

## HUBBARD COUNTY

### Planning Commission/Board of Adjustment Meeting Minutes

6:00 p.m. on Monday, September 28, 2020

The Hubbard County Planning Commission/Board of Adjustment (PC/BOA) held its regular public hearing and meeting on Monday, September 28, 2020 at 6:00 p.m. remotely by electronic means with one or more PC/BOA members present in the Hubbard County Government Center – County Board Room # 324.

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

Andres 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:** August 24, 2020 meeting.

Andres noted on the first page to change Petersen to Andres on the reading of the Planning Commission/Board of Adjustment meeting procedures.

Kovacovich made a motion to approve the minutes as corrected.

Grob seconded the motion that carried unanimously 5 – 0.

**Old Business:** None.

**New Business:**

**[Variance Application 33-V-20 by Richard Mercil and Rosa Panzarella:](#)** Part of Government Lot 1, Section 19, Township 141, Range 34, Lake Emma Township on Potato Lake, a recreational development lake. Parcel ID 16.19.00120. Applicants are requesting a variance from Section 506 of the Shoreland Management Ordinance for a proposed guest cottage that exceeds the 700 sq. ft. maximum allowed structure footprint.

Richard Mercil and Rosa Panzarella, 706 Belmont Road, Grand Forks, ND, presented the application.

Panzarella stated we are requesting a variance from the Shoreland Management Ordinance, Section 506.2, and requesting approval of a three-stall garage. It is a new construction with a guest cottage above. The part of the request that is in excess of the Ordinance is that the garage would have a guest cottage on the second floor that is in excess of the 700 sq. ft. allowed.

Grob said you are in the process of building a brand new home, I think you started this year sometime. Why did you not consider having the additional space in your house as you are building it new, rather than try to do an off-site guest cabin?

Panzarella answered initially we were working with a builder and designed the home. We wanted to ensure that every bedroom in the house had a really great view of the lakeshore. If you have been out there on that part of Potato Lake, every bedroom has a really nice view. We were not able to fit a fourth bedroom in there while keeping it below the maximum height. Our intent with the garage is to make sure that we have the additional space for people that might be visiting. It would really be used as an office initially. Of course, given the situation with the Shoreland Ordinance, we want the ability to have it and present it in a forward fashion versus retroactively trying to get something approved.

Grob clarified the drawing shows one bedroom in the garage.

Panzarella replied that is correct.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Andres asked have you thought about just having a separate guest cottage, not on top of the garage?

Mercil answered this is our first home that we have ever built. As we went through this process of planning, our hope was that we were going to be able to have an attached garage. Unfortunately, with the lot layout and the way the house was placed in there for the view of the lake, we had to decide to go with a detached garage. Of course, as a young man of 63 who wants to retire out there someday, I wanted a garage large enough so that I could have, not only a vehicle for my wife and myself, but a stall for a tractor or a snow blower. That gave us a footprint of about 1,200 sq. ft. We thought the space above would be the place to put a spare room if we wanted to. We went ahead and designed the septic system to support that. We never really looked at a separate guest cottage, just to keep the cost down, since we are putting up that garage itself as a detached structure.

Kovacovich stated I understand the need for the garage for the cars and equipment, but it is almost double the allowable size for a guest cottage. This is both a question to Buitenwerf

and to the applicants. Buitenwerf, would they be able to build it if we put conditions that it only be 700 sq. ft. of livable space above the garage? And to the applicants, would you be agreeable to that?

Panzarella replied absolutely. Right now as it sits, the guest space above is designed to be at 654 sq. ft., and we have no intention of making it any larger.

Buitenwerf responded it is entirely the Board's discretion as to whether or not you could approve it in that manner.

Andres added just to give you some clarification, as a Board we have findings of fact questions that we have to answer affirmatively. Some of us may be having difficulties answering yes because you have some permissible options. You are able to build a guest cottage since you have nearly four acres. You are able to build it by permit as its own separate structure. I just wanted to give you an idea about where we are at here. We have findings of fact to answer before we can approve it.

Mercil asked do you understand our point of the footprint for the floor space of the garage itself? It is just cost effectiveness to just build up. It was just so much cheaper for us. We designed the upstairs, it was going to be there anyway, 650 sq. ft. of potential living space. We went ahead and set the septic system up to support that if, in fact, it is granted.

Johnson stated I looked at it. I guess I do have a little bit of a problem with it. To be a consistent Board, we have had these in the past and we haven't approved one of these. Myself, I am not in favor of it.

Andres added at this time I am in agreeance with the staff's recommendation as well, because we do have room on the lot. I understand the applicants also have a septic system sized for it, which they could still utilize if they built the structure separately. As I mentioned, the lot is nearly four acres in size and relatively flat and suited for building. When permissible options exist, granting a variance is not in harmony with the Shoreland Management Ordinance's intent. That is where many of us are having trouble finding answers to those questions.

Mercil stated we are trying to follow the rules. We just want to be good neighbors.

Andres said I appreciate that.

Grob explained considering that a new house is being built, and there should have been the opportunity to take care of additional living space if needed, it just doesn't seem reasonable that we should be approving an additional guest cabin. This enlarges the living space on the lot.

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

Johnson seconded the motion that passed 5 – 0.

The motion carried unanimously 5 – 0.

### Findings of Fact

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

Yes ( ) No ( X )

Why or why not? The proposed structure is 1200 sq. ft. in size which is 71% greater in footprint than the 700 sq. ft. maximum allowed guest cottage footprint. It is possible to create the desired additional living space by either adding onto the newly constructed house or by constructing a separate guest cottage by permit. When permissible options exist, granting a variance 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? Proposing a 1200 sq. ft. guest cottage when there is ample room on the property to add the desired living space either through an addition to the newly constructed house or by building a separate guest cottage from the garage is not a reasonable proposal.

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 3.83 ac. in size and 150' wide. It lacks any wetlands and the bulk of the lot area that meets setbacks is relatively flat and thus suited to building. There are thus no unique lot characteristics creating a practical difficulty on the lot.

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

Yes ( ) No ( X )

Why or why not? The locality consists of a mixture of seasonal and year-round single family residences situated on lots of similar width, area, and topography. Primary residences on these other lots also meet the 100' ordinary high water mark setback. These lots do not appear to have guest cottages on them. Thus, allowing a 1200 sq. ft. guest cottage on this lot would not maintain 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 34-V-20 by Dwayne and Denise Tollefson:** Lot 1, Block 1, Eleventh Heaven, Section 15, Township 141, Range 32, Akeley Township on 11<sup>th</sup> Crow Wing Lake, a recreational development lake. Parcel ID 01.52.00100. Applicants are

requesting a variance from Section 902 of the Shoreland Management Ordinance for proposed grading and filling in a steep slope to construct a driveway.

Dwayne and Denise Tollefson, 3732 10<sup>th</sup> Ave. South, Moorhead, MN, presented the application.

Denise Tollefson stated we are requesting a variance to construct a driveway on our lot due to the steep slope ordinance, Section 902, whereas up to five cubic yards of material may be moved per year without the need of a permit. The length of the proposed driveway will be 100' x 12' and that the lowest spot is 3' deep. We are asking to be able to bring in about 250 cubic yards of fill to construct the driveway. We had our excavator, Jordan Elavsky, come in and he kind of walked through it with us. He thought this was the best area to put the driveway to decrease the amount of disturbance to trees and natural vegetation on the property. There currently is a makeshift driveway that comes in on top of the steep slope, but in order to grade that down it would cause too much disturbance of the natural vegetation of the property. We are proposing that we bring in the fill to construct this driveway. We will also add a culvert about mid-point of the proposed driveway to allow for drainage from the top of the steep slope underneath the driveway. All disturbed and constructed areas of the proposed driveway will be seeded and an erosion control blanket will be installed.

Grob asked you currently have a trailer, or mobile home, there on the lot? Is that an all-season structure, or do you intend to build a home that is all-season?

Denise Tollefson replied right now there is an Ice Castle fish house that we use to camp in the summer. We remove it around October because we use it for ice fishing too. We intend to build a home there. We would like to build one next summer, Covid allowing, with the materials that are in shortage right now. It will either be next summer, or the summer after. It will be in that area where the Ice Castle sits right now.

Grob continued if you were to build this new driveway, what is your intent with the steep slope and the existing driveway? When I was out there, you can drive in. It isn't too bad, but when you get to the crest of that hill and the little parking area, then there is a steep slope down to the trailer that you have. Do you intend to completely close off that road and especially the slope down to the road? What is your plan?

Denise Tollefson explained per Jordan Elavsky's recommendation, that area would have a swale away from the house. We won't be using that to enter the property because the slope is too steep towards the house. Up on the top, next to the road on the east side, is where our septic one and two are, that undisturbed area in the trees. The makeshift road is in between that. It will just get seeded, and that area will be swaled away from the house.

Grob clarified I was asking about the existing driveway. It seems like you could get a lot of erosion. If you build this new road, would you be willing to put a berm at the top of the hill and then seed that and not use it for access at all?

Denise Tollefson replied we don't plan to use it for access at all. The new driveway that we are proposing will be on the bottom of that steep slope. Where the makeshift driveway is

right now, when it comes up on top and then it comes down, we are not planning on using that for access at all.

Grob asked if we put a condition on this, would you be willing to block off at the top of the hill and reseed to prevent erosion, or at least water runoff, down that steep hill?

Denise Tollefson replied yes. We don't want water to come down towards the house, obviously. We will do whatever recommendation is made for that.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Andres added during the lot viewals it was apparent to see the difficulties that you applicants would have traversing the driveway during the winter months. According to my vehicle, the incline range is between 8 – 15 degrees as I was leaving the residence there, trying to get back out. You already answered my question that Grob asked you about leaving that higher portion, and I agree with Grob, if you are open to a condition about having it blocked off at the top and seeding it down. It would help you with that erosion and keep water from coming towards a new home as well. I, personally, am in favor of the request as the existing driveway is not workable in the winter with that steep slope that runs through the entire middle of the lot.

Petersen asked Grob can you could tell me again where you are recommending that berm to be placed? Is it by the makeshift parking area on that current driveway? Is that what you are thinking?

Grob explained when I was there, I didn't know if they intend to keep that road there. If they do, you come to the top where there is a parking area, then to the right it gets really steep downhill. My thought was a berm right at the crest of the hill before it goes down. A berm, and then seeding the whole slope down to the cabin. If they desire, they could continue that little parking area up to the left and the existing road if they wanted to continue it.

Petersen asked do you think it needs to be so specific to detail the size of that berm, or just simply saying berm is enough?

Grob replied if I had been smart enough, I would have measured it when I was out there. I think the applicants understand, and I think they have intent to do whatever they can to prevent runoff. I would just say a berm that prevents runoff on the current slope and then revegetation on the slope would be sufficient definition. I don't think they want the water runoff, so I think they would do the right thing.

Grob made a motion to approve the variance application with two conditions:

1. A berm must be constructed at the top of the hill to prevent runoff on the portion of the existing driveway to be abandoned.
2. The slope of the abandoned portion of the driveway must be revegetated to address erosion.

Petersen seconded the motion that passed 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 existing driveway grade is not workable in the winter. There is a steep slope that runs east-west through the middle of this lot that is unavoidable and must be crossed in order to reach the residential structure building site. The steep slope is 170' from the ordinary high water mark per the application sketch and if standard erosion control measures are employed, the driveway construction ought not to have any deleterious effects on 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? Having a driveway with a safe, workable grade to access the proposed year-round residence on the lot is a reasonable request and property use.

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

Yes ( X ) No ( )

Why or why not? There is a steep slope that runs east-west through the middle of this lot. The existing driveway grade is not conducive to easy winter traversing. Any alternatives require constructing a different driveway route through the steep slope.

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

Yes ( X ) No ( )

Why or why not? The property is one of two undeveloped lots in a five lot plat created in 2005. The lots to the east are similar in size. The lots to the west are smaller in area and depth due to County 25. The terrain in the area is a consistent steep slope that runs down to the lake from County 25. Most of the surrounding lots are seasonal single family dwellings with a couple that are year-round residences. The structures on these lots vary in regard to their OHW setbacks as the lots were developed at different points in time. Most of the lots have driveways that run through this steep slope that is common to the lots along this north side of the lake. Thus, the proposed driveway will not negatively impact 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 35-V-20 by Joseph Eiter and Mary Tintes:** Unit 5, Vacationaire Estates, Section 10, Township 141, Range 35, Arago Township on Island Lake, a recreational development lake. Parcel ID 02.41.00500. 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.

Joseph “Tony” Eiter and Mary Tintes, 524 3<sup>rd</sup> Street East, West Fargo, ND, presented the application.

Tintes stated we are requesting a variance to build a proposed addition to the existing cabin, which would provide an essential accessible egress from the building for the safety of us and our guests. The original cabin was built in 1931. An accessible fire exit from the dwelling was not considered at that time. The size of our proposed addition to the existing cabin is 8' x 22' 6", or 180 sq. ft. This addition will open the existing south wall of the kitchen, and an accessible six-foot exit door would be located just south of the kitchen. We would like to put an accessible bathroom into this addition. There would be no additional bedrooms added. No existing vegetation would be removed for this project. The essential character of the landscape would remain unchanged. The addition would use the same natural building materials as we used to build the original cabin to maintain harmony within that area. This project is a minor deviation from the setback variance and would not reduce the protective function of the setback.

Eiter stated the structure that we are looking to add to our cabin would, on the outside, look like it has been there since the day the cabin was built. We are going to match the siding and the roofline. The foundation will match what is already on the present cabin. We are trying to aesthetically look like it has been there and not some new piece that has been thrown on the side of the cabin. It is very important to us to maintain the look of the grounds there. We are part of an Association. There are nine cabins. Everyone has to have the same general look to their cabin. We are definitely following the rules and guidelines.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Kovacovich said my memory is failing me at the moment. Could you tell me what the vegetative cover is between your cabin and the lakeshore? What the vegetative cover is and what it looks like right now?

Tintes replied there is a fairly heavy amount of vegetation between the cabin and the shoreline. It consists of trees and a fairly thick area of reeds in the water. We actually have quite a bit of wildlife right in there. Since we have become owners of the cabin, we have



also added some vegetation to that area to mitigate erosion from the slope behind the cabin. It is quite lush and green there.

Eiter added as far as vegetation, when we first bought the cabin five years ago, there was not a front lawn because nothing was done at that time to protect the water runoff. We have been adding grass to that area. We have a nice full lawn that is directly in front of our cabin. On the hillside, we put a rock retaining wall in to hold the hillside in place. We are allowing the natural vegetation to grow in where it wants to.

Johnson stated I met with the owners during the lot viewal, and I made a comment of how the topography led to a vegetated area to the left of the cabin. There is no direct runoff to the lake.

Johnson made a motion to approve the variance application with the condition that gutters need to be added to the lakeside of the cabin.

Kovacovich seconded the motion that passed 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 proposed addition is very reasonable in scale at 180 sq. ft. and to the side of the structure. Conditions are being placed on the approval to limit the expansion of the cabin to just this addition and mitigate its aesthetic and impervious surface area impact by requiring a vegetative buffer to be established along the shoreline in front of the cabin.

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 180 sq. ft. for an added bathroom and expanded kitchen to a 596 sq. ft. cabin is a reasonable proposal – especially when the addition is to the side of the structure.

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 was formerly a resort that predated the Shoreland Management Ordinance. This cabin was constructed before the Ordinance. The Ordinance now requires a variance to add onto the structure since it is located in the shore impact zone.

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

Yes ( X ) No ( )

Why or why not? This is one of nine seasonally used residential units on the Vacationaire property. The unit is located almost in the middle of the property. The other cabins on the property are similar in size such that the small proposed addition will not alter the small, seasonal cabin feel of the development.

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 cabin being built before the ordinance in what is now the shore impact zone for which a variance is required in order to alter/add onto the cabin.

**Variance Application 36-V-20 by Stephen and Jeanne Szczeck:** Part of Government Lot 1, Section 12, Township 140, Range 34, Henrietta Township on Boulder Lake, a recreational development lake. Parcel ID 13.12.00300. Applicants are requesting a variance from Section 702 of the Shoreland Management Ordinance for a proposed residence to be located in the shore impact zone.

Steve and Jeanne Szczeck, 9297 Tewsbury Bend, Maple Grove, MN 55311, presented the application.

Jeanne Szczeck stated we are requesting to replace a nonconforming structure on our lake home. The present cabin was built in 1934. There were additions in 1940 and 1960. We have owned the cabin since 1982 and would like to update to a sound lake home. We are addressing a replacement of the house. The size of the foundation will be 34' x 44'. The purpose is to build a new house that maintains the character of the area that we have enjoyed since 1982. The practical difficulties in meeting the setback include the size of our lot, the County 18 right-of-way, as well as a 24' private easement for the five parcels that are on either side of us. We also have the sewage drainfield adjacent to the private easement and the County 18 right-of-way. We also need to put in a new sewage tank and lift station within our small property to update that, and also have a route for a truck to enter and pump out the sewage tank. That is our request.

Grob stated I realize that you can't meet the road right-of-way and the 100' ordinary high water mark setback, and yet you are proposing just sticking with about a 17' setback from the ordinary high water level? Did you consider moving your new home back farther and encroaching onto the right-of-way, giving yourself much more distance from the lake? There is a ridge back, maybe about 50' from the crest of the bank, which would be much more conducive to controlling water runoff and give you a little more space to the lake. I guess the question is, why did you decide to put it right here at the same location when there could have been an alternative that might be more conducive?

Jeanne Szczeck replied I think the berm you are talking about is near the drainfield, so we need to be away from that, in addition to having room to come into the property. The driveway comes right into the property. It is a shallow driveway shared by many people coming in, and then we need more space beyond that for adequate parking and a turnaround space for vehicles. If we went all the way back, we wouldn't have anywhere to get into the lot.

Grob asked Buitenwerf can you go back to the previous drawing where it shows the distances? Your drainfield is right up next to the property line. How close are they allowed to get to that drainfield by ordinance?

Johnson stated next to that drainfield, there was a row of trees. Did you see that row of trees?

Grob asked towards the road?

Johnson said no, right along where that drainfield is.

Grob stated there is a swale, a little bit of a depression, and then there are some trees, and then the drainfield.

Johnson said those trees right there, I would consider that our boundary of where I think an alternate would fit. If you look really close, you can see the stand pipes on that existing system. There is room between there and the trees. There is room for an alternate. Then going lakeward, we have to fit a septic tank in there, which could be fairly close and could be parallel with the drainfield. It could be condensed there. I just wanted to kind of give you a direction of where their boundary is to come back. There is room to come back, but their concerns would be losing their parking and turnaround, and they can't go right up to that drainfield.

Grob explained I wasn't quite sure about the tank thing. When I was there and I paced it off, on the assumption that we could encroach more into the right-of-way, I measured as best I could. It is hard to go off of that ordinary high water mark with those rocks, but if I take the base of that nice big pine tree by the lake, I figured they could move the house back to 50' beyond the base of that tree, back towards the road. The other side of the house, the best I could measure, would be about 45' - 50' to the cable gate. There is a cable that is kind of a gate to the driveway. They still had about 50' in between there, and the house could be 50' back from that tree, not including the deck. The deck could still go lakeward, because that would be about the equivalent of the rocks and the drop-off into the lake. I am thinking in terms of, if we gave them relief on the right-of-way, they could move the house and make a 50' setback from the ordinary high water mark. I don't know if anyone else tried to measure that.

Johnson stated I did it, and I figured that the house would be about 37' from the ordinary high water mark, and still fit everything to the back of it.

Grob asked when you say ordinary high water mark, were you at the water level, or were you at the crest of where the rocks are into the lake?

Johnson replied at that crest there in front of it, where the water would be straight down.

Grob asked did you include the deck on that?

Johnson clarified no I did not include the deck. At 37' I was figuring in the house. Without really flagging that off exactly, that is just where I thought it could go.

Andres asked callers on the line whose agenda item was not currently being heard to mute their phone to prevent feedback.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Steven Szczeck explained the proposed placement of the new cabin.

The Board asked Szczeck to repeat his explanation due to interference and difficulty hearing.

Steven Szczeck repeated we did consider moving the house back further. When we brought it back to the 50' mark, we found out that the south side of the house would infringe into the County Road right-of-way. Also, we are aware of the closeness to the water. When we installed rip-rap 15-20 years ago, we made sure that we had the proper fabric underneath the rocks that we used to protect the lake. Our builder has assured us that he certainly will use the silt screen approach to protect against any runoff to the lake during the construction process.

Kovacovich added if I am looking at the drawing correctly, it shows 117'. I assume that is from the ordinary high water mark to the lakeside of the drainfield. If you had a 34' house and a 6' landing, that is 40'. If you put it 50' back, that would put the back end of the house at 90', which would still leave 27' between the lake side of the drainfield and the house. Is that correct, based on this drawing, if we moved it that way?

Steven Szczeck clarified moving the house back how many additional feet?

Kovacovich replied I am saying where you have it marked is 17' back. If you make that 50' back, you put the 40' total width of the house, including what I assume is the landing on the non-lake side, that gives you 90'. That would mean you are 27' from your drainfield, and the drainfield is additional width between that road easement. I am just questioning if I am reading this drawing correctly.

Jeanne Szczeck answered I am not positive. The distance from the old house to the drainfield, if you look on the drawing, is 63'. That corner is coming back 17', so that would leave 46' between the drainfield and the house at that point. When you add the other 6' there is 40' left there. If we brought it back to 50', I don't know where we would put the new tank and lift station.

Kovacovich added then my questions would be, if you have 27' between the non-lakeside of the structure and the drainfield, I would think that would be sufficient for the tank and lift pump if that is needed.

Grob stated we are going to chase our tail here if we keep trying to do all the numbers. I am kind of where you are, Kovacovich. If the front of the house were moved back 50' from the ordinary high water mark, I think there is more than sufficient space to fit it in there. But, we are only guessing. We could table this and have them look at a layout 50' from the ordinary high water mark and see how it fits in there. I think we are not in favor of allowing a new construction 17' from the ordinary high water mark, when in fact there is a strong possibility that we could at least get it out of the shore impact zone. If that 17' that is shown there now were moved to 50', I think it could all fit in there. The front of the house, not the deck. The deck would have to still be the 8' in front, but if the front of the house were moved back to a 50' point, whether Buitenwerf's staff goes out there and literally flags the 50' mark, and then they look at how it would fit in. I don't know how we want to do it. We could deny it, because we don't want it to be that close, but we might be better off if we tabled it to let them reflag it at 50' and then see if it fits the drainfield and the tanks.

Kovacovich added I agree, and I believe that we should table it. It would be nice if it was flagged out so that we could actually see where that ordinary high water mark, where the 50' is, where the proposed house would be and how that relates to the drainfield. I am having difficulty right now as presented.

Petersen asked Buitenwerf the 17' that is shown on the drawing, I am guessing that is not a dimension that you had flagged there, because I didn't see anything there.

Buitenwerf replied that is correct. The 17' is from the applicants on their sketch, it has not been verified by our department.

Petersen continued I am in agreement here that we don't have a number right now, even on this drawing, that we could go on. I would be in favor of getting a reference point to start with from Buitenwerf's department of the 50', and then see what could be worked out. I would be in favor of tabling it myself.

Andres explained Mr. and Mrs. Szczeck, at this time what the Board is trying to explain to you is that in lieu of denying your application, we would be tabling your application to give you time to have the Environmental Services Department come out and establish the 50' setback, and give you time to establish a greater distance that you would be willing to move that house back to get it out of the shore impact zone and to build.

Steve Szczeck responded we understand.

Andres asked would you be open to us tabling the application to give you time to get that 50' setback measured and give you time for a different proposal as far as moving that house back?

Steve Szczeck said so essentially the change would be that the 17' would become 50', and then repositioning the new tank and lift. Is it possible that there could be a number somewhere in between? Less than 50' setback and more than 17' back?

Andres responded that is a good question. I think my colleagues would be open to something possibly in between there, much greater than 17'. We are shooting at closer to the 50' mark, with the understanding that it might not be able to be met, depending on your drainfield and your tank. To get that 50' setback established and see where everything could fit in, that is what we are looking for.

Grob added to make the direction clear, what I personally would like is the 50' setback flagged by Environmental Services, and then they flag out the dimensions of the house exactly as they have proposed it here, 34' x 44' with the bump out in the front. Flag that out as the point for us to look at. I spent quite a bit of time measuring things when I was out there, and I think those numbers would be very feasible for them to do it.

Johnson stated I would recommend that you ribbon the edge of your drainfield, on the lakeside of your drainfield, for the length of it.

Steve Szczeck asked are you asking the length of it?

Johnson explained I said that I recommend that you take a ribbon and mark the edge of your drainfield for the Board members.

Kovacovich made a motion to table the variance application to allow time for the Environmental Services Department to mark the 50' ordinary high water mark (OHW) setback on the property. The applicants were asked to mark the lakeside boundary of their drainfield and a revised proposed house location for the Board's onsite review in October, and submit an amended house location proposal for the Board's consideration.

Grob seconded the motion that passed 5 – 0.

**Variance Application 37-V-20 by Eric and Tara Wolff:** Part of Government Lot 3, Section 22, Township 141, Range 33, Mantrap Township on Coon Lake, a natural environment lake. Parcel ID 20.22.00710. Applicants are requesting a variance from Section 702 of the Shoreland Management Ordinance for proposed expansion of a nonconforming residential structure located in the shore impact zone.

Eric and Tara Wolff, 24967 Hardwood Drive, Nevis, MN, presented the application.

Eric Wolff stated we are requesting a variance from Section 702 of the Shoreland Management Ordinance for a proposed expansion of a nonconforming structure to add a bedroom, living room, and storage.

Grob added there is a lot of history about this house and the setbacks. The key issue in terms of shore impact zones is the garage, not the current house. The garage was approved by variance in the past. Now the addition that they are doing is, in fact, way out of the shore impact zone and 150' back. It seems to me that these are very minor changes relative to any kind of setback issues or shore impact zone issues.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

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

Petersen 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? The structure was originally built in compliance with the former 100' OHW setback. The ordinance change to a 150' OHW setback made the structure nonconforming. The peninsula that makes up the property is roughly 285' wide east-west where the house is located so the 150' OHW setbacks overlap. The proposed addition is modest in size and is wrapping around the house for structural reasons to protect the log walls from the elements. The lot is in natural vegetative cover aside from the small area where the house lies and is a testament to the applicants being good stewards of the property and 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 exterior log walls are exposed to the weather and several logs have had to be replaced due to rot. The proposed addition that wraps around the log walls to protect them is reasonable as is the amount of space proposed in the addition as it will still leave the structure modest in size.

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 consists of the point of a peninsula that is ~285' wide east-west where the house is located which is the widest point on the lot. The 150' OHW setbacks thus overlap and a practical difficulty in meeting the setbacks exists.

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

Yes ( X ) No ( )

Why or why not? Coon Lake is a small natural environment that is undeveloped aside from its east side where there are two other residences. The proposed addition will thus not change this very low density residential neighborhood feel whatsoever.

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 the fact that the house is located in the middle of a narrow peninsula and not able to meet the OHW setback from the east and west sides.

**Variance Application 38-V-20 by Clint and Patricia Mueller:** Lots 1-7, Block 1, and Lots 1-15, Block 2, Balsam Beach, Section 6, Township 145, Range 33, and part of the SW ¼ of the SW ¼, Section 5, Township 145, Range 33, Helga Township on Lake Plantagenet, a recreational development lake. Parcel ID 11.05.01400, 11.37.00500, and 11.37.00100. Applicants are requesting a variance from Section 701 of the Shoreland Management Ordinance to expand a nonconformity by adding 10 RV sites in Tier 3 and adding property to the resort.

Clint Mueller, 51155 219<sup>th</sup> Avenue, Bemidji, MN, presented the application.

Mueller stated the reason that we are applying for this variance application is that we would like to add in 10 more seasonal sites to our resort, back in Tier 3. We purchased the property across the road last spring from Bruce and Judy Wilson. That gives us more room in our Tier 3.

Kovacovich said I have known Clint and Patty Mueller for 20+ years. Along with other people, we were founding members of the Lake Association. Clint and I have been officers on the Lake Association together for the past 20 years, based on that, I am going to recuse myself from this application.

Grob added I want to make sure that I read into the record my understanding of the current situation. Currently, Tier 1 has 8 allowable spaces, and there are actually 16 units there. Tier 2 has an allowable 15 units, and there currently exists 23. Tier 3 doesn't have any at this point, but would be allowed 12 under normal situations. What I am trying to get at is, the current situation is, that 35 units are allowed between the first 3 Tiers. There currently are 39. The resort is currently 4 over, and 10 more units in Tier 3 would then put them 14 over what would be allowable. That is, by shifting things from 1<sup>st</sup>, to 2<sup>nd</sup>, to 3<sup>rd</sup> Tier as it is used. Even if they didn't build anything in Tier 3, they are already 4 units over. In addition, confirmation of these facts could be done by Buitenwerf. They purchased the additional property, and if it were added to the resort, that Tier 4 would allow 8 more units. With the 4 over, they would be allowed 7 additional units in Tier 4, not in Tier 3, if they added the property. I think I got those facts right. The point is, 10 more units in Tier 3 would make them substantially over what is allowable. The additional property, if built in that area, could add 7 more units and they would collectively, the entire resort, would be at the requirements. Hopefully, Buitenwerf, you would confirm that.

Buitenwerf responded what you stated is correct.

Johnson stated I would like to add that in the staff report, Darrin Hoverson had said that there were 35 dock slips there. I counted 39 when I was on site. There are 39 dock slips, not 35. Darrin went by records I believe, he wasn't actually on site.

Andres opened for public comment.



Mike Amble, 51288 219<sup>th</sup> Avenue, Bemidji, MN, stated I own the land directly north of the land that was just acquired and proposed to add to the resort. To me, this feels like it is two different variances. It should be one for the adding of the 10 RV sites in Tier 3, and another one would be adding property to the resort. My biggest concern is the property being added to the resort, and that being turned into an RV park, either now or into the future. I know that Clint has been a good steward to the lake, and a good neighbor, but my biggest concern is my property value and the amount that we have built onto the added property. It is already a nonconformity property, which now more property has been purchased to add onto that. That is my main concern right there.

Lana Kivi, 51030 219<sup>th</sup> Avenue, Bemidji, MN, stated we are the property adjacent south to the 13 acres that Clint and Patty want to add to the resort. We have already sent a letter, so I won't repeat what I sent in the letter because you did say that was a part of the record already, so I won't repeat that. We also had filed petitions that were signed by surrounding residents that are opposed to this because of the items that were mentioned in the petition. I would assume that also is a part of the record, correct?

Andres replied yes.

Lana Kivi continued I know that you have said that we don't need to repeat anything that we have put into the letter, but I would like to ask if those are taken into consideration at this time as well.

Andres explained all items that are submitted are taken into consideration.

Lana Kivi added I did call and talk to the County Assessor, and I did not have that at the time that I wrote my letter. The land that is across the road from the resort is not all part that falls under the Shoreland Ordinance, it falls under Helga Township Zoning, is that also taken into consideration?

Andres replied we take that all into consideration as well. Part of their request does fall outside of the Shoreland Management Ordinance.

Lana Kivi asked isn't there a MN Statute? I spent days looking for it and couldn't find it. Isn't there a MN Statute that says that in order to add property onto another piece of property, it has to be contiguous?

Buitenwerf explained the property being proposed for addition to the resort is contiguous. The public road does not cause it to be viewed as anything but contiguous.

Lana Kivi asked it is contiguous?

Buitenwerf replied correct.

Lana Kivi asked do you have any Statute, or whatever refers to that? I did not believe that a township road dividing a piece of property would still be contiguous. It is not adjacent to the resort.

Buitenwerf explained the township road is an easement only, and the fee title to the land beneath the right-of-way is in the possession of the Muellers.

Lana Kivi continued obviously we are opposed to this adding the property to the resort as commercial property, when it was originally residential.

Written public comment was received in opposition of the application.

Andres closed public comment.

Grob stated one of the public commenters pointed out that there are two separate issues, and there really are. We need to address both, but individually. The questions is should we address the property addition first? Once we know if it is attached, our views of what we would do in the other part with regards to Tier 3 could change. I am proposing that we vote on the attachment of that additional property to the resort first, and then deal with the issue with regards to the 10 RV units.

Andres added I agree. I believe we have two different items here, and we should address them separately. If all the members are in agreeance, we can go ahead and treat adding the parcel first, and then move forward. Are all of the members in agreeance with that?

All members agree.

Part 1:

Grob made a motion to approve the expansion of the nonconforming resort use occurring on parcels 11.37.00500 and 11.37.00100 onto adjacent parcel 11.05.01400.

Petersen seconded the motion that passed 4 – 0.

The Board adopted the staff report findings of fact for Part 1.

## Findings of Fact

### Part 1: Approve adding parcel 11.05.01400

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

Yes ( X ) No ( )

Why or why not? The resort currently exceeds the allowed dwelling unit density in Tiers 1-3. This new parcel 11.05.01400 will balance the over dense situation and afford the resort the opportunity to expand on the non-shoreland portion of the parcel.

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 ~13.5 ac. of land to the resort to improve its over dense dwelling unit situation and provide expansion opportunity in the ~7.5 ac. non-shoreland portion of parcel 11.05.01400 is a reasonable proposed 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 resort predates the Shoreland Management Ordinance (SMO) and is thus a nonconforming use. Section 701 of the SMO prohibits the expansion of a nonconforming use onto land not originally a part of the use unless a variance to do so is granted. This 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? The additional ~13.5 ac. parcel will allow the resort to spread its desired growth out onto land that adjoins a 100+ ac. forested vacant land tract to its east and that has a residential lot abutting its north boundary on which the house is on the north side of the tract ~230' from the property line. The house on the residential lot adjoining the south boundary of this parcel is ~270' from the south boundary and separated from it by a dense strip of mature coniferous trees that serves as a visual and sound screen/diffuser. Allowing the resort to spread out on this parcel will improve its ability to fit in with the neighborhood and diffuse the currently very over dense situation on the existing resort.

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 the resort is currently over dense and needs additional land in order to be able to add more dwelling units to the resort.

Andres stated now we will get to the second part of the application.

Grob commented I am kind of leaping forward here. To me, I think the consensus will be that we will not want to approve the 10 RV sites in Tier 3 because that will put them substantially over the limit. However, now with adding that property, he could add 7 units to Tier 4, which would be across the road. You can add 7 units there. If Clint would like to agree to a variance that would allow him to have 7 units in Tier 4, with the provision that no additional boat slips could be allowed for those 7 units. I bring that up, and I don't know how much we should get into boat slips, but as I read our County Ordinance, a planned unit development can only have boat mooring sites equal to the number of allowable units in Tier 1. If this were a brand new one, that would be just 8, which is substantially different. What I am trying to move towards is helping out Clint with what he wants to do, and the way I see us moving forward is potentially approving 7 RV units in Tier 4, but those 7 units could not have mooring spaces. Because, when you are done with it, he is conforming in terms of total number of sites and what would be allowable in 4 Tiers. He would then be conforming.

Mueller added we wanted to try to keep the seasonal sites on our side of the road, because it just seems better. At this time, if you are going to allow us to attach the property, but we would have to redo the septic, we would have to see if we would even want to put some

seasonal sites on the opposite side of the road. There are safety hazards crossing the road, and some people don't like to be that far off the water. We would have concerns about that. I guess I would not want you to approve the variance for those 7 sites in Tier 4. Once we make sure that it is feasible and cost effective for us to do it, then I would probably have to come back and apply for another variance.

Grob added I understand what he would like to do, that would leave us then with discussing and deciding whether we would like to approve or deny the second part of this application.

Andres stated it sounds from the applicant that he would look into something in the future, if something in Tier 4 is even something he would want to do. Then he would apply for a variance down the road if that is the direction he so desired.

Mueller replied that is correct. We don't want to waste everybody's time, and to waste our time and money, if we can't fill the spots. Without doing more investigating on it, I guess I would put it on hold is what I am saying.

Part 2:

Grob made a motion to deny the proposed addition of 10 RV sites in Tier 3.

Johnson seconded the motion that passed 4 – 0.

The Board adopted the staff report findings of fact for Part 2.

**Part 2: Deny 10 additional sites**

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

Yes ( ) No ( X )

Why or why not? The property exceeds allowed dwelling unit density by 8 units in Tier 1, 16 units in Tier 2, and 14 units in Tier 3 when the proposed additional 10 RV sites are included. Even if the proposed 10 RV sites were placed in Tier 4, Tier 4 would still be over density by 3 RV sites.

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

Yes ( ) No ( X )

Why or why not? The resort is currently significantly over the allowed dwelling unit density in Tiers 1 and 2 and 1/3 over allowed density in Tier 3. Adding 10 RV sites to Tier 3 would make it significantly over allowed density (i.e. 216%) which is not a reasonable use of the property when there is roughly 7.5 ac. of property on the newly acquired parcel 11.05.01400 that is non-shoreland on which the proposed 10 RV sites could be placed.

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 recently acquired adjacent parcel 11.05.01400 that is roughly 13.5 ac. in size and is flat and all upland area that is very conducive to the placement of the proposed RV sites. Approximately 7.5 ac. of this parcel is outside of the shoreland area. The proposed 10 RV sites could be placed in this non-shoreland area without need of Shoreland Ordinance approval and doing so would improve the resort's over dense situation rather than exacerbate it as the proposal in this application would do. There is thus ample room on the property to add the proposed sites without need of a variance to further increase the dwelling unit density nonconformance.

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

Yes ( ) No ( X )

Why or why not? This resort is surrounded by year-round single family residential lots. The resort is currently significantly over dense in regard to the number of dwelling units on it. The proposed 10 additional RV sites would further increase this over-density and be lined up right along 219<sup>th</sup> Avenue which would increase the resort's aesthetic impact to neighboring residential properties.

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

Yes ( ) No ( X )

Why or why not? Economics are not cited in the application as a difficulty, but it appears that economics is the primary reason for the proposed 10 additional RV sites.

**Variance Application 39-V-20 by Vernal and Michelle Lanning:** Part of the NE ¼ of the NW ¼, Section 19, Township 141, Range 32, Akeley Township. Parcel ID 01.19.00500. Applicants are requesting a variance from Section 4 of the Subdivision Ordinance to subdivide this property within five years of a prior administrative subdivision that created the subject property.

Kristine Biessener, authorized agent with Edina Realty, 405 State 371, Hackensack, MN, presented the application.

Biessener explained there is a square of land on the Lannings' property that was put there because, when Wicks sold to Lannings in 2018, it was supposed to be 20 acres. As the process was going forward, nobody realized that it had to be 300' at the road. The appraisal was already done, we already had a stacked closing with other houses that had to close, and we didn't have time to fix this without just being quick. The surveyor suggested that we add this square at the bottom of the property to make it be 20 acres, so that we could proceed with the real estate sale, but it was never right because it blocks the Wicks' access to the back 40. There is a wetland that prevents them from accessing their property with that square out of it. It was always the intention that Lannings would make it right with Wicks someday. They didn't expect to get transferred so quickly, it hasn't even been two years since they have purchased, but we do have a sale again. Lannings want to make this right

for Wicks before they go. That is the other reason for this request of giving that square back to Wicks so that they can easily access their back 40.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Andres noted the two proposed tracts will easily comply with the minimum lot size requirements, and the subdivision is not trying to further subdivide the property or get around requirements for a minor subdivision or plat with subdividing on a larger scale, but rather just adjust that boundary line. I am supportive of the request and so is staff.

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

Andres 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? The two proposed tracts will easily comply with the minimum lot size requirements and the subdivision is not trying to further subdivide the property and try to get around the requirement to do a minor subdivision or plat when subdividing on a larger scale, but rather adjust a boundary between existing tracts.

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? Conveying back the small square area of the property so the Wicks can get from the east to west portions of their property without having to go through the wetland located in the middle of their tract is a very reasonable use/proposal.

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 proposed area to be conveyed is necessary to allow the Wicks to be able to have an upland connection between the east and west portions of their property and thereby not have to consider impacting the wetland located in the middle of the property in order to get back and forth between the east and west portions of the tract.

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

Yes ( X ) No ( )

Why or why not? Who owns the square area to be conveyed is immaterial to the locality's character and feel. Putting this area back in the Wicks' ownership will have no negative effect on the 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 the Subdivision Ordinance requirement that there be a five year period between administrative subdivision applications so that they cannot be misused to subdivide large tracts of land without having to go through a higher level of subdivision review/approval.

**Variance Application 40-V-20 by Ron and Wendy Opheim:** Lot 12, Bannister's Fifth Crow Wing Addition, Section 30, Township 140, Range 33, Nevis Township on 5<sup>th</sup> Crow Wing Lake, a recreational development lake. Parcel ID 21.48.00800. Applicants are requesting a variance from Section 702 of the Shoreland Management Ordinance for a proposed expansion of a nonconforming residential structure located in the shore impact zone.

Ben Ott, authorized agent for the applicants, 17075 County 13, Nevis, MN, presented the application.

Ott asked are Ron and Wendy with us?

Andres replied they might be. There are a couple callers with their phones on mute. Wendy and Ron, are you with us?

Andres stated I am unsure if the applicants are on the line.

Ott explained we are looking at doing an addition behind the existing structure, which is within the 50' setback from the lake. I know we can tear it down and move it back to 50', but we propose to do the addition approximately at 50' and go further back. It would not disturb any of the vegetation that is currently there, and we would address any water runoff that the structure and the property currently has. I am here to answer any questions that you may have.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Johnson asked is there a crawl space under this structure?

Ott replied yes there currently is. It is probably 2 ½' - 3'. I didn't actually measure to see exactly what it is. The existing structure does have a crawl space.

Johnson asked what is the foundation made out of?

Ott answered it is a block foundation, poured concrete crawlspace. The crawlspace was well constructed back when it was built.

Grob stated this is a significant addition, square footage wise, almost 150% over the existing cabin. I don't have an idea of cost, but why wouldn't it be appropriate for them to tear down the existing structure and build back the required distance with an all new home?

Ott responded I did bring it up with them when I originally met with them and we discussed it. They really like the structure that they currently have, and the person that did the woodwork in it was a craftsman. It is quality built. To tear it down and have the square footage in a new place, rather than just adding on, would probably be a couple hundred thousand dollars more. You are looking at \$300,000 versus \$500,000.

Grob added if I got the numbers right, the current cabin is about 1,166 sq. ft. They want to add 1,664. That is approaching 3,000 sq. ft. That is a very large building, I would say oversized for the size of this lot. If they build it all from scratch, they probably wouldn't want to build this size.

Ott asked are you including the square footage of the garage in those square footage numbers?

Grob replied I think so.

Ott explained that would reduce the overall square footage of it. There again, 1/3 of the square footage that we are adding is upper level. In this day and age, 3,000 sq. ft. on a new house really isn't that large.

Kovacovich asked have the applicants considered picking that house up, moving it back, and building outside of the shore impact zone. That would save a considerable amount of money over new construction. Moving it back, and then doing the addition as they are proposing, could that not work?

Ott responded it would probably work. It would add cost. By the time you do that, you might as well tear it down and start over and move it back to 50'. Currently our new addition is right around that 50' mark and back. We are not disturbing any of the vegetation, and all of our water runoff is going to go behind the new addition and not lakeward. Our roof lines are angled away from the lake. Right now, currently, all the water is running down the driveway and into the lake, all the way from the township road into the lake.

Andres commented I think I am gathering from some of the members here that this proposed addition is so much larger than the existing cabin, which is somewhat conducive of being moved back out of the shore impact zone and being able to be added onto by permit. What some of us are struggling with is such a large addition. I understand that you are saying 3,000 sq. ft. is the new norm, but it is not so much at the 27' setback that it is from the ordinary high water mark. A 3,000 sq. ft. home would change the current aesthetics on the lake there.



Ott answered true, but if we do tear it down and move it to 50', we could build a 3,000 sq. ft. house or bigger. I am looking at it as not disturbing anything from the 50' setback or closer. I would address any runoff toward the lake with the new construction that we are going to do. That would actually take care of a lot of the problems that we currently have with that property, as far as the water runoff, by using retention ponds and the right slopes to angle the water the right directions.

Andres added I do appreciate the storm water management plan that you have provided.

Johnson stated I am agreeing with the builder. Moving it 23' back and building what it is, but I really don't want to use the size as my deciding factor. The proposal is everything landward except the existing structure that predates the Ordinance. I think it is a good plan.

Grob said I appreciate what Johnson has said with regards to building on the back side, but the outcome is still an impervious surface that is almost all in the setback zone and encroaches 25%. If I understand correctly, the neighbors have better setbacks and smaller cabins. Building this so close to the lake is going to make it look a lot more out of character from the neighbors in doing so.

Petersen asked Grob are you saying that with this addition, we would exceed the 25% or are we still within?

Grob replied I think Buitenwerf's calculations say that it is just about at 25%. That is for the whole lot, but if you are plugging all of the surface inside of the 100' setback, all of the land behind it isn't much value in terms of controlling runoff. Just because you meet the 25%, or you are right at the 25% impervious surface, when you are building too close to the lake, and all of that impervious surface is within the 100' setback, it makes it much more undesirable.

Ott added if I tear it down and move it back to the 50', I wouldn't necessarily have to do the water retention plan and the stormwater runoff ponds. I am addressing all of the water runoff that comes off of the township road and down their driveway currently. Buitenwerf can probably pull up the pictures where I showed the direction of the flow of the water and how it does run directly down to the lake currently. We would actually be addressing a lot of that runoff situation which would make it a lot better for the lake.

Kovacovich clarified just to make sure that these numbers work in my mind, if they were to do it by permit, they would have to be 100' back from the ordinary high water mark. As proposed, virtually everything except the apron is within 100'. I know we keep mentioning 50', but all the building as stated in the application is within the 100'. Is that correct?

Ott responded that is correct. I don't know if it is pre 1978 that you can tear down and build back at 50'?

Buitenwerf explained it is any nonconforming structure, so it could be something that predates the Ordinance, or in certain lake classifications, the lake classification and setback changed after several years. In any case, if you have a structure in the impact zone, you can move it so that it is located outside of the shore impact zone. Then, with a permit, you can reconstruct it and enlarge it so long as you don't make the nonconforming aspects of the original structure more nonconforming.

Ott clarified and that is 50', correct?

Buitenwerf replied on this lake, that is correct.

Andres asked Kovacovich does that help answer your question?

Kovacovich added so we are saying, based on this lake and past ordinances, they could move or tear down the existing and build at 50'? Did I understand that correctly?

Buitenwerf responded that is correct.

Ott stated we are proposing to basically build their new addition at 50' and leave the existing where it is. We won't touch the existing or disturb any of the soil that is between 50' and the ordinary high water mark.

Andres commented I think some of the members are trying to figure out how they can help you out here. There are options for you to move it back to that 50' mark and do it with a permit. That is why we are struggling. I do appreciate the stormwater plan. I think we are all just trying to figure out the best route at this time.

Ott asked I am curious to see what Buitenwerf's thoughts are on this.

Buitenwerf responded in my staff report, my recommendation would be to deny the request and have them propose something that could be done at the 50' setback.

Johnson made a motion to approve the application and provided the findings of fact for questions 1, 2, and 4, while adopting the staff report findings of fact for questions 3 and 5.

Petersen seconded the motion.

The motion failed 2 – 3 with Grob, Kovacovich, and Andres voting nay.

### **Findings of Fact for the failed motion**

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 landward and it is outside of the shore impact zone. They would not be disturbing anything closer to the lake than the existing 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? Using the property for a residential, year round use is 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 existing cabin was built before the Ordinance was enacted at a nonconforming 27' OHW setback. The ordinance requires a variance in order to add to a structure located in a shore impact zone.

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

Yes ( X ) No ( )

Why or why not? The essential character is that it is residential use on the lakeshore.

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.

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

Grob seconded the motion that passed 3 – 2 with Johnson and Petersen 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? The 1166 sq. ft. existing single story cabin sits 27' from the OHW. The proposed addition is 1664 sq. ft. in footprint and includes a two-story portion. The addition would significantly change the aesthetics of the structure as viewed from the lake and convert the lot's look and feel from that of a small seasonal cabin to a large year-round home. The homes to the north of this lot meet the 100' OHW setback. The adjacent house to the south is ~70' from the OHW. This lot is 385' deep, 100' wide at the OHW, and 65' wide at the rear lot line. There is room on the property to move the structure back and given the scale of the addition relative to the existing cabin and the intensification of the property use by it becoming a year-round residence, now is the time to move the structure further from the OHW.

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

Yes ( ) No ( X )

Why or why not? The proposed addition is larger than the existing cabin which is conducive to being moved back out of the shore impact zone and then being added

onto by permit. The proposed large structure located 27' from the OHW when all other residences in the neighborhood meet the 100' OHW setback aside from one that is 70' from the OHW is not reasonable.

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

Yes ( X ) No ( )

Why or why not? The existing cabin was built before the Ordinance was enacted at a nonconforming 27' OHW setback. The ordinance requires a variance in order to add to a structure located in a shore impact zone.

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

Yes ( ) No ( X )

Why or why not? As mentioned in the responses to the prior findings questions, most of the residences in this neighborhood meet the 100' OHW setback. This is the only structure in the neighborhood located in the shore impact zone. Allowing this single story cabin to become a two-story year-round residence with an attached garage would change the locality's character in a negative way. The structure would stick out both in the neighborhood and when viewed 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 a difficulty. The difficulty is due to the structure being located in the shore impact zone.

**Variance Application 41-V-20 by Wayne and Marilyn Luksik:** Lots 4-7, Block 2, Beauty Bay, Section 16, Township 140, Range 33, Nevis Township on Lake Belle Taine, a recreational development lake. Parcel ID 21.39.00400. Applicants are requesting the following variances: Part 1: Section 502.2 of the Shoreland Management Ordinance (SMO) for a variance from the 100' ordinary high water mark and 50' road right-of-way setbacks for a proposed residential structure. Part 2: Section 902 of the SMO for a proposed grading/filling project in a bluff impact zone.

Kevin Lindow, authorized agent for the applicants, 17604 253<sup>rd</sup> Avenue, Nevis, MN, presented the application.

Lindow stated the applicants are requesting a variance from Section 502.2 and 902 of the Shoreland Management Ordinance to allow construction of a single family residential structure that will be built at a 94' setback from the ordinary high water level of Lake Belle Taine and a 24' setback from the County 80 right-of-way. As to the second part, the applicant is proposing to slightly alter the existing grade on the north side of the proposed structure, partially within the bluff impact zone, in order to direct runoff from the north side of the structure's roof so that we can get it wrapped around the west end of the building and out towards the road instead of towards the lake.

Andres proposed since we have two parts, we should do Part 1 and Part 2 separately. Are the Board members in favor of that?

Board members agree.

Andres continued let's focus on Part 1 first.

Kovacovich asked if we approve the 24' right-of-way setback, that would allow the house to be built where it is marked as proposed, or would that move the house back from that bluff line?

Lindow replied as we have the proposed structure staked on the ground for the lot viewal, that would be at the 24' setback from the County 80 right-of-way and would also be at the 94' from the ordinary high water level, which is the setback that we are asking for. Both are as marked on the ground. I should clarify, with the location that the structure is proposed at, the 24' from the County 80 right-of-way, we tried to keep the structure back towards County 80 as much as possible, but leave space enough to allow the turnaround coming out of the garage. They can get turned around in the driveway and pull out driving forward when they come out onto County 80. If we pushed it even farther back towards County 80 they would have to back out into traffic. We didn't want to have a situation like that. That is where we end up into the 100' structure setback from the ordinary high water level. I am assuming you all got the chance to visit the property and see how flat it really is out there.

Andres opened for public comment.

No public comment was given.

Andres closed public comment.

Kovacovich made a motion to approve Part 1 of the variance application with a 24' road right-of-way setback.

Petersen seconded the motion that passed 5 – 0.

The Board adopted the staff report findings of fact for Part 1.

## **Findings of Fact**

### **Approve 24' ROW setback**

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

Yes ( X ) No ( )

Why or why not? The speed limit on County 80 is 30 mph so it functions not as a typical 55 mph County highway for which the 50' setback is appropriate, but more like a township road for which the ordinance requires a 20' 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? The structure will meet the 100' OHW setback and the lot is only 150' deep on the west side so some form of variance is needed and reasonable from

the 50' ROW setback that otherwise would allow a very small area for a house that would meet both setbacks.

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 149' deep on the west side and 198.56' deep on the east side. It is not possible to place a typical residence on the lot and have it meet both the 100' OHW and 50' ROW setbacks.

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

Yes ( X ) No ( )

Why or why not? The property has a resort next door to the west and single-family seasonal and year-round residences to the east. The property formerly had a motel use on it. The neighborhood is a mix of residential and commercial uses. The proposed residence on this lot will fit in with the neighborhood's mixed-use 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 lot lacking sufficient depth for a structure to be placed on it that meets both the 100' OHW and 50' ROW setbacks.

Kovacovich stated I am having a lot of difficulty with the idea of doing grading when it appears that gutters would solve the problem without disturbing the soil and bluff line whatsoever. At least that is my take from walking it, it sure seemed like there was not a need to clear that bluff line.

Grob added there is an existing retaining wall. I am sure that Lindow is better at this than me, with surveying, but I had the general sense that there was a gradual slope from that wall back towards the house, and that the natural runoff would, in fact, run off to the left and down into the left side as you face the lake. To do major surgery on that bluff impact zone didn't seem needed.

Lindow explained you are actually right in part of that. Where the building would be and the retaining wall, it does somewhat drain towards the building, and that actually brings about this request. In order to build there, I proposed that they would bring that structure up about one foot above existing grade so that they can get water away from the house itself. If they bring it up one foot, there is no way that they can slope that, even three feet away from the house, without getting into the bluff impact zone, which in this case ends up being relatively flat, as you saw on the ground. In order to work with that dirt, I felt that we needed to make this request. Otherwise, they can't disturb anything outside of the footprint of the house. While doing construction it is impossible not to disturb the area around the house. I don't want them getting in trouble for making tracks there, so to speak. We are just attempting to get that water around. There is a natural hole in the southwest corner of the property, and they can get that water there. We are not talking a giant ditch, just very slight. I don't see

where any of the runoff from the project itself can make it to the lake if we silt fence around the house itself.

Grob asked the design of the house, I don't know how much you are involved in it, what is that bump-out in the front of the house? What is that for?

Lindow explained that is a covered entryway. I included it with the house because there is a roof over it.

Grob added I don't see a deck planned here. This isn't one of those situations where they are going to build a house and then come back and want a variance for a deck, is it?

Lindow stated I cannot speak to what they would look for in the future at all. At this point, I am trying to help them get a house going. It is a slab on grade, I don't see where a deck would be necessary myself.

Petersen commented maybe I am missing something here. Why couldn't the building be moved just slightly to the east? And how much you would have to do that to meet the 100' setback, have you calculated that?

Lindow replied to address that, if you look at the circles with the "R" inside of them, those are the septic risers for the existing drainfield, which is in compliance. The east end of the building is at 20' from the drainfield currently, so we are limited in that direction.

Andres asked could we meet setback if that 6' x 28' was removed off the house?

Lindow asked Andres to repeat the question.

Andres repeated would you be able to meet the 100' setback if that 6' x 28' bump-out was taken off the proposed house? Is that correct?

Lindow answered no, it is not. If you look at the northwest corner of the garage and the northwest corner of the portion where it is labeled 6' x 24', they are all cutting into the 100' setback pretty similar along there. We twisted it to make it more or less parallel with the 100' setback, and tried to get it squared up with the road as much as we could there.

Grob stated we are only hassling over a few feet here. I don't know what you know about the house design, but 3,300 sq. ft. is, once again, a pretty large structure. We are seeing more and more of that, instead of the old fashioned 1,800 or 2,000 sq. ft. Is there any reason that this house size couldn't be scaled down just a little bit to meet these requirements?

Lindow responded you have to take into consideration that this is a slab on grade house. There is no basement, so it's not really as large as you are thinking it is. There is a 28' x 28' garage attached in there versus a detached garage. I think if you ran those calculations, it is somewhere around 2,000 sq. ft. for the total living space of the house. It is not, in my opinion, a big house.

Petersen asked if the applicant were to remove that 11' x 7' bump-out on the street side, and you moved the house back, would you make setback then?

Lindow clarified move the house back?

Petersen explained without that 11' x 7', does that give us enough on the lakeside to meet the 100' setback?

Lindow answered if you look at the southwest corner of the house where it's dimensioned 28.03' from the right-of-way, it has to pivot around that point in order to get a 22' radius on the turn area coming out of the garage there. By pivoting on that, we are still in that 94' setback range there. We squeezed this thing every which way we could to try and get it even everywhere, and this is where it ended up.

Grob asked how about the 6' bump-out in the front? That whole big room is close to 900 sq. ft. there, which is, I suppose, kitchen and living room area. That is pretty good sized. If that were removed, couldn't they make the 100' setback?

Lindow replied no. At the northwest corner of the garage there, they have got 94.27' from the 100' setback.

Grob said I kept looking at that from the front, I didn't look at the one on the left. The garage also doesn't meet the 94'.

Andres stated I had the same question and needed the same clarification, I didn't see that corner either.

Lindow added it is a nice, flat spot to work with. I don't think water is any issue, as far as getting it off site and out towards the road. Pushing it any closer towards the road is going to be a hazard, as far as getting out into traffic, in my opinion.

Andres said it appears we are having difficulties with the size of the structure. If the structure was reduced just a bit, it would be much easier and would be able to be done with permit. I understand why we have to pivot to try to work it in there in every single way.

Kovacovich explained I am struggling with the size. In my opinion, if you shrunk the size a little bit, in the garage and in the front, you would be able to fit it in by meeting the 100' setback, and then to allow some minimal grading to make sure that the water went away from the house. Rain gutters could direct runoff from that great amount of impervious surface away from the bluff line where it would drain and not affect the lake. That seems very doable. I guess I am struggling with the size.

Lindow responded in order to get a garage that is large enough to have a full sized pickup pulled in there, nowadays a pickup is 22' long, if you pull a truck like that into a garage the size that is proposed right there, it gives you just enough room to walk around it. If we try and shorten that up the 6', to meet the 100' setback, now you are buying different cars just to be able to park in your garage. It is just not feasible. They can't push that driveway any further towards the road and still be able to get turned around without backing out into the road. Part of the issue with that is the traffic that comes onto County 80 from the Nevis direction, you are going 55 miles per hour down the road. You can pull right straight onto County 80 at 55 miles an hour, no problem. To be backing out into that is just a recipe for disaster. We are just trying to do what makes sense. Six feet in my opinion is really not



asking for all that much, it is perfectly flat out there. If you would consider giving them the 94' setback and doing away with the grading, and putting gutters on instead, maybe that is something we could talk about.

Grob stated I am going to make a motion that we approve this variance request, Part 2. I think the lot is level and it has that retaining wall in the front. There is not any impact to the lake from runoff. I think Lindow makes some strong arguments. I kept trying to look at how we could push the house back 6' – 8'. I think the safety issue on the road is a valid one. I am familiar with the intersection, and he is absolutely right. People are coming off from 34 are not going to be just limping along at that point. The basic living size is just about 2,000 sq. ft., and the size of the garage is reasonable.

Grob made a motion to approve a 94' ordinary high water mark setback for the proposed residential structure in Part 1 of the variance application and approve Part 2 of the variance application.

Johnson seconded the motion that passed 5 – 0.

Grob provided answers for the findings of fact for questions 1, 2, and 3, while adopting the staff report answers for questions 4 and 5.

## Findings of Fact

### Approve 94' OHW setback and Part 2

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 structure is somewhat large, wide, and deep for this lot, the size is reasonable and the location is optimized for the lot. The need for the swale and moving the material a little bit into the bluff impact zone will not have an impact to the lake.

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

Yes ( X ) No ( )

Why or why not? The size of the residence is 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 road setback and the ordinary high water mark setback are not achievable.

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

Yes ( X ) No ( )

Why or why not? The property has a resort next door to the west and single family seasonal and year-round residences to the east. The property formerly had a motel

use on it. The neighborhood is a mix of residential and commercial uses. The proposed residence on this lot will fit in with the neighborhood's mixed-use 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.

**Miscellaneous:**

**Communications:**

**Adjournment:**

Kovacovich made the motion to adjourn.

Petersen seconded the motion.

The motion carried unanimously 5 – 0.

The meeting adjourned at 8:39 p.m.

Respectfully submitted,

Staci Lee

Recording Secretary