

Vilas County Board of Adjustment
Natural Lakes Owners Advancement Association
Minutes
May 20, 2009
Presque Isle Community Center



Members Present:

Glyn Roberts – Chair
Don Huntley – Vice-Chair
Dick Peterson
Joy Hanser
Marty Ketterer

Others Present:

John Summerkamp
Agent
9608 Mallard Landing
PO Box 824
Boulder Jct, WI 54512

Roger Martin
9339 Bald Eagle
PO Box 388
Boulder Jct, WI 54512

Chuck Terrile
9584 Red Fox Rd
PO Box 168
Boulder Jct, WI 54512

Raymond Trottier
9538 Snowshoe Rd
PO Box 655
Boulder Jct, WI 54512

Norman Petersen
9530 Snowshoe Rd.
PO Box 376
Boulder Jct, WI 54512

Millie Brekuhs
7010 Moonshine Valley Rd.
PO Box 438
Boulder Jct, WI 54512

Dr. William Potucek
7322 Bear Tr.
PO Box 318
Boulder Jct, WI 54512

Richard W. Fields	7234 Bear Tr. PO Box 256 Boulder Jct, WI 54512
Richard Harwood	7510 Coyote Pass PO Box 365 Boulder Jct, WI 54512
David Foster	7274 Bear Tr. PO Box 349 Boulder Jct, WI 54512
Ron Gebhard	9241 Bald Eagle PO Box 716 Boulder Jct, WI 54512
Andy Lynch	9341 Blue Heron PO Box 911 Boulder Jct, WI 54512
Jeff Thiel	9440 Natural Springs Rd PO Box 482 Boulder Jct, WI 54512
Jeff Barber	7430 Blue Bill Rd. PO Box 293 Boulder Jct, WI 54512
Tom Blake Water Quality Specialist Wisconsin Department of Natural Resources	107 Sutliff Ave. Rhineland, WI 54501
Mary Greenman Vilas County Assistant Zoning Administrator	330 Court St. Eagle River, WI 54521
Jim Janet Vilas County Deputy Zoning Administrator	330 Court St. Eagle River, WI 54521
David Sadenwasser Board of Adjustment Secretary	330 Court St. Eagle River, WI 54521

Mr. Roberts calls the meeting to order at 11:00 a.m.

Mr. Roberts explains the reasons for holding this hearing.

Mr. Huntley reads the public notice.

Mr. Roberts explains that an onsite inspection has been held by the Vilas County Board of Adjustment (the Board) and explains the rules governing the meeting, including that the variance request for each of the three parcels noticed above will be considered separately, beginning with the parcel known as Otter Landing.

Mr. Huntley swears in John Summerkamp, agent for the Natural Lakes Owners Advancement Association (NLOAA), of Presque Isle, WI.

Mr. Summerkamp states that the NLOAA is attempting to control access to the lakes within the Natural Lakes Private Preserve (Natural Lakes) by non-members as a means of controlling the spread of aquatic invasive species (AIS). He notes that all Natural Lakes lands, roads, accesses, and landings are privately owned but that the lakes themselves are public. He states that if the lakes were to be infested, eradicating AIS would be costly, and that the financial burden would be placed solely on the members of the NLOAA. He states that there is a guard shack at the entrance to Natural Lakes which is manned approximately 300 hours each year, mainly during deer season and on busier weekends in the summer. He notes that many non-members do not have the same interest in preserving the quality of the lakes within the preserve as members do.

Mr. Summerkamp states that placement of the gates at the edge of the Ordinary High Water Mark (OHWM) would allow access to the water for emergency services without having to open any gate. He states that while the NLOAA would provide keys to emergency service personnel should the gates be located away from the OHWM, this would require a large number of keys to be disseminated and could result in forgotten keys or otherwise hindered access for emergency personnel. He states that areas must be provided at each landing for people who reach the gate but cannot open it. He notes that at Otter Landing specifically there is water on both sides of the access road which limits where the proposed gates can be placed. He states that to place the gate beyond the 35 foot setback there would be no place to locate a turnaround for vehicles with trailers or a parking area for people without trailered boats.

Ms. Hanser notes that a decision must be made according to a three-step test, and asks Mr. Summerkamp to address each of the three requirements of that test: unnecessary hardship, unique physical property features, and non-determent of the public interest.

Mr. Summerkamp states that the hindrance to emergency services if the proposed gate were located beyond the 35 foot setback and the potential infestation of AIS create hardship.

Mr. Huntley asks if the fire department would be able to access the water with the proposed gates closed.

Mr. Summerkamp states that they would.

Mr. Huntley asks if the NLOAA has confirmed this with the fire department.

Mr. Summerkamp states that they have not.

Mr. Huntley asks how having the gate at the OHWM would allow unrestricted access for rescue units.

Mr. Summerkamp states that rescue units would be able to drive directly down to the edge of the water without encountering a restriction.

Mr. Huntley asks if they would be able to move all of their equipment into or out of the water.

Mr. Summerkamp states that the Presque Isle Fire Department is equipped with a rubber Zodiac-style boat that could be slid right into the water on either side of the gate.

Mr. Huntley again asks if this has been verified with the Presque Isle Fire Department.

Mr. Summerkamp states that it has not but he is familiar with the equipment they use.

Mr. Summerkamp states that in terms of unique physical limitations on Otter Landing, there is a long, narrow access road that goes down to the landing itself with what the NLOAA considers lake bed on either side of it, and that the 35 foot setback as measured from either side of the access road would overlap on itself. He states that the parcel is a peninsula with no location for a turnaround beyond the 35 foot setback.

Mr. Summerkamp states that public interest would not be harmed because in this case the public are the NLOAA members, of which approximately 80% voted in favor of the gates at a recent meeting. He also states that to control AIS would be in the public interest of all of Vilas County.

Mr. Huntley swears in Andy Lynch, of Presque Isle, WI.

Mr. Lynch speaks to unnecessary hardship. He states that as he understands gates are not prohibited by the Vilas County Shoreland Ordinance (Ordinance) and that the sole issue is the proximity of the proposed gates to the OHWM. He notes that because of the physical features of Otter Landing especially, the 35 foot setback requirement creates a hardship as it does not allow a gate to be placed in a manner that would allow the property to be fully utilized. He states that he has been using those lakes since the 1950s and that they have changed very little since that time. He notes that the NLOAA is simply attempting to preserve those pristine qualities.

Ms. Hanser asks about the specifics of the key distribution program for the proposed gates.

Mr. Lynch states that the keys are available from members of the NLOAA Board and require a deposit. The deposit is refundable upon return of the key. He states that of the keys already distributed, none have been returned despite the gates not yet being installed.

Ms. Hanser asks if all the gates are keyed alike.

Mr. Lynch states that they are.

Ms. Hanser asks if each property owner can get a key or if there is a set number available to be given out.

Mr. Lynch states that any NLOAA member who wants a key can receive one.

Ms. Hanser asks if each property owner would be responsible for keeping and maintaining their own key.

Mr. Lynch states that is correct and notes the reason for the deposit is that the keys are of a special type that cannot be easily replaced or reproduced.

Mr. Huntley asks if all area fire and rescue units are issued a key as well.

Mr. Lynch states that is correct.

Mr. Summerkamp states that 193 keys have been distributed to date, and that both the Presque Isle and Boulder Junction Fire and Rescue have keys. He notes that there are 312 members, so over half of them have paid the deposit to receive keys.

Mr. Huntley asks how many NLOAA members use the lakes.

Mr. Summerkamp states that it is impossible to know the exact number. He notes that some members do not use the landings or can use them without having to open the gates.

Ms. Hanser notes that many people with non-motorized boats can launch them off their own property.

Mr. Huntley asks how many members are non-riparian landowners.

Mr. Summerkamp states that he does not know the breakdown off-hand but estimates that only 25-30% of NLOAA members have lakefront property.

Mr. Huntley reads a letter from Mr. Marcus Poplawski, received via e-mail and speaking against the variance, into the record. The letter is entered as Exhibit A.

Mr. Huntley swears in Jim Janet, Vilas County Deputy Zoning Administrator, of Eagle River, WI.

Mr. Janet reads from the letter he sent to the NLOAA with the denied permits which states his reasons for denying the proposed gates. He then states that he discussed the setback issues the NLOAA agents. He states that the problem is that the applicants would not be allowed to fill to create new turnaround areas beyond the 35 foot setback, and this is what led to the present hearing.

Mr. Huntley swears in Tom Blake, Wisconsin Department of Natural Resources (DNR) Water Quality Specialist, of Rhineland, WI.

Mr. Blake states that a gate or a fence would accomplish the aims of controlling AIS but he notes that any member could introduce AIS into the lakes as easily as any non-member. He states that, for all three landings, the property owner is the entire NLOAA, and that the issue seems to be a personal inconvenience for the owners if the proposed gates were located beyond the 35 foot setback, which is not a criterion that the Board may consider when granting a variance. He states that placing the proposed gates beyond the 35 foot setback would cause no inconvenience to the NLOAA members because they would all have a means of opening the gates; the only inconvenience would be to any trespassers.

Mr. Blake states that the property is not necessarily unique in its physical features when compared to many public landings in the area. He also states that a gate in any location on these sites is not in the best interest of the Ordinance because it would not promote public health and safety by hindering access for emergency services. He notes that he spoke to the DNR Fire Specialist in Rhineland and that they would be able to cut the gate open with a bolt cutter if needed. He notes that the hardship must be caused by the property, and issues such as AIS and trespassing cannot be considered when determining hardship because they are not caused by the physical property features. One must focus on the cause of the hardship, not the effect. He states that an AIS infestation or someone having to back a trailer down a long road would be an effect of the hardship, not the cause.

Mr. Blake states that at Otter Landing the proposed gate may be able to be placed beyond the 35 foot setback but it would most likely not extend across the entire access road. He states that the proposed gate would not harm water quality or wildlife habitat. He states that it would however have a small impact on scenic beauty, and that a chain may accomplish the same goal while creating less of an impact. He asks that if a variance is granted the condition that the gate may only be closed from Memorial Day to Labor Day be imposed.

Ms. Hanser asks why closing the gate during the winter would be objectionable.

Mr. Blake answers that it would hinder access for emergency services and any barrier to rescue is objectionable.

Mr. Huntley swears in Mary Greenman, Vilas County Assistant Zoning Administrator, of Eagle River, WI.

Ms. Greenman states that she is not going to speak either in favor of or in opposition of the requested variance. She states that the object of the Ordinance is to maintain a 35 foot setback for gates. She advises the Board on the use of the three-step test in considering their variance to ensure their decision is defensible. She advises the Board to look at the intent of the Ordinance and quotes from the section of the Ordinance regarding its intent. She emphasizes that for a hardship to exist it must be “unduly burdensome” for the property owners to comply with the terms of the Ordinance.

Mr. Ketterer asks if a chain would be allowed under the Ordinance.

Ms. Greenman refers to Mr. Janet for the answer.

Mr. Janet states that it is not.

Ms. Greenman reads from the definition of a fence from Article XI of the Ordinance.

Mr. Huntley swears in Jeff Thiel, NLOAA member, of Presque Isle, WI.

Mr. Thiel states that he is opposed to the variance being granted. He notes that he installs many boat hoists, piers, etc. and that many of the boat hoists are quite wide, which would make for a narrow fit through the proposed gates. He notes that many members are not proficient at backing trailers and that the proposed gates would cause problems for those people. He states that at Otter Landing the gate could be located immediately after the driveway to the Miller property. He states that he does not belong to a fire department at this time but that he did belong to the Boulder Junction Fire Department for 20 years. He states that fire departments need to be able to put the 20 foot long suction hoses into the water where the water is deep enough so that the pumps do not pick up sand, and that there are occasions where the fire department must drive the front end of their trucks into the water to reach an appropriate depth. He also states that he agrees with much of what Mr. Poplawski stated in his letter.

Ms. Hanser asks if Mr. Thiel ever has to access the landings to install marine equipment when the owners are not present.

Mr. Thiel states that he does but he is a NLOAA member so he has access to the sites and gates. He states that he must carry his key with him on every installation if the proposed gates are erected. He notes that while the deposit for the keys is only \$25, but replacement or extra keys cost \$100.

Ms. Hanser asks if it is necessary to access these landings to install boat hoists, etc.

Mr. Thiel states that is correct. He states that one of the local non-member installers has a key of his own given to him by one of his customers.

Mr. Huntley asks what would happen if fire or rescue forgot their key.

Mr. Thiel states that a gate at either location would slow down the response of emergency services and that the key would be easily lost within the fire truck or ambulance.

Mr. Thiel states that the posts holding the gates will not work properly at the shoreline because of the adverse effect of frost and ice, which has caused the posts to heave out of the ground or become crooked in the past.

Ms. Hanser states that regardless of where the proposed gates are placed there would still be an issue with the keyed access: i.e. people losing or forgetting their keys.

Mr. Thiel states that is correct. He also states that there would be issues with backing trailers between the posts if the proposed gates were to be placed at the OHWM.

Ms. Hanser asks if Mr. Thiel's main problem is with the width of the gate.

Mr. Thiel states that is correct. He states that he also has problems with the aesthetics of the proposed gates.

Ms. Hanser asks if there are problems with trespassers.

Mr. Thiel states that there are few problems with trespassing. He states that he has lived in Natural Lakes since 1969 generally the only trespassers he sees are people looking at the leaves in the fall. He states that the fines for trespassing are large and that deters most people.

Mr. Summerkamp states that the minutes of the January 5, 2008 meeting of the NLOAA show that there were 166 signatures on the boat landing petition with 133 accepting the petition and 33 rejecting it. He states that there is a \$25 deposit for keys and that Mr. Thiel is correct when he says that each additional key costs \$100. He states this price was set as a deterrent to members passing out keys to non-members and that it is up to landowners to provide access to the business they hire.

Mr. Huntley swears in Roger Martin, of Presque Isle, WI.

Mr. Martin states that the gates are open from Labor Day through the winter until Memorial Day, and that 90% of the boat lifts, piers, boats, etc. are installed before Memorial Day. He also notes that while the alternative of a chain has been brought up, a chain is easily cut by any commercially-available bolt cutter, whereas the locks to be used on the proposed gates would be more difficult to cut.

Ms. Hanser states that there is much conflict between the NLOAA members themselves, and that any group of over 300 people will have internal conflicts. She notes, however, that the internal workings of the NLOAA are not the Board's concern. She reiterates that

the only thing the Board can concern itself with is the three criteria needed for granting variances.

Mr. Martin states that at all three landing sites there are issues with private driveways leading off the access roads.

Mr. Huntley swears in Dr. William Potucek, NLOAA member, of Presque Isle, WI.

Dr. Potucek states that the main thing at issue today is hardship. He states that when the NLOAA was faced with the possibility of AIS was when the gates became involved. He notes that Wildcat Lake is infested with AIS and is located only two (2) miles from Natural Lakes. He states that his research has found that it costs \$270,000 for one treatment of a 120 acre lake and that if AIS were introduced into Natural Lakes the NLOAA would be financially ruined. He states that the proposed gates would be located beyond the 35 foot setback if possible, but filling to create a turnaround is not permitted. He also notes that the gates are 14 feet wide and that any boats should fit through easily.

Ms. Hanser states that she would like the Board to go step-by-step through the three-step test and asks Mr. Ketterer his opinion regarding unnecessary hardship.

Mr. Ketterer states that he is sympathetic to the NLOAA attempts to protect Natural Lakes, but that he finds some issues regarding unnecessary hardship. He states he has issues with the fact that this is a private boat landing.

Ms. Greenman reminds the Board that when considering hardship they must consider whether compliance with the Ordinance would be “unduly burdensome” for the property owners.

Mr. Ketterer states that access for emergency services may not always be an issue, and that in his opinion the hardship in regards to emergency service access is self created. He states that by placing the gates voluntarily the NLOAA has created their own hardship and as such the variance cannot be granted under those circumstances.

Ms. Hanser states that if the proposed gate were to be placed beyond the 35 foot setback there would be no issue with the proposed gates. She states that the NLOAA is asking for a variance to place the gate closer to the OHWM because to abide by the setback requirement is not possible with the layout of the property. She states that the layout of the property is both a unique property feature and the source of the hardship.

Mr. Ketterer states that in his opinion all of the issues created in their statement regarding hardship are created by their voluntary placement of the gates.

Ms. Hanser states that the applicant is contending that placement of the gates beyond the 35 foot setback would create a problem for emergency services. She asks if Mr. Ketterer is saying that not erecting gates anywhere would eliminate any problems with emergency services.

Mr. Ketterer states that is correct.

The Board discusses AIS issues and the upcoming revisions to NR 115 with Ms. Greenman and Mr. Summerkamp.

Mr. Peterson states that Mr. Poplawski noted there were other areas where a gate could have been located beyond the 35 foot setback but that it was stated that those locations would cause problems with private property access.

Mr. Summerkamp notes that at Otter Landing placing a gate at the top of the hill, which is well beyond the setback requirement, would bar private driveway access.

Mr. Peterson asks about the possibility of having one gate to control all three sites.

Mr. Summerkamp states that the NLOAA has considered a single gate that the entrance to Natural Lakes at their membership meetings but that the property owners in Frontier Lakes Preserve, which has an easement across Natural Lakes, would not consent to that. He also notes that such a gate would cause traffic to back up onto Highways B and M.

Mr. Ketterer states that there seems to be a split among members of the NLOAA regarding the gates but that the Board can only debate whether or not to restrict the conformity to the Ordinance or allow an exemption beyond it.

Mr. Roberts notes that when Natural Lakes was originally laid out and surveyed the creators most likely chose parcels that were not suitable for building to be given for boat landings. He discusses the characteristics and history of boat landings

Mr. Ketterer reiterates his position regarding unnecessary hardship.

Mr. Summerkamp reiterates his opposition to the above opinion.

Ms. Hanser asks if Mr. Summerkamp feels it is unduly burdensome for NLOAA to have to place the gates beyond the 35 foot setback.

Mr. Summerkamp states that is correct.

Mr. Martin states that boat landings require a turnaround and that the physical structure of the property will not allow that beyond the 35 foot setback.

Ms. Hanser asks Ms. Greenman about the requirements for determining unnecessary hardship.

Mr. Ketterer discusses the physical attributes of the Otter Landing site with the Board and the NLOAA members, noting that some high ground exists where the gate could be

erected and the turnaround area could be reconstructed. He then reiterates his position regarding unnecessary hardship.

Mr. Ketterer states that the job of the Board is not to create solutions and options for the applicants but to consider the variance at hand.

Mr. Summerkamp states that there is lake bed surrounding Otter Landing that will not allow alteration of the landing site.

Mr. Ketterer refers to an area on the map where there is high ground populated by birch trees that could be used to reconstruct the turnaround.

Mr. Janet states that the Zoning Office would not allow any land disturbing activities within 35 feet of the OHWM.

Mr. Huntley states that he disagrees with Mr. Ketterer regarding the options available at the site. He states that he does not feel they can solve their problem at Otter Landing without a variance.

Ms. Hanser states that emergency vehicles would require a turnaround.

The Board discusses the possibility of reconstructing the turnaround area.

Ms. Greenman advises the Board that they must apply the three-step test to each landing separately.

Mr. Roberts closes the hearing to public comment.

Mr. Roberts states that he feels that it would be unduly burdensome for the applicants to comply with the Ordinance.

Ms. Hanser states that there are many similar situations at landings in the area, but what is unique at this property is that there are extensive wetlands surrounding the site. She states that the property is also unique in that it is a peninsula.

Mr. Roberts states that there is little flexibility at the site. Mr. Huntley, Mr. Peterson, and Mr. Ketterer agree.

Ms. Hanser states that in regards to public interest there will never be complete agreement among all parties. She states that she agrees with Mr. Blake in that water quality and wildlife habitat will not be harmed, and notes that the main issue regarding the public interest is that the gate is not a natural feature.

Mr. Peterson states that he feels the absence of the gate would be more harmful to the public interest than any proposed gate.

Ms. Hanser states that the motivation is to protect the public interest by protecting water quality.

Mr. Huntley states that the proposed gate will not harm aesthetics as there would be very little visual effect from the water as it would be small and painted green.

Mr. Ketterer states that he is unsure as to how the proposed gate would affect the public interest.

Ms. Greenman reminds the Board that they may place conditions on any variance.

The Board discusses the depth and wording required of any proposed motion to grant or deny the variance.

Ms. Hanser moves to grant the requested variance on Otter Landing with the condition that the gate be open to free passage from Labor Day through Memorial Day, as it would be unduly burdensome for the property owner to comply with the terms of the Ordinance because of extensive wetland areas that encroach upon the access road and access restrictions for emergency services, unique property features exist such as the parcel being located on a peninsula surrounded by wetlands, and water quality, wildlife habitat, and scenic beauty would not be harmed by granting of the variance. Mr. Peterson seconds.

Roll call vote on motion to grant variance request with conditions:

Glyn Roberts -	In favor
Don Huntley -	In favor
Dick Peterson -	In favor
Joy Hanser -	In favor
Marty Ketterer -	Opposed

Motion carried (4-1). Variance granted with conditions.

Mr. Roberts states that the Board will now consider the variance request for the parcel described above as Bobcat Landing. He states that the same procedure will be followed for this variance as was for Otter Landing. He opens the hearing to public comment.

Mr. Summerkamp states that it would be unduly burdensome for NLOAA to comply with the Ordinance because the physical limitations of the property preclude their compliance. He also states that placing the gate beyond the 35 foot setback would hinder access for emergency services.

Ms. Hanser asks about the depth of the water twenty (20) feet from shore in regards to the fire department being able to obtain sand-free water as mentioned above.

Mr. Summerkamp states that in general the water is three (3) to four (4) feet deep at the end of the piers at the landings.

Mr. Thiel states that Otter Landing is a shallow landing but that Bobcat Landing is deeper.

Mr. Summerkamp agrees that Bobcat Landing is deeper at the end of the pier than at the other landings in question.

Mr. Summerkamp states that physical limitations of the property include lakeshore on one side and wetlands or lake bed on the other side of the landing site. He states that there is no place to erect the gate beyond the 35 foot setback because of private driveway and turnaround issues.

Mr. Summerkamp states that there is no damage to water quality, wildlife habitat, or scenic beauty. He states that the proposed barrier could be opened for access to the lake, and that the proposed gate will ultimately help protect water quality, so there will be no harm to the public interest.

Mr. Janet declines to comment, stating that his reasons for denying the permits were the same for all three parcels.

Mr. Blake states that lacking a gate is not an unnecessary hardship; it is a convenience for trespassers. He states that the proposed gate would not be in the public interest as it would not promote the public health and safety due to its hindrance emergency services.

Ms. Greenman declines to comment on the requested variance.

Mr. Thiel states that the private driveway in question is located approximately 100 feet up the road from the OHWM and that the driveway in question is on NLOAA property.

Ms. Hanser speaks with Mr. Thiel regarding the survey map of Bobcat Landing and the position of the lot lines.

Ms. Hanser enters the large scale survey map of Bobcat Landing as Exhibit B.

The Board discusses with Mr. Summerkamp and Mr. Thiel the space for a turnaround at the curve in the Bobcat Landing access road using Exhibit B.

Mr. Roberts closes the hearing to public comment.

Mr. Roberts states that a gate could be erected beyond the 35 foot setback.

Ms. Hanser states that in that case a variance would not be needed. She states that this property is different from Otter Landing and that in her opinion unnecessary hardship is not present like at Otter Landing because there is a place to put the proposed gate within the Ordinance.

Mr. Ketterer states that he still feels there will be an impediment to emergency vehicles and that any hardship would be self-created. He states that he will not vote to grant this variance regardless of where a turnaround may be located.

Mr. Peterson says that he does not see any advantage to locating the gate beyond the 35 foot setback. He states that if the Board granted the last variance this one should be granted as well.

Ms. Hanser explains that each of the parcels is different and has to be examined on its own merit; the decision of the Board on one variance cannot affect its decision on another one.

Mr. Huntley notes that a gate located beyond the 35 foot setback would be legal but would still cause problems for emergency services.

Mr. Peterson states that he feels compliance with the Ordinance would be unduly burdensome for the property owner.

Ms. Hanser states that any property owner could erect a gate beyond 35 feet from the OHWM, and that if that can be done a variance is not needed. She reiterates that each parcel must be looked at separately on its own merits.

Mr. Ketterer states that emergency services would have the same access problems with gates located beyond the setback or on off-water parcels. He notes that gates on off-water parcels are common in Vilas County.

Mr. Ketterer states that whenever one places a gate across a road or driveway regardless of the location one creates their own hardship in terms of emergency access.

The Board discusses Mr. Ketterer's opinion on hardship.

Ms. Hanser moves to deny the requested variance on Bobcat Landing as it would not be unduly burdensome for the property owner to comply with the terms of the Ordinance because there is an area beyond the setback that may be used as a turnaround, the unique property features do not preclude the use of the existing turnaround, and compliance with the Ordinance will not harm the public interest. Mr. Ketterer seconds.

Roll call vote on motion to deny the variance request:

Glyn Roberts -	In favor
Don Huntley -	Opposed
Dick Peterson -	Opposed
Joy Hanser -	In favor
Marty Ketterer -	In favor

Motion carried (3-2). Variance denied.

Mr. Roberts calls the hearing to recess at 1:12 pm.

Mr. Roberts calls the hearing back to order at 1:29 pm.

Mr. Roberts states that the Board will now consider the variance request for the parcel described above as Mallard Landing. He states that the same procedure will be followed for this variance as was for the last two. He opens the hearing to public comment.

Mr. Summerkamp states that the NLOAA would like to meet the 35 foot setback requirement but cannot on this parcel. He reiterates that there would be safety issues with emergency vehicles or vehicles with trailers if the proposed gate were to be erected beyond the setback. He states that unique property features include private ownership on one side of the access road and wetland on the other.

Ms. Hanser enters a large scale survey map of Mallard Landing as Exhibit C.

Mr. Summerkamp describes the features of the parcel to the Board using Exhibit C.

Mr. Summerkamp states that there will be no adverse effect on water quality or wildlife habitat. He states that the proposed gate could be opened for access and will blend in with the natural aesthetics. He also states that there is a private driveway leading off of the access road.

Mr. Blake reiterates his argument regarding unnecessary hardship and access for emergency services, although he notes that because the Ordinance allows gates beyond 35 feet of the OHWM it must not consider gates harmful to public safety. He states that he feels the Vilas County Board of Supervisors was most likely not thinking in such narrow circumstances when they adopted the Ordinance.

Mr. Janet declines to comment, stating that his reasons for denying the permits were the same for all three parcels.

Mr. Ketterer asks if there is a difference between filling a wetland and filling lowland.

Mr. Janet answers that there is no difference between the two and neither would be allowed. He states that there are some instances when the DNR and the United States Army Corps of Engineers will allow a wetland to be filled, but that is typically not done when there is another way to access the property.

Mr. Ketterer asks if the NLOAA would be able to do anything with the wetland/lowland areas.

Mr. Janet states that they would not.

Ms. Greenman reiterates that she is not in favor of or against granting the variance. She reminds the Board that they must apply and review the three-step test for variances taking into account any unnecessary hardships, unique property features, and effect on the

public interest. She states that the decision of the Board must be defensible in the court system, and she reminds the Board that it is not their job to find other alternatives for the applicant, but only to consider their request to place the proposed gate 6-8 feet from the OHWM.

Mr. Huntley asks if alternatives can be considered but not created by the Board.

Ms. Greenman states that is correct, and reminds the Board that conditions can be placed on any variance granted.

Ms. Hanser asks exactly how far the proposed gate would be from the OHWM.

Mr. Summerkamp states that they are requesting to place the gate six (6) to eight (8) feet from the OHWM.

Ms. Hanser asks which specifically what distance from the OHWM they are asking for.

Mr. Summerkamp responds eight (8) feet.

Mr. Martin discusses how the gates were originally constructed and how they will be constructed if the variance is granted.

The Board discusses with the applicants the importance of stating the exact distance from the OHWM.

Mr. Roberts closes the hearing to public comment.

Ms. Hanser states that this variance request stands on its own merits and must be considered separately from the other variances.

Mr. Roberts states that there are limitations based on topography and the incursion of a private driveway on the access road.

Mr. Peterson states that the unique features of the property come in to play greatly on this parcel.

Mr. Roberts notes that there is no space for a turnaround.

Ms. Hanser states that she agrees but the Board does not have to provide for a turnaround. She states that her concern is that someone trying to back out of the site and getting stuck in the wetland areas, which would adversely affect the wetland.

Mr. Ketterer states that the proposed gate would not be a burden for the owners as they would be aware of its existence and would have a key with which to open it, and that they would be able to access the existing turnaround near the water. He states that a wider gate could be installed which would preclude anyone from driving around it.

Ms. Hanser states that private property encroaches up to the edge of the access road so that no part of the gate could be located there. She asks how far the gate post would have to be from the property line.

Mr. Janet states that the proposed gate could go right up to the property line per the Ordinance. He states that the Zoning Office policy is to tell people that they should be able to perform maintenance without trespassing.

Mr. Ketterer states that he feels there are plenty of places to place the gate beyond the 35 foot setback.

Mr. Huntley states that placing the gate beyond the foot setback would control the emergency services.

Ms. Hanser states that any gate would control the emergency services regardless of location.

Mr. Huntley states that where the applicant proposes the gate emergency services and people with small boats would still be able to reach the water with the gate in place.

Ms. Hanser and Mr. Ketterer discuss Exhibit C and the physical features of the parcel.

Ms. Hanser states that it is difficult to determine the 35 foot setback as one moves along the driveway away from the OHWM.

Mr. Ketterer states that there are plenty of locations to place the gate along the access road. He also notes that a turnaround does not need to be created at the location of the gate, as anyone who is allowed to have access to the landings will have a key to open the gate.

Mr. Peterson states that it would be a long way to back up.

Mr. Ketterer agrees but brings up the question of who would have to be backing up: the owners or trespassers.

Ms. Hanser states that she does not feel the gate would be contrary to the public interest because it would not harm water quality, would not harm wildlife habitat, and would not harm the scenic beauty of the site. She asks if there are physical limitations of the property that preclude the applicant from placing the gate 35 feet from the OHWM.

Ms. Roberts states that there is a limitation.

Mr. Ketterer asks what that limitation would be.

Mr. Roberts answers that it would be the inability to place a turnaround area.

Mr. Ketterer states that there is a turnaround area at the landing. He then asks if a turnaround area must be constructed at a gate.

Mr. Huntley states that in this case, practically speaking, one would because without a turnaround area at the gate someone who was unable get through would have to back all the way out to the road.

Mr. Ketterer asks who would have to do that; owners or trespassers.

Mr. Huntley states that anyone who comes down that road would have to back out, including NLOAA members who have forgotten their key.

Mr. Ketterer opines that would be rare and most property owners would have unrestricted access to the landing and the existing turnaround via their key.

Mr. Huntley asks how far someone would have to back out if they were unable to open the gate.

Mr. Summerkamp states that it is 2/10 miles from the main road to the existing turnaround.

Mr. Huntley states that is approximately 1000 feet. He then opines that is quite a distance.

Mr. Peterson states that he feels the hardship is present.

The Board discusses what services or utilities might require access to the boat landing area.

Mr. Huntley states that the fire department would be best suited by having the gate near the water because they would be able to access the water without opening the gate.

Ms Hanser states that if one must back up a long distance without turning around one becomes a hazard to anyone coming along from behind. She states that a turnaround at the gate is important because then one can still maneuver the road in a safe manner, and that safe egress from the gate must be considered.

Mr. Peterson agrees.

Ms. Hanser states that she feels unnecessary hardship has been discussed.

Mr. Huntley states that he feels there is unnecessary hardship because the applicant wants to control AIS and provide access for emergency vehicles and a gate at the proposed location accomplishes those goals. He states that if the gate were to be moved back it would be more of a hindrance to emergency services. Mr. Peterson agrees.

Ms. Hanser moves to grant the requested variance to place the gate eight (8) feet from the OHWM with the condition that the gate be opened to free access from Labor Day through Memorial Day, as it will not be contrary to the public interest because it will not harm water quality, will not harm natural habitat, and will not adversely effect scenic beauty; unique physical limitations of wetlands on the south side of the property and private property on the north side restrict the placement of the gate and egress from the property; and unnecessary hardship exists because compliance with the Ordinance would be unduly burdensome to the applicant as it would restrict safe ingress and egress from the property. Mr. Huntley seconds.

Roll call vote on motion to grant the variance request with conditions:

Glyn Roberts -	In favor
Don Huntley -	In favor
Dick Peterson -	In favor
Joy Hanser -	In favor
Marty Ketterer -	Opposed

Motion carried (4-1). Variance granted with conditions.

Mr. Peterson moves to adjourn. Mr. Huntley seconds.

Glyn Roberts -	In favor
Don Huntley -	In favor
Dick Peterson -	In favor
Joy Hanser -	In favor
Marty Ketterer -	In favor

Motion carried (5-0). Hearing adjourned at 2:10 pm.