres clarified you have a 15' cut at the ground level and 17' at the ridge with a 3 ½ foot slope. Historically, I just wanted to let you know that the Board has approved 10' ice ridge removals with a 3:1 slope. Is there any particular reason that you have gone to the 17' number?

Wolff replied no, we just called for removal of that 15' berm with what we had to work with. It slants down, that is why it is at 15' at one spot and 17' at another. It is not perfectly uniform.

Andres stated during the lot viewal it appeared to me that there would be less detrimental disruption to the current trees and shrubs of the shoreline if the ice ridge removal was moved over about 15'. I know that you had commented that you picked the center of the lot, but that center section has a lot of established trees and shrubbery already. Directly east of it, or facing the lake to the left, there is a lot of open area for the ice ridge.

Wolff agreed.

Andres asked did you consider removing the open part instead of just the middle section?

Wolff responded we did consider it initially, and then thought we might as well approach it from trying to be dead center to start with, just for the privacy portion of it. We are open to having that moved.

Grob added when I was there I had the same observation as Andres, and that is that it would be much more desirable to move it to the southeast. I didn't think there was much of an issue with visibility and privacy with the neighbor or the lot to the east, and clearly not a problem with the privacy of the lot to the west. I am in a mindset that if you could move it east about 15', just starting where the heavy vegetation ends, it would be much more desirable. The other thing is, we have typically approved a 10' cut with a 3:1 slope each direction, which would be about 9' in your case. Would your applicant be willing to consider a 10' cut with the 3:1 slope in each direction and move it such that it starts right after the vegetation ends, which is about 65'-70' from the property line on the east side?

Wolff replied I believe he would. I know Mark Diede is on the call. Mark, if you have any objections to that, could you make them known?

Dieede stated I am ok moving it for the vegetation. I think there are two birch trees that start the vegetation going north. I could start there. I was looking at the 15' just because of the boat lifts. I don't currently own a boat lift, or a big boat like that, I am just thinking that they are at least 10' wide with wheels. I thought it would be nice to have a little bit of wiggle room instead of dealing with a teeter totter type area at the ridge. It is a pretty drastic up and down, it is not your typical shoreline.

Petersen asked Grob if the cut was to be moved over to where you are suggesting, what is your feeling if it were left at the 15' wide at the base with a 3:1 slope in that location?

Grob replied I am not too sure I understand. Are you asking how I would feel about a 15' cut versus 10'?

Petersen said right, in your suggested location.

Grob added we have stuck to the 10' for a lot of applications, although in this case, the full width of the ridge is only about 7'. It is not a big thick one like we have seen. I think if we want to be consistent, I think 10' would be appropriate, but it is up to my colleagues on the Board. I think when you slant it, the 3:1 slant, it gives you a lot more freedom and flexibility when you are trying to put a dock out when you don't have a 4' straight up and down ledge on the side. Consistent with what we have done in many other cases, 10' cut with a 3:1 slope on each side, which in this case would actually turn out to be 10' on both sides. It would be a 30' width, 10' in the middle and 10' each direction. I heard the mention of the two birch trees. If you could start 5' to the left, as you face the lake, of those birch trees, it would be the right hand side of the slope. I think that still keeps you 35'-40' from the property line.

Johnson added I agree with Grob.

Kovacovich stated I agree with everything Grob has been saying.

Andres said I agree the Board has historically stuck with the 10' wide cut. I think we should stick with that as a general rule. Do I have anyone who would like to make a motion?

Grob made a motion to approve the variance application per the following modifications:

1. The west side of the allowed cut must be 5' from the two birch trees located on the shoreline.
2. The allowed cut is a maximum of 30' wide – consisting of a 10' wide centered horizontal base cut with a 10' wide slope on each side of the base cut connecting the base cut to the top height of the ice ridge.

Kovakovich seconded the motion.

The motion 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? Access is a normal, allowed purpose for a lot. A cut through on a permanent ice ridge is generally allowed. The location away from the current vegetation part of the ridge increases the reasonableness of the request.

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? As long as they have agreed to the location and size, it is consistent with prior Board of Adjustment decisions on permanent ice ridges.

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? A permanent ice ridge that has been there for a long time is unique to the property and not created by the owner.

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

Yes (X) No ()

Why or why not? In almost all cases lots have access and/or cuts in the ice ridge for access to the lake.

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

Yes (X) No ()

Why or why not? The ice ridge has been at that location for a long time, and access is a reasonable request.

Variance Application 2-V-20 by Kevin and Constance Roline: Part of Govt. Lot 5, Section 36, Township 141, Range 33, Mantrap Township on Owl Lake, a natural environment lake. Parcel 20.36.01020. Applicants are requesting an after-the-fact variance from Section 502.1 of the Shoreland Management Ordinance for a lakeside deck constructed within the 150' ordinary high water mark structure setback.

Kevin and Constance Roline, 22021 Forest Pines Drive, Nevis, MN 56467, presented the application.

Kevin Roline stated we received a letter from Hubbard County Environmental Services dated February 7, 2020, in regards to Shoreland Management Ordinance violations. Two of the three issues have been taken care of, and we are here to ask for a 3' variance after-the-fact for our deck project. It was not our intent to build a deck without a permit. It was also not our intent to violate the Shoreland Management Ordinance. We were just trying to do what we thought your recommendation was from the meeting last May of 2019, when our first variance application was denied.

Johnson stated when I saw Mr. and Mrs. Roline out there I asked the question of whether or not the deck was built by a licensed contractor, and you replied yes. Is that correct?

Constance Roline answered yes.

Petersen added if I understood correctly in their opening statement to us, they said it was not their intent to build the deck without a permit. I am not understanding, were you not aware that a permit was needed?

Constance Roline answered the very first time we came, we tried to get a permit and we came to the May 20th meeting, because our plan was different and Buitenwerf said we needed a variance to do what we wanted to do. You guys explained to us that it wasn't an ok plan because it went into the ordinary high water setback. You shared your recommendations for a deck that would work. When we left that night, I guess what we were thinking was that the recommendations that you gave, by doing that you were giving us permission to do that. We changed our plan and started building without even thinking about pulling another permit. We didn't even realize that until we got Buitenwerf's letter on February 7th. So, we called him immediately and tried to make the things right that were wrong. We wanted to do the after-the-fact permit, but we have to get this variance before we can do that.

Kevin Roline added we erred in not getting the permit and found out about that on February 7th from the letter sent by Environmental Services.

Constance Roline explained we want to make it right, but we have to go through this step first. We are hoping that we can do that.

Kovacovich said I have a question based on if I am seeing this correctly from the office, that the deck is actually 5' closer than the 150' setback. It is at 145' at each corner, and 147' from the ordinary high water mark in the middle. Is that correct, Buitenwerf? Am I reading the diagram correctly?

Buitenwerf replied yes, you are correct.

Kevin Roline said when we initially brought the first plan to the Board last May of 2019, we were told specifically if we brought that back 5'5" back towards the home and went waterward across the length of the house, that we would be sitting at the 150' ordinary high water mark. I guess we went from the initial measurement of the ordinary high water mark. The high water mark seems to have changed. It was measured in January of this year, and that is where this 3' variance came into play. Then it was measured again on April 30th, and now that number is different. We struggle with the ability to make a decision or plan. We went based on your first measurement of the 150', but two different measurements have come about since then.

Buitenwerf stated I can add some clarity. When we first were made aware of this issue in January of this year, with snow and ice conditions on the lake, it is not possible with our equipment to get an accurate ordinary high water measurement. Staff did their best and came up with 147' and felt that it was within the 150'. The Rolines then asked for the ordinary high water mark to be more accurately ascertained across the breadth of the deck. So, we shared with them that the only time that we can do that is during open water conditions. That was the reason for our waiting until the end of April this year for us to be able to complete those more accurate measurements that are able to be performed when the water is open on the lake.

Kevin Roline added that was fine, the only thing is that the measurement that we were using was based on the recommendation from the variance meeting from May of 2019. We were told exactly to go back 5'5", and we would be at the 150' mark. I guess we are wondering why we are not using the original ordinary high water mark measurement. Somewhere along that 47' of deck, something should be 150', because we went back exactly 5'5" from the previous denial as you recommended.

Grob said it is very hard with the numbers, but when I look back at your drawing that we were all referencing a year ago, and not with your 19 1/2' sides, I don't think you moved back 5 1/2'. It was more like about 2' or 2 1/2' if you look at the actual numbers. It is maybe debatable, but that would be my calculation based on what is there.

Kevin Roline continued if you look at the drawing from last year, we were at 21' out from the point of the house. Now we are back from the point of the house, you can see the house is kind of shaped like a ship. From the point of the house, we brought it back to 15'7", which was 5'5" from that. I think we had given you all a packet that had a diagram of what our proposal was last year that was denied and what our current deck is sitting at. The sides were brought out because it was our understanding if we brought that furthest part back

5'5" and went waterward along the whole length of the house, as stated in the minutes from last year's meeting, then we would be in compliance and would not be within the ordinary high water mark violation.

Constance Roline added in our efforts, looking at the minutes from May 20, 2019, we were trying to do everything that was recommended for us that night and be in compliance. That was our whole effort.

Kevin Roline said at some point last year there must have been a 150' ordinary high water mark measurement for us to be given the 5'5" to reduce the size of our deck. There was also an email here from Staci Harvey from Environmental Services, and she says you could be allowed to go 5' closer. It just happens that 5'5" from the previous deck and also the 5'5" from our first proposal, it is just kind of ironic that it is the same number. I know the first deck was approximately 10' out.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Constance Roline added I just wanted to say that unfortunately it was our error, yet we were trying to do what we thought was right. Now we are sitting with the deck completed. We want to make this right and we want to do whatever you can tell us to do, but if it is tearing up this deck, financially that is going to be a huge burden on us. None of this was intentional. We are here in good faith trying to make things right.

Johnson commented to be a licensed contractor, you are required to attend continuing education. In continuing education you are taught to get a permit. A permit would flush out any of these errors that would have happened because it would have been shown exactly where it was in the permit. That would have clarified any misunderstanding.

Kovacovich added the fact that no permit was applied for put all of the burden on the owners. I was not a Board member at the last meeting, but reading the minutes, I don't see where that gave anyone permission to do anything without a permit. So, that is where I am struggling with the fact that no permit was obtained. If the permit had been obtained, we wouldn't be here right now would be my guess.

Andres stated I am in the same situation. It appears a subtraction error has occurred and it is not in their favor. The calculation error may have been found in the permitting process. I myself, having worked in that department and reviewing applications that is one of the many things that we checked. We checked the ordinary high water mark setback and if you were building in or behind that setback. I am struggling as well knowing that I have been in that department and I know part of the process with permitting. For clarification, I would like to comment on the site plan of your 2019 application, you had a deck measurement of 21' lakeward from the point as we all have discovered has caused you to encroach 5'. I understand when you said you subtracted the 5' and only have a 16' wide deck. Now it is 16' in the middle from the point?

Kevin Roline replied it is 15'7".

Andres asked and somehow we are still encroaching?

Constance Roline explained that is why we are so confused. We pulled it back 5'5" and we went waterward across the full width of the house rather than in the concentrated 16' proposed area. Somehow that first ordinary high water number is totally gone.

Kevin Roline added that is where that 5'5" came from was that first ordinary high water number. Nick Macklem confirmed the 15'7" on April 30th. I had him measure it from the point of the deck out towards the end of the deck.

Grob asked if I went and measured today from the point of your house to the edge of your deck, how far is it.

Kevin Roline answered 15'7".

Constance Roline added Macklem just measured it. That is why we are confused.

Constance Roline continued it is also 5'5" from the previous deck and that is what Staci Harvey's email says that is dated March 27, 2019. Yes, our error is that we didn't pull the permit. We take that error on us because we are the homeowner and we should have done that. We are just trying to make it right now. Our intentions were not to break the law and not go over the OHW, we are just trying to do it right.

Andres added I do agree that obviously pulling a permit was your responsibility and the licensed contractor's responsibility as well. I think that while pulling a permit we may not have had this error. We might have found this error that you had or we might have caught the setback.

Kevin Roline said when our denial was made on May 20, 2019, if we would have come and pulled a permit with this exact design that we have now, we would have been right on the 150' mark. Now it looks, from the diagram that we see on the screen, it is very different.

Andres asked Buitenwerf do you have any information or comments towards that.

Buitenwerf asked for clarification on the question.

Kevin Roline stated our original plan was denied on May 20, 2019. My question is that if we had done a permit the next day, that 150' ordinary high water mark measurement would be exactly where our deck is placed right now. Because we brought it back 5'5".

Grob asked on the drawing on May of 2019, that shows 165' to the peak and 148' to what you were proposing, whose dimensions were those?

Kevin Roline replied I am assuming they came from Environmental Services. I had a different dimension on the first one that I had sent in and they asked me to correct that.

Grob said it is initialed SB, what would that be?

Kevin Roline answered I have no idea.

Johnson commented setback.

Constance Roline asked Buitenwerf can you help me understand how the measurement for the ordinary high water that we used on May 20, 2019 could be so different to Macklem's measurements now? It is very different.

Buitenwerf stated the photo that I have on the screen shows orange flags marking the ordinary high water mark. It is going to vary ever so slightly as you go along the shoreline, as these photos depict.

Constance Roline said I understand that. I just don't understand how we could have a measurement for 150' and now, at some point part of our deck was on the 150' setback, we pulled back 5'5" and now it is not even close. It is 5' different. It is not inches, it is feet. That is the part I don't understand.

Johnson explained it has a designated ordinary high water mark. From that measurement, he is going to put those flags in that same spot one year to the next, based on where the water is. That is going to be consistent. If somebody just draws a tape measure to get about where they are going to do it for an application, they are probably going to get three different answers. Until you get out there with the transit and shoot it with a contractor, then you will know exactly where it is at.

Constance Roline continued that is what Macklem did all three times. He had the measurements with his tape for May 20, 2019. Now his measurements three weeks ago are different, not in inches, but feet. They are very different. All three measurements were from Hubbard County.

Kevin Roline added on an April 10, 2019 letter that came through Buitenwerf's office, to answer Grob's question about the 147', they just wanted us to correct some of the narrative on that application. We just corrected that narrative based on information that came through Buitenwerf of Environmental Services, of the 147', which goes back to the 5'5" that we talked about initially.

Andres said I would like to back up and comment on the 2019 minutes. As we all have received a copy of them, just because I want to get back to why you didn't pull a land use permit when you initially reconstructed the deck. A Board member actually stated in the minutes that they struggled, in their opinion, answering these affirmatively. But you could do this by permit, enlarging the deck by permit would not need a variance. At that moment in time, you were instructed to pull a permit. I think we were all struggling with that. If you would have pulled a permit, these calculations and these errors that you have fallen into would not have happened. I think that is what I am getting from the consensus of the Board. It is all falling back on not getting that permit pulled and these calculation errors that you have now.

Kevin Roline stated we understand about the permit, and we take ownership of that, but I guess my question is the ordinary high water mark measurements shouldn't be any different from last year to this year.

Andres responded I believe that is what Johnson was telling you, the ordinary high water mark is going to be the same no matter where it is pulled, every time it is pulled, the OHW is correct.

Kevin Roline added but it's not though.

Constance Roline stated if it was, our deck is pulled back 5'5", at your meeting you said then we would be in compliance. Our mistake is that we didn't pull the second permit. We didn't go back in and do it again. It was not a deliberate thing. We should have done that and we agree with you. We should have done it and it told us to do it, but we didn't. We are trying to make it right now. But, our deck does measure 15'7" from the peak to the edge of the deck. In your minutes here, that is what would have been in compliance. Now somehow it has changed, not by inches, but feet.

Grob asked in light of the fact that, even though there may have been some misunderstanding on the dimensions, I am back to the fact that a licensed contractor knows there should be a permit. If he does a lot of work, he should know that he should get verification. Why is it that your contractor decided to take the old deck and build an illegal platform down by the lake? If he understood the rules.

Kevin Roline stated we just asked him to do that.

Constance Roline said we did not ask him to build an illegal deck and put it down by the water. We just said why don't you set that down there and we will use it. When we got Buitenwerf's letter, we immediately took that deck down. That deck is gone. As soon as we got his letter, as soon as the ice was off to get that deck down, it was taken down immediately.

Kevin Roline added we verified that with Buitenwerf.

Constance Roline continued we sent Buitenwerf pictures as soon as we got it taken down, and we immediately went and paid for the permit for the addition. We immediately wanted to pay for the permit for the deck, because honestly we did not realize we did not pull the second permit until we got Buitenwerf's letter on February 7th.

Kevin Roline said our contractor assumed that we had gotten a permit.

Constance Roline stated we just told him to go ahead and start.

Grob added if he is making an assumption, typically a permit is posted on the construction site. Without that in place, I am surprised he didn't question whether you had it or not.

Andres said yes, when a permit is pulled it is supposed to be posted on the job site, to be visible. The licensed contractor would have seen that and asked where it is going to be displayed.

Kevin Roline explained I guess that is the reason why you obviously have the after-the-fact permit and the after-the-fact variance. We are trying to follow that process.

Constance Roline added as soon as we got Buitenwerf's letter, we have tried to do everything that letter asked us to do.

Andres stated I am just going to let everybody know that what I am struggling with is that the deck could have been built in compliance with the setback, as we determined that back in 2019. I am struggling with the fact that if they would have had a permit, I just don't think that some of these issues would have happened.

Constance Roline stated I am just so frustrated because using the measurements that Hubbard County took in May of 2019, we did, to the inch, what the minutes told us to do. Now we are in question. We did exactly, to the inch, what was recommended.

Grob said those minutes do not authorize you to do anything. It is a basis by which we made a decision that said you were asking for something that was encroaching in the 150' setback, and that we were denying it. We were estimating how far that should go back, but that gives you no authorization to do anything. If you are going to proceed, you needed a permit on your addition, and you needed a permit for that deck. I am surprised on the amount that you have gone around on these kinds of things, that you would not have been very sensitive to that, to make sure that everything was kosher.

Constance Roline commented since day one, in May of 2019, we came in and tried to do the right process. We are telling you now, yes we did fail pulling the second permit, but that was our mistake. We left that 3 ½ hour meeting that night, and I was just grateful. I took your words and your recommendations as, "Go ahead, you can still do your deck, you just need to do it this way instead of the way you want it." That is where we, as lay people, came home excited to build, and started our project. That is where our error was. Now we are trying to make it right.

Constance Roline continued yes we screwed up, and we screwed up big time. Now we are trying to make it right with the after-the-fact permit. I don't know what else we can do. We got the letter and we immediately made all of the corrections that we could make, now we are trying to make this correction. That is all we can do.

Andres asked does anybody care to make a motion? I believe there are several of us that have put in our input that we are struggling. Going back to the 2019 minutes, giving them clarification on pulling a permit, and the permit not being pulled, I think some of us are struggling to approve this application. Some of may be on the denying side.

Grob asked do you have any idea how much it would cost to cut off 5' of that deck and move the post back to support it?

Kevin Roline replied I would guess between \$5,000-\$10,000.

Constance Roline added all the support posts would have to be taken down and replaced.

Grob continued you would have to change the railings, and then move the posts back and cut off that amount of space, whatever it is, 4 ½' to 5' that you would have to cut off. It would seem that new posts and just cutting off that deck and moving the railings, I don't know what a contractor would charge. You say \$5,000-\$10,000.

Kevin Roline responded I am guessing that it would be \$5,000 at the least.

Grob asked what is your estimate of what the deck cost?

Kevin Roline answered \$35,000.

Grob clarified that does not include the addition and other things, that is just the deck.

Kevin Roline replied that is just the deck.

Constance Roline added that is not just an estimate.

Kevin Roline said I know that is what the deck cost, \$35,000. Obviously, for a \$35,000 deck, it was not our intent to not get a permit. We take ownership in that, we just based our design on the recommendation of what we were told in 2019, thinking we were doing the right thing based on the recommendation.

Grob asked Petersen do you think \$5,000 is a reasonable estimate, or \$10,000? What would be your estimate to reduce the size of the deck?

Petersen stated I am going to refrain, even though I did work as a contractor for many years, I have been out of it long enough that I think I would be doing nobody any good service here by trying to guess what that would cost to cut that back. I am going to decline to answer that, because I think I don't know.

Grob questioned if we denied this, and the deck had to be cut back, they would still have about 15' of deck on the front of their house?

Constance Roline said from the peak to the end of the deck, would be 10'.

Grob said it would be 14 ½' or 15' on the sides.

Kevin Roline said correct. We were also told that we could go out from the previous deck 5'5", so that would still bring us out the 15' plus. Now we are back to the original deck at the peak. That was in Staci Harvey's email that we would be allowed to go 5'5" closer to the lake than the current deck and the variance would not be needed if that were the case.

Grob clarified she said that based on the dimensions that were given by Environmental Services measurements?

Kevin Roline stated I would assume.

Grob continued so your previous deck, in front of the peak, was presumed to be 15 ½'. Is that what you are saying?

Kevin Roline said we assume so, those measurements came from Environmental Services.

Grob said it shows 165' on that drawing.

Kevin Roline agreed.

Grob continued that is all the way to the peak? So, 5 more feet out from the peak of the old deck would have met the requirements of the previous measurement.

Kevin Roline replied exactly.

Constance Roline added that is where we are at now.

Grob asked what are you at today, what is that dimension today?

Kevin Roline answered at the peak it is 15'7". I don't think that anyone has been talking about inches.

Constance Roline said it is 15'7".

Kevin Roline added we kind of went backwards from the lake and came back the 5'5" from the first proposal.

Kovacovich stated I am reading the old document, I see 165'7". Is that to the peak or is that to the end of the deck? I am unclear of that.

Kevin Roline said that is to the peak and those are numbers that were given by Environmental Services.

Kovacovich continued if you were 165' at the peak, and you add 15', that is one thing, but your deck goes out 19'5". I am having a hard time, because of the angles, of understanding. I don't see anything that shows me the dimension from your peak on your current deck.

Kevin Roline answered it was 21', but then we took off the 5'5", so it would be 15'7". That paperwork you picked up that day.

Kovacovich stated I am talking about as-built right now.

Constance Roline added it is.

Kovacovich continued the dimension from the peak of your roof to the outer edge of your deck, you are saying is what?

Constance Roline answered 15'7". Nick from Hubbard County just measured that when he was here.

Kevin Roline added on April 30th.

Constance Roline continued and he got 15'7".

Kevin Roline stated I understand your confusion with the 19', but if you look at the shape of the house, it is shaped like a boat or a ship, basically the peak sticks out 4'8" further than the corners of the house.

Kovacovich explained when I look at the drawing that you handed out, the deck that you proposed would have been 148'7", that is what this diagram says.

Kevin Roline corrected it is 144' though. That is a four.

Kovacovich clarified that is 144'?

Kevin Roline said 144'7". That is the one that was denied. In order to stay outside of the high water mark, we backed it off 5'5". You are the only one we missed that day, I talked to you on the cameras, but I couldn't get your attention. I apologize.

Grob commented it is kind of interesting when I look at the Environmental Services' most recent measurement, the peak is where there is only a 3' discrepancy, it is at 147' and everything to the side. The single measurement in the past, would have been better off if we had three or four measurements in the past, obviously based on the shoreline contour.

Constance Roline stated we are just asking you guys to help us make this right and get the permit, and not tear our deck apart.

Kevin Roline added when I look at the measurement that came in January, on the northeast corner was 147', now it is down to 145'.

Kovacovich said as Buitenwerf stated, any measurement made in the middle of winter is just an estimate. It is close, but it is not accurate. Anything done in December, I don't think anybody can refer to as a reference point, plus all of these measurements, now that we are dealing with are after-the-fact.

Kevin Roline stated I understand that. My question is, why aren't we going back to the original measurement that was done for the denial in 2019? How we made our decision based on the Board's recommendation.

Constance Roline commented using that ordinary high water number, it is in compliance. Why has the number changed that we are using?

Andres added when we had clarification on that, I don't believe the number has changed. As they have all mentioned to you, the ordinary high water mark setback is going to be in the same place except for in the winter time, when it is hard to find.

Constance Roline added I don't understand, because the measurements Nick just gave us are different now.

Kevin Roline said by 3' at the peak.

Constance Roline continued on May 20, 2019, we were using the number to that peak, if we came back 5' 5", the deck would be in compliance.

Kovacovich said anything that was stated in that meeting can't be used for building purposes, that is the purpose of the permit. When we look at the ordinary high water mark now on each corner of the deck, we are 145' from the ordinary high water mark. Regardless of where the measurement was from the peak at that time, the corners still weren't correct, and that is the whole purpose of a permit. I am having a hard time, without the permit, nothing is official until that permit is issued, or a variance is issued with the specifics, and someone goes out and establishes that. We are dealing with what you are assuming is fact, when it is not necessarily fact until the actual time of a permit being pulled or a variance being issued. That is where I am struggling.

Constance Roline added I hear what you are saying, I really do. But, I want you to hear that when we left that meeting as lay people, we took what your Board was saying very seriously. Now we are here doing this, because we didn't pull the permit. We want to make it right and we want to pull it. Isn't that why they have an after-the-fact permit? We are respectfully trying to make it right.

Grob stated I understand what you are saying, but I think if I step back a little bit, the drawing that is on the screen right now is, in fact, the drawing that would have been created if you had pulled a permit. Environmental Services and your contractor would have come and measured. They would have drawn that line and you would have known. That is the core of the issue that comes up here. You did not do a basic fundamental requirement, and that is to make sure that you are meeting the 150' setback. We can point fingers, things were said, but basically what is said in that meeting is not the final answer. What is said in that meeting is a rationale for denying your original variance request. Anything beyond that is a clean slate.

Kevin Roline said my only issue there is we had our design based on that 150' mark. You are saying that 150' mark was not accurate at the time, because basically we followed that direction and that distance and made our current deck using that 150'. Now you are saying that would have been different if a permit had been asked for.

Grob explained that was only one measurement point, it didn't cover the whole width, the whole 50' of deck and its relationship to the shore.

Kevin Roline replied where on that current drawing is there 150'?

Kovacovich added when we approve or deny a variance, we go off of the information in front of us. We set the parameters, if we said we will let you build at 149', that is in the record. The 149' is established after the Environmental Services and the contractor together get the permit, so they know where that point it. I am struggling with this.

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

Johnson seconded the motion.

The motion 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? There is room to construct an amply sized lakeside deck on this home in compliance with the 150' OHW setback and thus by permit.

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 constructed deck is 19.5' deep x 47' wide. It could easily be scaled back to comply with the 150' OHW setback and still be very reasonably sized for outdoor living space.

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 applicants sought a variance in May 2019 for relief from the 150' OHW setback to construct this deck which the Board then denied because it found the deck could be constructed in compliance with the setback by permit. The variance is necessary because the applicants knowingly constructed the deck after the 2019 variance application without a permit and within the 150' OHW setback.

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

Yes (X) No ()

Why or why not? This natural environment classified lake has low-density seasonal and year-round residences on it – many of which have lakeside decks on them. This deck, if allowed to stay “as is” would not negatively affect the locality’s character.

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

Yes (X) No ()

Why or why not? The application cites no practical difficulties in being able to comply with the 150' OHW setback for the deck in question.

Variance Application 3-V-20 by Cynthia Draper and Allan DeWolf: Lot 55, Chinook Shores, Section 13, Township 141, Range 34, Lake Emma Township on Upper Bottle Lake, a recreational development lake. Parcel 16.53.05400. Applicants are requesting a variance from Sections 502.2 and 801 of the Shoreland Management Ordinance for a proposed subsurface sewage treatment system to be located within the ordinary high water mark setback.

Cynthia Draper, 25708 Hart Trail, Park Rapids, MN, presented the application.

Draper stated we have a failing septic tank that was put in probably about 1998. We have to replace it, and we are on the peninsula between Upper and Lower Bottle Lake. We need to have a setback of 71', it currently is at 75'.

Grob asked Johnson is the septic system that they are proposing, with the 1,500 gallon tank and a sand mound, I believe, with new sand over the old, is that a reasonable replacement for a septic system?

Draper said we have a 1,000 gal tank and it is fiberglass. Putting new sand, we don't have a mound. We don't have the new septic system that Dave Hacker is proposing.

Johnson commented I think of what the alternatives are, this is a better system to do, rather than relying on a holding tank or going closer to the lake. I think this is the best that could be proposed.

Draper asked did Johnson just propose to just put sand over the top of it, or to replace it?

Andres asked Draper to repeat the question.

Draper clarified I don't understand exactly what Johnson meant. Which one is a better system?

Johnson replied your proposal is better.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

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

Johnson seconded the motion.

The motion 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 existing SSTS on the property was found to be noncompliant in November 2019. The requested variance is for relief from the required OHW setback to the drainfield so that a replacement system can be installed. The requested setback is only 4' shy of the 75' setback able to be granted administratively and is only for a corner of the drainfield. The system will be placed in the same location as the prior system that failed and monitored as an experimental system.

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

Yes (X) No ()

Why or why not? The existing SSTS is noncompliant and must be replaced. A replacement SSTS for the house on the property is a very reasonable and necessary proposed use.

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

Yes (X) No ()

Why or why not? The property lies on a peninsula that sticks out into the lake. The lot at its widest is ~175' between the shorelines. Thus, because the OHW setbacks overlap, a variance from the setback is required in order to place a drainfield on the property and a variance from the setback was also granted to allow the detached garage to be constructed on the lot.

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

Yes (X) No ()

Why or why not? The locality is a mix of seasonal and year-round single family residences. Septic systems are common accessory features on such properties. The proposed system will be an in-ground pressure bed so it will have no harmful aesthetic impact on the neighborhood.

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

Yes (X) No ()

Why or why not? Economic considerations were not cited in the application as a difficulty. The difficulty is due to the property being located on a point and only ~175' wide between the two shorelines so it is not possible to meet the 150' OHW setback from the lake on both sides of the lot.

Variance Application 4-V-20 by Barry and Erin Dohrmann: Lot 6, Block 1, Loon Island, Section 17, Township 141, Range 33, Mantrap Township on West Crooked Lake, a natural environment lake. Parcel 20.47.00600. Applicants are requesting a variance from Section 502.1 of the Shoreland Management Ordinance for a proposed accessory structure to be located within the 150' ordinary high water mark setback.

Barry and Erin Dohrmann, 7078 65th Street NE, Sauk Rapids, MN 56379, presented the application.

Barry Dohrmann stated what we are asking for is a variance to put up a storage building within the 150' setback. We are on a peninsula, and we are not able to meet the 150' setback.

Grob said it is a pretty large garage. I was wondering why you need such a large garage. What do you plan to do with it? I know you have a regular garage with a couple of stalls in it. It seems pretty large for the lot relative to the neighbors, help me understand.

Dohrmann explained both Erin and I are not quite 50 years old. We are extremely active. We know we will be able to hunt, fish, camp, and I am getting into doing some farming on a piece of land that is fairly close to where our cabin is at, for wildlife, as well as for some cropland hay. Our long-term goal is that we would actually like to move up there full time. With the garage space that we have right now, it is a shallow garage. You can't park a pickup in it. It is full of yard and lake stuff. We would like enough shelter to have both of our vehicles in and still have some workshop.

Kovacovich asked on the drawing you have two locations for alternate sites for the septic system. If you were to need an alternate site, which one is the preferred alternate?

Dohrmann responded I believe I only have one proposed future septic site, as you are looking at the drawing, to the left of the house and garage.

Kovacovich clarified I guess it was in the compliance paperwork that suggested there were two.

Dohrmann explained in the drawing there you can see the septic tank coming to the right and down on the page from the house, and then it goes up to the mound, which we just had done in 2013.

Kovacovich asked the one on the opposite side of the driveway, or garage, is the actual alternative that you would choose to use if needed.

Dohrmann replied yes.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Johnson added when I was looking at the end of the garage and where the alternate site was, it looked like something had been used there for parking trailers. The grass was gone and it looked like a parking spot and maybe a place to push snow. If I was to choose an alternate site, I would have went uphill from that existing system myself. I don't know a reason that was there, but for me I would say that a system would go uphill from the existing. Any alternate site going the other way is downhill, and it would be hard to get drain back to the tanks. It would be problematic for sure.

Dohrmann stated I just was needing to put a future site on here. Our current system is brand new. I would anticipate that should be good for 20 years or better, but I agree that the future site for the septic that I put down, the reason I put that there is because that is off of a site plan that a previous owner had drawn. I assumed he had put some thought into it. I would be more than open to other options for our future septic. There is quite a bit of wooded area that goes uphill.

Petersen asked Johnson where on this site plan that Buitenwerf has pulled up for us on the screen, where are you suggesting that the alternate septic plan should be?

Johnson responded actually, I am having some problems here. I don't see anything, I don't have anybody's faces up. I have lost that. It might have something to do with being on the end of Paul Bunyan's line I think. I don't see the picture. But, from my memory, where his shop is proposed and there was an alternate that was drawn in, in between his shop and that mound system that was there, I would go uphill from that mound system with an alternate. I wouldn't have went in the hole below the old one, I especially wouldn't do it after the shop was there. Looking at his application, it looks like you are going to come up out of the ground in the back with block or something. How are you going to navigate that slope there? I think you were going to come in flat from your road.

Dohrmann answered from the driveway I was going to raise up about 8-10 inches, and I am back about 12' from the edge of the driveway. If you shoot that straight into that slope of the hillside, I would need about four courses of block to be 1' out of the ground so that I could maintain a natural slope behind the building. I don't want to fill the site, and I don't want to create an ugly berm behind the building. This way I could keep the water flow basically as it is established.

Grob asked Buitenwerf this picture you have here, is this Dohrmann's property?

Buitenwerf replied yes it is.

Grob stated the line drawing in the application shows that property line much closer to that garage of the neighbors. This must be offset in some way.

Dohrmann added the property lines on that aerial map are not even close to reality. They are way off, by 30' probably.

Grob asked because your neighbor's garage is pretty close to the property line and you are planning to be 15' from it?

Dohrmann explained the neighbor's garage is at least 30' off of the property line, and then my proposed building would be 15' off of the property line.

Grob asked are you sure about those property lines?

Dohrmann answered yes, we do have verified pins that are there.

Buitenwerf added the parcel map in this area of the County is not accurate, as you can see as I zoom out. Definitely take the property lines with a grain of salt.

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

Petersen seconded the motion.

The motion 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 lot lies on a peninsula and is only ~270' wide east-west so a variance of some kind from the 150' OHW setback is required because these setbacks overlap on the lot. The applicant has proposed a location that complies with the 150' OHW setback from the east shoreline and is 2/3rds of the OHW setback from the west shoreline – while working around existing improvements on the property to maintain the applicable setbacks from them also.

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 pole building for storage and other uses is a reasonable, common accessory structure on shoreland properties. The proposed location of the structure exceeds the 150' OHW setback from the east shoreline and will be 100' from the west shoreline. The applicants have done their best to comply with and/or maximize setbacks as much as possible.

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

Yes (X) No ()

Why or why not? The lot lies on a peninsula that juts north into the middle of the lake. The lot is only ~270' wide so the overlapping 150' OHW setbacks from the east and west shorelines do not provide any room where a structure could be placed on the lot without a variance.

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

Yes (X) No ()

Why or why not? The locality is a mix of seasonal and year-round residential uses. There is a 30' x 40' pole building on the lot two lots south of the subject property and it too has a separate detached garage on it like the subject property. There is only one residence located north (beyond) of this lot so the aesthetic impact to neighbors will be minimal.

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

Yes (X) No ()

Why or why not? Economics were not cited as a difficulty in the application. The difficulty is due to the property being located on a peninsula that juts out north into

the middle of the lake and the lot is only ~272' wide east-west so the 150' OHW setbacks from the two shorelines overlap.

Variance Application 5-V-20 by Bruce and Mandy Pratt: Part of Govt. Lot 1, Section 5, Township 140, Range 33, Nevis Township on Shallow Lake, a natural environment lake. Parcel 21.05.00130. Applicants are requesting a variance from Section 902 of the Shoreland Management Ordinance for a proposed grading/filling project located in a bluff impact zone, on a steep slope, and within the ordinary high water mark setback. The project volume exceeds the permissible threshold.

Bruce and Mandy Pratt, 502 6th Street NE, Staples, MN 56479, presented the application.

Mandy Pratt stated the reason for the variance is that we have owned the property for a little over a year and we hope within five years to retire on the property. We would like to build eventually, and we would like to fill in the hole in the front of the property so we would have a yard and easier access down to the lake.

Andres said during the lot viewal I noticed that you had two separate, fairly level areas of recreation on the lot. One is on a higher level, there was a picnic table up there and some firewood maybe. The other one is maybe the second tier down, it was fairly level as well.

Mandy Pratt explained the picnic table is on the second tier.

Bruce Pratt added we actually are going to move some of that dirt back towards the road on the upper level and then build our home there.

Andres asked do you have a landscaping company that is assisting you with this, or do you have plans drawn up?

Mandy Pratt replied not yet, we are waiting for the variance. We had actually talked to a contractor though, in Nevis, and he did come out and give us a quote on moving the dirt. On the retaining wall itself, no, we have not contacted anybody for the wall yet.

Petersen asked how did you obtain the 345 cubic yards to be moved? Whose estimate was that?

Bruce Pratt answered you guys gave us the formula to use.

Mandy Pratt added we just measured. We measured the fill area, so we got an approximate amount we would need in the fill area to the height that we need. We took those and went to the back where we are going to take the dirt from, and marked that area.

Grob said if I understand your long-term intent, you want to remove a bunch of dirt from the hill behind your current camper. Is it your intent eventually to build a home on that flat spot?

Mandy Pratt responded yes.

Grob continued I noticed that you have pretty well cut all of the trees in that area already.

Mandy Pratt explained because if we can't move the dirt forward, we are going to move some of the dirt backwards.

Grob asked the camper and shed up on top, those are yours?

Bruce Pratt clarified the shed is ours and the camper up on top belongs to me and my son. We use that for deer hunting.

Grob stated it looked like there was another camper spot just to the right of your permanent one towards the lake.

Bruce Pratt replied it was that way when we purchased the property.

Mandy Pratt elaborated we have only owned the property for a year.

Grob asked so that is not used as a camper site?

Mandy Pratt answered it is not.

Andres opened for public comment.

No oral public comment was given.

A written public comment letter was submitted in favor of the request.

Andres closed public comment.

Andres stated I would personally like to see a professional landscaper assisting you with this type of project.

Mandy Pratt replied so would we.

Andres explained with this extensive of a project being located not only within the ordinary high water mark, steep slope, and bluff impact zone, I would like to see some plans created by a professional landscaping company before I would proceed with approving this variance request.

Bruce Pratt commented we would have to get some bids.

Kovacovich added even with a professional landscaper, I would have difficulty with this proposal based on the slope. It is totally against the Ordinance, and I can't see how we can get around moving that much fill on that steep of a slope. A landscaper could come up with all kinds of plans, but I am not sure even with a professional landscaper doing the plans and the work, this is not the kind of proposal the Ordinance could really support, because of the steepness of that bluff.

Mandy Pratt asked are you talking about the slope behind the camper?

Kovacovich answered I am talking about the entire slope from the flat area on top all the way down to the lake.

Bruce Pratt added my only other alternative is to move everything on top towards the road. I guess you are saying that top won't be there by the time I am done with it.

Mandy Pratt clarified there is too much of a slope? But we are not going all the way down to the lake.

Kovacovich explained there is a slope from the very top all the way down to the lake, as I am looking at it.

Mandy Pratt continued we had Nick come out and he did a study on the slope. He said the slope was fine. He took some measurements.

Grob stated I am trying to understand your long-term plan. Clearly, what you are looking for is to build a permanent home behind where the camper is now. Moving the dirt out of the way and making a flat spot. Then you want to move down to the front so that you have more flat area to do whatever you want to do. I think that I am with Kovacovich on this. That is a pretty extensive set of alterations to that hillside on a natural environment lake. It seems to me that you can peel off the top, which is outside of the zone, you can peel off that top and make a fairly flat area, build a home, and still have a reasonable amount of area that is usable, and not alter the terrain as you head closer to the lake. There is no practical difficulty that is forcing you to want to have to fill that area in to make your site usable. You have plenty of room behind the camper and up the hill to do everything you need to do to build a comfortable lake home, or lake property, without altering the terrain. That is pretty extensive, the retaining wall. Twenty years from now the retaining wall will probably have to be replaced. It seems to me that it would be a pretty massive project. I am not particularly supportive of moving the dirt forward towards the lake, obviously you can do as you please back beyond the 150'.

Mandy Pratt added the excavator that we had come out and give us a bit, the one in Nevis, said that he could do it in a day. You could move that dirt in 8 hours.

Andres said I agree with Grob and Kovacovich as well. I just wanted to clarify that I didn't want to move forward with any approval, not having some type of professional landscaper, but I am also in support of the staff's recommendations.

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

Petersen seconded the motion.

The motion 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 request to move 345 cubic yards of soil from a hill behind the travel trailer and use 284 cubic yards of this soil to create a level area on a steep slope and in a bluff impact zone held in place by a 6' high x 65' wide retaining wall.

Such work is not possible without removing/damaging the existing mature deciduous tree cover in this area. The project would expose soil in a large area, destabilize the soil in these areas, and thereby make the soil very susceptible to erosion and stormwater management issues.

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? Moving 345 cubic yards (i.e. 34 dump truck loads) of soil from the slope behind the travel trailer and using it to fill in an area that is a steep slope and bluff impact zone with a 65' wide x 6' high retaining wall is not a reasonable use for the property. Rather, it would extremely change the look and feel of the property by removing a large area of mature deciduous tree cover and if undertaken without extreme care, could result in significant stormwater issues that could jeopardize the slope's integrity which would result in soil moving downslope and possibly entering the lake.

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

Yes () No (X)

Why or why not? The variance is needed because the applicants want to convert part of an extremely steep lot into a flat lot. The variance is needed because of personal preference. The proposed grading work is not being done to correct any stormwater issues. Rather, it is being proposed to provide a flat outdoor space between the travel trailer and lake.

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

Yes (X) No ()

Why or why not? This lot and the other half dozen or so lots on this peninsula are currently put to seasonal single family dwelling residential uses. While the affected areas will be quite large and remove a lot of existing mature deciduous tree cover, because of the dense mature tree cover that is on this lot and surrounding lots, the project area ought not to have a negative effect on the locality's seasonal residential character.

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

Yes (X) No ()

Why or why not? The application cites no practical difficulties in being able to comply with the ordinance.

Variance Application 6-V-20 by David and Brenda Weber: Lot 6, Block 1, and part of Lot 3, Block 2, Piney Grove, Section 28, Township 143, Range 32, Lakeport Township on Kabekona Lake, a recreational development lake. Parcel 19.49.00700. Applicants are requesting a variance from Section 902 of the Shoreland Management Ordinance for a proposed alteration of a permanent ice ridge and to exceed permissible volume of earthen material movement in the shore impact zone.

David and Brenda Weber, 190 1st Avenue SW, Wells, MN 56097, presented the application.

Brenda Weber stated we are requesting to move 20' of an ice ridge, part of it had already been opened years ago, but we are requesting 20' to accommodate a dock and a safe access to the lake for our grandchildren. As they are going in and out of the water with paddle boats and canoes. We also have a grandson who is legally sight impaired. It exceeds the amount of material you can move, I think we are factoring about 45 cubic yards. If we were to have permission to remove it, along with this application we have also been informed that we are out of compliance on a couple of items that we found after we bought the property back in October. There is a noncompliant boardwalk and apparently some excessive vegetation removal down by the lake. Those were done prior to us purchasing the property. We are working with Nick to bring that into compliance. We are asking for your approval to establish a 20' wide cut into the ice ridge.

Andres asked could you please give a little more information as to how you are working with Nick? What are you working on with him to bring you into compliance?

Brenda Weber replied we are looking at actually seeing if we could remove the boardwalk. One of the conditions basically, being that our grandson is very sight impaired, and the way the boardwalk sits, it could be a safety issue of him falling off the edge. We are going to be contacting Crystal from Soil and Water to see about the removal of the boardwalk, we could use the fill from the shoreland to bring that back. He is also lining us up with how we can replace any of the vegetation that had been removed throughout the prior years.

Grob asked Buitenwerf is the noncompliance of that boardwalk an issue in this variance? They are basically asking for a cut in the ice ridge. If they are working with your department on the rest, does this factor into what we decide near the lake at all?

Buitenwerf answered I would consider that related information. That was supplied to the Board, in addition to the fact that you would notice that during the site visit, so that you would have the background information there. Does it influence your decision on the application? Not necessarily, but it does give you an indication of what it will need to return to versus what you currently see, so that you have that in accurate context for considering the request.

Grob asked if they have to do something to that boardwalk, it would have to be narrower and higher to meet the wetland requirements, is that true?

Buitenwerf replied that is correct. The Shoreland Ordinance specifies a 4' maximum width. The prior owner in 2006 was denied a variance request for it to be 5' as opposed to 4'. The Wetland Conservation Act would require that the boardwalk be elevated where it crosses

a wetland, so that the wetland vegetation beneath it is able to remain viable and not be detrimentally affected by the boardwalk.

Grob clarified but the end point on that boardwalk, if it were replaced or changed, wouldn't need to be altered if I recall. The area that is right next to the ice ridge, is that correct?

Buitenwerf responded I have not had the opportunity to be out on the property recently, so I haven't been able to view that myself. Staff was out there last week.

Grob continued I do recall that the variance for the original cut that sits at 10', that the Board of Adjustment allowed that any of the dirt that was cut out of the bank, or ice ridge, could be placed on the ground just behind the ice ridge. In other words, that could be filled in based on the previous variance approval.

Buitenwerf explained that would only be if that area was not determined to be a wetland.

Grob asked even if the Board of Adjustment, back some number of years ago, did allow them to put the excess material in that 20' x 20' area by the end of the dock, next to the ridge?

Buitenwerf replied the variance from 2006 would not have the ability to trump or supersede the Wetland Conservation Act requirements.

Brenda Weber added I did an aerial search for wetlands on our property and I googled the MN DNR site, and I also googled the U.S. Government wetland site and it all came up the same way, that we only have a small little wetland that is about halfway up between the lake and our house and it is deemed as PSS1A. That little gold area you are showing right there. Otherwise it doesn't show anything else on that map as wetlands.

Buitenwerf explained what is shown on the map is the National Wetlands Inventory and those are wetlands that are located using aerial photo interpretation. There are a good starting place, but they are not in any means a substitution for field truthing, doing a wetland delineation. It is not uncommon to see this starting point, but by no means accurate as to the full extent of a wetland.

Brenda Weber said if I am talking with Crystal from Soil and Water, is that who I would be discussing this with?

Buitenwerf replied that is correct. Crystal is the Soil and Water Conservation District Administrator. She is also the Administrator of the Wetland Conservation Act for the County.

Brenda Weber added I was just able to leave her a message today. Nick gave me her number about removing the boardwalk, due to the fact that it is a safety concern for us anyway and especially because it is out of compliance.

Grob said I would like to come back to the ice ridge. You have asked for a 20' gap. We have traditionally been pretty consistent about 10' through an ice ridge, which is already approved. There is a previous variance that allows you to have a 10' cut, I realize it is only a 6' cut right now, so that could be expanded under the current stipulation to 10'. We have also allowed typically a slope, a 3:1 slope on both sides of the openings, which in this case

would probably be about 10' also which is not there now. That is what I would be in favor of, because that is what we have traditionally, consistently done and found that to be adequate for people to have docks and have access to the lake. The only thing unique about yours is the depth of your cut is probably as ugly as I have seen on any ice ridge.

Brenda Weber responded I think that came from when the elderly gentleman that was here, his original one has kind of filled in when he wasn't able to actually go down there. When we walked the shoreline this last winter to see what other people had, it looked like the majority of them were around 20' wide, 15' wide. That is why we were requesting a 20' wide.

Kovacovich asked Buitenwerf am I understanding correctly, that the variance that was issued prior in 2006, if they were to comply with that variance, they do not need a new variance.

Buitenwerf answered that is correct.

Grob asked that would allow them to do the slope without a new variance?

Buitenwerf replied I would interpret that having been a part of that variance application hearing process in 2006, as the Board at that time intending a 10' wide base cut with 3:1 side slopes.

Grob clarified without a variance they could open that up to 10' and do the 3:1 slopes to the side under the current stipulation.

Buitenwerf responded that is correct.

Brenda Weber added our neighbor just to the east of us applied for a variance last fall and we actually talked to them today, and they said that they were granted a 15' wide cut. So, if you would allow us a 15' wide cut, that would be great too.

Kovacovich stated I don't recall us deterring from the 10' that has been consistent for some time, unless my memory is failing me, which is quite possible.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Grob asked Buitenwerf on the property next door, I believe we did authorize their cut last year. Because of the depth of the ice ridge, did we allow more than a 10' cut?

Buitenwerf answered yes, I have the motion for Mr. Weiland's property from last fall on the screen so you can read the motion and the conditions placed on it.

Grob added as I was reviewing the property I had some thoughts that maybe in this case we might make an exception, just because the depth of that ice ridge is at least 15' of old ridge and probably another 4'-5' of new. Maybe we should allow a little bit wider cut because of that and to maneuver through. I don't know what the rest of the Board is thinking on it.

Andres stated I was not on the Board at that time last year, I can see where you might have proposed a little bit larger than the historically known 10', because that is a very ugly ice ridge that they have there.

Grob asked Johnson are you on here?

Johnson replied I am.

Grob asked do you recall why? I remember looking at that, and we looked at the neighbor farther to the left. Do you remember why we allowed a little bit larger cut?

Johnson answered I think it was because of the depth, it was the mass of that old ice ridge.

Grob asked do the rest of the Board members think that because of that, it might be worthwhile for us to expand what we allow for the cut? What is the general feeling for the rest of the Board?

Andres clarified I was on the Board, I just don't recall myself either at that time. Thank you Buitenwerf for bringing up the minutes for us to review.

Kovacovich said quickly scanning it, it looks like between the soil types and the thickness, those were the reasons. Obviously, we thought it was ok there. I am guessing this is a similar dimension ice ridge, so I would be okay with the 15' in this case too.

Grob added the third paragraph shows my comment.

Andres stated I can see where the changes needed to be adjusted for that. I would be in favor of that as well.

Petersen said I did go over and look at that. I remembered that we were there last year. I didn't have a tape measure or anything, but it did appear to be wider than 10'. I think in light of what it looks like we did there, I don't think I would have any problem with doing the same thing here on this property.

Grob told Andres I think the thing is to ask the applicants whether they would accept 15' with two 10' tapers on each side. Would they agree with that, if that is what we were inclined to approve?

Andres asked do you agree with Grob's suggestion of the 15' cut and the two 10' tapers on each side?

Brenda Weber answered yes we would.

Kovacovich asked if we are going 3:1, wouldn't it be possible with the height of that ridge that it would be more than 10' on the taper?

Grob replied I looked at that multiple times. It is kind of a big hump, then a shelf, then it comes down. It is hard to really determine, but I think if you go to 15' and go out wider, I think it is closer to 3 ½' than it is to 5'. I think the fact that we are opening it up, and that is what we did next door, I think that would be sufficient.

Grob made a motion to approve the variance application with the modification that rather than the requested 20' wide cut, a 15' wide base cut in the ice ridge with 10' wide side slopes in the proposed location is approved.

Petersen seconded the motion.

The motion carried unanimously 5 – 0.

The Board provided answers to questions 1, 2, and 4 while accepting the staff report answers to questions 3 and 5.

Findings of Fact

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

Yes (X) No ()

Why or why not? The agreement by the applicant for 15' wide cut and 10' slope on each side allows access through a very thick ice ridge. Those dimensions are in harmony with the intent of having access to the lake.

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

Yes (X) No ()

Why or why not? A cut through an ice ridge is a reasonable request to have access to the lake. Because of the depth of the ice ridge, the 15' cut is appropriate.

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? A permanent ice ridge exists on this property and many adjacent properties along this portion of the lake's shoreline. It was created by many years of ice push.

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

Why or why not? It is very consistent with an ice ridge cut on a neighboring property.

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

Yes (X) No ()

Why or why not? The application does not cite any economic considerations as difficulties. The stated difficulty is the existence of a permanent ice ridge along the property's shoreline.

Miscellaneous: Buitenwerf stated it is looking like next month's agenda will be similar in scale to this month's. Three or four applications have come in thus far and there are probably that same number anticipating being submitted prior to the deadline, which is next Tuesday. That is my rough heads-up as to what you will be expecting in June.

Andres asked do you think that we will be doing another GotoMeeting style session next month?

Buitenwerf replied good question. I don't know the answer yet. The County Board will be discussing things tomorrow and then possibly in weeks to come that may very well determine if we are able to return to in-person meetings or in-person to an abridged degree.

Grob added isn't the Governor's next adjustment point June 1st.

Buitenwerf said that very well may be. The rules of the game have been changing so frequently we have been in a constant state of adjustment.

Grob stated this went well tonight. Andres did an outstanding job and it worked fine. It is nice sitting here at my dining room table.

Grob continued I am interested if Buitenwerf has any comments or suggestions for things that we could have done different. Any feedback?

Buitenwerf replied overall I would say the meeting went extremely well. Just the one minor technical glitch we had with Mr. Wolff's two devices. We got a little side tracked for a while and I think that Kovacovich did well at calling the question when it needed to be called.

Communications:

Adjournment:

Kovacovich made the motion to adjourn.

Grob seconded the motion.

The motion carried unanimously 5 – 0.

The meeting adjourned at 9:11 p.m.

Respectfully submitted,

Staci Lee

Recording Secretary