



Hubbard County Land Records - Environmental Services

301 Court Avenue, Park Rapids, MN 56470
Phone: 218.732.3890 Fax: 218.732.7993
www.co.hubbard.mn.us/environmental.htm

July 2013 Board of Adjustment meeting staff report

New Business:

Staff:

Eric Buitenwerf,
Land Records Co-
Director
Env. Services Officer
Bryan Haugen,
Env. Specialist
Scott Navratil,
Env. Specialist
Maria Shepherd,
Admin. Assistant
Kevin Trappe,
GIS Technician

Variance Application 24-V-13 by Daryl and Denise Seaman: Apartment 2, Vacationaire Estates, Section 10, Township 141, Range 35, Arago Township on Island Lake. Parcel # 02.41.00200. Applicants are requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residential structure located in the shore impact zone.

The request is to add a 180 sq. ft. loft above an existing 800 sq. ft. single story residential cabin. The cabin is at a 42' OHW setback per the application. The cabin height will increase from 11' 10" to 17' 2". The SSTS is compliant as this entire property's SSTS was upgraded in 2009. The proposal will not affect the SSTS sizing. This cabin is one of several in a grandfathered residential development that operates similar to a planned unit development. The Association owns the land on which the buildings sit and the individual owners own their cabins as "apartments" that sit on the ground owned by the association.

Because the proposed addition is minor in scale relative to the existing cabin and it proposes to go up instead of out, the department does not object to the request. Some things to look at during the lot viewal as possible conditions to mitigate the structure's size increase in the shore impact zone would be: 1. if stormwater management is a concern such that gutters and directed downspouts might be prudent, and 2. if a vegetative buffer along the shoreline would be helpful to mitigate aesthetic impact of the increased structure height when viewed from the lake and any stormwater management issues that might exist or be increased due to the proposed addition.

Below are proposed findings of fact for your consideration:

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 proposed addition is going up instead of increasing the cabin's footprint. It is only a 180 sq. ft. addition to an existing 800 sq. ft. cabin and the height is only increasing from 11' 10" to 17' 2" so there will be minimal aesthetic impact from the structure when viewed from the lake. The applicants are attempting to comply with the ordinance intent by going upward with an addition instead of increasing the footprint.

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

Why or why not? An 800 sq. ft. cabin is a small structure such that asking for an additional 180 sq. ft. of living space in the form of a loft is a reasonable request/use of the property.

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3. Is the stated practical difficulty due to circumstances unique to this property?
Yes (X) No ()

Why or why not? The structure predates the ordinance and is located at a nonconforming ordinary high water mark setback in the shore impact zone. Given the scale of the addition relative to the existing structure, it would be unreasonable to require the structure to be moved to a more conforming setback in order for the addition to be constructed.

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 predates the ordinance and is located in the shore impact zone. The ordinance requires a variance for any additions/alterations to structures located in the shore impact zone. The landowner did not create the structure or ordinance.

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

Why or why not? The house and surrounding properties in the locality are single family year-round and seasonal residential uses. The proposed variance seeks to maintain this property's single family year-round use and therefore will maintain the essential character of the locality.

6. Does the stated practical difficulty involve more than economic considerations?
Yes (X) No ()

Why or why not? The application does not cite economics as a difficulty. Instead, the cited difficulties are the structure predating the ordinance and being located in the shore impact zone, and it not making sense to consider moving the structure because of the scale of the proposed addition relative to the existing cabin's size.

Variance Application 25-V-13 by Steven and Patricia Haataja: Part of Government Lot 8, Section 12, Township 139, Range 34, Hubbard Township on Big Stony Lake. Parcel # 14.12.01400. Applicants are requesting a variance from Sections 502.2 and 706 of the Shoreland Management Ordinance for a proposed lakeside deck on a nonconforming residential structure located in the shore impact zone. The proposed deck exceeds 15% of the structure's existing ordinary high water mark setback and will be located within the required minimum 30 foot ordinary high water mark setback.



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The request is to remove an existing concrete platform located on the lakeside exterior of a nonconforming residential structure and replace it with a 10' x 20' deck. The deck would be 20' from the ordinary high water mark at the nearest point.

A basement is proposed under an addition that was made to the cabin in the 90s. This basement can be constructed without a variance. The applicants were not aware of this when they submitted the application. Therefore, you may disregard this portion of the application.

The SSTS is not compliant. A design for a new system is on file and has been approved. If the variance is approved, it should have a condition placed on it that the SSTS must be upgraded.

The department recommends approval of the application on the condition the existing concrete platform is removed and the area is revegetated because the proposed deck is a worthwhile trade-off as it reduces the impervious surface area in the shore impact zone. It appears that the lawn between the house and lake slopes considerably toward the lake so you may want to consider if a vegetative buffer of some kind along the shore in front of this area would be an appropriate mitigating condition to offset the deck.

Below are proposed findings of fact for your consideration:

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

Why or why not? A nonconforming concrete platform that is larger than the proposed deck is being removed in exchange for the deck – thereby reducing the impervious surface area in the shore impact zone which is in keeping with the ordinance's intent. The structure predates the ordinance and is located in the shore impact zone. A ten foot waterward deck is reasonable in order to provide sufficient room to safely maneuver on the deck.

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

Why or why not? A lakeside deck in exchange for removing a larger, existing concrete platform is a reasonable use for a house on a riparian lot. Many people owning a house on a lake like to enjoy viewing the lake from a lakeside deck.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (☒) No (☐)

Why or why not? The structure and platform were present prior to the ordinance and are located in the shore impact zone at a distance of 22'. There is no way to have a lakeside deck on this structure without a variance as the ordinance requires that



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decks not encroach closer than 30' from the ordinary high water mark or 3.9' lakeward of the structure's 24' 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 structure was present before the ordinance was enacted and it is located in the shore impact zone at a 22' OHW setback. The landowner did not construct the house at this setback or enact the ordinance.

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

Yes (X) No ()

Why or why not? The house and surrounding properties in the locality are single family year-round and seasonal residential uses. The proposed deck will maintain this property's single family year-round use and therefore will maintain the essential character of the locality.

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

Yes (X) No ()

Why or why not? The application does not cite economics as a difficulty. Instead, the cited difficulties are the structure's being constructed in the shore impact zone at a setback that does not allow a deck to be built by permit and the ordinance's requirement that a lakeside deck not be closer than 30' from the OHW when there is only 24' between the house and OHW.

Variance Application 26-V-13 by Northwoods Bank of Minnesota: Part of Government Lot 6, Section 15, Township 141, Range 32, Akeley Township on 11th Crow Wing Lake. Parcel # 01.15.01600. Part 1: Applicant is requesting a variance from Section 1003.1 of the Shoreland Management Ordinance (SMO) and Subd. 2.10 of the Individual Sewage System Standards Ordinance to create two new lots that do not have room to allow for two standard subsurface sewage treatment systems (SSTS) per lot. Part 2: Applicant is requesting a variance from Sections 501.2, 1001, 1003 and 1006 of the SMO and Section 4, subd. A.1.a.3.b of the Subdivision Ordinance to create two riparian lots that do not comply with some of the minimum lot size requirements. Part 3: Applicant is requesting a variance from Sections 502.2 and 801.3 of the SMO for a proposed SSTS that will not comply with the required 150 foot ordinary high water mark setback.

There are three parts to this application that are all interconnected with the main request being to reduce the dwelling unit density from four units to two units – one per proposed lot. This lot had been operated as a grandfathered, legal nonconformity in terms of its having four dwelling units until recently when the owners allowed the property to go back



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to the bank. The lots are limited in terms of suitable SSTS sites so the proposal is the applicant's effort to bring the property into compliance with the ordinance as much as possible.

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The proposal is to reduce the number of dwelling units from four to two. As a voluntary measure to offset the lot area on one tract and RLSA on both tracts not quite meeting the ordinance's minimum requirements, the applicant is willing to create a 10' deep no-mow zone along 90' of the shoreline to act as an aesthetic and stormwater buffer.

The SSTS on the property are non-compliant. There is not much undisturbed soil on the lots to accommodate new drainfield locations. Therefore, Parts 1 and 3 of the application are being requested. Tract A has room for two drainfield sites meeting setback requirements, but the locations are in disturbed soil so they do not meet the requirements of a "standard" SSTS. (Any newly created lot must have room for two standard SSTS sites.) Tract B's primary drainfield site is not able to meet the 150' OHW setback requirement and do so in undisturbed soil. A 90' OHW setback is needed in order to install the necessary new SSTS in undisturbed soil.

Tract A is 839 sq. ft. shy of the 40,000 sq. ft. minimum lot size requirement and the RLSA is 13,343 sq. ft. instead of the required 20,000 sq. ft. Tract B has sufficient lot area, but its RLSA is 16,537 sq. ft. Both proposed lots meet the lot width requirements. Tract A's RLSA is reduced due to Tract B's access being provided by an easement over the existing driveway that runs through Tract A instead of being directly onto CSAH 25.

A well located along the proposed boundary line between the two tracts will be abandoned because it does not allow for proposed drainfield locations to be used due to setback requirements. Thus, a new well is proposed to be drilled on Tract B to allow SSTS setback requirements to be met.

The department recommends approval of the application because the applicant has done an excellent job of reducing the dwelling unit density on the lot and volunteering to create a vegetative buffer along the shore to mitigate the two lots not meeting all lot size criteria. The volunteered 10' vegetative buffer should be made a condition of approval along with abandonment of the existing well and drilling of the proposed new well.

Below are proposed findings of fact for your consideration:

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 dwelling unit density is being cut in half from four to two units. A well that does not meet SSTS setback requirements is being abandoned and a new well that does meet setbacks is being drilled. A vegetative buffer along 90% of the shoreline is being installed to mitigate the lots not meeting all size requirements. This is a "win-win" for all parties involved.



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

Why or why not? Reducing the density from four dwellings to two dwellings and creating two lots so that the density cannot be increased in the future is a reasonable use of the property that can only be achieved by variance because the proposed lots are not able to comply with all the lot size requirements as there simply is not enough land to do so.

3. Is the stated practical difficulty due to circumstances unique to this property?
Yes (X) No ()

Why or why not? The property historically consisted of four grandfathered, legal nonconforming dwelling units. Over the years, SSTS for these units have used up space requiring that variances be granted to allow new SSTS to be installed as so much of these two proposed lots have disturbed soil that is not suited to use for drainfields. The lots are already improved (meaning they have residences on them with indoor plumbing connected to an SSTS) and working around structures that predate the ordinance so they can comply with setback requirements and the uniqueness of a 50' road ROW setback from CSAH 25 that eats up a lot of the RLSA on these two lots further contribute to the list of unique circumstances on the property.

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 property was created prior to the ordinance and the structures were constructed prior to the ordinance. The road ROW setback is the primary reason why the two lots cannot meet the RLSA requirement. The landowner did not create the lot or the structures on it or the ordinances that established these lot size and SSTS regulations.

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

Why or why not? The variance will improve the essential character of the locality by reducing the dwelling unit density from four to two units – one per lot – which matches the standard dwelling unit density of one unit per riparian lot.

6. Does the stated practical difficulty involve more than economic considerations?
Yes (X) No ()

Why or why not? The application does not cite economics as a difficulty. Instead, the cited difficulties are the road ROW setback affecting the RLSA, the location of



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structures that predate the ordinance, and the disturbed areas that do not allow SSTS to be installed.

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GIS Technician

Variance Application 27-V-13 by Kathy Grell: Part of Government Lot 4, Section 21, Township 140, Range 34, Henrietta Township on Lake Peysenski. Parcel # 13.21.03300. Applicant is requesting a variance from Section 906 of the Shoreland Management Ordinance for creating a pasture from an existing non-agricultural use that does not comply with the required 500 foot ordinary high water mark setback or 5 acres minimum pasture size.

The request is to pasture two horses on ~3.5 acres (the ordinance requires a five acre minimum pasture size) and convert land currently in non-agricultural use that is not 500' from the OHW of Peysenski Lake to an agricultural use. (The ordinance requires land that is so converted to be at least 500' from the OHW.) Section 906 of the shoreland ordinance is shown below for reference.

The SSTS is compliant and the proposal does not affect the SSTS in any way other than the drainfield is located in the fence-in area. If the horses congregate in this area, they could compact the soil and thereby harm the drainfield.

The department recommends approval of the request with a suggested condition that no more than the requested two horses can be pastured on the property as a way to ensure the livestock use maintains the locality's essential character by being a minor accessory use.

Section 906. Special Provisions for Agricultural Uses

1. General cultivation farming, grazing, nurseries, horticulture, truck farming, sod farming, and wild crop harvesting are permitted uses if steep slopes and shore and bluff impact zones are maintained in permanent vegetation or operated under a conservation plan approved by the Hubbard County Soil and Water Conservation District and consistent with the field office technical guides of the Natural Resources Conservation Service, as provided by a qualified agency individual. The shore impact zone for parcels with permitted agricultural land uses is equal to a line parallel to and 50 feet from the ordinary high water level, or half of the structure setback from the ordinary high water level within the particular management district, whichever is greater.
2. Conversion of land from a non-agricultural use to use as pasture or cropland is permitted in all shoreland management districts surrounding lakes, provided that such conversions shall maintain a buffer of five hundred (500) feet from public waters. Land shall be considered to be used for agricultural purposes if at any time during the ten years immediately preceding the date of enactment of this Ordinance the land was primarily used for agricultural purposes as defined by this Ordinance.
3. Horsebarns, stables and barns for livestock must be setback a minimum of five hundred (500) feet from the ordinary high water mark of public waters.
4. New animal feedlots shall not be allowed within shoreland areas.

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5. Agricultural practices and associated uses must be conducted consistent with the provisions of Agriculture and Water Quality "Best Management Practices for Minnesota".

6. Land used as pasture must be a minimum size of five acres.

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Below are proposed findings of fact for your consideration:

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 proposed pasture is ~3.5 acres in size and its closest point is 200' from the lake and separated from it by County 20. Limiting the number of horses allowed to be in the pasture to two will ensure that the vegetation does not become overgrazed and thereby create a potential erosion problem. The raised grade of the roadbed of County 20 will also guard against any stormwater reaching the lake.

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

Why or why not? The entire property is 5.1 acres in size. If the entire property was fenced in for the pasture, only a variance from the 500' OHW setback would be required. If the property had been in agricultural use, then no variance would be needed if the entire property was fenced. On a five acre parcel in a rural part of the county, it is reasonable to pasture two horses on ~3.5 acres of ground, a good portion of which complies with the 500' OHW setback.

3. Is the stated practical difficulty due to circumstances unique to this property? Yes (X) No ()

Why or why not? The property was created in the 70s when the ordinance did not contain Section 906 or regulate livestock pastures. The lot is 5.1 acres in size so pasturing the entire property would require the fence to encompass the house and outbuildings which is not practical or safe. Even if that were done, the majority of the lot falls within 500' of the lake. There is no way to comply with the ordinance requirements without a variance.

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 size, dimensions, and proximity to the lake. The lot was not created by the landowner.

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



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Why or why not? Limiting the number of horses allowed to be in the pasture to two will ensure that this livestock use does not become a primary use of the property and that it remains accessory to the primary residential structure dwelling unit use. There are several trees on the property and topographic changes that screen much of the pasture area from the view of neighboring properties.

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

Yes (X) No ()

Why or why not? The application does not cite economics as a difficulty. The difficulty is the lot was created before this section was added to the ordinance and fencing the entire property is impractical due to it would include the house in order to comply with the five acre minimum and then the property would still be unable to comply with the 500' setback requirement and thus still need a variance.