

## HUBBARD COUNTY

### Planning Commission/Board of Adjustment meeting minutes

6:00 p.m. on Monday, October 24, 2016

Chairman Ted VanKempen opened the meeting with the following members present: Ken Grob, Tom Krueger, Tim Johnson and Charlene Christenson, substituting for Cal Johannsen, ex-officio Planning Commission member. Also present was Environmental Services Officer Eric Buitenwerf.

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

#### Board of Adjustment:

**Approval of Minutes:** September 26, 2016 meeting.

Johnson made a motion to approve the minutes as presented. Grob seconded the motion that carried unanimously 4 - 0.

#### Old Business:

**Variance Application 37-V-16 by Jason Welter:** Part of Gov. Lot 10, Section 12, Township 140, Range 33, Nevis Township on Eighth Crow Wing Lake, a recreational development lake. Parcel 21.12.02600. Part 1: Applicant is requesting a variance from Sections 502.2 and 503 of the Shoreland Management Ordinance (SMO) for a proposed lakeward addition to a lakeside deck on a nonconforming residence that does not meet the 100' ordinary high water mark (OHW) setback and is located in a bluff impact zone (BIZ). Part 2: Applicant is requesting an after-the-fact variance from Sections 502.2 and 503 of the SMO for a platform that does not meet the 100' OHW setback or 10' side lot line setback, and is located in a BIZ. (Note: underlined text indicates amendment made to original application.)

Jason Welter, 567 131<sup>st</sup> Avenue N. Champlin, MN, presented the variance application for a proposed lakeward addition to a lakeside deck on a nonconforming residence that does not meet the 100' ordinary high water mark setback and is located in a bluff impact zone. We would like to add a 5' by 20' addition to the deck to accommodate a table and chair set.

Part 1 - deck addition

Grob indicated this variance request was delayed last month due to some unclear facts of when certain items were constructed. I believe, after the investigation of the Environmental Services Department, the current parking platform is valid and acceptable. The fire pit was constructed by a previous owner without a permit or variance. The current deck was built by variance with the home upgrade. Mitigation for any construction on the bluff is not feasible. The combined existing situation has 650 square feet of impervious surface in the bluff impact zone.

Johnson asked Buitenwerf if the fire pit platform is considered a legal nonconformity.

Buitenwerf replied the fire pit platform is an illegal nonconformity as it was constructed after the bluff impact zone regulations were a component of the ordinance. No variance or accompanying permits were issued for the fire pit or platform.

VanKempen asked for public comment.

No written correspondence was submitted.

No public comment was given.

VanKempen closed public comment.

Grob commented the fire pit and other construction already exists in the bluff impact zone. Adding additional square footage to the deck would seem to be an excessive impact to the bluff impact zone.

VanKempen noted the paving stones along the side of the house are being used as a driveway. They can also be used as additional seating area.

Krueger agreed with both Grob and VanKempen.

Grob made a motion to deny Part 1 of the variance application and adopt the staff report findings of fact.

VanKempen seconded the motion.

Findings of Fact Part 1:

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

Yes ( ) No (X)

Why or why not? There already is 548 sq. ft. of deck/platform space in the bluff impact zone on this lot. All of this space is afforded an equal view of the lake and either abuts the cabin or is within 20' of it. Allowing another 100 sq. ft. of impervious deck surface area to be placed in the bluff impact zone when an abundant amount of such space already exists would not be in harmony with the ordinance's and State Rule's intent.

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

Yes ( ) No (X)

Why or why not? The owner already has 548 sq. ft. of deck and platform recreational space abutting the cabin for easy use that is located in the bluff impact zone. This 548 sq. ft. provides a very reasonable use of the property. Adding 100 sq. ft. of deck space in the bluff impact zone would not be reasonable.

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

Yes (X) No ( )

Why or why not? The structure was built prior to the ordinance at a nonconforming OHW setback and in a bluff impact zone. There is no way to enlarge the deck without a variance because it is in a BIZ and the structure does not meet the 100' 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? As mentioned in previous answers, the structure was constructed prior to the ordinance by a previous owner. It sits in a bluff impact zone and does not meet the 100' OHW setback.

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

Yes ( ) No (X)

Why or why not? There already is 548 sq. ft. of deck and platform space abutting or adjacent to the cabin which lies in the bluff impact zone and within the 100' OHW setback. This amount of deck/platform space is excessive. Allowing another 100 sq. ft. of such area on a lot that is only .25 acres in size would not maintain the locality's character which consists of smaller seasonal cabins with much smaller outside deck/platform space.

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 is the fact that the structure and existing deck are located in a bluff impact zone and do not meet the 100' OHW setback.

The motion carried unanimously 4 – 0.

#### Part 2 – after-the-fact fire pit platform

VanKempen commented it appears the fire pit platform was in place prior to the deck being added to the front of the house. During the on-site lot view, there were no visible signs of erosion.

Grob asked if there is a lot of runoff down the bluff when we have a heavy rain.

Welter replied no.

Krueger commented he did not see any erosion down the bluff from that area.

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

VanKempen seconded the motion.

#### Findings of Fact Part 2:

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 has been in this location at least 10 years as best we can tell from the available documentation. The lot is only 124' deep and a little more than half of this depth is covered by a bluff impact zone. There is not a viable location to where the platform could be moved that would better meet setback requirements. The platform does not appear to have been causing any erosion issues due to runoff generated from its surface.

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

Yes (X) No ( )

Why or why not? The lot is 116-124' deep and a bit over half of this depth is made up of bluff impact zone. Having a platform within practical distance of one's residence where one can enjoy a view of the lake is a reasonable use of property – especially on a riparian lot.

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

Yes (X) No ( )

Why or why not? The lot is only 100' wide x 126-124' deep. Roughly two-thirds of the lot's depth is occupied by a bluff impact zone.

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 lot was created by a previous party prior to the ordinance being enacted. The bluff impact zone ordinance language was added by the State of Minnesota in 1991.

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 for roughly a decade as best we can tell. During this time, there have been no complaints submitted to the Environmental Services Department by neighbors concerning this platform. The platform blends in well to the area and does not look out of place.

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

Yes (X) No ( )

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

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 acquired the property in October 2004 and states that the platform existed on the property at the time they purchased it.

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

Why or Why not? Not applicable. The applicants acquired the property after the platform was constructed – according to the applicant.

9. Did the applicant obtain a permit from another entity that violated the law?  
The applicant acquired the property in October 2004, states the platform existed at the time he purchased the property, and there is no record of his having obtained a permit from another entity that violated the ordinance.

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

Yes, in terms of purchasing the property. It is unknown what value is appropriately placed on the platform to say if it is substantial.

11. Did the applicant complete the repairs/construction before the applicant was informed of the impropriety?

The applicant purchased the property after the deck was constructed and in existence.

12. Are there other similar structures in the neighborhood?

The two neighboring properties to the North have decks and cabins in the bluff impact zone.

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?

Yes. The platform has been in place for roughly a decade as best we can tell. There is no evidence of erosion downslope of the platform on the bluff slope. It might be possible to move the platform further away from the bluff crest, but the expense of doing so and the challenges of filling in the area where the platform is located and successfully stabilizing and revegetating said area are not worth the minimal gain.

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 appears to have been in place for roughly a decade. There is no evidence of the platform causing any erosion or other problems to the bluff. The platform is well screened from the lake by the existing trees and understory vegetation so there are no aesthetic concerns with its location. If the platform were required to be moved, that would expose the soil where it is located to potential erosion and there would be challenges to successfully rehabilitating the area that are not worth the risk associated with moving the platform and doing such work.

The motion carried unanimously 4 – 0.

**New Business:**

**Variance Application 43-V-16 by Margaret Prah:** Lot 8 and the N ½ of Lot 7, Block 1, Joseph C. Barta Estates, Section 28, Township 141, Range 34, Lake Emma Township on Big Sand Lake,

a recreational development lake. Parcels 16.57.00800 and 16.57.00710. Applicant is requesting a variance from Section 702 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residence located in a bluff impact zone.

Tom Patterson, 23562 Greenway Drive, Park Rapids, MN, presented the variance application. We are proposing an addition to a nonconforming residence located in a bluff impact zone. I have provided additional photographs of the proposed area for your viewing. I submit to you that we comply with Section 1103 of the SMO. In the first photograph, the trees you see were planted by Margaret Prahll when she acquired the property approximately 36 years ago. When the trees are fully in bloom, you can hardly see the lake from that junction. The second series of photographs show me standing near the waterline looking up toward the pine trees in the first photograph. If you notice, you cannot see the cabin. It sets back nearly 24' from the edge. The third photograph shows 52 steps down to the lake. The steps and landing were constructed in 1977 or 1978. Wayne Krueger replaced both structures 3 – 5 years ago. To our knowledge, the nonconforming uses predated the ordinance. The size and shape did not change when they were replaced. Therefore, it would not be fair to use those as a basis to deny the request that is before us today. The fourth photograph shows the extensive vegetation throughout. There has never been an erosion issue. The fifth photograph will show the height of the proposed screened-in porch. It is significantly below the nonconforming structure. This depiction should give you added information to suggest that we believe we comply with each one of the provisions of Section 1103 1). A-F of the SMO. All of the water that is on this lot drains to the land side, not the lake side. We have never used fertilizer on our lot, and we never will. We are members of the Big Sand Lake Association along with many other foundations and organizations. We feel strongly about protecting our lakes and land. We will not do anything to degrade the quality of this property or the lake. Technically, we will be impacting the bluff impact zone by six inches.

Krueger asked if the photograph presented represents the proposed construction. Will there be any additional decks or platforms?

Patterson replied no.

Grob noted the ESO staff report indicated a noncompliant septic system and asked Buitenwerf for clarification.

Buitenwerf explained, after reviewing the compliance report, the first tank was a round block tank. In conclusion, it was found to not be water tight.

Johnson agreed. Block tanks are not water tight tanks.

Patterson remarked the tank would not have been discovered had we not filed for the application.

Grob explained that is why we have compliance inspections on all legal additions, to be sure the septic systems are functioning properly. What are your plans for guttering on the proposed addition? I am concerned with the side facing the lake.

Patterson replied he would be willing to attach gutters to the addition.

VanKempen asked for public comment.

No written correspondence was submitted.

No public comment was given.

VanKempen closed public comment.

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

Conditions:

1. The noncompliant block septic tank must be abandoned and the building sewer line routed around it.
2. Gutters must be installed and maintained on the lakeside roof slope of the screen porch addition to divert water away from the lake and bluff impact zone.
3. The existing well that is too close to the proposed addition must be properly abandoned.

VanKempen 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 structure was granted a variance in 1977 to be constructed at an 80' OHW setback prior to the bluff regulations being added to the ordinance in 1991. The front quarter or so of the house sits in the bluff impact zone. The proposed addition would only be 1' into the bluff impact zone. Mitigating conditions are being placed on the variance that will ensure the stormwater generated by the addition will not go lakeward down the bluff. The applicant made a noticeable effort to make the addition comply with the ordinance as much as possible while working with the limitations of how the structure is built and laid out.

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

Yes ( X ) No ( )

Why or why not? A 20' wide x 15' deep x 11' high screened porch addition to an existing 1,440 sq. ft. residence is a reasonable use of property. People like to be able to see the lake on a riparian lot and do so without having to be bothered by bugs.

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

Yes ( X ) No ( )

Why or why not? The structure was built by variance at an 84' OHW setback within a bluff impact zone prior to the bluff language being added to the ordinance. The ordinance requires a variance for any addition to a structure located in a bluff impact zone.

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 mentioned in previous answers, the structure was constructed by variance at an 84' OHW setback in a bluff impact zone prior to the bluff regulations being added to the ordinance in 1991. The difficulty is that the current ordinance requires a

variance for any addition proposed to be made to a structure that is located in a bluff impact zone.

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

Yes (X) No ( )

Why or why not? The two nearest structures (one to the north and one to the south of this lot) are larger than the existing structure and proposed addition thereto. The lots in this area are in the 5-8 acres in size range and there is quite a bit of distance (~390') between the proposed addition and the nearest structure to the south.

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 is the fact that the structure is located in a bluff impact zone and does not meet the 100' OHW setback, and the ordinance requires a variance for an addition to a structure located in a bluff impact zone.

The motion carried unanimously 4 – 0.

**Administrative Decision Appeal by Tim Hanna and Bob LeSage:** Little Sand Bay Villas CIC #28, Section 35, Township 141, Range 34, Lake Emma Township on Little Sand Lake, a recreational lake. Parcels 16.45.90100-16.45.91000. Applicants are appealing an administrative decision regarding Condition 13 on Conditional Use Permit 2-CU-11.

Tim Hanna, 212 Eastwood Drive, Redwood Falls, MN, and Bob LeSage, 1251 East Broadway, Redwood Falls, MN, presented the variance application. We are requesting an appeal on the administrative decision regarding Condition 13 on Conditional Use Permit 2-CU-11. This conditional use permit was obtained by Brett and Catherine Prouty, June 21, 2011 with 15 conditions. Condition 13 states the operating permit for this CUP must be obtained within five years of the date of the County Board's approval of the CUP or this CUP will be void. This property was transferred to LSD, LLC in January 2014. During that process, the CUP operating permit had been forgotten. Obviously all of the other provisions of the CUP were met. Recently upon a property combination, Mr. Buitenwerf brought to our attention the fee had not been paid. Thus following the letter of the CUP, he chose to void the CUP. Now that this is a residential planned unit development, it cannot be converted back and it cannot go forward without the CUP. We are asking the Board if we could continue the CUP by paying the fee and moving forward with the existing CUP.

Grob asked if Buitenwerf would comment on Condition 11.

Buitenwerf replied some of the items that were required to satisfy the condition had been implemented. However, there are some things that are outstanding as observed during the lot viewal. There is still erosion taking place, near the garage, on Unit 1. There are also some berms that were not installed on the middle driveway area along the laundry structure. There is still evidence of erosion filling sediment in the parking area furthest south of the units on the property. Along with the operating permit not being applied for or issued.

Krueger asked if they have been trying to correct Condition 11 over the past five years.



LeSage replied they had hired a contractor to take care of the issue. Evidently, I was not aware of it running back. It appears to need additional attention and we have it taken care of.

Krueger stated Condition 11 states the erosion problem shall be corrected to the satisfaction of the Environmental Services Department. Did they go back to Mr. Buitenwerf to get the satisfaction?

LeSage replied to his understanding they did. Evidently there was a miscommunication.

Krueger asked Buitenwerf if they came to seek satisfaction on Condition 11.

Buitenwerf replied regarding Condition 11, I last met on the property with Brent Prouty, Doug LeSage and Bob Berghuis, (the contractor hired to do the work), to satisfy Condition 11. We discussed and agreed upon the necessary steps to implement to address the erosion issues. Upon completion, they were to notify me to inspect the work. Some of the work they asked if they could wait to do until the detached garage on the top of the hill was constructed. It was completed later and I had not heard from them.

VanKempen asked what date that was.

Buitenwerf responded early summer 2015.

Hanna asked if there was physical documentation of that conversation.

Buitenwerf responded mostly verbal.

VanKempen asked for public comment.

No written correspondence was submitted.

No public comment was given.

VanKempen closed public comment.

Grob noted the law is clear that there is a five year limit. Our rule here is to act as quasi-judge as to whether in fact the Environmental Services Department is acting according to law and ordinance. On that basis, it seems we would rule in favor of the Environmental Services Department. What is the purpose of a five year limit?

Buitenwerf responded the condition is placed if, after time, the use does not occur. For example, twenty years pass by and someone entertains the idea of commencing that use again, the neighborhood may have change and that particular use may not be compatible. The sunset clause is a housekeeping item that is commonly used in ordinances to guard against an incompatible use potentially taking place in the future. The ordinance currently has a default requirement that an operating permit be obtained within two years of the conditional use permit being granted. Otherwise the permit would be void. The current ordinance is more stringent than the condition that was placed on this permit when it was issued.

Grob asked if the conditions would differ presently as to the conditions that were applied at that time.

Buitenwerf responded he did not think so. I do not foresee additional conditions other than the conditions that were placed in 2011.

Grob assessed that a major portion of the existing application is salvageable and may be used for a new application. Is that a fair assessment?

Buitenwerf replied yes.

LeSage commented we have operated this residential PUD unknowingly not obtaining the operating permit. We feel we have been meeting the intention of the original CUP by running it the way you previously had approved. We have simply made this oversight. Since another conditional use would be similar to this, it would be much easier to move forward rather than starting over. We feel this would be a simple solution.

Grob commented the legal advice given to the Board was that the Environmental Services Department was well within its right and very clear that they have the right to request a reapplication. It is our role to either support or not support the Environmental Services Department. I have the perception that the burden on the applicant is not particularly difficult.

Grob made a motion to support the Environmental Services Department decision and deny the administrative decision appeal.

VanKempen seconded the motion.

Findings of Fact:

1. Legal advice says the Environmental Services Department decision is consistent with the law.
2. The burden on the applicant is not burdensome for the re-application process.

The motion carried unanimously 4 – 0.

**Variance Application 44-V-16 by Michael and Jennifer Hoagberg:** Part of Gov. Lot 4, Section 31, Township 139, Range 33, Crow Wing Township on Duck Lake, a recreational development lake. Parcel 06.31.01700. Applicants are requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance to convert an unimproved lot that does not meet the 100' minimum lot width requirement into an improved lot and place a residential structure on the lot at less than the required 100' ordinary high water mark setback.

Michael and Jennifer Hoagberg, 17550 Hemlock Avenue, Lakeville, MN, presented the variance application. This property has been in our family several decades. This specific lot that we are talking about was given to my in-laws in the 1960s. Subdivision of the lots caused them to be very narrow and long. Therefore, it does not meet the 100' width requirement. At that time, they installed Angler Drive Road to access the lots. Two specific items on our variance request are due to the practical difficulties - the uniqueness of the property and maintaining the essential character of the property. We are wanting to place a cabin directly in line with all of the cabins that are currently on Angler Drive. Building the cabin further back would place it in the middle of the road and possibly create potential fire and safety access to the other properties. The properties immediately to the north went through the variance process a few years back with similar issues. The hardship is once again due to the road. Given this hardship and the practical difficulties, a 100' setback would not be feasible. We have 100% support from the other property owners on Angler Drive.

Krueger asked without the variance, are you deprived of a reasonable use of the property.

Hoagberg replied it would be difficult to build a cabin on the existing road with the 100' setback. It would also set us behind the two story cabin that would dramatically affect our view to the south of the lake.

Grob commented on the view of the lake, moving the structure setback an additional 30' would not materially affect your view of the lake.

Hoagberg asked how the 100' setback will impact the use of the road.

Grob explained he was just speaking on the view.

Hoagberg clarified placing the structure at a 100' setback would be placing it on the road.

Grob acknowledged.

Hoagberg clarified due to the variance process, we were not able to finalize the actual plans with any contractors. We did; however, allow for some alterations to accommodate the road. We were mindful of the exits on the cabin and actually have them along the punch-out for the safety of the people exiting the cabin.

Grob replied this is not a formal road.

Hoagberg replied according to your Board it is. It was on the two variances in 2003 and 2007 that I referenced earlier.

Grob explained the current cart path was used as a rationale in previous decisions. We are not confined to previous decisions. We have to take into consideration today's existing situation.

Jennifer Hoagberg asked who put the Angler Drive sign up.

Grob explained if you build back on the road, would it really deny anyone from having access to their current structure as there are two outlets on the road.

Hoagberg replied yes.

Jennifer Hoagberg commented the Tickners have legal easement to exit over the property.

Grob agreed they have a legal easement to exit. My point is that they still have access out of their property to the main road.

Hoagberg responded legally speaking, no.

Grob asked if people consistently use the road.

Hoagberg replied yes. They use both exits consistently.

Johnson asked Buitenwerf if it would be possible to suggest the applicant and or other nearby parcels to have their own driveways to the County Road.

Buitenwerf replied there is nothing that would preclude that. All of the tracts, including the Hoagbergs' property, do front County Road 13. They could all apply for an approach permit from the Highway Department to utilize a driveway onto County Road 13.

VanKempen asked if there were cabins on both the east and west side of Angler Drive.

Hoagberg replied yes. The cabins on the west side of Angler Drive are converted garages.

VanKempen asked what the difference is between this variance application and the variance application in 2011.

Hoagberg responded we did not have a building plan at the time and the footprint was slightly modified from what was approved in the variance. When we requested a permit to build a home that was slightly smaller with less impervious surface coverage, we were denied. The variance application since then has expired. Therefore, we applied for a new variance.

Krueger asked about building the cabin on the east side of Angler Drive.

Hoagberg responded building at 140' setback would once again place his cabin behind the two story house next door which would obstruct the view of the lake.

Jennifer Hoagberg replied we do not want a road on the front of the cabin. We have stayed in some of the converted garages over the summer and we have had children running out toward the street as they do not realize the road is continuously traveled.

VanKempen asked for public comment.

Jeff Dickie, 22761 Angler Drive, Menahga, MN 56464. We own the cabin at the listed address. The lots on Angler Drive has been occupied by family until recently. The road has been used as ingress and egress for all vehicles to the cabins prior to 1962. I have a background in emergency services. The structures are all wood structures. If one of the structures would catch on fire, it will be destroyed before emergency services would arrive. If you were to cut the road off, multiple structures would be lost instead of one. The existing U-shape road will assist in the numerous necessary emergency vehicles needed to extinguish a fire. If a large vehicle, such as a backhoe, would need to go through to work on septic issues, you would not be able to turn around. Our family provided this road as a noise barrier from the traffic on County 13. That is why there are no driveways directly on County 13. Not only would drive way locations will be limited on each lot, as many of the septic systems are located behind the garages, the steep grade would be an issue as well.

Chris Wagner, 22761 Angler Drive, Menahga, MN 56464. I am concerned about the trees we would lose if we needed to re-route a road or driveway. We lost several trees from the storms this summer.

Steve Michlin, 22900 Anchor Drive, Menahga, MN 56464. We own a lot on Angler Drive. The lot is only 80' wide. With the location of septic systems and additional cabin, there is not room for a road. Placing the home at the proposed setback would be aesthetically appealing to the surrounding properties.

Bryan Ojala, 10311 County 13, Menahga, MN 56464. I feel as though you would put an undue hardship on the end cabin owned by James Cook. It will cost thousands of dollars for each property owner to cut a road or driveway onto each property. You will wipe out numerous trees in doing so, and cause erosion issues.

VanKempen closed public comment.

Written correspondence was received from Dana Tickner, 3204 43<sup>rd</sup> Avenue South, Minneapolis, MN 55406 in favor of the variance request.

Written correspondence was received from Diane Ojala and Jaclyn Michlin, 22749 Angler Drive, Menahga, MN 56464 in favor of the variance request.

Written correspondence was received from Bryan and Diane Ojala, 22723 Angler Drive, Menahga, MN 56464 in favor of the variance request.

Krueger noted after public comments were given, the safety issue of emergency vehicles being able to get to the property.

Grob asked Buitenwerf about the variance in 2011 that stated the lot could be an improved lot only under the condition of a 100' setback on any structure. Is that variance voided since 5 years have passed?

Buitenwerf responded Variance 67-V-11 was granted after the ordinance was amended to include the 5 year sunset period. If it hasn't yet expired, it will shortly.

Grob asked if there is anything in the record that indicates why the condition was placed on that lot. When variances for the other cabins on either side have been able to have things done using the road as the criteria.

Buitenwerf responded I suggest reviewing the Board of Adjustment meeting minutes that are provided in the packet and on the screen.

Johnson commented he read through the application and noted that there was a cabin on the lot. When was the cabin torn down?

Hoagberg replied it was relocated to the Ojalas' property within the last 12 months.

Johnson asked if it was 36' by 36'.

Hoagberg replied no. It was 16' by 16'. It was the original cabin built in 1970.

Johnson asked if the setback of the cabin was 77'.

Hoagberg replied yes. That setback would be acceptable. The rationale we used was to stay in line. If the ultimate result is a 77' setback, we would be satisfied.

VanKempen commented Angler Drive goes across eight different lots. Is that correct?

Hoagberg responded yes.

VanKempen asked if all of the lots are owned by the family.

Hoagberg replied no.

VanKempen asked is there a possibility without an easement, a landowner could close it.

Hoagberg replied potentially.

VanKempen commented at that point you would have to put in your own driveways.

Hoagberg replied potentially, unless we go through the legal process to make an easement.

VanKempen remarked if a private property owner is not willing to do so, you will still have access from County Road 13.

Hoagberg replied there are a lot of assumptions at hand.

VanKempen expressed concern about the emergency service vehicles making errors of coming down the north access road. I would like to see a plan as to what size the cabin will be. It is very open ended.

Hoagberg clarified the plan presented is one of the plans they prefer. We now have a plan that we like and it has room for potential modifications to either move it further away from the road or primarily to deal with unknown elevation issues.

Krueger asked if the distance from the lake is set.

Hoagberg replied pending elevation it is set. We would like to be in that line, but if elevation dictates that we need to create some sort of walk out or steps down for safety out the front, we created enough cushion for a little setback. The uncovered porch is entirely for elevation.

Grob asked Buitenwerf if they would need to have a permit issued when they have a design for the house.

Buitenwerf replied yes. A land use permit would be required if the variance is granted.

Johnson asked Buitenwerf if the ordinance allowed a platform off the front of the structure.

Buitenwerf responded if it meets the 100' structure setback.

Grob indicated if the variance states the setback is 67' everything must be behind it.

Hoagberg responded whatever is finalized on the variance will fit within the footprint.

Grob asked Buitenwerf to display the Angler Drive photo. I would like to see if there is room to relocate Angler Drive. Could the road be looped around?

Hoagberg asked for clarification. Are you wanting to loop entirely within our property or with other properties?

Grob replied within your property.

Hoagberg commented within our property, there is a little room for adjustment. The issue would be the garage and septic system on the north.

Grob asked if the road could be moved 10'.

Hoagberg responded he hasn't had a surveyor to check into it. It may potentially be possible. There may be some difficulties due to the location of the garage on the north.

Krueger asked if 75' was the State setback.

Buitenwerf replied no. The requirement at the State level is 100' setback from the ordinary high water mark. A general development classified lake has a 75' setback.

Grob commented he does not understand why a 100' setback cannot be met.

Hoagberg explained there is one lot that is not in the family. Tract D and Tract E have legal easements to exit through Tract F.

Krueger commented that there may be a safety issue if we alter the direction of the road.

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

Conditions:

1. The house and any lakeside deck/platform must meet a 67' ordinary high water mark setback.
2. The house must fit within the footprint of the house shown on the variance application site plan sketch.

Motion failed for lack of second.

Krueger made a motion to approve the variance application with the following conditions:

Conditions:

1. The house and any lakeside deck/platform must meet a 77' ordinary high water mark setback.
2. The house must fit within the footprint of the house shown on the variance application site plan sketch.

Johnson 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? Variance was granted in 2011 as it created a safety issue with the road.

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

Yes (X) No ( )

Why or why not? They should be able to build a cabin.

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

Yes (X) No ( )

Why or why not? The road should be in back, but it isn't.

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

Yes (X) No ( )

Why or why not? One to two generations before they laid the road out.

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

Yes (X) No ( )

Why or why not? Most of the structures on neighboring lots were constructed prior to enactment of the Shoreland Ordinance at setbacks that are less than the current 100' OHW structure setback. The proposed residence would be similar in size to that of the existing neighboring residences.

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 3 – 1 with Grob voting nay.

**Variance Application 45-V-16 by Paul Filas:** Lot 8, Block 1, Lakewood, Section 8, Township 141, Range 33, Mantrap Township on West Crooked Lake, a natural environment lake. Parcel 20.58.00800. Applicant is requesting a variance from – Part 1: Section 502.1 of the Shoreland Management Ordinance (SMO) to construct a proposed residential structure at less than the required 150' ordinary high water mark setback. Part 2: Section 902 of the SMO to excavate in a bluff impact zone to install an SSTS.

Paul Filas, 6340 Ridgestone Drive North, Billings, MT, presented the variance application. We would like to build at less than the 150' ordinary high water mark setback. It has been brought to our attention the 150' setback measurement starts from the breach of the lakeshore that now exists. Thus, building from that setback places the structure on a steep bluff. It is virtually impossible to build in that area. You would then need to build back by the road. I am willing to decrease the size of the structure if needed.

Johnson asked what the possible dimensions would be.

Filas responded that he would be willing to decrease the size to 20' by 40' or 20' by 46' dimensions. I am flexible. I would need to be mindful of the size to service the well.

VanKempen asked for public comment.

No written correspondence was submitted.

No public comment was given.

VanKempen closed public comment.

Grob expressed his concerns that natural environment lakes are starting to receive pressure for development. It seems inappropriate for us to not require the 150' structure setback. The true nonconformance would be allowing the structure to be constructed at 115'. It is hard for me to perceive for you to be able to drive in and find room to turn around if you need to build a holding tank in front of the structure. After walking up the hill, there is a nice view from back there. It appears with the placement of the septic system, and the ability to drive in and turn around without encroaching on the wetland, it does not seem like the most desirable place to build a structure.



Johnson asked if you were to decrease the size of the structure, would you be able to make the 150' setback from the lake, not the wetland.

Filas replied yes. I would be able to make the 150' setback from the lake.

VanKempen asked Buitenwerf if the area the applicant has proposed to build the structure on was excavated.

Buitenwerf replied it appears there has been some material that has been removed. Whether it has been pushed into the wetland, it is hard to say without doing some soil borings.

VanKempen asked Buitenwerf if the hill is considered part of the bluff. Thus making excavation into the hillside a possibility to move the structure back further.

Buitenwerf replied yes. There is a bluff through part of the lot.

Filas commented he believed the owner before him did some excavating on the property. To my knowledge it is on public record.

Grob asked if he builds at the 150' setback, what kind of constrictions are there on a bluff to remove soil from the hillside.

Buitenwerf responded he would need to stay out of the bluff impact zone. No excavation is allowed in the bluff impact zone. If you are beyond the structure setback, there are no limitations on grading and fill unless you are in a steep slope, or bluff impact zone, in which case there are regulations. This qualifies as a steep slope through most of the property. As determined by ESO staff, there is a large component that also qualifies as a bluff. We have not mapped the entire property.

VanKempen asked in what area of the property you turn around your vehicle.

Filas replied I turn around anywhere. Even if I build the structure a bit smaller, I should be able to turn around.

Grob asked if he was aware of the cart path or road along your hillside of the bluff.

Filas responded he is aware of that now. During the summer you cannot see anything.

Grob commented I would be leaning toward not approving anything less than the 150' setback. A natural environment lake is a special classification. Multiple people are going to start requesting less than the required 150' setback.

Johnson agreed with Grob. I am okay with being closer to the wetland area. During the lot viewal, I did not understand what was being proposed beyond that and how it would work for you.

VanKempen mentioned if it was his property, he would build up on the hillside for the view of the lake. The only difficulty building there is getting down to the lakeshore which I assume a four-wheeler or golf cart would accommodate.

Grob asked have you looked at an alternative building site. If so, what are the constraints or difficulties you foresee?

Filas responded I may need to take out a few trees to be able to actually view the lake. Am I allowed to remove trees?

Grob replied there are no tree removal restriction beyond 150' of the lake.

Filas stated that it depends on whether the County determines the 150' setback from the lake itself or the wetland.

VanKempen asked Buitenwerf if the impact zone on natural environment lake is the first 75'.

Buitenwerf replied correct. A fifty percent screening needs to be maintained of the structure when viewed from the water during summer leaf on conditions.

VanKempen asked if there would be any other limitations due to the steep slope.

Buitenwerf replied if there is an area that meets the steep slope definition, clearing would be allowed. A bluff impact zone has the same restrictions as a shore impact zone, in which tree removal is not allowed.

Johnson made a motion to table the variance application per the applicant's signing a written request for an extension of the time limit for the County to review and act upon said application so that a new proposal to meet the 150' ordinary high water mark setback from the lake, not the wetland, of the property may be submitted for the Board's consideration sometime in the Spring of 2017.

Grob seconded the motion that carried unanimously 4 - 0.

Filas stated he verbally agreed to indefinitely extend the variance application.

Buitenwerf stated Filas completed the form indicating his desire to indefinitely extend the variance and waive his rights to the 60 day rule so he could submit an amended proposal sometime in the Spring of 2017.

**Variance Application 46-V-16 Pine Haven Christian Assembly:** Lots 15 – 21, Block A, Lots 1 - 9, Block B, Lots 1 - 4, Block C, Lots 13 and 15, Block D, Pine Haven Beach, Section 17, Township 139, Range 34, Hubbard Township on Long Lake, a recreational development lake. Parcels 14.38.01150 and 14.38.02070. Applicant is requesting a variance from Section 701 of the Shoreland Management Ordinance to make some structural alterations, expansions and additions to a nonconforming church camp use.

Joe Cachiaras, 2017 31<sup>st</sup> Place, Rochester, MN, presented the variance application. I am the Vice Chairman of the Pine Haven Christen Assembly Board and the Chairman of the Property and Grounds Committee. When we went to apply for a land use permit for the dining hall addition, we discovered we were nonconforming. At the time we did not understand what that meant, but since then Buitenwerf has brought us up to date. The variance request stems from the 2015 change in our classification. The camp and resort is nonconforming to the new Shoreland Management Ordinance. Due to the nonconformity, we are requesting a variance to extend the west side of the existing dining hall. After talking to the Hubbard County Soil and Water Conservation District (SWCD), they proposed we remove part of the blacktop driveway and excavate it down approximately three feet to create a reservoir. That would then be filled with rock. Impervious pavers would be installed to allow water from the down spouts of the dining hall expansion to allow for proper drainage. We have had an issue of run-off during heavy rain falls ending up in the lake. We recently received an extension on a federal grant of approximately \$18,000 to assist us on the \$36,000 project as long as the variance is approved. The extension

was approved until next Spring of 2017. Compliance inspection reports have been filed with ESO. Everything was compliant with the exception of a noncompliant cesspool on the property. At this point it does not appear to have been abandoned properly. We will abandon it appropriately.

Grob asked if there was a detailed stormwater management plan in place or an alternate plan approved by the SWCD.

Cachiaras replied yes. It would be that or additional. At the time, this particular plan may be revised by the SWCD with the removal of the oak tree and taking the pavers around the dining hall with the same impervious surface coverage.

Grob remarked what I am looking for is with the approval of the variance application we would put a condition on the variance that a stormwater management plan is in place or an alternate plan that is approved by the SWCD.

VanKempen asked for public comment.

No written correspondence was submitted.

No public comment was given.

VanKempen closed public comment.

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

Conditions:

1. The stormwater management plan as presented in the variance application must be implemented or an alternate plan approved by the Soil and Water Conservation District can also be allowed.
2. The noncompliant septic system cesspool on the property must be properly abandoned.

VanKempen 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 dining hall addition will comply with all setback and height requirements. The property will continue to comply with the 25% impervious surface area requirement. The paver platform is a voluntary measure the camp is undertaking to mitigate the stormwater generated by the proposed addition. The proposed stormwater management project is very much in harmony with the ordinance's intent.

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

Yes ( X ) No ( )

Why or why not? Having a dining hall that is large enough to accommodate the camp's users is a reasonable use of the property. Installing a pervious paver platform/walkway around the proposed dining hall addition is also a very reasonable use of the property so that no stormwater management issues arise as a result of the additional impervious surface area created by the proposed dining hall addition.

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

Yes (X) No ( )

Why or why not? The church camp is a legal nonconforming use that predates the Shoreland Ordinance. Section 701 of the Ordinance requires a variance for any structural alterations/additions/expansions to structures involved in such a use.

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 caused by the Shoreland Ordinance requiring a variance for any structural alterations/additions/expansions to structures involved in a legal nonconforming use. The proposed dining hall addition and platform will both meet all setback and other ordinance requirements.

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

Yes (X) No ( )

Why or why not? The dining hall is located in the middle of the property and meets the 100' OHW setback. The property is well vegetated with mature trees. Thus, the addition and pervious paver platform will not be visible to other properties or the lake. If anything, the platform and related stormwater management improvements will help maintain the locality's character by guarding against any stormwater-related erosion occurring due to the dining hall addition.

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 is the fact that Section 701 of the Shoreland Ordinance requires a variance for any structural alterations/additions/expansions to this legal nonconforming use.

The motion carried unanimously 4 – 0.

Closed the Board of Adjustment meeting at 8:30 p.m.

(Planning Commission ex-officio member Cal Johannsen is absent. Charlene Christenson will be substituting in his place for the meeting tonight.)

**Planning Commission:**

**Approval of Minutes:** September 26, 2016 meeting.

Krueger made a motion to approve the minutes as presented. VanKempen seconded the motion that carried unanimously.

**Old Business:** Subdivision Ordinance review

VanKempen noted we are reviewing the proposed changes made to the Hubbard County Subdivision Ordinance and asked if anyone had any questions, additions, omissions or changes that they would like to address.

Christenson asked if the Board could provide her with background as to why a 33' road easement has been chosen in lieu of a 66' road easement.

VanKempen replied most of the township roads have 33' road easements. When Helga Township representatives were here during the ordinance review, their findings revealed 33' easements have been sufficient. I agree the 33' easement would be adequate for an administrative subdivision with four lots or less.

Christenson asked Buitenwerf if he knows how many Townships have road ordinances that have 66' easements.

Buitenwerf replied no. I would be guessing as to how many actually have them and what their standards would be.

Grob remarked we had lots of discussion on this.

Buitenwerf explained for the minor subdivisions, the current draft states it requires a 33' road right-of-way easement unless you have five or more proposed tracts that do not front a public road in which case, it must be a 66' road right-of-way.

Christenson agreed with the 33' easement if it is four lots. I am concerned for the townships that have road ordinances and when the people come to them asking for the road to be taken over and it is news to them that they are not up to the correct specification.

Johnson responded we had public comment from a surveyor that explained he would direct his clients to the proper subdivision application needed to accommodate the needs of the client.

Christenson asked Buitenwerf how she would find information regarding each Township's road ordinance. Would I need to go to each township's website?

Buitenwerf replied not all townships have websites.

Christenson asked if they are required to file documentation with ESO.

Buitenwerf replied no. You may need to send a letter of inquiry to each township asking them to provide us with their road right-of way requirements.

Grob asked for clarification on page 11, paragraph 4 and page 12. Basically we are requiring formal certificates of survey.

Buitenwerf replied yes when metes and bounds descriptions are used.

Grob asked for clarification on plats and outlots.

Buitenwerf gave multiple examples on platting and how outlots were described in historic lots.

Grob asked Buitenwerf if adding the minor subdivision and editing the administrative subdivision is a step forward for our County. Is this making it more efficient for developers?

Buitenwerf replied it has some gains as far as administrative ease. It also has some steps backward.

Grob commented the directive from the Commissioners was to evaluate the possibility of doing a minor subdivision and editing the administrative subdivision. Evidently one township complained about the subdivision ordinance. In essence we tried to put into place a process that is best overall for the County.

Krueger asked if the some of the variances that have been processed due to the change in the platting. Do you think some of those would have been eliminated with the new changes?

Buitenwerf replied they would have been, but with the current ordinance language, those were appropriately vetted through the variance process and appropriately approved.

Grob asked what the motivation was from Helga Township to push the change of the subdivision ordinance.

VanKempen replied there were multiple things that motivated Helga Township. One of which is the proximity of Helga Township to Park Rapids, MN. They would be making multiple trips from the north end of the County if a variance was needed. They also expressed that most of their township roads were 33' wide easements and they felt the other requirements were excessive - making most of their backlots virtually impossible to develop without a variance.

Grob remarked it is important for buyers to be aware of what they are purchasing.

VanKempen commented that Schoolcraft Township has a road ordinance. We put it into place to protect the residents from developers coming in developing a substandard road and then having the residents petition the Township to take over the road.

VanKempen noted the minor verbiage corrections to the Subdivision Ordinance draft and made a motion to accept the revised Subdivision Ordinance draft and present it to the Hubbard County Board of Commissioners.

Krueger seconded the motion.

The motion carried unanimously 4 – 0.

**New Business:** None

**Miscellaneous:**

**Communications:**

**Adjournment:**

Krueger made the motion to adjourn.

VanKempen seconded the motion.

The motion passed unanimously 4 – 0.

The meeting adjourned at 9:02 p.m.

Respectfully submitted,

Veronica Andres

Recording Secretary