



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

May 2013 Board of Adjustment meeting staff report

New Business:

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Variance Application 10-V-13 by Terry Nelson: Lot 27, Idle Acres, Section 16, Township 139, Range 33, Crow Wing Township on 3rd Crow Wing Lake. Parcel # 06.39.02600. Applicant is requesting a variance from Sections 502.2 and 503 of the Shoreland Management Ordinance for an after-the-fact (ATF) variance to allow a platform to be located inside the bluff impact zone.

The applicant constructed a 14' x 22' platform in front of the property's cabin in a bluff impact zone without the required variance or permit. The platform's lakeside edge is two feet from the bluff crest.

There is a history of two previous variances on this property with this landowner. In 1998, an ATF variance was granted for the 14' wood platform located next to the paver stone platform involved in this current variance request. In 2005, a variance was granted for an addition to the cabin.

The SSTS was installed new in April 2006. Due to 2013's unique weather, a winter agreement has been provided instead of a compliance inspection. The agreement requires that a new compliance inspection be performed on the property's SSTS by June 1, 2013. If you consider approving this request, the department recommends conditioning an approval on a compliance inspection being submitted by June 1st and that it shows the SSTS is compliant.

Because there already is an 18' x 14' wooden platform on this lakeside exterior wall of the house in the BIZ allowed by the 1998 ATF variance such that the landowner already possesses a lakeside platform use on the property (referencing finding of fact question 2) and this paver stone platform is in the heart of the BIZ, the department recommends denial of the request. The department would then provide the landowner with a plan to remove the platform and restore the area, and a deadline by which to do so.

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 (X)

Why or why not? This platform was constructed completely in the bluff impact zone (BIZ) after the landowner already had a sufficiently sized platform adjacent to this one in the BIZ that was approved by an after-the-fact variance in 1998.

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



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- Why or why not? The property already has a 14' x 18' wooden platform in this BIZ adjacent to the requested paver stone platform that was approved by an after-the-fact variance in 1998. The landowner thus already has a reasonable platform use of the property right next to the requested platform.
3. Is the stated practical difficulty due to circumstances unique to this property?
Yes (X) No ()
- Why or why not? The cabin was constructed prior to the ordinance taking effect and there being a bluff impact zone regulation. There is no way to place a platform along the lakeside exterior wall of the cabin without doing so in the BIZ and thus requiring a variance to do so.
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?
Yes () No (X)
- Why or why not? The BIZ ends midway through the cabin. Thus, a platform can be constructed behind the cabin outside of the BIZ and there is even room to construct it in conformance with the 100' OHW setback.
5. Will the issuance of the variance maintain the essential character of the locality?
Yes (X) No ()
- Why or why not? The locality will remain single family seasonal and year-round residences-many of which have platforms or decks as accessory components of their residences. A lakeside platform is a typical feature on riparian lot residential use properties.
6. Does the stated practical difficulty involve more than economic considerations?
Yes (X) No ()
- Why or why not? Economic considerations were not cited by the applicant as a difficulty. The alleged difficulty is the fact the structure was built before the ordinance was enacted and bluff regulations came into play.
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? (You will need to ask the applicant the first question.) The fact the applicant went through an ATF variance in 1998 for the exact same platform issue is evidence of the fact he did not act in good faith. He knew the required process and chose not to follow it.
8. Did the applicant attempt to comply with the law by obtaining the proper permits?
- Why or Why not? No. (You will need to ask the applicant, "Why not?".)



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

Not that we are aware of. (Again, ask the applicant.)

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

No. The platform does not constitute a “substantial investment” in our mind. The investment was just for ~320 square feet of paver stones with the landowners likely having provided the labor.

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

Yes. The platform was finished at the time Environmental Services staff observed and documented it during a field visit on December 4, 2012.

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

Yes. Other homes along the lake in this area have lakeside platforms.

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 landowner already was granted a variance for a 14' x 18' wooden platform in 1998 that is located right to the north of this platform. This paver stone platform consists of loose-fit paver stones placed on top of the ground surface. The pavers are easily removable. The benefit to the bluff of reducing the intensity of impervious surface in the BIZ is significantly greater than the detriment the landowner might suffer if required to remove the platform.

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

Yes. The landowner already has a good sized wooden platform on the lakeside of the cabin in the BIZ. He knew from the ATF variance process allowing that wooden platform that variance approval was required in order to construct a platform in this location – yet he constructed this new paver stone platform anyway. The platform is easily removable. Justice is served by not allowing citizens to knowingly abuse the required legal process and requiring that this area be restored to vegetation to reduce the impervious surface in the critical BIZ and thereby protect this portion of the bluff from becoming instable.



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Variance Application 11-V-13 by Ronald and Linda Bouchie: Part of Government Lot 4, Section 3, Township 145, Range 34, Rockwood Township on Arrow Lake. Parcel # 22.03.00510. Applicants are requesting a variance from Sections 502.1 and 801.3 of the Shoreland Management Ordinance to install a septic system at less than the required 150 foot ordinary high water mark setback.

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The request is to be able to install a new SSTS drainfield at less than the required 150' OHW setback from Arrow Lake which is a natural environment classified lake. The landowner states that he would like the variance because he does not want to install a pressurized SSTS. A compliance inspection on the existing SSTS was submitted in June 2009 that stated the SSTS in compliant. The application is vague as to the reason behind why the drainfield is being proposed to be replaced – especially since the system was deemed compliant in 2009.

The property is slightly over eighteen acres in size. There should be room on the property to install a drainfield that meets all setback requirements. The application does not state that there is not a lack of room on the entire property to place a drainfield meeting setback. What it states is that a pressurized SSTS could be installed in compliance with the setback requirements, but the landowner does not want to install that type of a system.

The department recommends asking the applicant questions to find out the reason(s) for installing a new drainfield when the existing drainfield was found compliant in 2009.

The department also recommends that the variance application be denied because questions are not able to be answered “yes”.

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 (X)

Why or why not? The application states that a pressurized drainfield can be installed in compliance with the established setback requirement. Allowing a drainfield to be installed closer to the lake than the required 150' OHW setback when the property is 18+ acres in size would not be in keeping with the ordinance intent which is that it be complied with whenever practically possible.

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

Why or why not? The application admits that a pressurized drainfield can be installed on the property in a way that complies with all setback requirements. Thus, the landowner is not deprived of the ability to have a drainfield installed. There are eighteen plus acres on this lot that the National Wetland Inventory shows as not containing any wetlands.



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

Why or why not? The property is 18+ acres in size with an average depth of ~550' from the lake which provides ample room to comply with the 150' OHW setback. There are no wetlands on the property per the NWI and the soil survey shows the property to consist of soils that are suitable to SSTS. The stated difficulty in the application is that the landowner does not want to install a pressurized drainfield.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?
Yes () No (X)

Why or why not? The application states that the landowner is creating the difficulty by not wanting to install a pressurized drainfield which the application implies could be done by permit in compliance with the ordinance OHW setback requirement.

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

Why or why not? There are less than half a dozen homes on this little lake. The shoreline is otherwise undeveloped. Allowing an inground drainfield to be up to 135' from the OHW instead of 150' is not going to harm the locality's essential character.

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

Why or why not? The application states that the applicant's alleged difficulty is the fact that he is concerned about the cost and reliability of a pressurized drainfield SSTS and such a system causing the potential for sewage backup into his home.

Variance Application 12-V-13 by Michael and Julia Brooks: Lot 6, Re-Arrangement of Minndiana, Section 35, Township 141, Range 34, Lake Emma Township on Little Sand Lake. Parcel # 16.43.00600. Applicants are requesting a variance from Sections 502.2, 503, and 704.7 of the Shoreland Management Ordinance for a proposed addition to a nonconforming residential structure that is located in the bluff impact zone, does not comply with the 100 foot ordinary high water mark setback, and was previously modified by variance.

The request is to add a 4' x 14' (12' high) addition to the non-lakeside exterior wall of the residence on this lot. The house is located in the bluff impact zone (the crest lands in the middle of the house) and also does not meet the 100' OHW setback (56' OHW setback to lakeside deck).



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In 1979, a variance was granted to allow a 7' x 26' lakeside deck. In 2009, a variance was granted to allow a three season porch on the side of the house along with a deck in front of the porch that connected to the existing deck.

The SSTS is compliant and the proposed addition does not affect the SSTS sizing.

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Given the small scale of the proposed addition relative to the size of the house, the fact the house sits entirely in the bluff impact zone, and the fact that Section 704.7 of the shoreland ordinance requires a variance for any alteration to the structure, the department recommends approval of the request. There is a legitimate practical difficulty as there is no way to add onto the house (for the above-mentioned reasons) without a variance.

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 addition is very small (4' x 14') and located on the rear (non-lakeside) side of the house. The house was built prior to the ordinance and bluff language and has previously been altered by variance so a variance is required for any subsequent alterations to allow the Board of Adjustment an opportunity to review such proposals and make sure they comply with the intent of the ordinance and rules. The landowner has done everything possible to locate the proposed addition in a spot that minimally impacts the bluff and lake and thus complies with the ordinance intent as much as possible.

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

Why or why not? The proposed use of the addition is not stated in the application. However, the current house is 1264 square feet in size and the proposed addition is 56 square feet. This is a very reasonably sized addition to a structure that is currently reasonably sized relative to the average size of a home today.

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

Why or why not? The house was built prior to enactment of the ordinance and the front half of it is in the bluff itself with the back half fully located in the bluff impact zone. The house also sits at a 56' OHW setback so it does not meet the 100' OHW setback either. The house has previously been altered by variance so Section 704.7 of the shoreland ordinance requires a variance for any subsequent alteration. Thus, the difficulty is due to circumstances unique to the property.

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



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Yes (X) No ()

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Why or why not? The difficulty is caused by the facts laid out in the answer to question # 3. The landowner is not causing the difficulty. The difficulty is due to the fact the house predates the ordinance and sits in a bluff impact zone and the ordinance requires a variance for any alteration to the structure because it has previously been altered by variance.

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 seasonal and year-round homes. This 56 square foot addition will not change the character as this house will remain a single family residence.

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

Why or why not? Economics are not cited as a factor in the application. The difficulty involves the fact the house was built before the ordinance was enacted, it is located in a bluff impact zone, it does not meet the 100' OHW setback, and it had been previously modified by variance such that a variance is required for this or any other subsequent modification.

Variance Application 13-V-13 by Scott and Carrie Parks: Part of Government Lot 1, Section 9, Township 139, Range 34, Hubbard Township on Long Lake. Parcel # 14.09.00600. Applicants are requesting a variance from Sections 502.2 and 704 of the Shoreland Management Ordinance for proposed additions to a nonconforming residential structure that does not meet the required 100 foot ordinary high water mark structure setback. The proposed additions will exceed the 50% square footage allowed by permit and the two foot height increase allowed by Section 510 of the Shoreland Management Ordinance.

The request is to add a 624 sq. ft. attached garage and a 64 sq. ft. covered entry to an existing nonconforming residential structured that sits at a 58' OHW setback per the application. The proposed additions exceed the 50% addition allowed by Section 704 of the SMO-thus the need for a variance. Also requested is a change in the roof height from 11' 6" to 14' 6" to allow the roof to be changed from a 3/12 to a 6/12 pitch for better rain/snow shed.

The SSTS servicing the structure is compliant and the proposed additions do not affect the SSTS sizing.

The department does not object to the covered entry request because it is a minimal size and protecting the front door from the elements for safety considerations is reasonable.



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The department also does not object to the attached garage because it will be located in compliance with the 100' OHW setback and it could thus be legally constructed as a detached garage in this location. Allowing the garage to be attached makes sense instead of requiring it to be detached over a technicality in the ordinance language-which would not be in harmony with the ordinance intent. A suggested condition is to specify that the addition can only be used as a garage and not be later converted into living space.

Lastly, the roof height change is reasonable given the snow conditions encountered in this area. A three foot increase to 14' 6" will not create any aesthetic problem for neighboring properties or parties recreating on the lake.

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 roof height change is very reasonable and being under fifteen feet after the project is completed will not harm the aesthetics for the neighbors or lake users' views. The covered entry is reasonable to protect the main door from the elements. The garage addition will be located at a spot that conforms with the 100' OHW setback so allowing it to be attached to the house is a technicality that does not run afoul of the ordinance/rules intent.

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

Why or why not? Increasing the roof pitch from 3/12 to 6/12 for better snow/rain shed is very reasonable (especially in light of this winter's snow load.) A covered entry over the main door for safety considerations of keeping snow/ice off of the deck surface is reasonable. An attached garage is also a reasonable request in this area with our winter weather extremes – especially since the garage location itself complies fully with the 100' OHW setback.

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

Why or why not? The structure was constructed prior to the ordinance at a nonconforming 58' OHW setback. Also, Section 704 of the SMO requires a variance for any proposed addition to a structure that exceeds 50% of its square footage. The proposed additions total 53.4% of the existing structure's square footage, but consist of non-"living" space. Both of these items create the difficulty and are unique circumstances.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No ()



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Why or why not? As stated in the answer to question # 3 above, the difficulty is caused by the structure predating the ordinance and being located at a nonconforming 58' OHW setback and the requirement in Section 704 of the SMO that any additions to a structure in excess of 50% of the existing structure square footage can only occur through approved variances. The landowners have nothing to do with these two items.

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 seasonal and year-round homes and this house, if the additions are allowed and constructed, will remain a single family residence that will thus continue to fit in with the surrounding residential homes and thus maintain the locality's essential character.

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

Why or why not? The difficulty involves the fact that the structure was built before the ordinance was enacted at a 58' nonconforming OHW setback. Economics were not cited as a difficulty in the application.

Variance Application 14-V-13 by Bethany Bible Camp: Lots 17, 18, 19, 20 and 21, Bethany Beach, Section 4, Township 145, Range 32, Farden Township on Grace Lake. Parcel # 07.40.00170. Applicants are requesting a variance from Section 502.2 of the Shoreland Management Ordinance for a proposed new structure to replace an existing structure at less than the required 100 foot ordinary high water mark structure setback.

The request is to tear down an existing cabin that the application states sits at a 43.5' OHW setback (per Env. Services staff measurement) and replace it with a new cabin that is the same footprint size with the exception that the roofline is proposed to extend waterward to cover the space between the two existing lakeward bumpouts on the cabin and the roof height is proposed to be raised two feet to seventeen feet.

A variance is required because the new structure is proposed to not comply with the required 100' OHW setback. A variance is also required because the State statutes that allow certain nonconforming structures to be repaired, maintained, or reconstructed apply only to residential or resort property uses. This property's church camp use does not qualify for being able to maintain nonconforming structures per these statutes' criteria.

A variance request was denied last November for the same structure. Back then, the proposal was to tear down the 22' x 24' rear wing of the cabin and replace it with a 36' x 38' addition that would have been the same width as the front portion of the cabin.



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The SSTS on the property are all compliant and the one that is to service this structure is more than adequately sized for doing so.

The property's rental unit density complies with the ordinance requirements. There are currently 5 units in Tier 1 (OHW – 267' landward) and 7 units of the current average unit size would be allowed in Tier 1. Tier 2 (267'-534' from OHW) is large enough to allow 6 units and 2 units currently are located there. No structures are in Tier 3 (534'-801' from OHW) and there is no Tier 4 (801'-1000' from OHW) to the property.

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There is more than ample room on the property to construct the proposed new structure at a conforming OHW setback instead of in the shore impact zone. The lot is over 1,100' deep and there are no wetlands or other physical constraints on the property that would prohibit the structure's placement behind the 100' OHW setback. Therefore, the department recommends denial of the application because many permittable alternatives exist.

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 (X)

Why or why not? There is sufficient space on the property to build the proposed structure at a conforming setback by permit. Because a permittable alternative exists, granting a variance where there is no practical difficulty in complying with the ordinance would not be in harmony with the ordinance and 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? A permittable location is available for the proposed new construction at a conforming location on the property. Having a permittable option means the landowner is not deprived of the use of the property in the manner prescribed by the construction and proposed use of this proposed new structure.

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

Why or why not? The application does not provide any stated difficulties why the requested new structure cannot be built at a conforming setback on the property by permit.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes () No (X)



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Why or why not? The landowner's desire to construct the proposed new structure in the shore impact zone instead of pursue permissible options for the requested structure when there is ample space on the property where the proposed structure could be constructed by permit is the sole reason for seeking the variance. Therefore, the difficulty is being created by the landowner.

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

Why or why not? The area would remain single family seasonal and year-round residential structures. However, most of the residential structures on surrounding properties meet the 100' OHW setback. The proposed new structure would create a new commercial structure in the shore impact zone. For this reason, the variance would tend toward negatively impacting the locality's character rather than being neutral and maintaining it.

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

Why or why not? The application does not cite any economic considerations as being the practical difficulty in this matter. The alleged difficulty concerns a desire to reconstruct a nonconforming structure that predates the ordinance and is located in the shore impact zone.