

HUBBARD COUNTY

Planning Commission/Board of Adjustment meeting minutes

6:00 p.m. on Monday, January 25, 2016

Vice Chairman Ted Van Kempen opened the meeting with the following members present: Ken Grob, Tom Krueger, and Charlene Christenson. Tim Johnson was absent. Also present was Environmental Services Officer Eric Buitenwerf.

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

Election of Officers:

Van Kempen called for a nomination for Chairman.

Christenson made a motion to nominate Ted Van Kempen as Chairman.

Grob seconded the motion.

The motion carried unanimously 4 – 0.

Van Kempen called for a nomination for Vice Chairman.

Christenson nominated Ken Grob as Vice Chairman.

Krueger seconded the motion.

The motion carried unanimously 4 – 0.

Van Kempen called for a nomination of Secretary.

Grob nominated Charlene Christenson.

Krueger seconded the motion.

The motion carried unanimously 4 – 0.

Planning Commission:

Approval of Minutes: No agenda at December 28, 2015 meeting.

Old Business: None

New Business: None

Miscellaneous: None

Board of Adjustment:

Approval of Minutes: December 28, 2015 meeting

Christenson made a motion to approve the December 28, 2015 minutes as presented. Grob seconded the motion.

The motion carried unanimously 4 – 0.

Old Business: None

New Business:

Variance Application 1-V-16 by Robert & Marybeth Anderson: Part of Gov. Lot 2, Section 34, Township 141, Range 34, Lake Emma Township on Thomas Lake, a recreational development lake. Parcel 16.34.00800. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed detached garage to be located at less than the required 20' road right-of-way setback.

Robert Anderson and Eric Munson presented the application as a proposal to move the garage into the road right-of-way by 6 to 8 feet. We are trying to make it more accessible from the road. The grade is very steep where we are trying to position the building and that would require a lot more fill and logging to get trees out of there. It would be inconvenient to figure out a way to back out of there as well.

Anderson commented that it would also get us quite a bit closer to the septic system if we were to try to meet the road right-of-way setback.

Krueger commented that there was an existing garage there and was that there before you owned the place.

Anderson responded yes.

Krueger asked if the existing garage was at a nine foot setback.

Anderson replied that is correct.

Krueger asked if there had ever been any issues with that garage.

Anderson responded that this new one would not be quite as close to the road right-of-way.

Christenson asked for the record about the traffic, the speed of traffic and the type of road.

Anderson replied that it is a very curved black top road. The volume of traffic is low, but we have never lived there.

Van Kempen opened the discussion for public comment.

No public comment given.

No written correspondence received.

Closed public comment.

Grob noted that even though that road is curved, it appears to be more straight and therefore visibility for backing in and out. It is close to the right-of-way. The fact that the garage is angled

allows for backing in and out of the garage without backing onto the road. I do not think safety is an issue.

Van Kempen responded that only one corner of the garage is in the right-of-way.

Anderson noted that being able to back out and then drive onto the road was a major consideration - not wanting anyone to back on to the road.

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

Grob seconded the motion.

Findings of fact:

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

Yes (X) No ()

Why or why not? The ROW setback variance of 9' will not harm the line of sight on the township road or pose other vehicle safety concerns because of the slow travel speed on the road due to the sharp curve located just to the west of this property. The proposed garage will more than meet the required ordinary high water mark structure setback. The lot slopes down toward the lake such that placing the garage closer to the lake and thus more in compliance with the 20' ROW setback would require more fill to be brought onto the lot to make the building site level.

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

Yes (X) No ()

Why or why not? The existing detached garage on the property is a single car garage that does not offer storage space for more than one vehicle or many other items. Having additional storage space on the lot given the size of the home on the property is reasonable especially given the harsh winters experienced here.

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

Yes (X) No ()

Why or why not? The lot's topography is cited as the primary difficulty in that a much greater quantity of fill is required to be brought onto the property as the proposed garage is moved further from the edge of the ROW. Another consideration is proximity to the existing legal nonconforming residence on the property. There is room on the north side of the road on the north portion of the lot for a garage, but safety concerns of having to cross the township road and the much greater distance from the cabin that would not be at all practical do not make this area feasible.

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

Yes (X) No ()

Why or why not? The difficulty is created by the lot's topography and its sloping toward the lake such that much greater quantities of fill are required to provide a level building site for the garage the further from the ROW it is placed. The added difficulty is the cabin's location in that for a garage to be practical, it must be situated reasonably close to the residence it services. Placing the garage on the north side of the township road would not be practical due to distance from the cabin nor would it be safe as it would require crossing the township road to reach the garage from the cabin.

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

Yes (X) No ()

Why or why not? The area consists of single family year-round and seasonal residences. Detached garages are a common accessory structure in the area and an 11' ROW setback rather than a 20' ROW setback for a reasonably sized 28' x 30' garage will not harm the locality's residential character.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as the sole difficulty. The difficulty involves the lot's topography and the need for more fill in order to place the garage further from the ROW along with a need to site the garage a reasonable distance from the cabin it services.

The motion passed unanimously 4 – 0.

Variance Application 2-V-16 by Thomas & Joyce Lamb: Lot 1, Luceth Beach, Section 15, Township 141, Range 34, Lake Emma Township on Lower Bottle Lake, a recreational development lake. Parcel 16.51.00100. Applicants are requesting a two-part variance: Part 1: After-the-fact request for a lakeside platform that does not comply with a 75' ordinary high water mark (OHW) setback authorized in Variance 82-26. Part 2: A request from Section 702 of the Shoreland Management Ordinance for a lakeward deck addition to a nonconforming residence that does not meet the 100' OHW setback.

Tom and Joyce Lamb presented the application as a deck on top of a concrete slab that is 12' x 32' and is already there.

Krueger asked if the posts for the deck will be on top of the slab.

Tom Lamb answered yes.

Christenson commented that when they were out there, the slab appears to be in good shape with no cracks and no evidence of erosion. It makes sense to leave the slab where it is.

Van Kempen opened the discussion for public comment on Part 1.

No public comment given.

Written correspondence received from Max Handbury in favor.

Closed public comment on Part 1.

Van Kempen commented that with the age of the slab which is in good condition and there seems to be no erosion with it being there. How it got there and never got a permit to build it we may never know. It would do more harm to dig this slab out of there.

Grob made a motion to approve the after-the-fact variance request and adopt the staff report findings of fact with the Board of Adjustment providing the answer to Question 12 for which a potential answer was not provided in the staff report.

Christenson seconded the motion.

Part 1 findings of fact:

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

Yes (X) No ()

Why or why not? The platform was constructed by a previous owner at a 70' instead of 75' OHW setback. It has been in place since probably 1983 when the building permit for the house per the variance was issued as the permit showed a 12' x 28' lakeside platform and the proposed OHW setback as being 77'. The platform was constructed by a previous owner and we are therefore left to speculate why the platform is at a 70' setback. It could be that the slight slope to the property led to a mismeasurement or the shoreline could have eroded enough over 34 years to account for the 7' difference. The platform has not caused any environmental issues during this time whereas its removal would expose soil to potential erosion.

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

Yes (X) No ()

Why or why not? Having a lakeside platform on a riparian lot residence is a typical accessory use on such a residential property. The area occupied by the platform is a high traffic area that benefits from a hard wearing surface like concrete to avoid soil erosion vs. grass that would likely not withstand the heavy foot traffic and thus expose soil and increase the erosion potential.

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

Yes (X) No ()

Why or why not? A permit for the platform was issued in 1983 as part of the house building permit. The platform was constructed by a previous owner and has been in place for ~34 years. The house was built by variance that allowed a 75' OHW setback. The record is not clear as to why the platform was constructed at a 70' OHW setback and since the landowners who built it no longer own the property, we will likely never know the real answer as to why the platform was not built in compliance with the 75' setback or if the setback is not met now because of shoreline erosion that may have occurred over the last three decades.

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

Yes (X) No ()

Why or why not? As stated in answers to the previous questions, the platform was constructed by previous landowners in ~1983. The current owners purchased the property in November 2015.

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

Yes (X) No ()

Why or why not? The platform has been in place since approximately 1983 and has not harmed the locality's residential character of single family seasonal and year-round homes. Lakeside platforms are a common accessory feature of a house on a riparian lot and other homes in the neighborhood have similar platforms or decks located at similar OHW setbacks.

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

Yes (X) No ()

Why or why not? Economic considerations were not cited in the application. The difficulty involves the fact that the platform was constructed by a previous landowner at a nonconforming setback over three decades ago.

7. Why did the applicant fail to obtain a variance/or comply with the applicable requirements before commencing work? Did the applicant act in good faith?

Why or Why not? The applicant did not own the property at the time the platform was constructed in 1983. A previous owner pulled the permit and constructed the platform at that time. As soon as the applicants were made aware of the situation, they submitted a variance application to address the issue. Thus, we feel the applicants have acted in good faith to correct the situation.

8. Did the applicant attempt to comply with the law by obtaining the proper permits?

Why or Why not? Yes. As mentioned in the answer to Question 7, the applicants applied for an after-the-fact variance as soon as they became aware that the platform did not comply with the variance. Also as mentioned in previous answers, the applicants did not construct the platform. It was constructed by previous owners ~34 years ago.

9. Did the applicant obtain a permit from another entity that violated the law? Provide explanation below.

No. The applicants did not own the property until November 2015. The platform was constructed by previous owners in 1983.

10. Did the applicant make a substantial investment in the property? Provide details below.

No, but the applicants did not construct the platform. The applicants purchased the property in November 2015. The platform was constructed by previous owners in 1983.

11. Did the applicant complete the repairs/construction before the applicant was informed of the impropriety? Please provide details below.

No, the applicants did not complete the construction as the platform was constructed in 1983 by previous owners decades prior to when the applicants acquired the property in November 2015.

12. Are there other similar structures in the neighborhood? Please provide details below.

There are other similar structures in the neighborhood and there are similar structures that are closer to the lake.

13. Would the minimum benefits to the county appear to be far outweighed by the detriment the applicant would suffer if forced to remove the structure? Why or why not?

No. The platform has been in place for 34 years without causing any apparent harm to the environment. Removing the platform now would expose the site to potential erosion and convert a high traffic area from an appropriate concrete surface to an alternate surface that likely would not withstand the foot traffic.

14. In light of all of the above factors, would denying a variance serve the interests of justice? Why or why not?

No. The platform has been in place for 34 years and not caused any apparent harm to the environment or surrounding properties. Removing the platform would expose the site to possible harm by increasing the erosion potential both in the short-term as grass would be

established and long-term as grass would not likely withstand the high foot traffic present in this location due to its relationship to the sliding glass entry door on the lakeside wall of the house and the tendency for the lakeside exterior or a residence on a riparian lot to be a site of congregating of people, chairs, tables, etc.

The motion passed unanimously 4 – 0.

Christenson commented that the slab is in good shape and would make a solid foundation for a deck and we discussed if they put the deck and wrap it around. After being out there and looking at several structures in the neighborhood and several of them being closer to the lake than this one, there is no problem with this deck in my view.

Van Kempen expressed that with the slab already there, it seems like an ideal spot for this deck. If we require them to meet setback and put the majority of the deck around the corner of the house, we are adding to the impervious surface on the lot.

Grob explained that it is hard to tell this time of the year and since you just recently purchased the property, we would have liked to find out some information about the shoreline. There is a slope and an ice ridge at the bottom of the hill. It appears to have a natural buffer so there is no need for more. It would be desirable to have the deck meet setback; it makes sense to build the deck right on top of what already exists. This would be the least disruptive.

Krueger noted that the platform with the deck on top is the best option.

Van Kempen opened the discussion for public comment on Part 2.

No public comment given.

Written correspondence received from Max Handbury in favor.

Closed public comment on Part 2.

Christenson made a motion to approve the variance request.

Van Kempen seconded the motion.

Part 2 findings of fact:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?
Yes (X) No ()

Why or why not? This slab was in place before they purchased the property and using what is there which will not impact any further toward the lake or impervious surface.

2. Without the variance, is the owner deprived of a reasonable use of the property?
Yes (X) No ()

Why or why not? There is an existing exterior sliding glass door that needs to be safely accessed and it is not unreasonable to have a deck at the lake.

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

Yes (X) No ()

Why or why not? The house was built by previous owners 34 years ago by variance , the platform already exists. The applicants inherited this structure's layout and the OHW setback.

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

Yes (X) No ()

Why or why not? The house was built by previous owners 34 years ago; the house has an exterior lakeside sliding glass door that requires some form of safe access to be provided to it. The current landowners acquired the property in November of 2015 and did not make any of the improvements on the property that are dictating where the deck can be placed.

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

Yes (X) No ()

Why or why not? The area consists of single family year-round and seasonal residences. A lakeside deck is a common accessory feature of residential structures on riparian lots and specifically such structures in this locality.

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

Yes (X) No ()

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

The motion passed unanimously 4 – 0.

Variance Application 3-V-16 by Roger & Debora Plumley: Part of the SE1/4 of SE1/4 and Part of the NE1/4 of SE1/4 in Section 23, and Part of the NE1/4 of NE1/4 in Section 26, Township 140, Range 30, Nevis Township. Parcels 21.23.00910, 21.23.01100, 21.26.00310. Applicants are requesting a variance from Section 4, Subd., A.1.a.2 of the Subdivision Ordinance to create four tracts lacking the required 150' minimum frontage on a publicly maintained road.

Kevin Lindow, agent, presented the application as a spit of two properties into three parcels. One parcel is to be sold and two parcels are going to be exchanged between the owners and the only road frontage on the entire property as it sits right now is 105' on 184th Street. In attempting to subdivide this property, they have bumped into a practical difficulty in the fact that this parcel is positioned in such a way that it does not have enough frontage on a public road. Each piece

would be served by a public road, but instead the applicants are asking to use their 33' easement to access each parcel that is being split.

Christenson asked if it could be explained how Tract C is kind of an "L" shape verses taking Tract D straight across.

Lindow explained that the layout is this way because of the existing fence lines on the property that were used to keep horses in. Those fences are to go with Tract D and the new owner so that they can continue to keep horses on there.

Van Kempen commented that Tracts C and B will be in joint partnership and Tract A will be traded.

Lindow replied yes in the end the ultimate goal here is for Tract A will be titled to Roger and Debora Plumley. As an exchange for that piece where Tract A is, they will be giving up what is shown as Tract C on the survey. That will become Andrew and Melissa Lindow's.

Christenson explained that a condition may be warranted where Tract B and C would have to stay in common ownership. Would everyone be in agreement with this condition?

Lindow answered that they would not have a problem with a condition as long as it is worded in such a way that it allows them to go through the subdivision process after this by Administrative Subdivision and not have any problems with that.

Grob commented that this would be good long term in keeping Tract B from becoming an isolated lot in the future.

Van Kempen noted that Tracts A, C and D have access through the 33' easement. Tract B is a standalone lot. If that was to ever be a separate lot, it would have to have some kind of easement granted to it.

Lindow responded that right now they use that parcel for deer hunting and cut some hay off it, but other than that at this time there are no plans to even build there. Long range that Tract B is shown as 8.73 acres is much greater than the minimum size that is required to split a parcel off. Since the new Subdivision Ordinance took effect in June, that would have been allowed under the previous ordinance but with a 33' easement to access it. They did ask for a variance from both sections of the ordinance.

Van Kempen opened the discussion for public comment.

No public comment given.

No written correspondence received.

Closed public comment.

Van Kempen made a motion to approve the variance application with the condition that Tracts B and C will be in common ownership and adopt the staff report findings of fact.

Christenson seconded the motion.

Findings of fact:

1. Is the variance in harmony with the intent of the comprehensive plan and zoning ordinance?

Yes (X) No ()

Why or why not? An existing 33' wide ingress and egress easement road that used to be a township road (and is thus built to safe specifications with a wide gravel top, good ditches and sight lines, and a level grade) will provide access to the proposed tracts from 184th Street – the nearest public road. The easement road allows safe two-way traffic on it. The ordinance's intent is to not create landlocked property and manage access points for safe integration of incoming and exiting vehicles with vehicles on a road. This easement road used to be a township road and was only vacated because of its short ½ mile distance and there being one residence that used the road.

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

Yes (X) No ()

Why or why not? The property is 66.5 acres in size and oddly shaped with only a 105' wide short flag abutting the nearest public road (i.e. 184th Street). Forty acres of the property is located a full ¼ mile into the section away from 184th Street. The easement road that will provide access from these tracts to 184th Street used to be a township road and was vacated only because of it being ½ mile long with only one residence on the road such that it was not cost-effective for the township to continue maintenance. Had this township road remained such, the proposed tracts would have complied with the ordinance's 150' minimum frontage on a public, maintained road requirement. Thus, the proposed use is reasonable in our eyes.

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

Yes (X) No ()

Why or why not? As stated in the answers to questions 1 and 2, this property is uniquely shaped as a "flag lot" in that it only has 105' of frontage on 184th Street and the 40 acre bulk of the tract is ¼ mile away from 184th Street in the interior of the section. The 33' wide easement road that will provide access to the proposed tracts used to be a township road prior to its vacation. Had the easement road remained a township road, the proposed tracts would all have complied with this ordinance provision.

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

Yes (X) No ()

Why or why not? The difficulty was caused by the township vacating the easement road in October 1988.

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

Yes (X) No ()

Why or why not? The property is a mixture of pasture and wooded acreage. Most of the surrounding property is forested with the property to the northeast of the subject property being pasture. The area has very low-density residential development with there being three residences along 184th Street. Otherwise, it is over a quarter mile between this property and the nearest residence.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as the sole difficulty. The difficulty involves the property's unique "flag" shape and the fact that the township vacated the 33' easement road in 1988.

The motion passed 3 – 0, with Krueger abstaining due to a conflict of interest.

Variance Application 4-V-16 by John & Jenny Johnson: Lots 2 and 3, Third Crow West, Section 16, Township 139, Range 33, Crow Wing Township on 3rd Crow Wing Lake, a recreational development lake. Parcel 06.47.00300. Applicants are requesting a variance from Sections 702 and 801.2 of the Shoreland Management Ordinance and Article V, Sect. 1.01 of the Subsurface Sewage Treatment System Ordinance for a proposed addition to a nonconforming structure located in the shore impact zone that will not comply with the required 10' septic tank setback.

Jeff Tolle, J. T. Builders, presented the variance application as a request to do an addition that would make the septic tank four feet from the addition. On the other side of the house if tried to put the addition there, the main walkway to the lake and the plumbing becomes a huge issue to get the other side to the septic tank. In the front of the house, it is already dug into the hill so that would not work. It says 14' x 16' on the application, the plan says 18' x 14' and I do not think I could get the 18' x 14' on the house.

Grob asked what the layout of that addition is.

Tolle explained that the kitchen is on the front, the dining room is against the lake side and a spiral staircase to go down to the basement. No bathrooms up, there is a ¾ bath downstairs with two bedrooms. The addition is a one level addition and all the plumbing underneath is crawl space with the function of the addition as a sauna.

Krueger commented that the addition looks a lot closer to the septic tank maybe 2 feet when we were on site.

Tolle explained that the septic tank is 1 ½ feet out from the cover and straight down 4 ½ feet deep.

Krueger asked why there was a plumbing issue.

Tolle explained that all water appliances would be on the other side of the house away from the tank.

Christenson asked how you could fix the septic system if there were problems. If you had to go in there and you had start digging out the tanks, you would be so close to the addition.

Tolle answered that as long as the tank is exposed, you could pull it out if the tank had an issue. If we had to meet setback, we would have to move the tank which would involve digging the tank out and moving it.

Van Kempen noted that part of the addition would be attached to the house and the other part would be on pillars. How many pillars will there be?

Tolle replied that there would be three.

Van Kempen noted that if the posts were placed at the front on the back, in a sense where the tank is and the addition would be up higher, you have no seepage issue under the basement because there will be no basement.

Tolle replied that they will be tin in the ground and they have a tree that they will run into on the 18' part. They do not want to cut anything down. That is why they will probably build at the 16' size.

Grob explained that this septic system was just recently put in and is there any reason why the tanks were put where they were?

Tolle noted that they have all this room and why the tanks were placed where they were is a mystery.

Van Kempen opened the discussion for public comment.

No public comment given.

No written correspondence received.

Closed public comment.

Christenson expressed that it seems logical where you are putting this addition, but am concerned about the distance of the tank to the proposed addition.

Van Kempen noted that the floor of the addition is matching the floor of the house. Is it open space under or will the pillars be exposed?

Tolle explained that there will be T.G.I.s and the whole bottom will be spray foamed.

Christenson asked if it will be enclosed.

Tolle explained that it will be enclosed for varmints and so forth.

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

Van Kempen seconded the motion.

Findings of fact:

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

Yes (X) No ()

Why or why not? The addition itself is located outside of the shore impact zone. The location on the house is logical and the addition is above ground so the 10' setback that is required from a basement or living area is in principle achieved.

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

Yes (X) No ()

Why or why not? The cabin is only 500 sq. ft. in size. The proposed addition is 224 sq. ft. in size. Together, the cabin will be 724 sq. ft. in size which is still a very compact residence compared to the average lake residence size today. Thus, the proposed addition for more living space within the cabin is very reasonable.

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

Yes (X) No ()

Why or why not? The cabin is located in the shore impact zone and was constructed prior to enactment of the ordinance by a previous owner so a variance is required in order to add onto the structure. The existing septic system and the topography limits what you can do without major changes to the location.

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

Yes (X) No ()

Why or why not? The structure was constructed by a previous owner prior to enactment of the ordinance. The structure is located in the shore impact zone so the ordinance requires a variance for any addition(s) to it.

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

Yes (X) No ()

Why or why not? The area consists of single family year-round and seasonal residences. The proposed 14' x 16' addition to a 20' x 25' existing cabin will not alter the locality's residential character as the resulting structure is still well within acceptable square footage for a very modestly sized cabin.

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

Yes (X) No ()

Why or why not? Economics were not cited in the application as the sole difficulty. The difficulty involves the structure's being located in a shore impact zone.

The motion passed unanimously 4 – 0.

Communications: None.

Adjournment

Krueger made a motion to adjourn.

Van Kempen seconded the motion.

The motion carried unanimously 4 – 0 and the meeting adjourned at 6:51 p.m.

Respectfully submitted,

Barbara Barth
Recording Secretary