

HUBBARD COUNTY

Planning Commission/Board of Adjustment Meeting Minutes

6:00 p.m. on Monday, September 23, 2019

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

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

Planning Commission:

Approval of Minutes: August 26, 2019

Kovacovich made a motion to approve the minutes as presented.

Johnson seconded the motion that carried unanimously 5 – 0.

Old Business: None.

New Business:

Final Plat Application of Paradise Point by Burton Manz: Part of Government Lots 6 and 7, Section 22, Township 143, Range 34, Lake George Township on Lake George, a recreational development lake. Parcels 17.22.00700 and 17.21.01410. Applicant is proposing to subdivide 51.9 acres into 10 riparian lots.

Burt and Deb Manz, applicants, and Matt Murray, surveyor, presented the application.

Murray stated the preliminary plat has already been approved. It was to create 10 lots as indicated. There has been one change since the preliminary plat was approved. In the southeast corner of the plat, there was an "Outlot C" proposed. After additional research, we found out that was already subject to a highway easement as shown on the right-of-way map. We ended up just eliminating "Outlot C" and dedicating it to the public as part of the public road. This way we don't have a substandard parcel to figure out what to do with or who will own it in the future. Otherwise the plat is as presented on the preliminary plat.

Grob asked Buitenwerf has the paperwork for that dedication been done such that all we have to do is basically say yes we agree with that?

Buitenwerf replied between what is already on record with the Highway Department's work on the road, plus what Mr. Murray has put together in the plat document itself, the two of those together take care of the issue.

Grob continued and the Commissioners have approved the preliminary plat as it was proposed?

Buitenwerf replied correct.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Grob made a motion to approve the final plat as proposed with the action on "Outlot C" to the County Board for approval.

Andres seconded the motion that passed unanimously 5 – 0.

Christenson left the meeting after action on the motion was taken.

Board of Adjustment:

Approval of Minutes: August 26, 2019

Kovacovich made a motion to approve the minutes with one correction on page 26 to change the word deck to platform in condition 1 of the motion.

Johnson seconded the motion that carried unanimously 5 – 0.

Old Business: None.

New Business:

Variance Application 36-V-19 by Daryl Bessler: Part of Government Lot 2, Section 16, Township 143, Range 34, Lake George Township. Parcels 17.16.07400 and 17.16.06200. Applicant is requesting a variance from Sections 501.2, 1001, and 1003 of the Shoreland Management Ordinance and Section 4, Subdivision A.1.a.2 of the Subdivision Ordinance to adjust a boundary line between two nonconforming tracts in a way that will make one tract more nonconforming.

Daryl Bessler, 37238 US 71, Lake George, MN, presented the application.

Bessler stated the first part of this is to correct a problem that was created when there was a boundary dispute back in 2004. The original lots that I had were about 2 acres and .79 acres. When the result was made, the attorneys and the surveyors managed to take the property and split it to 1.4 acres each. The lot that my house is on has other buildings. I want to return the lot, as close as I can, to that 2 acres and put the other one back to .79 acres. My intention is to build a cabin on the other lot. Both lots are nonconforming. I am trying to clear up that problem and move forward with the cabin. I would also note that there was a trailer at one time on that. There was a garage on it. I have had a site inspection done for the septic on the other lot and everything was fine there.

Grob said there are several numbers thrown around in terms of the acreage. What is it now? As I look at the drawings, I get confused with the numbers.

Bessler replied 1.93 acres and then .79. That is what they were originally. The one lot was over 2 acres, but when Highway 71 came through, they took some of that; so it put it down to 1.93 acres. The other one had been .79, but when this resolve was made I didn't catch that they made them both 1.4 acres. I am trying to get that back to the closest I can. Under the proposal that was drafted, it would be .9 acres and 1.8 acres.

Grob said I look at the numbers on this drawing, the one for "Tract 1" shows 1.2 acres. That is what is proposed?

Bessler replied according to my tax statement, it is 1.4 acres and 1.4 acres. "Tract 1" was the larger lot, but they are now both 1.4 acres as they were recorded back in 2008. Again, that was something that I didn't realize had happened.

Grob added when I look at that drawing, I see the odd shaped one, which is what I think you called "Tract 1". And "Tract 2", there are two blocks there.

Bessler replied one is the neighbors.

Grob continued when I read what is left over, it says "Tract 2" is being proposed at .5 acres?

Bessler answered I believe it is bigger than that.

Grob explained that is why I am confused. It says "Tract 2" is .9 acres with the right-of-way; .7 without. Then inside the block it shows .5 acres. When I think in terms of .5 acres, which is a little over 20,000 sq. ft. which is substantially smaller than a lot needs to be. I would like to clear up the numbers.

Buitenwerf said I believe that .5 acres that you are referring to is the residential lot suitable area for "Tract 2" as proposed. The surveyor's documentation does lend to the difficulty in knowing what numbers indicate what.

Grob clarified that is suitable acres?

Buitenwerf replied suitable area. The .9 would be the acreage including the right-of-way for "Tract 2".

Grob asked and the lot actually crosses over Night Hawk Road, if I remember from the drawing.

Buitenwerf agreed.

Johnson asked on the neighboring lot, did that owner now previously own either one of your lots?

Bessler asked across the road?

Johnson said no, "Tract 1" and "Tract 2".

Bessler replied no that was previously owned by Mr. Ackerman.

Johnson continued so that adjoining lot there, that was the property that you had the dispute with?

Bessler agreed. Over a period of 4 years we did get it resolved. There is a fence there and the plan is to take that right across. It is bigger than it was originally, even that particular lot.

Johnson stated in the past, the property line before that happened was just fine with you and you came home and there was a fence up?

Bessler replied that is right, there was.

Kovacovich asked on the smaller of the two lots, is there ample room for a septic system and an alternate site for the drainfield?

Bessler answered yes there is.

Grob said for a non-riparian lot there is an 80,000 sq. ft. requirement. That is about 1.8 acres. Do you intend to sell that lot? You own both of them. You could consolidate the whole thing into one big lot and build a guest cabin. What is your long term intent with the land?

Bessler replied I lost my wife three years ago and I don't want that large of a home, it is a five bedroom home and I don't need a house that big. I am getting married in less than a month and we will be trying to downsize. We are going to try to find a place that is ground level with no steps. Something that will be smaller. My son wants to have that other lot. I said I would build a cabin and he can buy it from me.

Grob asked and then you would sell the original lot?

Bessler agreed.

Grob asked on "Tract 2", the one that your son is going to have, wouldn't it be more value in the long term to retain the larger acreage rather than downsize it? I don't see that adding that extra acreage to your "Tract 1" is adding any value. I am trying to figure out the logic here.

Bessler answered my logic is simply that I have more buildings. I have several buildings on the "Tract 1" where my house is located. My son is not interested in more anyway. The surveyor basically suggested trying to go straight across and that is how it ended up.

Grob stated there really is no practical difficulty in having those jagged lots.

Bessler said I just want it to be closer to what I had. I have a five bedroom home, I have a garage, I have two out buildings, and I have a wood boiler on that lot as well. It is closer than it needs to be. I want more space for that. There was a trailer over on that other one. It was small. It was only .79 acres and this is .9 acres, so it is getting bigger.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Grob added I want to confirm what he is basically saying. This is the current layout of the lots. He wants to draw a straight line across the bottom of the arrow.

Andres asked Buitenwerf regardless if this is approved or not, he would require a variance to build on that smaller lot anyway, or can he do it by permit?

Buitenwerf replied my guess would be with a variance, but I would have to do further research to say for sure.

Grob added because it is non-conforming.

Petersen asked Buitenwerf is it a possibility, the way the lot is configured now, he might be able to build on it by permit? You are not sure, is that what you are telling me?

Buitenwerf replied correct. I would have to do some research because of the history with the prior subdivision that Mr. Bessler has described.

Johnson stated in your proposal you showed a 36' x 40' structure on that "Tract 2". Would you have any problem of having that a condition, that it doesn't ever exceed that?

Bessler replied not at all. My son does not want anything big at all. We would have no troubles with that at all.

Grob asked once again, can you show me the drawing of the original? Why wouldn't you just extend one line just a short distance that squares off the new lot? Then that little piece to the west would just be part of your original lot. Why wouldn't you do that?

Bessler replied because actually I want to have more buildings on my larger lot. I want to get it close to what I had. I do understand that it was over 2 acres to begin with. Then the road came through and took some. Then they took some more when we had the dispute. Again, the attorneys and the surveyor are the ones that made that determination, otherwise I would not have. I should have known what they did, but I really didn't. It got resolved and I trusted their judgement.

Grob asked how long did it take for you to discover that they had done that? You settled in 2008. Was it immediately afterwards?

Bessler answered I didn't pay much attention until I stated looking at this. I guess it is on the tax statement too, but I didn't really notice it because it didn't make a big difference in the tax payment at all.

Grob asked do you think they did that because they understood the requirements for a non-riparian lots and they wanted to make both of them closer to legal conforming lots?

Bessler replied I seriously doubt that, but I don't know for sure. If you look at the other lot that is my neighbors, even with the changes, my lot is bigger than that. If you look around, you will find that my lot is significantly bigger than the lots around there. I would also remind

you that this particular lot did have a trailer on it. I took it off. I have taken some other buildings off of it too. I want to try to put up a nice looking cabin.

Grob asked are we sure that what you are proposing would have adequate space for a well and two alternate sites?

Bessler responded yes.

Petersen added just for clarification, we need one primary septic and one alternate site, right? And we have that?

Johnson replied yes.

Johnson made a motion to approve the variance application with the following condition:

1. The proposed structure on parcel 17.16.06200 must not exceed the 36' x 40' footprint shown in the application with no more than 2' soffits and stay in the location that it is being proposed in the application.

Petersen seconded the motion that passed unanimously 5 – 0.

The Board provided answers for findings of fact questions 1 and 3. They adopted the staff report answers for questions 2, 4, and 5.

Findings of Fact

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

Yes (X) No ()

Why or why not? This isn't going to negatively affect the lake. It is all usable high ground with medium sand texture. Adding this condition will keep it in harmony.

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 proposed lot line reconfiguration is reasonable in that it will provide a single straight boundary line rather than the current jumble of three short boundary lines that form very sharp ninety degree angles.

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 dispute was initiated by someone other than the owner and resulted in the change of the lots.

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

Yes (X) No ()

Why or why not? The area consists of a mixture of seasonal and year-round single family residential lots that are all improved. Some of the lots are similar in size to the two subject lots while others are much smaller – half the size or less. There is no additional undeveloped land in the neighborhood. Thus the adjustment of the boundary line will not have any noticeable negative effect on the locality's character.

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

Yes (X) No ()

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

Variance Application 37-V-19 by Ron and Wendy Opheim: Lot 12, Bannister's Fifth Crow Wing Addition, Section 30, Township 140, Range 33, Nevis Township on 5th Crow Wing Lake, a recreational development lake. Parcel 21.48.00800. Applicants are requesting a variance from Section 702 of the Shoreland Management Ordinance for a proposed addition to a nonconforming structure located in the shore impact zone.

Ron and Wendy Opheim, 22716 Deep Wood Lane, Nevis, MN, presented the application.

Ron Opheim stated we are here for a variance on the screen porch that we are looking at doing. Our entrance to the structure is falling apart. We are looking to increase the room in our entry way going into the cabin and also a little more storage.

Grob stated my one observation there is that the way the lot is, and the neighboring lot to the west, they are pretty susceptible to water runoff. If we approve the variance I would like us to think about having all of the rain gutters on the house set up such that all of the water runs to the west, or the left as you face the lake. There is more vegetation there. The rest of the lot is close to the lake. It's not a very large lot that is subject to runoff and erosion to the lake.

Grob continued the GIS map showed the property line going right through your home.

Buitenwerf explained that is why there is a disclaimer that opens right at the start of the GIS application that says to take the parcel map with a grain of salt.

Grob asked you know where your property line is?

Ron Opheim replied yes, I have located the stakes.

Petersen asked Buitenwerf you mentioned vegetative planting as a possible condition to an approval of this. Did you have anything specific in mind there?

Buitenwerf replied no.

Grob added I will talk to that. I tried to look at that and it didn't seem practical as a solution, which is why I was proposing rain gutters in front and back of the house. They can direct the water to the left. That is a better solution than trying to do something at the shoreline. That was my view for mitigation.

Petersen said the shoreline was better over there?

Grob continued it just didn't seem reasonable to force a 15' or 25' buffer zone. It is better to try to direct the water into a rain garden that sits to the left. If we could put a condition on to do that for mitigation.

Andres asked Grob are you also wanting them to have gutters on the proposed porch?

Grob replied they would have to. The porch and the whole rest of the house. Everything would have to be guttered such that all water would be directed into that holding area.

Ron Opheim asked you are talking the lakeside also?

Grob said yes.

Wendy Opheim added do you remember the slant?

Grob corrected not the front, the backside.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Grob made a motion to approve the variance request with the following condition:

1. Gutters must be installed on the backside (i.e. non-lakeside) of the house, including the porch, such that all the roof water runoff is directed to the west side of the property.

Andres seconded the motion that passed unanimously 5 – 0.

The Board adopted the staff report findings of fact.

Findings of Fact

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

Yes (X) No ()

Why or why not? The addition is only 180 sq. ft. in size and being added to the rear of a 1080 sq. ft. cabin that was built in the shore impact zone before the ordinance took effect. Adding to the rear of such a cabin is most in-line with the ordinance's

intent. The scale of the addition relative to the cabin's size and the cabin's condition do no warrant requiring the structure to be moved back to a greater OHW setback.

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? Adding a 180 sq. ft. screen porch to the rear of a 1080 sq. ft. cabin that will not be visible from the lake is a reasonable use of the property that is in-line with the ordinance's intent.

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

Yes (X) No ()

Why or why not? The cabin was built before the ordinance was enacted in the shore impact zone. The ordinance does not allow additions to structures in the shore impact zone. These factors were outside of the current or prior owners' (since the ordinance took control) control.

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

Yes (X) No ()

Why or why not? The neighborhood is made up of seasonal and year-round single family residences on riparian lots of varying width and large non-riparian tracts that are in a mix of private and public ownership. While the residences on all other lots meet the 100' OHW setback with one being ~85' from the OHW, the scale of the proposed addition to this cabin located in the shore impact zone will not affect the locality's character.

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 difficulty. The difficulty is due to the structure being located in the shore impact zone and constructed prior to the ordinance's enactment.

Variance Application 38-V-19 by Bryan Wormley: Part of Government Lot 3, Section 16, Township 141, Range 33, Mantrap Township on West Crooked Lake, a natural environment lake. Parcel 20.16.00110. Applicant is requesting a variance from Section 701 of the Shoreland Management Ordinance for a proposed new structure to be added to a nonconforming use.

Bryan Wormley, 25951 County 6, Nevis, MN, presented the application.

Wormley stated we are seeking a family gathering area. We have an office for the resort. It is kind of a lodge, but it is a family gathering picnic area in place of our sand volleyball. It is across the road from the lake.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Andres asked your application stated that it is going to 1 ½ - 2 stories high. What are you proposing to be in the upper level?

Wormley answered I don't have 2 stories. I think I listed maximum height of 16' with 10' sidewalls. If it lists that, it is a mistake.

Andres said thank you for the clarification.

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

Petersen seconded the motion that passed unanimously 5 – 0.

Findings of Fact

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

Yes (X) No ()

Why or why not? The proposed structure complies with all setbacks and will be hundreds of feet away from neighboring properties and the lake and separated from these items by dense tree cover. Were it not for the nonconforming use status of the resort, the proposed structure could be built by permit.

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

Yes (X) No ()

Why or why not? Having a game room and gathering structure for resort guests during inclement weather is a reasonable use of a resort property where such structures – often labeled “lodges” – are commonplace.

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's use is nonconforming and commenced prior to the ordinance. The ordinance requires variance approval to add a structure to a nonconforming use.

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

Why or why not? The structure is 270" + from the next property to the north, ~350' from the nearest property to the south, 570' from the nearest property to the east, and at least 280' from the OHW. The property is heavily wooded so the structure will not be visible outside its immediate radius on the resort property. The structure will be used by existing resort guests and therefore ought not to increase the use's intensity in any detrimental way.

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 difficulty. The difficulty is due to the property use being nonconforming and the ordinance requiring variance approval in order to add a structure to the property.

Variance Application 39-V-19 by Victor and Laura Biegler: Lot 8, Palmer Pines First Addition, Section 29, Township 139, Range 33, Crow Wing Township on Palmer Lake, a natural environment lake. Parcel 06.44.00700. Applicants are requesting a variance from Section 502.1 of the Shoreland Management Ordinance for a proposed residence to be located within the 150' ordinary high water mark setback.

No applicants were present.

Petersen opened for public comment.

Kent Eimers, 23409 County 109, Menahga, MN, stated I am on the board for the Palmer Lake Association. There was a letter and email sent in opposing the variance. I am also two cabins down and personally my wife and I oppose. We want to stay with the 150' setback.

Petersen closed public comment.

Written public comment received from:

- Board of Directors of the Palmer Lake Association.

Grob added when we were out there, our observation was that there would be adequate room to move it back to the 150' point. We looked where the septic system was. We felt there was still room for a garage and to meet the right-of-way setbacks from the road. If I recall, the application also said the current structure would be completely decommissioned as living quarters. Could we approve a variance with those conditions without anybody here, Buitenwerf? Do we have only the choice of denying or tabling it?

Buitenwerf replied no, the application should contain the information you need with which to make a decision, coupled with what you saw during the lot viewal.

Kovacovich said, Buitenwerf, it is my belief that there is room to move this back within the setbacks and he could therefor build by permit, is that correct?

Buitenwerf answered that would be staff's recommendation and assessment of the property.

Grob added because he has, basically, a guest cabin.

Kovacovich asked they could decommission that and then build by permit?

Buitenwerf replied correct.

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

Andres seconded the motion that passed unanimously 5 – 0.

Findings of Fact

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

Yes () No (X)

Why or why not? There is room on the lot to place the proposed house in conformance with all setbacks by permit. Granting a variance when a permittable option exists would not be in keeping with the ordinance's intent.

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

Yes (X) No ()

Why or why not? The existing cabin that will be replaced by the proposed modular home is very small in size and not insulated. The proposed year-round structure is reasonable in size and also a reasonable use for what is proposed to be a year-round retirement home.

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

Yes () No (X)

Why or why not? The applicants have informed staff that they have plans of building a detached garage on the property by permit between the proposed house site and road. The variance need for a reduced OHW setback for the proposed house is because the applicants also want to place a detached garage on the lot.

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

Yes (X) No ()

Why or why not? The neighborhood is primarily comprised of seasonal single family residences on platted lots that are the same size as the subject lot. The structures on the neighboring lots are reasonably small in size and located at varying setbacks that range from 65' – 120' from the OHW. Most of the lots are minimally improved. Only one has a detached garage. The rest only have cabins on them.

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

Yes (X) No ()

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

Variance Application 40-V-19 by Crow Wing Crest Lodge: Part of Government Lot 1, Section 15, Township 141, Range 32, Akeley Township on 11th Crow Wing Lake, a recreational development lake. Parcel 01.15.00710. Applicant is requesting a variance from Section 701 of the Shoreland Management Ordinance for replacement of a structure that is part of a nonconforming use.

Kim Bowen, 31159 County 23, Akeley, MN, presented the application.

Bowen stated we are remodeling cabin 4, which is our oldest cabin. It was built in the 1920s. Right now the current dimensions are 34' x 21 ½' and we are hoping to just square it off when we rebuild it. 34' x 22'. We want to square that off because it is simpler to build that way. The original variance had a little knock out on the back and after some thought, and some discussions with you, I am concerned about runoff going to the backside of the cabin. A second reason to square it off would be just to have all of the water go off to the sides. The third reason is just a few more feet for wheelchair access inside.

Kovacovich stated when we looked at it, one of the big concerns was the big oak tree in the hillside. I am wondering why you don't ask for what we approved last time, which was 130' feet. That would give you more latitude to site that building with the other cabins and also have less impact on the hillside and the tree.

Bowen added I have already thought about that and I really appreciate that advice. I think I will take that actually. I was a little concerned that it would be too far out, but I think I will just take the whole allowance. I think that would be best to get it away from that tree. I do love that tree and I would really like to save it. So yes, instead of just 6' away from the hill, I think you are right. I should just move it as far as I can. You guys allowed 15' and that would be a wise choice.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Andres added to keep in mind, her deck cannot go past that 130' as well?

Kovacovich stated what we had approved the last time.

Grob made a motion to approve the variance application with the new structure dimensions with the following conditions:

1. the cabin is allowed to be placed at a 130' setback from the ordinary high water mark, and
2. no additional dwelling units will be allowed in Tier 1.

Kovacovich seconded the motion that passed unanimously 5 – 0.

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

Findings of Fact

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

Yes (X) No ()

Why or why not? The cabin location is 30' further from the lake than the required 100' OHW setback. The footprint of the cabin will only change a few hundred square feet and the height increase to 18' is still very reasonable. The number of dwellings in the resort is not changing. The cabin sits in the middle of the property that is over 1000' wide and 1200' deep so it will not negatively impact any neighboring landowner or pose any aesthetic impacts to people using the lake. It makes sense to increase the cabin size to allow it to meet code requirements and accommodate customers with disabilities.

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? Increasing the size of a 1920s cabin so that it is able to meet various code requirements is a reasonable use of the property...especially when the proposed cabin will have almost the same footprint as the existing cabin and it will be located 130' from the ordinary high water mark.

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 ordinance requires a variance to alter a structure that is a part of a nonconforming use. The resort use predates the ordinance. The ordinance requirement was not created by the current or prior landowners.

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

Why or why not? This resort has been in operation for decades. The proposed cabin replacement is located in the middle of the property which is just over 1000' wide so the proposed location will not affect any neighboring properties. The cabin will sit 130' from the OHW and is screened from the lake by several mature trees on the property so the added 9' of structure height will not pose any aesthetic issues for parties recreating on the lake. The property is also nearly ¼ mile deep so the increased structure height will not impede the lake view of any back lot landowners as there are none.

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

Yes (X) No ()

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

Variance Application 41-V-19 by Steve and Diane Winkels: Part of Government Lots 4 and 5, Section 29, Township 140, Range 34, Henrietta Township on Long Lake, a recreational development lake. Parcel 13.29.01200. Applicants are requesting a variance from Section 702 of the Shoreland Management Ordinance for proposed additions to a nonconforming structure located in the shore impact zone.

Steve Winkels, 21445 Farwell Avenue, Fairbault, MN, presented the application.

Winkels stated what we want to do is on the backside of the cabin, away from the lake. We want to add a section that is 16' x 28' in order to give us a little more room in the cabin. We would go from 2 bedrooms to 3 and add a utility room. On the west corner we would add a section that is 8'8" x 9'4" just to make the kitchen slightly bigger and add to the dining area also. We have to replace the entire deck. We would use the exact same footprint that is there, not any bigger. The south end of that, we would then enclose like a screen porch.

Johnson asked Buitenwerf if he kept that deck exactly the way it was, would he need a variance for that? The deck without the screen porch.

Grob asked to rebuild it you mean?

Buitenwerf answered assuming that was legally placed initially, it could be rebuilt by permit to the same dimensions.

Johnson asked you bought this in 2012?

Winkles replied yes.

Johnson asked do you use this year-round?

Winkles replied no.

Petersen asked Johnson about his opinion of the septic system as it sits right now.

Johnson stated that is why I asked the question that I did, because as it sits right now I think that it probably is fine with the use.

Petersen asked and adding an extra bedroom?

Johnson added it would require it to be totally changed.

Petersen said I am just asking your opinion. After viewing those photographs that we did, is that not enough information to say that the system could be made compliant? Or would he have to replace it?

Johnson answered I am not exactly sure. On the site, I asked the owner for the depth of the well. I was trying to get a handle on how far that septic was away from it. He thought the depth might be 50'.

Winkles responded I have been told that it is a 50' sand-point well.

Johnson continued on the compliance inspection it said that it is shallow. That can all be changed, but with the addition of the bedroom; I am not completely sure.

Petersen stated what I was getting at is that if he adds a bedroom, would we approve this if he is going to need a new experimental system? He would have to replace that existing system in the same spot, because we have no other area to do it. That is our option.

Buitenwerf replied correct.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Winkles asked when we did the walk around the other day, there was talk about just making the present drainfield larger. I thought some of you thought it could be done that way.

Johnson stated I couldn't tell exactly where that septic was, if it was underneath the driveway. I couldn't tell exactly where your property line was, that wasn't marked. The septic system wasn't marked. It shows it under the road on the map, but it doesn't show dimensions. I am not sure that I could add onto that with the information I had. If it was about where you are saying it was, there is limited space. I wouldn't be in favor of putting another bedroom on because of only that amount of space up in that corner.

Petersen asked if someone in the field were to go out there, would they be able to determine whether that system could be added onto by more work in the field?

Johnson replied it would, but the way the topography is. I believe yes, I could add on to make it fit a 3 bedroom.

Petersen added through further investigation, you mean.

Johnson answered yes, but that would be taking up more room than what is there, which I think should be left for an alternate.

Andres said I follow along the same path. With no alternate site to accommodate that third bedroom, I have difficulties approving that as well. The only thing that I foresee as a possibility is the expansion on that 8' x 8' kitchen. He can do a new deck by permit, of course not with the screen porch. I don't foresee approving going closer to the lake with the screen porch.

Petersen added I concur with that. It is one thing to replace those decks as they are, but to bring the structure out on top of them with that porch; I would really struggle with how I would answer that with our findings of fact. That is not what the ordinance is looking for there. I would have a problem with that. I am still hung up a little bit on if whether we have good information on your existing septic system and whether you have any options or not there. It seems like with the information we have, you don't have the option to add a bedroom.

Grob stated I think I am with you and Andres. This is a small lot, about half the required size. They are in the shore impact zone. I do not believe it is consistent with the harmony of our Shoreland Ordinance to build any kind of living area, such as a screen porch, to the front of the building. I don't know about the addition to the back because I don't understand the septic information. The only possible thing might be the kitchen. I am not in favor of building toward the lake at all.

Petersen asked Buitenwerf if we were to go along those lines, it sounds to me like we would be perhaps in favor of allowing part of this. Does that mean we deny this as it sits? Would that be the recommendation? How best would we accomplish this?

Buitenwerf replied if that is the Board's desire, staff would recommend acting on the original application. Once that action had been taken, if you would entertain a different motion, then entertain that motion and then do separate findings to support that. Your answers are going to be different for a denial than an approval.

Grob asked did I hear a yes to the fact that the addition to the kitchen could be done by permit, or would that require a variance too?

Buitenwerf explained because the structure is in the shore impact zone, any additions would require a variance approval.

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

Grob seconded the motion.

Winkles asked what if we postponed it until I have someone come in and evaluate the septic, so we know exactly where everything is and we can make a decision based on that whether it can be added to or not?

Johnson responded that is what I was talking about as far as where it is at and the topography. What is there, I would save for an alternate. In order to put your bedroom on, you would have to expand.

Winkles continued what would the alternate entail?

Johnson answered an alternate is what you have right now for when it eventually fails and you need to put in a new system for your two bedroom.

Winkles asked can a new system be put in for a three bedroom?

Johnson replied it could, yes.

Winkles asked in the same spot or a different spot?

Johnson answered a designer could get that in there, but they would take more of that land. That is where we made the decision about that.

Petersen asked you are saying that if you expand the system there is no alternate site.

Johnson replied it is pinching it down there tight.

Kovacovich added the motion is on the table and seconded. I would suggest that we vote on that and if in fact the desire of the applicant is to move forward, he submit a new application with a lot more details. As it is, there are other portions of the application that are equally tough to approve. I would ask that you call the question.

Petersen asked for the vote.

The motion passed unanimously 5 – 0.

The Board adopted the staff report findings of fact.

Findings of Fact

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

Yes () No (X)

Why or why not? The cabin is old and 34' from the OHW, and the scale of the proposed additions is a large enough percentage of the existing cabin square footage that it makes sense to look at constructing a new structure at a greater OHW setback on the lot. Allowing an addition to the home to extend another ~9' lakeward would not fit the ordinance's intent of moving things away from 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? The cabin is modest in size by today's standards and thus the proposed additions are not unreasonable space additions. The aspect that is not reasonable is the fact that the proposed screen porch would encroach 9'+ lakeward on a cabin that is only 34' from the OHW.

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

Yes (X) No ()

Why or why not? The cabin was built in the 1920s at a nonconforming OHW setback before the 1971 enactment of the Shoreland Management Ordinance.

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

Yes () No (X)

Why or why not? The neighborhood is a mixture of two resorts, a year-round residence, a residential planned unit development, and year-round residential backlots. Most structures in the area meet the 100' OHW setback. Allowing the proposed addition to go lakeward on a structure that is already very close to the shoreline would not be in keeping with the locality's character of most structures being much further from the lake and effectively vegetatively screened from the lake.

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

Yes (X) No ()

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

Variance Application 42-V-19 by Gary and Connie Kennedy: SW ¼ of the SE ¼, Section 36, Township 143, Range 32, Lakeport Township on the Kabekona River, a Tributary. Parcel 19.36.01000. Applicants are requesting a variance from Section 502.7 of the Shoreland Management Ordinance for Part 1: Ordinary high water (OHW) mark and right-of-way (ROW) setback variances for a proposed accessory structure and Part 2: OHW and ROW setback variances for a proposed RV site and vehicle parking area.

Gary and Connie Kennedy, 34146 331st Avenue, Laporte, MN, presented the application.

Gary Kennedy stated we feel this is a very unique situation. This has been in my family since 1950. Highway 200 runs through the property as you can see. All through those years, due to a 200' right-of-way on the south side of Highway 200, no one in the family thought we could do anything on that side. That changed in 2013 when our neighbors were able to

request a variance from the right-of-way and do some building there. There was no ordinary high water mark variance requested at the time. When we decided to do our projects we had to request that the County come out and mark our ordinary high water mark for us. In doing so, they brought Darrin Hoverson from the MN Department of Natural Resources (DNR) out to help mark it. During that time we found out that there is a major discrepancy between where our OHW is marked and where our neighbors had theirs marked. It was approximately 80'-100' difference. That stopped the neighbor's request for a variance on theirs and it put us behind from May until now to even get in here. We had to wait until the DNR did their OHW. That put everybody back on the timeline. We have wasted a summer chasing this out. Back in 1985, the DNR designated that as a wetland basin. That pushed the rules on how to mark the OHW. In 2013 when our neighbors had theirs done, according to Darrin Hoverson from the DNR, he told us at that time it was a mistake for the neighbor's property. We saw that and we felt we could build based on that. Our survey that we had done last fall also stated that we had more room to build from the OHW. With that being said you can see where the OHW is written on, underneath where it says "Site B". In fact, the true OHW is if you move up where the delineation mark from the wetland is. I just wanted to state there was a discrepancy back in 2013, a mistake according to the DNR and what the County had come up with.

Gary Kennedy continued what we are asking for on "Site A", because it is a 200' setback from the State Highway and the OHW comes up to within 5' of the State right-of-way, we are asking a variance for a 12' x 100' area. Basically we would need a 2' right-of-way setback and approximately a 138' OHW setback. That is to put a storage container there. Our "Site B" is down in a wetland delineation area. That gives us a narrow tract. We are off of the State right-of-way down there. We are off the 50' setback from there. What we are requesting is up to about 70' of the OHW to park an RV in there. We have retired and our plan is to split the property, sell the land on the north side, and that would be our summer home with an RV pad. The pad would just be a small gravel pad. We are all self-contained for septic.

Grob stated there seems to be a lot of history, but it is clear we do now have an agreed to and established OHW line for this property. All we can go on is the fact of what it is now and base our decisions on that new information.

Connie Kennedy added it is really not new information. It has been that since 1985. In 2013 somebody made a major mistake in granting him to be able to build up that close.

Grob continued all I need to know is what the current OHW line is for your property. That is the fact that we have to deal with.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Andres asked you mentioned that this property has been in your family since the 1950s. I believe that the County purchased the road right-of-way around the 1930s.

Gary Kennedy stated the State took it through the court. That made it 200' through there. Back then they thought there was going to be a 4-lane interstate going through there. They took the 200' on that side and then further down, where all that wetland is where we want to place an RV, that was a borrow pit. It was never returned to what it should have been and that is why it all ended up as wetland now.

Andres continued it appears that many of your neighbors purchased back the 100' that you are allowed. I wanted to know why you haven't purchased that 100'.

Gary Kennedy answered we haven't approached them really. We didn't know if we needed to. All we really want to do up there on the west end is to put the storage container there.

Connie Kennedy added we didn't think we needed to.

Gary Kennedy stated where the original OHW was from 2013, we thought we could have been alright there. Then when the DNR came in and re-established that in August, that threw our whole plan out and that is why we requested the variance. Most of that right-of-way is worthless, especially on the east end. That is all swamp and wetland. You can see the wetland delineation in there.

Grob added if you had another 100', you would not have a right-of-way setback issue and you could probably find a location for your building site that would meet the 150' setback.

Gary Kennedy said the building site that is written on there; that is what the surveyor did just to meet the parameters when they did the survey. Just to show we could place something in there.

Johnson asked on the neighboring property in 2011, they came in for a variance to allow a 12' x 40' pad within 2' of the State 200' right-of-way. They were granted that variance. They were granted on the assumption that the County would not need that 50' to use it for anything. They were granted a seasonal spot there. Those owners threw in the towel the next year. They did not want that variance anymore and they came in with a variance to build, and they were denied. Then they went and bought the State right-of-way.

Andres added it just appears to me that if you were to go and purchase that 100' that most of your other neighbors have done, then you can do all of this by permit without a variance.

Gary Kennedy asked which one? Because I am off of the right-of-way, except for a little bit of the OHW on the "Site B" and that is all swamp down there.

Connie Kennedy said we could buy right-of-way up there and it would be wonderful. The rest of all the land down here is worthless, so we are paying for about 1,200 feet of worthless land. I asked Mr. Boughner the other day what he paid for his and he said \$6,600 x 1,200 feet. This little chunk of land that is a piece of Swiss cheese isn't worth it.

Gary Kennedy said if they gave it to us for nothing it would be fine.

Grob added the State would want to sell it to you based on some assessment. They are going to assess that wetland area at virtually zero. I think you need to approach this just like shoreline. When an assessor establishes a value of a piece of property, he looks at the

quality of the shoreline. There are several levels. If it is really bad, it is not assessed very much at all. Your concern is that you are buying something that is worthless. If it is really worthless, then they shouldn't be assessing it for more than worthless. They would only really be charging you for the part that has some value or use.

Connie Kennedy asked can you go to the State with us?

Grob said you haven't tried. If you had gone and came back and knew what they wanted for it.

Gary Kennedy stated we are just asking for something right now.

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

Petersen seconded the motion that passed 4-1 with Johnson voting nay.

Findings of Fact

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

Yes () No (X)

Why or why not? MnDOT is willing to convey 100' of its 200' ROW easement to landowners along this stretch of highway who are interested in obtaining such. The landowners to the west did so which allowed their lots to be developed by permit. One of the applicants is a former MnDOT employee. Allowing this lot to have structures and a parking area placed within the OHW and ROW setbacks when an option exists to meet the setbacks and build by permit would not be in harmony with the ordinance's intent.

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

Yes () No (X)

Why or why not? Placing the two desired improvements in the proposed locations when the applicants are able to acquire an additional 100' of usable depth on the lot by obtaining this portion of the ROW easement from MnDOT for which one of the applicants worked prior to retirement would not be reasonable. Other landowners next to this property went through the easement acquisition process which allowed structures to be built between Highway 200 and the river by permit.

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

Yes () No (X)

Why or why not? The applicants have the opportunity to acquire 100' of road ROW from MnDOT which would allow the desired improvements to be placed on the

property by permit. The property is forty acres in size. There is more than ample room on the north side of the highway where the desired structures can be placed with a permit or without a permit as the property extends beyond the 500' shoreland area.

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

Why or why not? Allowing the requested OHW and ROW setbacks when the applicants have the opportunity and ability to acquire an additional 100' of usable lot depth by working with MnDOT on obtaining the outer 100' of the road ROW easement would cause this lot to not fit the locality's character of structures being much further from the lake and the recent pattern of adjacent properties that have been developed having structures that met setback requirements of the time.

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 the sole difficulty.

Variance Application 43-V-19 by Daniel and Miranda Hillukka: Lot 9, Block 1, Williams' Woods, Section 29, Township 139, Range 33, Crow Wing Township on 2nd Crow Wing Lake, a recreational development lake. Parcel 06.48.01000. Applicants are requesting a variance from Sections 502.2 and 503 of the Shoreland Management Ordinance for an after-the-fact deck and structure placed within the 100' ordinary high water mark structure setback and a bluff impact zone and a proposed addition to said structure.

Daniel and Miranda Hillukka, 8075 211th Ave. NW, Elk River, MN, presented the application.

Daniel Hillukka stated basically we purchased this property a few years back with the intent to add on to the existing cabin, which had a camper trailer parked next to it. What we are asking for is to add onto the side away from the lake. A bigger cabin with more amenities to fit our family. We have six children. 12' x 20' with the trailer was getting quite cramped. It is a difficult topography with the bluff being there on two sides of the property, and then with the lot narrowing down towards the south, I thought this seemed to be the most common sense approach. Adding onto the existing building, leaving enough room on the south end for the septic and parking.

Grob stated this is an after-the-fact application for retaining the existing small cabin and deck, and a forward application for an addition next to that existing cabin in the bluff impact zone. It is for both. It is not just getting approval for the existing cabin as an after-the-fact because it was built incorrectly. It is for both.

Daniel Hillukka stated I would just like to say that they after-the-fact part is not because I had built this building and then I am applying for this. It has been there since 1993.

Johnson asked did you draw that last drawing that was up?

Daniel Hillukka replied yes. I do CAD work.

Johnson asked was that porch covered, the one that is off the addition?

Daniel Hillukka clarified on the south end there, away from the lake?

Johnson agreed.

Daniel Hillukka replied yes.

Johnson asked you held the tank at 10' away from that when we were out there on the flags?

Daniel Hillukka said right.

Grob said the existing cabin is fairly old. I don't know what kind of total condition it is, but it is fairly old. Have you thought about trying to build away from the bluff? It looks like there is enough property there for you to do that.

Daniel Hillukka responded I have thought about it. It would be really tight. I know there is an alternate site for the septic on the south west corner, across the driveway.

Grob asked where it says "privy"?

Daniel Hillukka said yeah, right in that area there would be an alternate site for the septic. Everything just gets tight on the south end. I think 30' where the proposed addition would be, plus the porch. From the crest of the bluff, that would put that building all the way down and take up most of that driveway area.

Grob asked what is the square footage of your addition?

Hillukka replied it is right around 1,000 sq. ft. including a half story above.

Grob continued what is the square footage of the existing cabin?

Hillukka answered 240 sq. ft.

Grob stated the lake setback is not such a big issue, it is just that everything is built right on the bluff, which is not in harmony with the Shoreland Management Ordinance. It just seems to me that you could move back and to the left a little bit. Build a 1,200 sq. ft. addition without much more money that it would cost for the 1,000 sq. ft., and try to meet the setback from the bluff. It seems to me there is space for you to do that.

Petersen said I didn't look closely at that existing structure when we were out there. Can you tell me a little about how it is built? In other words, does it have a foundation under it?

Hillukka replied it has a post foundation with concrete tubes. It has been there since 1993. I didn't see any erosion problems with the building being there, there is a gutter on the

bottom side of the roof dumping into a pile of rocks. I wouldn't see much of a problem with erosion, provided all the runoff water is handled correctly.

Petersen asked was the structure originally a porch?

Hillukka answered it has been the same building as long as I can remember.

Petersen clarified it was built on posts?

Grob added it was permitted as a porch and it has been closed in.

Petersen asked since it was originally permitted, it was closed in?

Grob replied I don't know when it was closed in, but the original permit was for a screen porch, but not an enclosed living structure.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Johnson added as far as development on this lot, I think it should go right where he has got it planned. The way the topography is and the septic design with the alternate; that is where it needs to be. To me, I don't think it would disrupt the bluff to take that porch away, but he was permitted that. I think even though there may have been some controversy in the application; that was back in 1987, 1993, and 1994. I can't see taking that.

Petersen asked Buitenwerf was it located per the permit? In other words, whoever built it at the time, did they build it where they said they were going to? Is it 100' back?

Buitenwerf replied no. The deck and the structure were not placed where they were to be placed per the permits. That is the reason for the after-the-fact component of the request.

Andres asked Johnson there is not an alternate site? If he were to move the entire structure back to meet the setbacks, he can get his septic in somewhere else or in the same place?

Johnson replied if he moves it back; the point I was making is that I think this is in the best location that he is proposing. He could move it back up a little further and make it around over there, but if you look at the design in the packet, there was an alternate on that whole side over there.

Petersen asked why then, Johnson, do you think it is best there where it is?

Johnson answered just because where he has this all laid out on the map is where it needs to be. From the drainfield and all the way from that tank and then a lift tank, it has to be there. He has the other side for his alternate.

Kovacovich added if you move that off of the bluff line into the area at the top of the turnaround, it still retains the alternate site down to the south corner. The existing system as designed looks like it can stay, but it would in fact take him off the bluff line. A lot of

places have a straight in with a back out turnaround rather than a loop turnaround. To me, that is not an issue.

Grob said that bluff is the crest of the bluff. Normally you would have to have a 30' setback from that crest. He may not be able to meet that. Putting the addition on the bluff, just to preserve a 240 sq. ft., 25-30 year old structure.

Johnson asked it is not exactly on the bluff though, is it? Because the porch was only 3' in, right?

Grob corrected almost the entire existing cabin is in the bluff. And half of the addition is going to be in the bluff. The other half is away from the crest, but it still doesn't get the 30' setback. I think he would be hard pressed to meet the requirements of a 30' setback from the crest of the bluff, but it doesn't make sense to me to build on the bluff. If you just move straight to the left with that whole block of the addition, towards the property line.

Discussion ensued while Grob explained his proposed placement of the structure.

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

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

Findings of Fact

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

Yes () No (X)

Why or why not? There is room on the lot to move the existing deck and structure back to a conforming setback and then add on the desired additional living space also by permit.

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

Yes () No (X)

Why or why not? There is room to move the existing improvements and proposed structure outside of the bluff impact zone and beyond the 100' OHW setback.

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? There is a bluff on the property, but there is room to construct a residence by permit. The immediately prior owners to the current owners created the need for the variance by not constructing the deck and 12' x 20' structure in conformance with setbacks as indicated on their permit applications.

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

Why or why not? The area is made up of single family residences – mostly seasonal with some year-round. There is a large tract of public land 140' to the east of the lot. The bluff on this lot extends to the south through the lot and to the west across the next two lots. Allowing development within the OHW and bluff crest setbacks would not be in keeping with the area's development of structure's meeting setbacks.

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 44-V-19 by Chris and Lynn Niemeyer: Part of the NE ¼ of the NE ¼, Section 21, Township 140, Range 34, Henrietta Township. Parcel 13.21.00620. Applicants are requesting a variance from Section 4, Subdivision A.1.b.1 of the Subdivision Ordinance to create 2 tracts that do not meet the 300' average minimum lot width requirement.

Trenton Simon, 1217 1st Street East, Park Rapids, MN, authorized agent for the applicants, presented the application.

Simon stated we are trying to subdivide this lot. We currently have the home and the lot with 5 acres for sale. In the process of doing an administrative split, it was brought to our attention that the minimum width of the lot that we were trying to sell did not meet the 300' mark. The practical difficulty was that chunk down in the southeast corner, the 200' x 143' that they have never owned. Once we realized that, we tried to negotiate selling more land so that they were able to meet that process, but the buyer was unable to get financed for that amount. That is what brings me here today.

Grob asked for the record, Henrietta Township has found it consistent with their requirements and they have approved it?

Simon stated he did sign off on it, yes.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

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

Andres seconded the motion that passed unanimously 5 – 0.

Findings of Fact

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

Yes (X) No ()

Why or why not? The two proposed tracts meet and exceed the minimum lot size requirement and are within 15' and 23' of meeting the 300' minimum width requirement. There are portions of both tracts that exceed the 300' width criteria. Henrietta Township found the two proposed tracts meet its land use ordinance requirements and approved the proposed division. The unique layout of the current property is best divided at the proposed location and allowing two tracts to be created out of the property will not be contrary to the ordinance's minimum lot width intent as the property and surrounding area are already developed to what is likely to ever be the maximum development potential.

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 proposed tracts meet or exceed the minimum lot size requirement and have portions that meet or exceed the minimum lot width requirement. The property is already developed as are the neighboring properties so further development is not likely. Thus, drawing a property line between the existing commercial and residential uses of the property seems reasonable.

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

Yes (X) No ()

Why or why not? The property acquired its current shape over many years and due to actions not taken by the current or prior owners.

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

Yes (X) No ()

Why or why not? The area is a mixture of commercial and residential property uses that exist on relatively large tracts of land ranging from 5 to 40 acres in size. There is an existing commercial use on the north end of the subject property and a residential use on the south end. Dividing the property in two will not alter the area's character.

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 difficulty.

Variance Application 45-V-19 by Bethany Bible Camp: Lots 17-21, Bethany Beach, Section 4, Township 145, Range 32, Farden Township on Grace Lake, a recreational development lake. Parcel 07.40.00170. Applicant is requesting a variance from Section 701 of the Shoreland Management Ordinance for a proposed structure to be added to a nonconforming use.

Jeremy Berg, 717 18th Street, Bemidji, MN, chairman at Bethany Bible Camp, presented the application.

Berg stated we are looking to build a bathhouse. We have one and we would like one on the girls' side so they don't have to be on the boy's side at night. Since we are a nonconforming use, we have to get a variance for anything we do.

Petersen said you were not at the lot viewals the other day.

Berg answered that was my wife.

Petersen asked did she mention to you our concern about routing that supply line to those three tanks and you have no problem with that?

Berg replied I talked to Dave Larson after that and that is what he recommends since we have to run over that line anyway on the way there. It makes sense to do it.

Petersen added so a condition like that would not be objected.

Grob clarified so the kitchen and the bathhouse would go through those three.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Kovacovich made a motion to approve the variance application with the following condition:

1. The three existing currently bypassed septic tanks in the septic system that is to service the proposed structure must be plumbed into the septic system and thereby put into use.

Johnson seconded the motion that passed unanimously 5 – 0.

The Board adopted the staff report findings of fact.

Findings of Fact

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

Yes (X) No ()

Why or why not? The only reason a variance is required is because the property use is nonconforming. Were it not for this consideration, the proposed structure meets all setbacks and could otherwise be built by permit. The structure will be 230'+ from the lake and 15' from the nearest (east) property line. The SSTS to which the bathhouse will be connected is compliant and properly sized to handle the bathhouse's volume of use.

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 women's bathhouse at a church camp is very much a reasonable use especially as the cabins on the property lack bathroom facilities.

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 camp use is a nonconforming use that predates the ordinance's 1971 enactment. The ordinance requires a variance in order to add a structure to a nonconforming use. These items are beyond the owners' (current or past) control.

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

Yes (X) No ()

Why or why not? The camp has existed on this property for decades without incident. The proposed structure will be far from view from the lake and meet all other setbacks. The primary property use of nearby lots to the east is year-round single family residential while to the west, the residential use is more seasonal. Mature tree cover exists that also minimizes the aesthetic impact of the proposed structure.

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

Yes (X) No ()

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

Variance Application 46-V-19 by Gregory and Angie Kuehn: Part of Government Lot 7, Section 20, Township 141, Range 34, Lake Emma Township on Blue Lake, a recreational development lake. Parcel 16.20.02000. Applicants are requesting a variance from Section 801.2 of the Shoreland Management Ordinance and Article V, Section 1.01 of the Subsurface Sewage Treatment System Ordinance for an existing drainfield to not comply with the required 20' setback from a proposed guest cottage.

Gregory and Angie Kuehn, 17506 County 40, Park Rapids, MN, presented the application.

Gregory Kuehn stated last year we got a permit to build a garage for storage. My mother is originally from Aitkin, MN. This summer her situation has gotten worse. We discussed having her move up to our place. Inside of the house is not an option for a lot of reasons, so what we are proposing is to convert the existing garage into a guest cottage for my mom.

Grob asked the garage exists, or you haven't built it yet?

Kuehn stated the garage exists.

Grob continued so you would convert the garage into a guest cabin?

Kuehn replied yes.

Grob asked what would you use for a garage?

Kuehn answered we have poured concrete inside of the pole building, so the dirt floor pole building is going to be more of a garage. My mom is going to have to park her car outside.

Grob clarified lot size is 3.87 acres, 190 feet of frontage. So, the lot qualifies for a guest cabin.

Buitenwerf agreed.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Andres asked so you currently have an attached garage on the existing residence too?

Kuehn replied yes.

Andres asked do you plan on putting gutters on this if it is approved, I noticed it did not have any gutters.

Kuehn answered we will. All of the rain that we have gotten, it is just running. So yes, absolutely.

Andres continued with the size being 660 sq. ft., you are aware that you won't have room for a deck or anything on this guest cottage?

Kuehn responded it really wouldn't make sense to do that anyways. She can't really see the lake from where it is. There would be a concrete area in front of the door.

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

Grob seconded the motion that passed unanimously 5 – 0.

Findings of Fact

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

Yes (X) No ()

Why or why not? The proposed guest cottage is slab on grade construction. The 20' drainfield setback exists to prevent sewage from entering a habitable space which is not possible in this case as there is no crawlspace or basement in the structure.

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? Utilizing the existing detached garage as a guest cottage for a relatively short-term occupancy need versus constructing a separate guest cottage on the lot in order to gain 11' additional feet of setback from a drainfield when the structure is slab on grade construction seems very reasonable.

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

Yes (X) No ()

Why or why not? The need for the applicants to be able to accommodate a family member in the proposed guest cottage arose after the structure (currently a detached garage) was constructed. The applicants could construct another structure to function as a guest cottage with a permit, but that would increase the property's impervious surface area and aesthetic impact unnecessarily. The topography of the slope on the east side of the drainfield and the location of the easement running over the property preclude moving the drainfield to another location. The drainfield is also only three years old. It would make little sense to move it to gain an additional 11' of horizontal distance from a slab on grade structure.

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

Yes (X) No ()

Why or why not? The structure to be used as a guest cottage already exists. The lot is large enough to have a guest cottage. The variance solely involves a reduced setback between the guest cottage and drainfield on the lot which in no way will harm the locality's character.

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 difficulty.

[Variance Application 47-V-19 by Perry Blake Vander Vorst](#): Lot 16, Block 1, Belle Taine Park, Section 9, Township 140, Range 33, Nevis Township on Lake Belle Taine, a recreational development lake. Parcel 21.51.01600. Applicant is requesting a variance from Sections 501.2 and 506 of the Shoreland Management Ordinance for a proposed guest cottage on a lot that does not comply with the minimum required lot width or lot area.

Perry Blake Vander Vorst, 20274 Fairwood Drive, Nevis, MN, presented the application.

Vander Vorst stated we have a small cabin with one bedroom on the main floor and a very small bathroom. Then we have an open loft that we have two beds in. We have three kids with spouses and 8 grandchildren. As you can imagine, the bathroom is pretty taxed when we have them all there. We needed some garage space and my wife wants to get rid of the shed on the south side. This is our opportunity to add a couple bedrooms and a bathroom above the garage. Our intention is to build a 24' x 28' garage north of the current cabin with the bedrooms on top.

Vander Vorst continued I did submit a letter today. Environmental Services determined that the shed was out of compliance. That is closer to the water. We had already planned to remove it. In that letter today I indicated that we would remove it, but we would like to be able to keep it there until that garage is built so we have a place to store the items that are in it. We don't have any other space for it.

Petersen opened for public comment.

No public comment was given.

Petersen closed public comment.

Andres asked do you currently have a garage?

Vander Vorst replied no.

Grob asked Buitenwerf could he build an addition to the cabin of the dimensions or square footage that he is proposing for this guest cabin by permit?

Buitenwerf answered I believe that would be permissible, as there is room to meet setbacks and it should comply with the 25% impervious surface requirement.

Grob said the current cabin meets the 100' setback. Why did you not consider just doing an addition to your cabin?

Vander Vorst replied we talked to a couple contractors and due to the trees and the cost, they suggested that we start with a different structure. We would have to remove all roof lines to get up to a second story. Also, to get the garage space, we would have to remove trees either to the west or to the east. They suggested that we start over with a new facility.

Kovacovich asked Buitenwerf if they were proposing just a garage, would that be within the ordinance?

Buitenwerf replied yes. Other than, logistically, it appears that the layout of the garage door faces towards the septic tank. That would be for the applicant, not our ability to issue the permit.

Kovacovich continued so the issue for the variance is actually the guest cottage portion of the garage?

Buitenwerf answered correct.

Grob explained it is an issue because the lot does not meet the minimum requirements, area wise or width wise, for a guest cabin.

Andres added for clarification purposes, I believe if I am understanding properly, that he would be able to add on bedrooms to the cabin and build a garage separate; all by permit?

Buitenwerf replied that would appear correct.

Andres asked your view of this is to gain more bedroom space?

Vander Vorst added and bathroom space. The question I have is, if you want us to add onto our current cabin, our footprint is not going to be any different. If we build a garage without the bedrooms above it. My question is why would you not allow that?

Andres added ordinance wise, your lot is not the proper size for that separate guest cottage structure. That is basically what we have come down to.

Petersen stated we are trying to adhere to the ordinance if we can. That is the difference. If you were to add onto your building, the ordinance doesn't speak to that. You can do that and build a garage separately. You would be fine there.

Johnson added you could also put a bathroom in the garage.

Vander Vorst asked why wouldn't they tell me that when I have been in there several times asking questions? Why would they not tell me that I could go by permit and do those things, because no one has told me that.

Buitenwerf stated I can speak to that. Staff cannot read minds, so they don't know what somebody might be thinking or considering. They can only field the questions that are put to them. Not being party to those conversations; that is the best that I can say.

Grob said I know with the change that the County did, the more relaxed requirements for guest cottages that we did a few years ago, we have been pretty strict about meeting the requirements. We would like to stick with that. As I look at this, he is close to the 40,000 sq. ft. The lot is only 100' wide so that is probably the biggest restriction. The main cabin meets setbacks and the septic system can handle the change. Based on our discussion that says he can build that size of an addition to his cabin and his garage, why wouldn't it make sense for us to approve this with a condition that in the future no addition or expansion of the existing cabin would be allowed?

Johnson stated I thought the same way as you on that except that we have been very consistent about this and the State requirements. The only downfall I see is that the next owner can turn that into a rental, a VRBO.

Grob asked could we put that restriction on it?

Johnson replied you sure can.

Petersen asked that restriction being?

Grob answered that the guest cabin could not be rented as a VRBO in the future.

Petersen asked are you ready to make a motion on that Grob?

Grob responded I am having trouble with this one. I would like to stick hard with it, but when I see what he could do and the disruption to the property.

Grob made a motion to approve the variance application with the following conditions;

1. The property cannot be used as a rental property.
2. No further, future addition or expansion of the existing cabin or the proposed guest cottage is allowed.

Petersen said we saw the stakes out there where the building was proposed. It appeared like the garage door was right in front of the septic tanks.

Vander Vorst replied part of it is. We could remove one more tree and move it about 6' south. That would keep the garage door away from the septic.

Petersen asked for opinions on that.

Buitenwerf stated I am not clear, based on the drawing that is submitted of the garage door location, how you have 6' yet to go.

Vander Vorst answered we would have to move the whole garage 6' south.

Petersen clarified you would move the whole building you are saying.

Andres asked would that need to be amended if we were to approve this?

Buitenwerf replied no. It meets setback and would not be an issue.

Petersen clarified we would not need any language about that in there.

Buitenwerf answered not unless you want to start dialing in the location that it can be placed.

Petersen stated Grob had made a motion and was about to proceed with his findings.

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

Johnson seconded the motion that passed 5-0.

Findings of Fact

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

Yes (X) No ()

Why or why not? Although the lot width and area are less than what is required, the fact that the applicant could build an addition to the house and a garage, taking up double area, it seems it is in harmony with the general purpose by minimizing the impact to the terrain.

- 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? Although the lot is on the marginal side to have additional space, the existing cabin is small, about 950 sq. ft. It is reasonable to want a larger area. Placing a guest cabin over the garage is the best solution to accommodate the reasonable manner and use of the property.

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

Yes (X) No ()

Why or why not? The lot's width is not unique as all the lots in this plat are 100' wide as are many riparian lots throughout the County.

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

Yes (X) No ()

Why or why not? Because the applicant could build a garage by permit, the approval of this variance does not essentially change that impact.

- 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 difficulty.

Miscellaneous:

Communications: Buitenwerf stated the amendment that was handled by the Planning Commission for the Shoreland Management Ordinance was adopted by the County Board Tuesday and it will take effect this Wednesday when it is published in the newspaper. Second is a reminder for those of you that will be attending the training that is upcoming in October in St. Cloud, I will be getting details to you. It will be an early morning departure from here and we will return around 5.

Johnson asked what was that date?

Grob stated October 23rd.

Buitenwerf said it is a Wednesday.

Buitenwerf continued as far as agenda items for next month, the deadline is next Monday. At present we do not have an agenda, but I am sure we will by next week.

Kovacovich asked does that mean that you have no applications yet?

Buitenwerf replied correct.

Andres said I just wanted to remind everybody that I will be gone for lot viewals on the 24th if we do have an agenda and lot viewals, but I will be here for the meeting on the 28th.

Adjournment:

Petersen made the motion to adjourn.

Kovacovich seconded the motion.

The motion carried unanimously 5-0.

The meeting adjourned at 8:15 p.m.

Respectfully submitted,

Staci Harvey

Recording Secretary