

## HUBBARD COUNTY

### Planning Commission/Board of Adjustment Meeting Minutes

6:00 p.m. on Monday, November 22, 2021

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

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

#### Planning Commission:

**Approval of Minutes:** None.

**Old Business:** None.

**New Business:** None.

#### Board of Adjustment:

**Approval of Minutes:** October 25, 2021

Grob made a motion to approve the minutes as presented.

Andres seconded the motion that carried unanimously 5 – 0.

#### Old Business:

**Amended Variance Application 53-V-21 by Scott Nyegaard:** Lot 9, Little Wolf Shores, Section 1, Township 145, Range 32, Farden Township on Little Wolf Lake, a recreational development lake. Parcel 07.42.00900. Applicant is requesting: Part 1: An after-the-fact (ATF) variance from Section 902 of the Shoreland Management Ordinance (SMO) for grading/filling within the shore impact zone and ordinary high water mark setback that exceeds permissible thresholds. Part 2: An ATF variance from Section 902 of the SMO for removal of part of a permanent ice ridge. Part 3: An ATF variance from Article V, Section 1 of the Subsurface Sewage Treatment System Ordinance and Section 801.4 of the SMO for a holding tank that does not meet the 10' setback from an adjacent dwelling **or 10' property line setback**. Part 4: An ATF variance from Sections 502.2 and 702 of the SMO for making a nonconforming dwelling more nonconforming via an addition including exterior decks that causes the dwelling to not comply with the 20' road right-of-way setback **or 10' property line setback**.

Scott Nyegaard, 32752 Wolverine Road, Cass Lake, MN, presented the application.

Nyegaard stated I am here looking for some after-the-fact variances. Last time I was down here you asked me to survey the property. I have had that done and submitted to you. This is a smaller cabin that we bought three years ago in 2017. We understood that the road in front of it was private, and that there was an approval to build larger. That was originally why we purchased the property. I think the septic tank is maybe a good spot to start. If you look at the drawing, there was that same septic tank in place where my stairway currently is. It was between the road and the house. When

we did the new well we needed to move that further away. I moved it laterally. There was never 10' on either side of it to begin with, and that was part of my reason and rationale for moving it. I am just looking to ask for those after-the-fact requests to be granted.

Johnson asked where is the well located on that site?

Nyegaard replied it is on the lakeside of the road.

Kovacovich stated the septic tank is currently underneath the deck up against the building.

Nyegaard responded yes. It is about 6 ½' off of the building.

Kovacovich continued when we were there for lot viewal, there was a temporary retaining wall. What are your plans to hold that soil in that spot there? It is going to continue to sluff if left the way that it is.

Nyegaard answered I have a whole bunch of rocks that I moved from that original spot that I am planning to put back in place, but I was told to stop everything and I have stopped.

Kovacovich said on that deck the entire area from underneath the stairway on the right side all the way over seems to be sluffing, and the footings that you have set on the ground that screw in with some kind of anchors appear to be moving because every one of your supports is not centered directly on them. The deck appears to be sagging. What is your solution to that whole situation for everything underneath that deck that is currently sluffing towards the road? How are you going to stop that?

Nyegaard replied I don't notice any sluff on the deck, and that is why those sand anchors are there. You don't have to set those exactly at the middle because they are all adjustable. As you sink those concrete pieces in with 2' rebar, they are designed not to move. I haven't noticed any kind of sluffing at all. Ultimately, I would again know that I need to put some type of retaining wall. I would be trying to do that with the correct process instead of the after-the-fact in the spring.

Kovacovich stated it appeared to me that the entire deck is moving to some degree and everything underneath is not stable as it is right now.

Andres asked is this your permanent residence?

Nyegaard replied yes.

Andres continued how often do you have the tank pumped?

Nyegaard answered about every two months.

Andres asked what is the current holding tank made of?

Nyegaard responded it is plastic.

Andres stated I am not sure of the integrity of the tank at this time. When I was there we did notice that the seal at the top is already lifting. I was curious if you know how long this plastic tank is to last?

Nyegaard answered I do not know the shelf life on that. It is the tank that has been there.

Andres clarified so it is the same tank that you had before, you just relocated it.

Nyegaard said yes.

Kovacovich asked what size is that tank?

Nyegaard replied I think it is 1,200 gallons.

Grob stated you said that you moved it to the front from the side. Why couldn't that tank have remained there? You wanted the steps there so you moved the tank. Why couldn't it have stayed at the end of that stairway?

Nyegaard replied when I put that new well in, the line coming into the house had to be separated 40' from the well line which goes from the well spot underneath the stairs now into the house area.

Grob clarified you have to be separated from the well, but not from the water line.

Buitenwerf stated I am not aware of a setback from the line.

Johnson explained there is a 10' separation between them or an impervious surface between them. I don't think the well line into that house would interfere with it. In fact, it would be better if the tank was to the west and just south of the propane tank. That is where the septic tank should be.

Kovacovich asked is there a reason that you didn't put it there?

Nyegaard answered I guess I didn't think about it. I didn't realize it was going to be an issue to be honest.

Andres stated in your application you mentioned that you are okay with moving it to the proper setback location. You stated that you would follow the guidelines set forth by Environmental Services.

Nyegaard replied I am just interested in making it right.

Grob asked if he moved it to the left could he still have the gravity feed to the tank by the terrain? Would it still be okay to do that?

Johnson agreed.

Grob asked the deck you have coming off over the garage, what is its purpose? You have a really large deck off the front of the house. Why is that deck there?

Nyegaard answered it is off the master bedroom.

Grob continued it almost crosses the property line. Our objective here is to try to bring you back to conformance. It seems like that wouldn't have to be there.

Nyegaard stated I have a large sliding glass door there that leads to it. I obviously would like to keep that.

Petersen asked going back to the septic tank, do we know exactly what type of septic tank that is and is it conforming? When he moved it, would that have been the time to have it inspected or the move approved?

Buitenwerf explained the initial location of that tank was never inspected. An inspection never took place in 2004 when it was first placed, and then when it was moved it did not get the necessary design approval, permit approval, or inspection that are required.

Petersen asked you said that you would be willing to move the tank if necessary, where exactly would that be? Does anybody have an opinion on that?

Johnson stated I would leave that up to the designer that he will need to hire to get a permit and schedule an inspection.

Petersen said is that what you think should happen there regarding that tank?

Johnson agreed.

Kovacovich mentioned one of the issues is the fill that was placed on the lakeside of the road. How much fill did you move and how deep is that fill throughout that area?

Nyegaard replied the calculations are in there. I think that one spot on the highest end is about 12" – 15" and it is just graded down. My original reason for the placement in there is that they were going to charge me \$30,000 to move it and then move it back. I was just going to stack it in there, and then as people were moving construction stuff in I leveled it.

Kovacovich asked how much fill was placed around the trees?

Nyegaard answered certain trees there is probably 8" on some and all the way down to nothing on others.

Grob asked did you put any of the fill on Wolverine Road, or did all of it get put onto your property?

Nyegaard replied it is all on my property.

Grob clarified so the current grade on Wolverine Road has not changed at all?

Nyegaard answered no.

Grob asked the stairway in the front of the house encroaches 6' – 8' into the road. It would seem that any part of the structure actually in the road and across the property line does not seem to be reasonable. Is there any way that you could rearrange where the stairway comes down so that it would not encroach across your property line?

Nyegaard responded I am certainly willing to do that so that it would come down basically in front of the garage door. I think I can have that run east and west instead of north and south.

Petersen asked what do you think of abandoning that stairway and putting a railing across there? Then on the end of the deck where you have a temporary one that you were using, you could make that one your permanent stairway.

Nyegaard replied I am not against that. If I have to remove the tank and put it down on the end, that is part of the reason that I didn't finish that end of the deck. I thought the tank might have to be in that place.

Kovacovich stated to me it seems that even if you turn it you are still not even close to meeting the setback. The best location in my mind to meet as much of the setback as possible is to take it off on that left side there. We realize those are fairly steep, and you would have to dig in and do some kind of a stairway down in the bank there also to utilize that, but that would certainly remove that obstacle as far as we could from the road.

Andres asked when you enter your garage, do you have stairs inside to get upstairs?

Nyegaard answered correct.

Andres continued so you do have access upstairs?

Nyegaard replied yes, the deck is not the only access.

Grob asked the ice ridge work, it appears from your drawing that you did a small cut?

Nyegaard agreed.

Grob continued I can't see how wide.

Nyegaard answered 10' x 4'.

Kovacovich opened for public comment.

No public comment was given.

Kovacovich closed public comment.

Petersen asked Johnson what do you think about leaving the septic tank there, but finding out what type of tank it is? I am just asking based on your expertise in the septic.

Johnson replied I think that after looking at the survey there is a more conforming location for it. Leaving it is not in harmony with our ordinance.

Andres stated in the violation letter, his option 2.b kind of gives what I am looking at for where it should go for the holding tank relocation.

Petersen said I am fine with that. Is there room to move that tank over to that side and still get the stairway in there?

Johnson answered I do believe there is. I think there is probably room because you can put the tank lengthways with the house, just like a propane tank. You could probably get two of them in there and have more capacity. If it did get in the way I would remove the stairway and use the garage for an access to the upstairs.

Grob mentioned we also would have the option to allow less than the 10' setback because it is kind of brushed in, and there is reasonable separation from the neighbor.

Johnson added I did talk to the neighbor the day that we were there, and he said he was agreeable to encroaching the property line for the septic tank.

Kovacovich said it appears that there is a possibility, and of course we don't have the design here, but that it could be done by permit where it would meet setbacks?

Buitenwerf answered possibly. It would be really tight. It would either be able to, or it would be very close to being able to, meet all setbacks if you place it to the west of the house.

Andres commented I am not opposed to keeping that first section of stairway and turning it. It would be nice for him to get up there in lieu of him digging in the dirt and creating more steps. If he put a landing and turned it to go away with the other steps, he will still be inside his property line.

Kovacovich stated it would go down towards the garage.

Andres agreed.

Grob added where it is now it is actually into the roadway.

Andres said I am not in favor of him keeping it in the driveway. I am in favor of a landing, turning the stairs, and keeping everything inside of his property. As far as the overhead deck and the property line goes, that is up in the air. That is really here nor there for me because it is above ground. It is not really encroaching at the ground level.

Petersen asked can we act on this tonight if we were to go that route with the stairway and moving that tank? Are we just saying that the tank has to be moved, and it has to be conforming? How are we going to word that?

Kovacovich stated that is what we would have to do is either say that it has to be conforming or we table it until a design comes forth on where it can go. Buitenwerf, can we table one part and act on the other parts?

Grob added I think we can come up with the wording that basically says he has to move that tank, meet the 10' setback from the road, and that it would be up to Environmental Services to approve the final location. I think we could add that we would allow movement up to the property line on the west side.

Kovacovich said I would be amenable to that. We would want something in writing from the adjacent property owner that it is okay. We would stipulate to keep as far away as possible, but we would allow an encroachment on that 10'.

Johnson added because of it being a poured basement I don't see a big risk in having it a little closer to the house.

Grob stated except the stairway is right there.

Johnson continued even the new spot. If he can get in two tanks rather than having to pump every month.

Grob added he could put it further up the hill towards the propane tank.

Johnson stated he could probably get in two.

Grob said I would rather clean it up and get it done.

Kovacovich agreed. That would be my preference also, to try to act on everything tonight and give the Environmental Services Office the final approval within the parameters that we set.

Andres asked did you understand my input on the stairs, adding a landing and turning it so that you can keep that same exit in lieu of the other side?

Nyegaard replied correct.

Grob stated I think we should walk through the various conditions.

Discussion ensued about developing the various conditions that would be placed on an approval of the variance application.

Grob added in general we are in agreement that to require cutting back the size of the structure or to tear down something is not in the best interest of the County or the applicant.

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

Part 1: The fill is allowed to remain on the conditions that: an 8" gap in the fill is created around each tree in the fill area and that the area must be revegetated.

Part 2: The cut in the ice ridge is allowed to remain "as is" and the area must be revegetated.

Part 3: The septic holding tank must be moved to a more conforming location. The holding tank is allowed to be relocated to the west side of the house at no less than a 5' setback from the house and a 5' setback from the west lot line provided that a lot line agreement is submitted from the neighboring property owner to allow the encroachment into the 10' west lot line setback. The tank must meet a 10' setback from the south lot line which is also the road right-of-way boundary. The holding tank must be properly designed, permitted, and receive a passing inspection from the Environmental Services Department.

Part 4: The deck over the garage will be allowed to remain, but the stairs that extend into the road right-of-way need to be moved in order to stay within the property lines. Environmental Services must approve the new location of the stairway.

Grob seconded the motion that passed 5 – 0.

The Board provided answers for all of the findings of fact questions.

### 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? Probably the biggest concern is the septic, and it addresses that to get it compliant. It also minimizes any of the other ordinance violations. It is mitigating them to what we believe is an acceptable level without harming 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? It appears that it is very similar to the homes around him on the roadway. I do believe it is a reasonable manner.

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 circumstances are such that the lot is an undersized lot which was granted permits to build many years ago. With the additions there is limited space. The roadway bisects the property, so he has property on both sides of the roadway.

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

Yes ( X ) No ( )

Why or why not? It is very similar to what we see with the houses on either side.

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

Yes ( X ) No ( )

Why or why not? Economic considerations are not cited in the application.

[Variance Application 54-V-21 by Jason Johnson](#): Part of Gov't Lot 4, Section 29, Township 143, Range 32, Lakeport Township on Kabekona Lake, a recreational development lake. Parcel 19.29.03110. Applicant is requesting a variance from Sections 901 and 902 of the Shoreland Management Ordinance for a proposed second access path to the lake and grading/filling in a steep slope that exceeds the permit threshold.

No applicant was present.

Kovacovich stated it is my understanding that we will be tabling this until the applicant provides the information that was requested at the last meeting.

Kovacovich made a motion to table the variance application.

Petersen seconded the motion that passed 5 – 0.

[Amended Variance Application 59-V-21 by Jon Sivald](#): Lot 1, Bannister's Stony Lake Addition, Section 1, Township 139, Range 34, Hubbard Township on Big Stony Lake, a recreational development lake. Parcel 14.48.00100. **Part 1: Applicant is requesting an after-the-fact variance from Section 502.2 of the Shoreland Management Ordinance for a detached garage located within the 100' ordinary high water mark (OHW) structure setback.** Part 2: Applicant is requesting a variance from Section 502.2 of the SMO for a proposed detached garage to be placed within the 100' OHW structure setback.

Jon Sivald, 5200 Lakeview Court, White Bear Lake, MN, presented the application.

Sivald stated I have a variance request in to build a 24' x 24' garage. Environmental Services did some checking on the history of the property and determined that the existing garage was too close to the lakeshore due to the setback on the east side. They suggested that I amend my variance request to include the existing garage in addition to the 24' x 24' garage that I was requesting to build. I met with the Board when we did the lot viewal last week, and the focus seemed to be on alternate septic system sites. As a result of a recommendation by the Board, I called Al Winterberger. As it turns out, Al Winterberger actually did the inspection on my septic system when it was installed in 2000. He had a file on it and was familiar with it. I told him what I was proposing to do, and he said there are some options. He suggested I use a pressure bed system, and it would require 15' x 25' to install that. It could potentially be installed west of the existing garage or north of the driveway if there is room there. Additionally, I talked to him about the existing septic system, and he said that the MPCA has said that you can use an existing septic system location if there is enough room in between the existing lines to install new lines. I just measured it before I came to the meeting and I have 6' – 7' between those lines. In the event that I would have to move my septic system, I have a few options at this point. The pressure bed is an option and using the existing location is a possible option. I am proceeding with the survey. Compass Consultants feels like they can be out there some time towards the end of the month for that survey. That would define my lines and let me know how much room I have. If I were to put a pressure bed system in between

the existing garage and the west line, it would determine the number of feet that I have there. I may or may not have to have a neighbor agreement to put it there. I would still be 100' back from the well at that point.

Grob asked I would be curious about the survey. Could it be possible that the new garage could be put where the 50' marker is and not within the shore impact zone?

Sivald responded if I were to put the garage in that location I think I would seal off my entrance to the lot.

Grob stated that is why we asked for a survey. I am personally interested in the survey to see if there is that option to do that.

Sivald commented it would set it back further from the lake, but there is 66' there, a drainfield, a garage, and a 10' setback from the garage. I really don't think that is feasible. I would have no way to get into the lot then.

Grob mentioned those are the facts that we need.

Sivald continued I will get the survey, but based on the amount of land that is there I just don't see how it will work.

Petersen added when we were out there we talked about a design for an alternate septic site. It sounds like you have gotten some verbal language saying that it should be doable. Do we want to accept that, or are we looking for a design?

Johnson said I believe that he should have that design. I think that what he said will satisfy what we are asking for, but with that survey we might have some different information for a decision.

Kovacovich stated I am in agreement with that. Having that survey and the septic design with the alternative possibilities would be very beneficial before a decision. It would also potentially impact the location of the proposed new garage. I am willing to approve the after-the-fact part for the existing garage tonight and table the second part for the new garage until such time that we have the survey and septic information in front of us.

Andres added I am not sure that we should act upon the after-the-fact tonight because if that survey does show different figures it could close some possibilities. If we wait and he doesn't have room for the drainfield and the garage may not work, he may have the option to expand his current garage. If we are going to wait, we might as well wait on all of it. He has already said that he will be getting the alternate septic design plan and the survey within the next couple of weeks. Is Mr. Winterberger going to provide you this information after you get the survey as well?

Sivald commented what I was going to do was to provide him with a copy of the survey so he can verify sites that would be workable.

Andres stated then both of those things could possibly be achieved at the end of the month.

Sivald asked why are you not approving the after-the-fact variance?

Andres explained we might wait on the results of your survey because if there is no room for that extra drainfield or pressure bed beside the garage, then we are going to be back to the other plan of putting the drainfield between your other lines. We just need those answers first. If you don't have room there, we are back to not having room for your garage. We want to be sure that you have room for the site, but if we don't maybe you want to expand the garage?

Sivald questioned by leaving that after-the-fact variance open, I could amend it again and consider adding on to the existing garage?

Andres responded I think amending it would require tabling it for different verbiage. I just meant for now you would have that option. Once you get your results, you are going to see if it is going to fit there or not. The Environmental Services Office can provide guidance if you decide to amend it again during this tabled time.

Buitenwerf explained we would have to have enough forewarning to be able to re-notice.

Sivald clarified you are saying that it could possibly be amended to add onto the existing garage in its current form?

Andres replied that is just a possibility if you don't have room. What you are asking for now is a proposed garage. We don't know exactly where the property lines are or where the alternate drainfield is going to fit. Once we get the property surveyed, then you will know where the alternate septic site is, and that will give us all a bunch of answers. Then you are going to know right away if the garage is or isn't going to fit there. If it is not, you might want other options. I am not saying that we can grant them right now, I am just saying that you might have to think of other options. If we were to grant the after-the-fact variance now, we would be working backwards.

Sivald stated that would rule out adding to the current structure.

Andres explained not necessarily, but we would be back to a new variance again.

Kovacovich added what the Board is saying is that it makes sense to us to have all of the information in front of us before we act so that it leaves all alternatives open for both you and the Board to best meet the ordinance the best we can.

Kovacovich opened for public comment.

No public comment was given.

Kovacovich closed public comment.

Petersen clarified we are asking for the survey and the alternate septic design?

Kovacovich replied that is my understanding.

Sivald asked you want the survey, but are you talking about just proposed sites for the alternate septic system, not a design?

Kovacovich answered just the proposed sites by a licensed designer.

Andres said you have stated in your application that your second garage is proposed to house boats and ATV storage. What will your current garage be then?

Sivald replied the current garage is pretty small. That is just going to be a rec room for the grandkids. It will be storage for the cabin and a rec room.

Andres asked are you proposing living quarters in there?

Sivald responded no living quarters.

Andres continued water, bathroom, or sleeping quarters?

Sivald answered not at this point.

Grob said we would have to put a condition on it.

Sivald stated it is not a very large structure. It is only 22' x 24'.

Andres explained I was just asking the questions because of your lot size. Your lot size is right at 33,000 sq. ft. If you were looking at living quarters for a guest cottage, your lot does not meet those requirements. I just wanted to make sure that you understood that part of the ordinance. Your lot is too small for a guest cottage.

Kovacovich made a motion to table the variance application to allow the applicant time to submit a certificate of survey from a licensed surveyor and a septic system site evaluation showing an alternate site location for the septic system.

Andres seconded the motion that passed 5 – 0.

**New Business:**

**Variance Application 61-V-21 by Bertel Jurgens:** Part of the SE ¼ of the SW ¼, Section 6, Township 140, Range 34, in Henrietta Township. Parcel 13.06.01220. Applicant is requesting a variance from Section 4, Subdivision A.1.b.1 and Subdivision A.1.a.2 of the Subdivision Ordinance to adjust a tract's boundaries to make it nonconforming by not complying with the required 300' minimum lot width.

Bertel Jurgens, 21254 Field View Trail, Park Rapids, MN, presented the application.

Jurgens stated what I am trying to do is to square up Lot D. For me to do that, I have to stay within the zoning requirements for Henrietta Township. I have to push Lot D out to the east. Originally, I did not own that 10 acres to the east. I actually purchased that last year around Christmas time. I spoke to Ralph, and he said if I covered the cost for surveying I could have that sliver off the cul-de-sac. I went through Henrietta and that put them under 5 acres for Henrietta zoning. It is hilly terrain. I was hoping this year to put the house on Lot E, and with that I could move it up on the hill and not fight water. Ralph definitely did not want anyone to build to the east if they were giving up that side. They were going to buy an acre, and I was going to trade that portion from one lot to the other to put them over the 5 acres. All I wanted was the 66' right-of-way if they wanted to use that as an access to the other road. I got that originally passed through Henrietta after I bought the 10 acres. When I had the septic review that is what led me here off of the survey. I was told that I was out of compliance because the ordinance was changed in May, and I didn't do my research on it.

Kovacovich said this appeared fairly straight forward when we went out and looked at it. I personally didn't see any issues that needed to be addressed for my standpoint.

Andres added I didn't see anything either. As far as that 66' access, I understand that as well. I would rather have my own access and not an easement. I am not opposed to that.

Grob stated there is the issue long-term not being able to subdivide Parcel M any further. I think that condition would make sense.

Jurgens agreed. My point of squaring it up is that I have kids and how it is would square it up and we would know our boundaries. Sooner or later Ralph won't be my neighbor anymore. For the house it made the most logical sense. It gets me up on the hill and you can have a walk-out and a view. For the most part it is not affecting anybody as of now.

Kovacovich opened for public comment.

No public comment was given.

Kovacovich closed public comment.

Grob made a motion to approve the application as presented with the condition that Parcel M cannot be subdivided in the future.

Petersen seconded the motion that passed 5 – 0.

The Board adopted the staff report Findings of Fact answers for questions 1, 2, 4, and 5 while providing the answer for question 3.

### Findings of Fact

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

Yes ( X ) No ( )

Why or why not? The proposed layout for parcel 13.06.01220 will still provide a 367' x 797' large rectangular block of the tract that will exceed the 5 ac. min. lot size and allow the ordinance objective to be met of providing enough elbow room for a residence, typical outbuildings, well, and septic 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 bulk of the proposed tract shape will meet and exceed the lot width and area minimum requirements. Having a 66' wide flag attached to the bulk of the lot as a means of accessing Farmland Drive vs. an easement over the neighboring property instead is an understandable desire on the part of the applicant.

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 circumstances are somewhat unique to the property given the requirements for the sizes, and it is reasonable to want free standing access to the isolated lot.

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

Yes ( X ) No ( )

Why or why not? The proposed boundary line adjustment will not change the fact that there will still be three large tracts in this area so there will be no additional impact in terms of such things as additional residences being built and added traffic on the road. The property is in a transition area between high density platted residential lots adjoining the property to the south and then three other similarly sized residential lots immediately to the west and a number of 20 ac. or larger tracts to the north and west.

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

Yes ( X ) No ( )

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

[Variance Application 62-V-21 by Robert and Kristi Gorman](#): Part of Gov't Lot 2, Section 6, Township 141, Range 33, Mantrap Township on Big Mantrap Lake, a recreational development lake. Parcel 20.06.01200. Applicants are requesting an after-the-fact variance from Section 502.2 of the Shoreland Management Ordinance for a platform and accessory structure located within the 100' ordinary high water mark structure setback.

Bob and Kristi Gorman, 3664 Woodland Trail, Eagan, MN, presented the application.

Bob Gorman stated what I am asking the Board for is an after-the-fact variance for a 5' x 7' non-dwelling structure on an 8' x 8' platform to obtain ADA reasonable accommodation request for qualified individual(s) that is necessary to allow for safe, accessible, year-round use and remain at its current location of 37' from the ordinary high water mark. I have included attached documents. I would like to thank Hubbard County, whoever was able to allow for the confidential protected health information that I supplied to verify the disability related location need of my request be kept in a separate file other than individuals who had a "need to know" basis in making this determination following federal and state requirements.

Kovacovich asked there is a shed that is beyond the 100' setback right now. Do you put things in that shed?

Bob Gorman replied yes.

Kovacovich continued do you use it regularly?

Bob Gorman replied yes.

Kovacovich asked do you use it in the winter months?

Bob Gorman replied yes.

Kovacovich mentioned when we were out there we noticed the steep shoreline, and that you have a dock and boats out there. How many boats do you have?

Bob Gorman answered essentially two boats, a pontoon and a fish and ski boat. I have a canoe and a sailboat as well.

Kovacovich asked how frequently do you use them?

Bob Gorman responded frequently during the summer season.

Kovacovich continued how do you get to those boats from the house?

Bob Gorman answered I would say the most common route that we use is that we leave the deck door, go around the picnic table, and down the stairs where we attached some railings. Before I finish, I would say that this was a nonconforming lot that was built prior to the Shoreland Management Ordinance. The topography is very difficult. The disabilities that have occurred have been since we purchased the home. To finish the route that we take to the dock and the boats, we take those concrete stairs right along the front of the deck. There is a flattened out area next to the terraced rocks that we use to prevent drainage into the lake, and there are a couple additional steps down to the dock.

Kovacovich asked do you know how many steps there are going down to the dock?

Bob Gorman replied I have counted a number of different routes. I did count the steps on the front entrance, and it likely isn't very different. It is 14 steps in that direction.

Kristi Gorman stated just looking at the pictures, it looks like there are 8 – 10 steps going down to the lake.

Kovacovich clarified towards the lake?

Kristi Gorman agreed. That is just the cement stairs. Is that what your questions was?

Kovacovich agreed. I was just curious about the number of steps going down to access the boats on the dock.

Bob Gorman added I would say that there are an additional couple more. If I were guessing, I would say that there are 14 – 15 from ground level, and there is an additional incline down at the lake. There are maybe another 3 – 5 steps down to the dock level.

Kovacovich stated you are able to traverse that getting up into the house and down to the lake. How is that any different than traversing steps to a sauna if it met the setbacks?

Bob Gorman replied that is what I would like to spend most of the time talking about.

Kovacovich repeated my question specifically is how is that different?

Bob Gorman stated that is what I would like to answer. This is done year-round. The sauna and the hot tub on that level that you can see right next to the deck. That is traversed year-round. It is used quite a bit, I would even say predominantly, in the winter. The steps down that you are talking about to the lake, that is used primarily during the summer. When I applied for the initial medical hardship reasonable accommodation in 2018, I requested both. There was a reason that they were co-located together. What I would tell you is walking down stairs in the summer versus walking down when you are wet going from a sauna to a hot tub, or the proposed Hubbard County route where you would go from that entry door that you are looking at right now, take a left, and go around the house. There are no internal stairs between the first floor and the second floor. In the winter, you guys were there, there were wintery conditions. The slip and fall risk is dramatically increased. If I understand what you are asking for, you are saying to walk back. Can we have the other photos of your safer, more accessible route?

Kovacovich added I am not saying it is safer. I am just asking if it were placed within the ordinance and beyond the required setback.

Bob Gorman said that is exactly what I am talking about.

Kristi Gorman commented it would be slipperier.

Kovacovich asked does your grandson use the boats?

Kristi Gorman replied sure.

Kovacovich continued and how does he access the boats? The same way that you described?

Kristi Gorman answered in the summer. He walks down.

Grob asked does he need help or is he able to traverse that himself?

Bob Gorman stated when he is wearing his AFO braces that I put in the medical information that I supplied. Most of the time he can walk without assistance.

Kristi Gorman added he does need assistance getting into the boats because he can't lift his legs.

Grob explained when you talk about braces, I didn't know what that meant if he can traverse all of this on his own.

Bob Gorman stated at this point in his diagnosis of the condition that I supplied you with the information, he can do it on his own. Based on the condition that he has, we have to think ahead.

Kovacovich said there is an area in the back with chairs and a fire pit. Do you use those?

Bob Gorman replied yes.

Kovacovich continued how do you access those?

Bob Gorman answered we walk back there.

Kristi Gorman added it is usually around the side of the house. Primarily in the summer. They are sitting out there because we don't have storage, and we don't have an extra garage.

Bob Gorman stated we use the backyard. There is a swing set. There is the proposed Hubbard County location that was marked right past the parking pad.

Kristi Gorman explained we do have to get some cars in on this flatter area too.

Bob Gorman said I would like to go down line by line with Buitenwerf's staff report. How the measurements were taken, where they were taken from, how it is commonly used, the amount of steps, and the circuitous route that the staff report suggest would be a safer route. They talk about a level surface, but it is how do you get to the level surface? It is not completely level, it is roughly level.

Kristi Gorman added when the staff was out there to measure the distance, I believe they probably didn't know that we don't have internal stairs. There is really no easy way to get from the main level, which is where we all are. It is a three bedroom house, we have two grown children that have families. We all squeeze into this top level of the home.

Bob Gorman stated there was a suggestion in the staff report about putting it inside. There is no room to put it inside.

Kovacovich said one of the pictures depicted vehicle parking. Is that normally where you park your own personal vehicle?

Kristi Gorman agreed.

Kovacovich continued how do you then access the cabin? How do you do that from the vehicle when you park?

Bob Gorman explained we go up the stairs.

Kovacovich clarified that is regardless of the season? That is required because there are no internal stairs.

Bob Gorman stated yes, that is the only access.

Kovacovich said that is simply from the non-lakeside. That is strictly a garage and storage facility, but there is no access to the upstairs, the same as on the front of the house?

Kristi Gorman agreed.

Kovacovich asked why can't you use that same stairway that you use to access the house to access down to a sauna?

Bob Gorman answered there are multiple reasons. The hot tub, sauna, and the lake surface feature are used as a circuit. In Scandinavian and Finnish culture it is widely known. I supplied this information before. The Mayo Clinic article is an excellent review article. There are therapeutic benefits for the sauna, hot tub, and even cold therapy. Initially I tried to apply for this as a 601.3. Now that has been modified again, and structures do not have to be solely storage. The deck and platform don't have to be for storage. When it was written, Hubbard County removed the medical hardship. I asked how to apply for an ADA variance. I reviewed how these things were handled in the past. You present all of your personal and private information in a setting like this and you decide. The actual variance that I went through in 2018, there was no addressing my request. If you look at my request in 2018 it was a straight hardship ADA request that was never addressed. I surrendered 150' of decking. That was a disproportionate condition. The staff said that I should have put my sauna on decking. They took 150' of decking away from me. I could have put it on decking, but the dealer said that was not a good structural issue. There were 64' leftover that I could have used to put the sauna on. I could have graded, removed fill and dirt, and disrupted the terrain. I have one of the largest Norway pines on the whole west shore that I am trying to protect. We looked at multiple locations. There are slip and trip risks all over the place. I have ten different factors that we looked at. Before we go much further, are you considering that there are two qualified family members with disabilities? Has that determination even been made?

Kovacovich replied we have the medical information. We are not qualified as a Board to make a determination on whether the disabilities are real or not. We have your medical information that indicates that you and your grandson have a disability.

Bob Gorman added I will tell you what Hubbard County's legal counsel told me. You have expertise in determining these hardship requests with medical information, you have seen many of them. I supplied medical information. I requested information from Environmental Services, legal counsel, medical consultant, your ergonomic reviewer, whoever looked at it. We can look at the letter. I am assuming we are dealing with two qualified individuals under the ADA definition. If we have to go with each individual, we can do that. If you look at the ADA and the HUD and the DOJ recommendations on how zoning boards are supposed to handle these requests, it is very clear.

Kovacovich asked how difficult is it for you to access the cabin now with the existing stairway from the driveway up? Do you have difficulty accessing the cabin?

Bob Gorman answered if those steps are icy, sure.

Kristi Gorman stated we have installed railings alongside there to help all of us.

Kovacovich asked how often do you traverse those stairs in a given day or a given stay at the cabin?

Bob Gorman clarified are you saying for me individually?

Kovacovich asked how often do you use the stairway?

Bob Gorman replied as often as I need to get from Point A to Point B, but not accessing a hot tub or a sauna.

Kovacovich continued you use flagstone right now to level, and there is a number of stairs between the deck and that platform that the sauna sits on right now.

Bob Gorman answered rough flagstone. We looked at different surfaces that were available to us and that actually works quite well.

Kovacovich asked could not that same type of material, or an alternate material, be used to lay a pathway to a sauna in another location?

Kristi Gorman replied not without using the other cement stairs. We would have to go out and around.

Bob Gorman added and disrupt more terrain. These things are used in conjunction together.

Kovacovich asked how do you deal with snow removal in the wintertime off the driveway and the stairs?

Bob Gorman answered I shovel it.

Kristi Gorman added or I shovel it.

Bob Gorman continued the sauna and hot tub have a large eave overhang, which is beneficial. Kristi will lay down carpet. You can push the shovel there. Along the side, it is on a steep slope. There is a narrow 3' – 4' path. I push along the shovel. What is kind of nice about the steep slope is that you can just push it down. There is that short little connector piece. We have specifically looked at the stairs. The safest stairs to allow drainage would put stick strips on it and we added a grab bar. We have a protective landscape barrier in the winter that prevents people from falling. If we can put a railing on the front, I would be more than happy to do that.

Kovacovich confirmed so you do the snow removal between the two of you on the stairways and in the sauna and whirlpool area. How about the driveway itself?

Bob Gorman answered the driveway we do with a snow blower or we have someone plow it. We do not use a snow blower up in the area where the hot tub and sauna are.

Andres stated you mentioned that you had been in contact with the Environmental Services Department about Section 601. When was your last contact?

Bob Gorman clarified Section 601.3.

Andres repeated when was your last contact from the Environmental Services Department?

Bob Gorman replied the verbal directive or recommendation was in front of the van when you left lot viewal. I asked Buitenwerf because it looks like 601.3 was amended and changed to add decks. I asked specifically if the requirement was removed about solely storage. Buitenwerf stated that it does not have to be solely storage. That was the original ordinance section that I applied with. This is a 35 sq. ft. structure. If you can't have a deck or platform with a structure and you can only have one, I will get rid of the decking.

Grob added the new change retains that you can have a water-oriented storage shed up to 48 sq. ft. down by the lake. What was added was that you can also have a platform or a deck which had to be mitigated with 500 sq. ft. of vegetated area.

Grob continued I am going back to the statements that were made in the HUD report. I want to confirm that you did acknowledge that the purchase and installation of the hot tub was not on the advice or recommendation of a doctor. It was not prescribed?

Bob Gorman replied I discussed it with my physician, and just for your information I am a physician. I am a faculty member in the Department of Medicine at the University of Minnesota.

Grob repeated was it prescribed for you to have a sauna for your medical conditions?

Bob Gorman said no. I discussed it, but I didn't get a prescription.

Kristi Gorman stated he does get medical brochures and information of all different types. He reads those things and pertains it to himself and my grandson.

Grob stated the need for a sauna was something that you decided. It was not prescribed or needed to treat a medical condition.

Bob Gorman added it was well recognized in the medical literature.

Grob asked the sauna is not something that would be a normal device that would be needed for access to the lake or to enjoy the lake. Typically, we have allowed ADA structures for the primary reason of enjoying the lake. Why do you have a cabin? It is for the lake. It is the number one reason that most people have cabins. We have allowed it, but only for the duration of the need. If you were to sell the place and someone else were to buy it, it would have to be removed. That is typically what we have done. I am trying to establish the fact that this wasn't prescribed for your medical condition, and it has nothing to do with your enjoyment of the lake itself. I think our issue here deals with the fact that there is an existing structure that you built without a permit, and now we are trying to defend its location. If you had went to the Environmental Services Office and asked about applying for a variance to place it in an optimal location because of your medical disability. Now it is in the shore impact zone and on a steep bluff.

Kristi Gorman stated it is not on a steep bluff.

Grob said if someone slipped they could fall about 20'. I have a surgically repaired ankle that had a severed tendon and fused joints. I have feet worse than his, I guarantee you. I did not feel comfortable walking up alongside that hot tub. We need to find the best location to minimize the exertion. When I was there and walked around the side of the house, there is a nice reasonably flat spot here every bit as flat as where you currently have it. I would say that might be 65' – 70' setback. If you had come in and applied for a variance at this location before this was built, it is a good possibility that it would have been approved.

Bob Gorman stated that does not even make any sense. We use the two together.

Grob said that is not necessary that you have to use the two together. You could put your hot tub up there. We allowed you to have that hot tub because it could have been on a deck. I could make a strong argument that where you have placed it is not a particularly good place given all the descriptions of cardiac, neurological, and orthopedic issues. Where the hot tub is with that narrow path, it has to be shoveled somehow. I would contend that is a very risky walk for someone with orthopedic ankle issues, maybe even cardiac. What I am trying to say is that we are only trying to

defend its location because it was put there without a permit. If we could have discussed the location prior to placing, I would contend that we probably would have come to the conclusion of the optimal place to put it on your property. All this argument about disabilities, it would seem to me that would have been a more logical solution instead of all this hassle. Right now it is in the shore impact zone, on the edge of a bluff, in a high risk area. There are lower risk areas where that can be placed. Maybe they don't meet the 100' setback.

Kovacovich asked Andres did you get your question answered?

Andres stated it was not quite answered. I think there is a possibility that maybe we need to reevaluate Section 601 regarding water-oriented structures and your communications with the staff. To my understanding, there is a possibility that you might be able to retain your structure in its place, but there would have to be some alterations. Can Buitenwerf assist me in what exactly Section 601 covers as far as this application?

Buitenwerf explained Mr. Gorman asked me about that at the end of the lot viewal. I consulted with counsel on Friday and left Mr. Gorman a voice message on his cell phone with the summary of the conversation that I had with counsel. That Section does allow water-oriented accessory structures. The sauna would fall under that definition. It does meet the dimensional threshold, so it falls within those. It also meets the 20' setback that is required. If the Gormans would be open to the mitigation that is required in that Section, in terms of native vegetation in the shore impact zone, then potentially this could be addressed through a permit.

Bob Gorman commented we would.

Andres continued did you understand that? You would have to visit with Environmental Services staff in regards to what would need to be done. Removing the platform underneath would be one of those conditions.

Bob Gorman asked as far as the grading, I am not sure if that was changed recently, but it looks like the homeowner is able to remove up to 5 yards depending on the location. Would I be allowed to grade, and put it on a more level surface to make it safer for myself or the other family member who would be affected?

Buitenwerf replied yes. If the sauna was taken off of the current platform, and the platform was removed, you would be allowed up to 5 yards of grading to create a stable, flat surface on which the sauna could then be placed.

Bob Gorman asked would I be allowed to put a railing in front of the area where it is located? A protective railing was suggested. Right now I have a fabric landscape barrier in the winter. If that is allowed, can I put a protective railing up from the hot tub to the sauna, similar to what I have on the deck? The railing could be used to safely access both structures year-round. Do I need a variance for a railing to connect that to my primary structure, to extend the railing along that slope area?

Buitenwerf stated from what I hear you are referring to just a safety hand rail, grab bar?

Bob Gorman agreed.

Buitenwerf replied that would be allowed, you would not need a permit for that.

Bob Gorman stated I would be happy to review that with the Environmental Services Department.

Andres clarified Mr. Buitenwerf explained to you that legal counsel had given him guidance that a water-oriented structure from Section 601 would be a permitting option if you followed their guidance by removing the platform and keeping it in that same place. Since there is a possibility that you have a permissible option, my suggestion to the Board would be to table this to give Mr. Gorman time to work with Environmental Services staff to see if that permitting option exists, and that he would be open to that in lieu of moving forward with the variance.

Discussion ensued about the definition of a water-oriented accessory structure and permissible options for this application.

Kovacovich opened for public comment.

No public comment was given.

Kovacovich closed public comment.

Andres asked Buitenwerf do we have any other questions or guidance that we can give Mr. Gorman besides tabling this to contact you to see what the proper way to go by permitting is?

Buitenwerf replied that would be primarily it. He could certainly review Section 601 of the Shoreland Management Ordinance, which it sounds like he has done previously, to read through the mitigation language for vegetation.

Bob Gorman stated I would be willing to do that.

Andres asked you would also work with him and the staff, and then you would determine whether you are going to withdraw the application at that point if you go that route. If we table it, then he could withdraw it?

Buitenwerf agreed. If the application is tabled to explore the permissible options under Section 601, and then if he did obtain a permit that way, the logical next step would be for him to submit an update officially withdrawing the variance for lack of need of a variance due to the permit having been issued.

Kovacovich asked are you willing to table this for you to work with the Environmental Services Office to see if there are permissible options that can accomplish what your needs are here?

Bob Gorman replied absolutely.

Kovacovich made a motion to table the application to allow the applicants time to confer with the Environmental Services Department to see if permissible options exist for this request.

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

**Variance Application 63-V-21 by Jennifer and Ryan Olson:** Part of Gov't Lot 1 and part of Gov't Lot 2, Section 1, Township 140, Range 34, Henrietta Township on Boulder Lake, a recreational development lake. Parcel 13.01.00900. Applicants are requesting a variance from Section 506 of the Shoreland Management Ordinance for a proposed guest cottage that exceeds the maximum allowed 700 sq. ft. footprint and is located within the 100' ordinary high water mark structure setback.

Jenny Olson, 1626 Maple Place, Fargo, ND, presented the application.

Olson stated we are a family of five. We have three small girls. We bought this cabin on Boulder Lake in 2016. I grew up here in the summers. My parents are down the shore. We have been there

for 40 years, and we love the place. As our family has grown, the 790 sq. ft. structure seems to have gotten a little smaller on us. We would just like space for our family to be comfortable year-round. We looked at lots of options for how we might get a little bit more living space. Ultimately we decided to request this variance to deem the current 1950s cabin as a guest cottage so that we could build a slightly larger structure up on the hill set 100' back. The smaller structure is within the 100' setback. We did a lot of research and work to get to this point with the intent of following as close as possible with the ordinance's intent. We bought an additional 50' of property. We buried the power lines. We had room for a proper septic plan. We looked at splitting the property into two lots so that we could build on that back lot, but lots of constraints made that not work. We looked at adding onto the current structure, but as you saw with the retaining wall and how close that was to the water, that just seemed like that would be pretty disruptive. That is how we settled on this particular request for the variance.

Grob mentioned you identified one of the constraints or difficulties was that when you looked at expanding, a builder recommended not. Why not? There seems to be reasonable space around the existing cabin that you could add to. Why would the builder say that you couldn't add to it?

Olson answered it would be fair to say it was not that the builder said that we couldn't. I think our builder consulted with the Environmental Services Office, and it was determined that maybe it was not the best option. If you guys think it is a possibility, I would consider it. It has a rock foundation. Our builder is here, and maybe he can answer these questions better than me. Building up didn't seem like it would be very stable with the current foundation. When we looked at which direction could we build, one direction got us too close to the road. Building back did not seem feasible because there is a retaining wall back there, and there is not a lot of space to go back. Then we looked towards the fire pit and shed, but being that it is so close to the water we didn't think the Board would approve that. But, if that is something you are interested in, we could consider that.

Grob asked how close is the closest point on the cabin to the lake?

Olson replied the corner of the deck is 15', give or take.

Andres stated I am not sure that I would be open to building a larger structure 15' from the lake in the shore impact zone. I would definitely be more in favor of a structure meeting the setback.

Petersen asked what is the situation with the tree house?

Olson responded that was pure ignorance. We built that tree house for the kids several years ago before I started this process. I know a lot more now. I need to address that going forward with you and Environmental Services. I definitely intend to address it, I just don't know how that will resolve.

Kovacovich asked as a condition of approving this, would you be open to removing that tree house since it was built without a permit and it is in the shore impact zone?

Olson answered to be totally honest that would break my heart. The kids started an adventure club with the neighbor kids there. It is where they create and play. I would love to explore any other possibility other than taking that down. As a mom, I would do just about anything to preserve that for them, even though I totally understand now.

Kovacovich asked could that structure be moved to another location on the lot and still retain what you need for your kids?

Olson responded it would be completely dismantled. It is designed for those trees and cannot be rebuilt as it is. The whole family just chipped in. I thought it was going to be just a little platform in the trees, and it became more than that. If it had to be moved it wouldn't be recreated.

Andres commented I don't think a condition is necessary. It is a violation and would have to be a variance request.

Kovacovich opened for public comment.

No public comment was given.

Kovacovich closed public comment.

Grob stated this is a classic situation that we wanted to avoid when we redid the Shoreland Management Ordinance for guest cabins, and reduced the size from duplex lots to a conforming lot. We wanted to maintain size and not have it in the setback zone. To allow this opens up a Pandora's Box for many more like it and ones that we have denied in the past. I am not supportive. I do not see any reason why the structure should be preserved when a new cabin is being built.

Andres asked would you be open to them reducing it to the 700 sq. ft. to keep it?

Grob answered no. No cabin at all.

Petersen asked Buitenwerf if they were interested in adding onto the existing cabin, is there an amount that they can add onto? Or can they do what they want?

Buitenwerf explained it would require a variance for any addition to that because it is in the shore impact zone.

Petersen clarified even to add onto it would require a variance for that?

Buitenwerf agreed.

Andres added the lot is large enough to have a guest cottage and a residence.

Johnson made a motion to approve the application as presented with the following conditions:

1. The tree house must be removed from the property before permits for the proposed projects can be issued.
2. The lot cannot be subdivided or reduced in size in the future.

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

The Board adopted the staff report findings of fact.

### **Findings of Fact**

1. Is the variance in harmony with the general purposes and intent of the official controls?  
Yes ( X ) No ( )

Why or why not? The lot is 3.2 ac. in size which normally would be large enough to allow it to be subdivided into two lots which would then allow there to be the two proposed structures – one on each lot. The way the township road bisects the lot coupled with the large wetland in the north central portion of the lot prevent it from being subdivided. So given the valid

physical difficulties with the lot, allowing two structures on the property on the condition that the lot is never subdivided or reduced in size fits the ordinance intent concerning the allowed dwelling unit density for this amount of acreage.

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 1950s cabin is laid out and built in a way that there isn't any easy way to remove 100 sq. ft. from it or move it to a conforming location. The cabin is in very good shape such that tearing it down doesn't make sense. Adding a second dwelling to the lot that meets setbacks and is larger than the 700 sq. ft. guest cottage threshold is reasonable as the existing cabin is not conducive to being enlarged.

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 3.2 ac. in size and 265' wide such that it normally would be able to be subdivided, but the way the township road bisects the lot and the presence of a large wetland do not allow buildable area minimums to be met. The existing cabin was built in the shore impact zone in the 1950s before the Shoreland Ordinance existed.

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

Yes ( X ) No ( )

Why or why not? The locality mostly consists of similar seasonal residences with a smaller percentage of year-round residences. Lot sizes vary with conforming lots to the south and nonconforming lots to the north. Most of the residences on the other lots in the area meet the 100' OHW setback. The existing cabin has existed since the 1950s and the new residence will be built atop the hill at a conforming setback and screened from adjacent property by existing mature tree cover.

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

Yes ( X ) No ( )

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

**Variance Application 64-V-21 by Allen Poncelet:** Part of the SW ¼, Section 4, Township 139, Range 32, Lakeport Township on Mow Lake, a recreational development lake. Parcel 03.04.01400. Applicant is requesting an after-the-fact variance from Section 704 of the Shoreland Management Ordinance (SMO) to convert an unimproved lot into an improved lot and from Section 511 of the SMO to have more than one RV dwelling unit on the lot. The lot lacks the required two suitable drainfield sites meeting all setbacks and the ability for all applicable setback requirements to be met.

Allen Poncelet, 31552 County Road 23, Akeley, MN, presented the application.

Poncelet stated I am looking for a variance from a 100' setback to a 70' setback. That would bring it to a previously developed area that had a trailer house back up until 2006.

Kovacovich said we saw that there are two trailers on the lot at this time. How do you deal with the septic for those two units?

Poncelet replied I have the pumper trucks come out and pump it out for me. My neighbor and a gentleman that I went to school with have pumper trucks.

Kovacovich asked where do you store that, right in the RV?

Poncelet answered right in the RV.

Kovacovich continued I observed what appeared to be piping off to the side of the lot going down towards the lake. Can you tell me what that is?

Poncelet responded that was hooked up when the campers were first put in. It was never used at the time. Environmental Services came out and said something about it, so I removed that right away. I got ahold of a septic guy and talked to him about it. We eliminated that and did not use it.

Kovacovich asked there is no place here that is suitable for septic tanks and a drainfield, is that correct?

Poncelet replied I wouldn't want to use a drainfield. I would put in a holding tank. My intention is to put a holding tank in it with an alarm system.

Grob asked why do you need two RVs on such a complicated lot? Why do you want two RVs?

Poncelet agreed it is a complicated lot. Basically, we have a completely handicapped foster child in a wheelchair. One of the campers we need for her and for us. The other is for our children when they come out to stay in.

Andres asked how do you get down to the lake?

Poncelet replied I walk.

Andres clarified there was snow cover, but we thought maybe there was a little section of wood planks. It is very steep.

Poncelet agreed. Years ago somebody had some kind of a walkway down there. That is what we are using now. There used to be a log wall in front of where the camper is there. That is where I am looking at a 70' variance at. Down that little walkway where one camper sits, on the right side it went down to the lake right there.

Andres asked where the campers are currently placed, that is where you would prefer to keep them?

Poncelet replied I would prefer to. I would hate to try to clear somewhere else that is out of the high water level, removing more trees, and trying to level it. It is not feasible.

Grob asked you are intending these to be permanently in place RVs?

Poncelet answered no. They will periodically be moved off. They are going to be pulled off sometimes.

Grob stated the one that was there looked pretty permanent to me.

Poncelet replied it has been this last year.

Grob continued what dimensions are they?

Poncelet answered 35' is one of them. The other one was 25'.

Grob stated 25' and 32' are the two numbers in the application.

Poncelet agreed.

Grob continued and the typical road width of 8'.

Kovacovich mentioned the drawing here depicts the RVs next to each other. Is that your intent rather than the one is now parked quite a ways off to the left side of your lot there?

Poncelet stated there was an area in between. That is the area that we wanted to leave for parking cars off the road in between those two camper areas.

Kovacovich clarified so rather than what the drawing here shows, you are proposing that they would both stay where they sit now. That is what you are proposing?

Pocelet agreed.

Kovacovich continued so the drawing is not accurate?

Poncelet explained there is a space between both campers.

Andres asked how many feet?

Poncelet questioned did I put that on the drawing?

Andres said it does not appear so.

Poncelet continued maybe I didn't get that one on there. I would guess 75' over. I could narrow that down if I had to.

Petersen stated it seemed like more than 75' between those two.

Poncelet replied I am just guessing. I am not sure.

Petersen clarified where they are sitting right now is what you are asking for, not what this drawing is showing.

Poncelet agreed. I think I have the length of the footage on there from the nose of one camper to the rear of the other one.

Kovacovich opened for public comment.

No public comment was given.

Kovacovich closed public comment.

Written public comment was received from Robert and Brenda Davis and Mark and Nancy Teal.

Johnson asked how long has the second RV been sitting there?

Poncelet replied that has only been there since the middle or the end of August. There was one there before that was pulled out, and then this one was pulled in. One of our children had Covid and put the camper in there to stay isolated from everyone. Now he wants to leave it there for everyone to use.

Kovacovich asked what is the lot size here?

Andres replied 74,000 sq. ft.

Buitenwerf agreed.

Johnson asked Buitenwerf what does our definition allow if he had a permanent camper on this property? How long could someone temporarily camp next to it?

Grob answered 30 days.

Buitenwerf explained if it were there for 30 days or more it is considered a dwelling. If it was meeting our definition of occasional or intermittent visitors, that would be what is allowed. So, having guests up for a weekend here and there.

Johnson asked is there anything about being licensed in that language?

Buitenwerf replied not for the Shoreland Ordinance purposes, but that would get into more of the Assessor's Department on whether it is personal property and how they value, classify, and tax.

Grob added this is a 74,000 sq. ft. lot and our rule is one RV. Is this lot large enough to have an RV or a structure and a guest cabin?

Buitenwerf replied the lot area certainly is, but the issue on the lot is the slope and the fact that the ordinary high water mark and road right-of-way setbacks overlap by 4'.

Grob stated this lot is probably more conducive just for a single RV.

Kovacovich added it is probably most suitable, given the limitations of the lot with the ordinary high water mark and the road setbacks, for one RV and not a second. I am inclined to think the same.

Grob mentioned there are a couple other violations, a shed and some possible vegetative clearing in the shore impact zone and on a steep slope.

Poncelet responded I actually had the DNR out there. I am letting it regrow. I have planted some shrubs too. The storm that went through two years ago in Nevis, the tornadoes took all those trees down. They were actually broke off and were laying on the shed that was there. The shed has been there since 1960 something. I have been letting it revegetate. I have grass growing out there. I have trees growing. I am actually planning on putting more shrubs and trees out there this next summer. There are about three oaks that are dying off and won't live much longer.

Andres asked this is a seasonal use, it is not your permanent residence?

Poncelet replied no. We have two other properties besides this.

Discussion ensued about the conditions to be placed on the motion regarding the existing storage shed on the property.

Kovacovich made a motion to allow one RV dwelling unit on the lot with the following conditions:

1. A holding tank be installed on the property.
2. All existing Shoreland Management Ordinance violations must be resolved.
3. No additional structures will be allowed on the lot in the future.

Grob seconded the motion that passed 5 – 0.

The Board adopted the staff report findings of fact.

## Findings of Fact

### Deny Original Request

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

Yes ( ) No ( X )

Why or why not? While the lot is 74,300 sq. ft. and almost 300' wide at the shoreline, it is lacking depth such that the 20' road right-of-way and 100' OHW structure setbacks overlap by 4'. The required two suitable drainfield sites meeting all setbacks thus do not exist. Most of the lot also meets the steep slope definition with 24' of rise over 79' of run (30% slope). Placing two dwelling units in the form of two RVs on the lot would thus be an excessive level of development.

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? Given the answer provided for question 1, placing two RVs on the lot is not reasonable. The lot is best suited to a single RV site.

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

Yes ( ) No ( X )

Why or why not? The lot is narrow enough that the 20' road ROW and 100' OHW setbacks overlap by 4'. Also, a steep slope occupies all but the very middle rear portion of 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 mixture of seasonal and year-round residences on riparian lots that vary in size due to the township road that runs behind them and close to the lake. The property on the north side of the road is a large acreage farm. The steep slope on this property runs along most of the north side of the lake. Structures on other riparian lots vary in terms of their OHW setbacks. The other lots have single residences on them. Allowing two RV dwelling units on this lot when setbacks cannot be met and there is no room for even one standard septic system would not be in keeping with the locality's low-density mix of residential lake lots and agricultural use.

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

Yes ( X ) No ( )

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

## Findings of Fact

### Allow Improved Lot with one RV site

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

Yes ( X ) No ( )

Why or why not? While the lot is 74,300 sq. ft. and almost 300' wide at the shoreline, it is lacking depth such that the 20' road right-of-way and 100' OHW structure setbacks overlap by 4'. The required two suitable drainfield sites meeting all setbacks thus do not exist. Most of the lot also meets the steep slope definition with 24' of rise over 79' of run (30% slope).

The lot is thus suited for a single RV dwelling serviced by a holding tank as being the maximum amount of improvement allowed on the lot.

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? Given the lot's lack of depth and the steep slope that occupies most of the lot, a very low level of development in the form of the allowed single RV site with a holding tank is reasonable and 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? The lot is narrow enough that the 20' road ROW and 100' OHW setbacks overlap by 4'. Also, a steep slope occupies all but the very middle rear portion of 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 mixture of seasonal and year-round residences on riparian lots that vary in size due to the township road that runs behind them and close to the lake. The property on the north side of the road is a large acreage farm. The steep slope on this property runs along most of the north side of the lake. Structures on other riparian lots vary in terms of their OHW setbacks. The other lots have single residences on them. Allowing the lot to be improved with one RV site serviced by a holding tank would maintain the locality's low density mix of residential lake lots and agricultural use.

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

Yes ( X ) No ( )

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

**Variance Application 65-V-21 by Birch Harbor Resort:** Lots 1-12, Block 1 and all of Block 2, Birch Harbor, Section 15, Township 141, Range 34, Lake Emma Township on Lower Bottle Lake, a recreational development lake. Parcels 16.77.00100 – 16.77.01100. Applicants are requesting a variance from Section 701 of the Shoreland Management Ordinance to expand a nonconforming use by replacing an uninhabitable structure with an additional dwelling unit.

Gary and Theresa Blakely, 25546 Harbor Trail, Park Rapids, MN, presented the application.

Gary Blakely stated we are requesting to remove the existing mobile home on the lot that is uninhabitable and make it a seasonal RV site. The structure is already tied into the existing septic system and water supply system that is on the resort.

Grob asked you said seasonal RV? You would intend to rent it only to one guest for the whole summer.

Gary Blakely replied yes. They would have to own the RV, and it would just be them. They would not be able to sublet it out to anybody.

Grob clarified would it be removed in the wintertime?

Gary Blakely responded we would prefer that it didn't.

Grob stated then it would be more of a permanent thing.

Gary Blakely replied seasonally used, but permanently on the site.

Theresa Blakely commented the permanency of the RV site would be for as long as that person would sign a lease for.

Grob continued you show a 70' setback. It surely didn't look 70' to me when I was there. Is there any way to verify that? I noticed on the drawing that all the structures show a setback. Where did those numbers come from?

Gary Blakely replied I used a measurement app on a map.

Grob questioned is the yellow line the assumed ordinary high water mark?

Buitenwerf explained no. The yellow line is from the parcel map outlining the plat. It would be somewhere in this weed line.

Gary Blakely said if you go to the lot next to us it is a lot clearer. You can kind of see where his is because his is very well defined and this isn't, but it is right next door so I think it is very similar to following that line.

Grob asked Buitenwerf you can get a dimension off of that, right?

Buitenwerf replied it is on the screen.

Grob stated 72'. 70' does seem like a reasonable number then.

Andres added when you purchased the resort 2 – 3 years ago, the mobile home was vacant and uninhabitable. Have you considered just removing it and keeping it gone, and then you could expand into Tier 2 when it comes to that time?

Gary Blakely answered we have considered that, but right now the cost to build something is pretty prohibiting. We want to explore that in the future, but we thought this would be the easier way to be able to cover our costs for taxes.

Theresa Blakely added not only that, but to cover that eyesore and get the safety hazard out of there.

Andres stated it does need to be removed. I just meant in general to be compliant and have everything in your unit density, if it was just removed in general.

Grob added this was an existing structure, and with it they are one unit over density. Why isn't this just replacing an existing unit that has been there a long time? Why is it an issue now?

Gary Blakely replied we asked the same question to Environmental Services and this is the route they thought we should go.

Grob continued where it is a seasonal RV or whether it is a permanent structure, either way it is one over density.

Kovacovich asked because it is uninhabitable, did they give up any preexisting rights that exist? Is that correct, Buitenwerf?

Buitenwerf replied correct.

Grob asked how long does it have to be uninhabitable for it to be considered no longer valid?

Buitenwerf answered the Statue for nonconformities is if it is discontinued for a 12 month consecutive period or greater.

Johnson asked for a seasonal use?

Buitenwerf clarified for any use.

Grob added the fact that this has been unused for more than 12 months basically voids it. This is, in essence, trying to add an additional residential unit that exceeds Tier 1. If they had to place it someplace else, where else on the lot could they place it? If we talk about other Tiers? Where could you put it so that it is usable or connectable to the existing septic system? It didn't seem to me that there were any other reasonable place and still be able to connect to the septic system.

Buitenwerf explained where the curser is on the screen is the end of Tier 1. Anywhere from that point all the way back to the rear of the property.

Johnson asked you are saying that the previous owner platted that? Those are platted lots?

Buitenwerf answered they have approval for that to be converted to a residential planned unit development.

Johnson continued so he could put a structure in each one of those squares?

Buitenwerf replied the intention of that application was to flip the resort into a residential PUD. They just never exercised that for some reason.

Kovacovich asked can you tell me, Buitenwerf, the home is split between the Tiers, correct?

Buitenwerf agreed.

Discussion ensued about the layout of the Tiers on the lot and possibilities for other options with subdivision.

Kovacovich opened for public comment.

No public comment was given.

Kovacovich closed public comment.

Kovacovich stated I am feeling that based on the infrastructure in place and removing what certainly could be considered a safety hazard and also an eyesore from the lake, in view of the fact that the house is barely in Tier 1 and if it were in fact a few feet further back, we would not be having this discussion, it would be allowed by permit, I am inclined to think that with some conditions this is probably an okay request.

Grob added I am supportive of it.

Andres commented I am supportive in those terms as well because of the portion of the house that is falling into Tier 1, and also the fact that there is septic made for that unit and it is already established. If it was moved into Tier 2, then that is a whole new establishment.

Discussion ensued about potential conditions to be placed on the approval of the variance.

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

1. The additional dwelling unit can only be an RV.
2. The new RV can be no larger than the current footprint of the existing structure excluding the stick-built entryway.
3. The new RV cannot be placed closer to the ordinary high water mark than the existing structure excluding the stick-built entryway.

Petersen seconded the motion that passed 5 – 0.

The Board provided the findings of fact for questions 1 – 4 and adopted the staff report answer for question 5.

### Findings of Fact

1. Is the variance in harmony with the general purposes and intent of the official controls?  
Yes ( X ) No ( )  
Why or why not? The infrastructure is already in place, and the home is just a few feet into Tier 1. The impacts of approving this are very minimal and would be within the general purposes.
2. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?  
Yes ( X ) No ( )  
Why or why not? It was a resort and was always used as a permanent mobile home there, and they are proposing it would be an RV site where the infrastructure is in place.
3. Is the need for a variance due to circumstances unique to the property and not created by the current or prior property owners?  
Yes ( X ) No ( )  
Why or why not? This was, up until the time it was no longer used, it was fine.
4. Will the issuance of the variance maintain the essential character of the locality?  
Yes ( X ) No ( )  
Why or why not? By removing the trailer it will improve the character by removing a safety hazard and what could be viewed as an eyesore for something more desirable.
5. Does the stated practical difficulty involve more than just economic considerations?  
Yes ( X ) No ( )  
Why or why not? Economics are not cited in the application as a practical difficulty.

**Variance Application 66-V-21 by Carter Erickson:** Lot 5, Block 2, Birchwood Estates, Section 18, Township 141, Range 33, Mantrap Township on Ojibway Lake, a recreational development lake. Parcel 20.44.00500. Applicant is requesting an after-the-fact variance from: Part 1: Section 502.2 of the Shoreland Management Ordinance (SMO) for a house and lakeside platform located within the 100' ordinary high water mark setback. Part 2: Sections 901 and 902 of the SMO for grading/filling in excess of permissible volume and creating an area void of permanent vegetative ground cover on a steep slope.

Carter and Rachel Erickson, 21519 250<sup>th</sup> Street, Park Rapids, MN, presented the application.

Carter Erickson stated I think all the variance requests were covered. This started about six years ago. We wanted to do these projects mainly because we wanted to take down the existing deck. It was an unsafe structure. We noticed some erosion in certain places coming down from the eastside stairway that comes from the driveway down toward the fire pit and then leads to the lake area. We went into Environmental Services to inquire about permits. The discussion focused on setback and it appeared like we had met them, but apparently we have made some mistakes. We are here to try and correct those. I think all the variance requests were stated unless you would like me to restate them. There was a platform that we put in the existing footprint of the deck. There was some fill brought in and a flat area off that platform held by a retaining wall. Then some improvements were made to the fire pit. It started with a French drain with a lead out to decrease the erosion that was coming down from there, and then just to make it a flatter, safer surface where the fire pit was put in. The way we inherited it was numerous large boulders that were so big that they shaded things out. There really wasn't any vegetation, and it didn't seem like a very comfortable place to have guests sit by the fire. Those were repurposed for the wall, and then we flattened things out so if people got up from a chair they wouldn't topple into the fire.

Grob asked the platform that you now have is basically is the same size as the deck that you removed?

Carter Erickson replied correct.

Grob continued so you have retained basically the same footprint with that platform. The fire pit area, although larger than what would normally be allowed for an area like that, is pea gravel. Most of the runoff goes what direction from that? The runoff from the east side of the house goes into the fire pit area?

Carter Erickson explained into the French drain and then underneath.

Grob stated there is a French drain that channels it down into your highly vegetated area on the east side.

Carter Erickson agreed.

Grob stated that fire pit area, although larger than a normal platform, is a stormwater control structure. That is how you designed it?

Carter Erickson agreed.

Kovacovich opened for public comment.

No public comment was given.

Kovacovich closed public comment.

Andres asked Buitenwerf in the future if the owners decide that they do want a deck off the sliding glass door on the second level, do they have to come back for a variance? Or do they meet setback?

Buitenwerf explained the sliding door is roughly centered from what I can recall on the cabin. There is the possibility of putting a deck on there with a permit due to the house being measured at 108.4' one way and 93.9' the other. If they would not extend the deck the full width of that side of the cabin so that it would comply with the 100', it is possible that they could do it with a permit.

Andres clarified so the current applicants, or future owners, could have that option by permit if they meet setback doing a partial deck.

Buitenwerf continued it kind of hinges on the outcome of this evening and whether a condition is placed.

Carter Erickson asked if a variance is approved for the platform, could a future deck, in the same footprint that the old deck, be approved without a new application? Or would that have to be a new application the way things stand? We didn't have imminent plans, but you brought up the question.

Buitenwerf explained the application doesn't include that, and the public notice did not make mention of a lakeside deck. You could amend the request. Then we would need to table it so that we could renote properly to include the deck, and then the Board could entertain that at the December meeting.

Carter Erickson stated there is not an imminent plan to do it.

Rachel Erickson stated we like it better without the deck. There is a better view of the lake.

Andres commented the house meets the ordinary high water mark setbacks from the south shoreline, and it is only 6' shy from the other shoreline.

Discussion ensued about the possible conditions to the approval of the variance.

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

1. No additional footprint expansion of the house is allowed.
2. The fire pit must be kept functional in its stormwater control/retention area function to protect the lake from stormwater runoff.

Johnson seconded the motion that passed 5 – 0.

The Board adopted the staff report findings of fact and added the last sentence to the answer for question 1.

### **Findings of Fact**

1. Is the variance in harmony with the general purposes and intent of the official controls?  
Yes ( X ) No ( )

Why or why not? The house meets the OHW setback from the south shoreline and is only 6.1' shy of meeting the setback from the east shoreline so it is largely compliant with the setback. The platform is in a similar situation relative to these two OHW setback measurements. The retaining walls and related grading work are reasonable in scale and allow the area near the house to be more functional which thereby reduces the pressure on the rest of the lot being converted from its natural wooded state which is to the lake's benefit. Given the lot's steep terrain, the house is sited on the most suitable spot on the lot. The fire pit area serves as a stormwater control/retention area, which protects the lake from stormwater runoff.

2. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?  
Yes ( X ) No ( )

Why or why not? Having a residence with a lakeside platform and some landscaping to provide a level recreational area given the lot's steep slope toward the lake is reasonable especially since all the rest of the lot has been left undisturbed in a natural state. Requiring the house to be moved to gain 6.1' of OHW setback from one of two shorelines on the lot when there really is not an alternate suitable spot on the lot for the house 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 lot is uniquely shaped with lakeshore along the south side and half of the east side which leaves little room on the lot to meet the 100' OHW setback and also the 150' OHW setback for the septic system drainfield – and then fit in a detached garage and driveway in the remaining space. Most of the lot is also made up of a steep slope with the house having been placed on the sole spot that was level enough to be conducive for such.

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

Yes ( X ) No ( )

Why or why not? This lot is part of a 14 lot plat created in 1978 so the development of the lots has been in compliance with the Shoreland Management Ordinance. The lots are put to a mix of seasonal and year-round residential use. The requested variances will not harm the locality's residential character. The adjacent lot to the west is a State public access.

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

Yes ( X ) No ( )

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

#### **Miscellaneous:**

**Communications:** Buitenwerf stated there will be a December meeting, maybe 3 – 5 new applications.

Kovacovich asked when do we elect new officers? Is that at the January meeting?

Buitenwerf explained if we have reason to hold a January meeting.

Kovacovich stated otherwise it would be the next meeting after the first of the year. I would consider being Chair again if you desire, with the understanding that I am going to need a lot of help if we are going paperless, and the other thing is that I know there are two or three meetings that I potentially will miss due to travel.

#### **Adjournment:**

Kovacovich made the motion to adjourn.

Andres seconded the motion.

The motion carried unanimously 5 – 0.

The meeting adjourned at 9:14 p.m.

Respectfully submitted,

Staci Lee

Recording Secretary