

**Town of Duluth
Planning Commission
Meeting Minutes
April 25, 2017**

The meeting was called to order at 7:05 by Vice Chair Jo Thompson.

Present: Jo Thompson, Wayne Dahlberg, Liz Strohmayer and Dave Edblom.

Absent: John Schifsky, Jerry Hauge, and Larry Zanko.

Also present: Sue Lawson, Planning Director and Rolf Carlson, Town Board liason to the Commission.

The agenda was approved with the deletion of the approval of the March meeting minutes and election of officers.

Public Hearing: Mary Tennis / Stacy LaVres Variance

Sue opened by reading the Town's Communication Agreement. She then introduced the hearing and the process for the hearing.

The applicants, Mary Tennis and Stacy LaVres, propose to build a 24 ft by 24 ft addition and a 6 ft by 8 ft mudroom addition onto their home at 7004 Olson Road. The property is in zone district FAM-3. They are requesting a variance from 75 ft to 53 ft for the closest side yard setback and a variance from the 25% allowable footprint for an addition to a non-conforming primary structure. The original structure is 576 sq ft and the proposed addition is 624 sq ft which is 108% of the size of the original structure. The proposal meets all other dimensional requirements for the zone district.

Sue read a summary of the request from the application:

We would like to add an addition to our home, with the primary purpose of being able to "age in place" and remain on our homestead as long as possible. The plan was developed with the emphasis on accessibility and includes a stairless entry into the mudroom, a driveway that extends to the door of the mudroom, and a straight staircase onto the second floor. We currently have only a narrow spiral staircase. The straight staircase would allow us greater access to the second floor of our home as well as would be easier for first responders to navigate if necessary.

Our plan is our best attempt to work with the complicated topography of our land; there is a fairly steep SE slope and undulating bedrock throughout the property. The request is for a variance from the side yard setback for an addition to the applicants' home at 7004 Olson Road. The applicants are Mary Tennis and Stacy LaVres. The property is in zone district FAM-3. The proposed addition meets all other dimensional requirements for the zone district.

Sue showed a topographic site map showing the slope of the property.

Stacy said that she and Mary moved to the area 11 years ago. They love the community and want to stay in their home as long as possible. They would also like to be able to care for her aging mother, if necessary, in their home. Stacy is an only child. When they realized their house was less than 75 ft from the side yard, they tried to purchase land from the adjoining property owner. When they could not do that, they decided to seek a variance.

Mary said that they would like to have a home that is more amenable to aging in place. She said that Stacy's mother has difficulty using the stairs and the bathroom is upstairs. When she read the Town's comprehensive plan she was struck by the sense of community in it, the desire to maintain the rural character of the Township, and the care for natural resources. She feels like this variance for an addition to their home honors the comprehensive plan.

Wayne asked who originally built the home.

Mary said the home was built in 1985 and they moved in in 2006.

Dave asked about the size of the home.

Mary said that the footprint is 576 sq ft and there is a partial loft, so the total is square footage is 960.

Jo asked if they considered putting the addition onto the front or east side of the house.

Stacy said that it is quite steep off the front side of the house and is bedrock. The way it is currently set up, there is a slight rise plus six steps to enter the house. They wanted to put the addition on the east side but the land slopes away quickly and would not allow entry to the house without steps. In addition, runoff and erosion potential would be worse on that side. Also, if the addition were on the east side, the driveway and parking would be too close to the septic system.

Mary said that building on the east side would require building up quite a bit and bringing in a lot of fill. The slope would become even steeper. It made more sense to build along the ridgeline and with the topography of the land.

Wayne said that the zoning for that area changed in 2004. Prior to that the setback for the side yard was 50 ft, so the home was in compliance with the existing Ordinance when it was built.

Sue read the criteria for considering a variance and the responses to the criteria from the application.

Is the proposal in harmony with the general purposes and intent of the Ordinance and consistent with the Comprehensive Plan?

Applicant response: This addition on our home would not affect the rural character of our neighborhood and would not be visible from the Olson Road. The buffer strip of wooded land on the W side of the property would not be substantially disturbed since the addition would extend N and E of the existing residence. The total impervious surfaces is well below the limit for Zone FAM-3 and the additional square footage will still be well below the limit.

Our project is consistent with the comprehensive plan's policies:

General Land Use

1. Provide for quality, controlled growth that respects natural resources and retains the existing character of the community.
2. Maintain the rural character of Duluth Township.

Natural Resources/Agriculture

1. Develop land with respect to natural resources to enhance and preserve a quality environment.

Housing

3. Promote natural resource protection and compatibility with the community.

Our project adds onto our home, making aging in place a priority, while respecting the boundaries of our challenging terrain and topography. It is designed to follow the natural ridge line, and it would not require blasting of rock and would have a low impact on altering the landscape. The area is already clear of trees, and the buffer of woods between our property and our closest neighbor Jan Viren would remain. Our desire is to reside in our community of Duluth Township as long as possible and live in a way that respects the land and maintains the rural nature of the Olson Road.

"Practical difficulties," as used in connection with the granting of a variance, means that

a. The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;

b. The plight of the property owner is due to circumstances unique to the property not created by the property owner;

c. The variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.

Applicant response: a. Our primary residence is a small single family dwelling with a footprint of 576 sq ft and a partial second floor. The addition would include a ground-floor bedroom, bathroom, utility room and pantry, and mudroom. A straight staircase would lead to a second story study, music room and three-season porch. We would extend our driveway around the E side of the house to the N side of the addition for ground-level entry into the mudroom. Our current home has a bedroom and bathroom on the 2nd floor, up a steep spiral staircase, and our current entrance requires walking up a slope, and a stairway with multiple steps from the driveway to the front door. This addition would allow us to stay in our home longer-term as we age, and it would upgrade the property, making it more desirable for a wide range of residents and so encourage continued owner-occupation in the future.

There are seven other homes on the Olson Road, with the largest being 3176 sq. ft. and the smallest 896. Our current home is 960 sq. ft. and our home after the addition would be 2130, so it would be a reasonable size as compared to our neighborhood's median square footage of 2036.

b. The home being built too close to the property line, undulating bedrock throughout the lot and the slope of the land are circumstances we did not create. A previous owner built our home in 1985, and the closest corner is 50' from the side property line to the W. Building E is deterred by the slope of the terrain and would not achieve the goal of accessibility since entering the home would require steps.

Our home is built on top of bedrock. An excavator dug a test hole in the area of the proposed extension last fall, and it is likely that building on that site is possible. If the bedrock interferes, we may need to shift the project slightly more E (away from the side property line) and would like to ask for this latitude from the Planning Commission.

c. As stated earlier, there is a buffer strip of woods on our property next to our home which would remain after the addition. There are also large wooded areas between our home and our neighbors. The rural character of the property would not be disturbed.

Is the proposed variance a use that is allowed under the Zoning?

Applicant Response: Yes, land use for an addition to a single-family dwelling with an approved sewage disposal system is consistent with FAM-3 land use zoning.

Jo asked about the possibility, as discussed in the application, of moving the addition further to the east away from the side yard line.

Mary said that exploratory holes were dug at the approximate corners of the proposed addition, but the contractor said that you could not be sure until you actually dug for the foundation. So they might be forced to move the addition somewhat depending on the bedrock.

Public testimony

No one had signed up to provide testimony.

Beth read the letters that were submitted:

Jan Viren, April 16: I wish to let it be known that I support the variance request that was submitted by Mary Tennis and Stacy LaVres.

Shirley Duke: To the Planning Commission: My neighbors at 7004 Olson Road propose an addition to their house. I support their plan even if it requires a variance. Mary and Stacy are responsible neighbors and will do a good job.

Close of public testimony

Liz asked about the driveway and the slope of the land. Would emergency vehicles have difficulty on that slope?

Mary said that there is a parking pad below the house that they use in the winter and it is possible that emergency vehicles would have to park there instead of going up to the house.

Liz asked how far the parking pad is from the house.

Mary said it was 45 ft.

Sue projected photos of the existing home and site.

Everyone agreed that the slope to the front and east of the house was prohibitive.

Liz made a motion to approve both variances because she believes both requests are in harmony with the purpose and intent of the Ordinance; neither will affect the rural character of the neighborhood. The owners intend to use the property in a reasonable manner. They are striving to not decrease the setback of the existing structure and the percentage increase request is reasonable. The circumstances are not created by the landowners because the structure was in place when they purchased the property and the slope and the bedrock are circumstances that they have no control over. The essential character of the locality will be maintained as the area is well covered and not visible to the neighbors or from Olson Road.

Dave seconded.

Commissioner members noted that the house is non-conforming now, but it was conforming when it was built. The addition is set back further than the original house, which was in compliance when it was built. They felt like the request was reasonable in that the house is small and the addition is small. The footprint is modest and stacking the addition as proposed makes sense.

Liz made a motion to amend the original motion such that the setback be 53 ft or greater.

Dave seconded.

The amendment to the motion was approved unanimously.

The motion was approved unanimously.

Because the Bille variance hearing was scheduled for 8:15, the Commission proceeded with the agenda until that time.

Old Business

Sue said that there has not been additional progress on the SMU-8 rezoning. Data is broken out by lot and block and she and Clint Little are hoping to refine the data as time allows. Hopefully, the open house for the rezoning can be held in the fall when people are more available.

Regarding the greenhouse on Clover Valley Drive, Mike Mageau communicated that the last crop will be harvested on May 15 and the greenhouse will be removed by the end of the month.

Sue said that the Town Board had a question regarding the Clover Valley High School tax forfeit land that is in the process of being rezoned from LIU-3 to FAM-3. The question is how or whether to divide CVHS land for sale. There is an adjacent parcel that was tax forfeit that the County already sold. It is not well-suited for building because of wetlands and a trout creek. If the CVHS property is divided for sale, the owner of that parcel might have an option to acquire a smaller parcel that when added to his parcel would facilitate use of the property. Another option is to sell it as a whole.

Wayne asked if the County is trying to restructure the parcels so they meet zoning requirements.

Sue said that they were. They are working with the Town for the best solution.

The Commission agreed that dividing it into two parcels made sense if it is possible that the 5 acre parcel could be sold to the owner of the 15 acre parcel to the south. The Commission agreed that the primary objective was to not create nonconforming lots.

Public Hearing: Bille Variance

Introductions were made: Karen ? (court reporter) Carol Danielson-Bille, Chuck Bille, Jacob Stonesifer, Howard Sievert, Rolf Carlson, John Bowen, Jay Zinc, John Schulz, Rebecca Norine, Elly Nelson, Jack Nelson Daniel Watkins, Jim Snell, Roger Beck, and Julie Beck.

Sue introduced the hearing and the process for the hearing.

The Billes property is two parcels that have been combined, located between 5846 and 5848 North Shore Rd on the shore in the SMU-6 zone district. Sue read an introduction to the variance request as submitted by the applicants:

Since April 16, 1992, Charles Bille and Carol Bille-Danielson have been the owners of this property.

During that time, the Applicants have made two requests to the Township of Duluth's ("Township") Zoning Board ("Board") to build a modest house on the Property. Both of those requests were denied. Therefore, the Applicants have lost 25 years of use and enjoyment of their Property.

The time has now come where the Applicants are establishing their retirement plans. They have long dreamed of retiring on their peaceful property abutting the shores of Lake Superior. The only hurdle they have to surmount is getting a variance from the Board. The house proposed by the Applicants would be 30' x 28', with a 24' x 22' attached garage, and would stand 25' tall. It would be professionally constructed in a manner that blends in with the Northwoods of Minnesota. Homes of this size on lots the size of the Property are common and typical in the area.

Due to a decline in elevation from Scenic Highway 61 to the House, as shown on the Survey, only the top portion of the House would be visible from Highway 61. The House would sit in the center of the Property and would have a relatively small footprint that would not disturb neighbors or tourists traveling up Highway 61. As the Sketches show, the House would only be a little bit bigger than the 40' x 25' building that was located on the Property when the Applicants purchased it. However, the House is located in a more ideal location for all concerned compared to the original building. The original building burned down shortly after Applicants purchased the Property.

Granting Applicants' variance request not only helps the Applicants, but also improves the entire locality by turning unused vacant property into a tax-generating residence that will increase the appeal of the whole area. Furthermore, by retiring on the Property, the Applicants will become active members of the Township – they will spend money at the local establishments, and they will have a direct interest in the Township as citizens, rather than as distant property owners.

Sue showed a table of the dimensional requirements for SMU-6, the dimensions for the proposed project and the amount of variance requested:

Dimensional Requirements SMU-6	Lot Area	Lot Width	Lot Coverage	Road Setback	Side Yard Setback	Setback from Unclassified Watercourse	Setback from Vegetation Line of Lake Superior
	2 acres	200'	25%	110'	35'	50'	100'
Proposed Project	.31 acres	75'	18%	68.6'	12'	35'	87'
Variance Needed	1.69 acres	125'	None	41.4'	23'	15'	13'

The Billes included a letter from the Duluth/North Shore Sanitary District indicating that the property can be connected to the DNNSD system.

Sue showed three site sections showing the slope towards Lake Superior. The slope of the center section including the house site is 13.7%. The slope on the east side of the property is 16.5% and the west side is 15.1%.

Wayne noted that the slope is an average of the terrain – there is a precipitous drop towards the lake in the middle of the property, so it is actually flatter on either side of that drop.

Sue showed the house plans. Other than the dimensions for the footprint, the plans are not necessarily pertinent to the Commission's decision.

A pre-construction and post-construction stormwater management plan was included with the application. Post construction they intend to build a low berm along the lower section of the watercourse above the vegetation line to retain rainwater before it gets to Lake Superior. They plan to put in a retaining wall below the driveway, as well. There will be some cut and fill. Sue read from the stormwater plan:

Applicants will be moving some of the fill on the lakeside of the house to accommodate the berm in the stormwater management plan. In moving that material, applicants will probably level some of the property between the house and the drainage ditch (watercourse), which will prevent any substantial run-off due to heavy rains. Any remaining fill will be placed under the floor in the garage, or moved onto the driveway... Applicants do not anticipate any additional fill material to be brought onto the property. The only material that may be required would be some rock and sand to be placed over drain tile around the foundation of the house.

The applicants submitted some examples of nearby properties to demonstrate the reasonableness of their lot size. Sue read from this:

The property is in a SMU-6 district, which “is intended to provide residential and mixed uses consistent with the recreational and natural attributes of Lake Superior, on a suburban-scale lot size.” This means that it is contemplated that a residential use is reasonable. The only conflict is with lot size and setback requirements. Building a modest home that will only need setback and lot size variances is using the property in a reasonable manner not allowed by the Ordinance. In fact, because no use of the property is permitted by the Ordinance, a modest home is the only reasonable use of the property.

The neighboring properties exemplify that a single home on a 75 ft wide lot is a reasonable use in the SMU-6 district. For example, Dodge’s Log Lodges has 5 cabins located on a lot approximately 215 ft wide. That is one cabin every 43 ft. The directly adjacent lot to the northeast (5848 North Shore Drive) of the property has a cabin on it and a width of only 75 ft. Two properties to the southwest (5844 North Shore Drive), there is a building on a lot that is only 40 ft wide on the Lake Superior side.

The preceding discussion shows that the applicants propose to use the property in a reasonable manner not permitted by the Zoning Ordinance.

They included maps of each of those properties with the application.

Sue read the criteria for considering a variance and the responses to the criteria from the application.

Is the proposal in harmony with the general purposes and intent of the Ordinance and consistent with the Comprehensive Plan?

Applicant response: Granting a variance to build the house is in harmony with the purpose and intent of the Ordinance because the house will improve the locality and is the only feasible use of the property.

Pursuant to Article I, Section 3 of the Ordinance:

A. Intent. The intent of this Ordinance is to establish comprehensive land use regulations for the Town of Duluth in accordance with the provisions of Minnesota Statutes Chapters 366 and 462 and all acts amendatory thereto or other legislative changes hereafter enacted.

B. Purpose. The purpose of this Ordinance is to promote the health, safety, and general welfare of the community by dividing the Township into zones and regulating the uses of land and the placement of all structures. This Ordinance seeks to encourage the most appropriate uses of land in the Township, to encourage and maintain the community as rural and in balance with its many natural amenities, to protect its rich and diverse natural resources for future generations, and to provide a basis for a sustainable community.

The variance request meets the purpose and intent of the Ordinance. The house the applicants propose will provide a safe and comfortable home, while contributing to the general welfare of the Township through additional real estate tax revenues and a more desirable real estate market. As proposed, the house would sit in an ideal location on the property, and would not be a detriment to any neighbor or tourist. In fact, it would improve what would otherwise be a vacant lot.

A modest house certainly does not adversely affect the health, safety, or welfare of the Township's residents. In fact, a modest house on the property is much better for the community than other uses on the property that are allowed by the Ordinance. For example, under the Ordinance (Article VIII.3), a trashy RV and outhouse could be permissibly kept on the property. This would drive surrounding property values down and would not generate any additional tax revenue. The house on the other hand, would increase surrounding property values and increase tax revenue. In fact, the health, safety, and welfare of the Township's residents are adversely affected by having the property remain vacant without a residence on it. Having year-round occupancy of the property allows it to be properly maintained and supervised and will ensure that no dangerous conditions exist on the property. The applicants cannot oversee the property and its use if they are not living there.

The most appropriate use for the property – in fact, the only viable use for the property – is to contain a modest home, such as the house. Neighboring lakeside lots contain homes or cabins for miles in each direction. Allowing the house to be built on the property is not only an appropriate use of the property – it is the best use of the property.

The house would not alter the Township's rural status. As a modest home with moderate surrounding tree coverage, the house will be in conformance with the attributes of a rural home. Furthermore, the area surrounding the property does not presently have a rural look. There are cabins or homes built on most lots. Allowing the house on the property would certainly not detract from that setting.

Building the house would not be adverse to the property's natural attributes either – notably here, Lake Superior. In fact, if the variance request is granted, the property will have on-site stewards who can assure that the property is preserved. For example, applicants have already developed a Stormwater Management Plan to help protect Lake Superior from run-off on the property, which is attached to the Application. Also, since the property is mainly bedrock underneath, erosion concerns are minimal. Finally, the impact of the house on nature would be slight – no sewer is required because city sewer is available and the house has a small footprint.

Granting the variance request would also facilitate a sustainable community. A community is only sustainable if new properties are allowed to be built. This drives interest in the area and increases property tax revenues. The main draw of the Township is Lake Superior. Allowing stagnation on Lake Superior development is not sustainable.

The variance request is in harmony with the intent and purpose of the Ordinance, and nothing suggests that the House would have an adverse effect on the health, safety, or general welfare of the community.

The variance request is consistent with the Comprehensive Plan, which encourages growth in housing.

The Township's Comprehensive Plan ("Plan") thoroughly discusses how the Township hopes housing to develop in the next five years. Chapter 3.E. (p. 8) of the Plan states: Future land use, economic growth and community pride are all strongly tied to housing. Housing is a dominant presence on the community landscape and is a bedrock supporting a community's health, wealth and future vitality. Well-maintained housing contributes to building community pride and a positive community image and it reflects the overall quality of life for a community. In Chapter 4.A. (p. 11) the Plan discusses the community's vision for the year 2021. Part of the vision is that: "New housing has occurred throughout the Township. All new housing promotes the community's rural character and sustainable development practices."

Furthermore, Chapter 4.B. of the Plan discusses the Township's policies moving forward. Under Housing, Paragraph 1 (p. 16), one of the policies is to "[e]ncourage housing of various types for people of all economic levels in a manner consistent with Town land use goals." Another policy, under General Land Use, Paragraph 1 (p. 14) is to "[p]rovide for quality, controlled growth that respects natural resources and retains the existing character of the community."

Under the Plan, the Township clearly desires for additional housing to occur. It is good for the growth of the community and is necessary for community pride. Given these points, granting the variance request would be consistent with the Plan. The applicants want to build a new house on currently vacant land. This new house will be well-maintained and will contribute to community pride and the image of the Township. Rather than having a vacant lot which adds nothing to the Township, the applicants propose building a brand new house that will give the public a positive image of the Township and will increase tax revenue. Adding a modest home to a currently vacant lot maintains the rural nature of the community while adding value to it. Putting a bar on building on Lake Superior property merely because a lot is a too small under the Ordinance threatens the community's wealth and future vitality – it eliminates the most lucrative resource the Township has.

Granting the variance request would help effectuate the Township's Plan and future goals of encouraging sustainable housing development.

"Practical difficulties," as used in connection with the granting of a variance, means that

- a. The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;**
 - b. The plight of the property owner is due to circumstances unique to the property not created by the property owner;**
 - c. The variance, if granted, will not alter the essential character of the locality.**
- Economic considerations alone do not constitute practical difficulties.**

Applicant response: The applicants face practical difficulties in complying with the Ordinance. The property is of a lot size and nature that does not allow any use under the current zoning. For applicants to get any use and enjoyment out of the property a variance of some form needs to be granted.

a. The applicants' proposal to build the house on the property is not permitted by the zoning due to lot size restrictions and setbacks, but is reasonable because it will allow for the highest and best use of the property for both the applicants and the Township.

When applicants purchased the property in 1992, there was a structure located on it as indicated in the sketches. This structure was destroyed shortly thereafter due to a fire. The fact that there was a large structure on the property at the time of purchase indicates that having a modest sized house on the property is a reasonable use. It

also shows that applicants had a reasonable basis for believing that they would be able to have a structure on their Property moving forward.

The property is in a SMU-6 District, which “is intended to provide residential and mixed uses consistent with the recreational and natural attributes of Lake Superior, on a suburban-scale lot size.” Art. V.2.E. (p. 32). This means that it is contemplated that a residential use is reasonable. The only conflict is with lot size and setback requirements. Building a modest home that will only need setback and lot size variances is using the property in a reasonable manner not allowed by the Ordinance. In fact, because no use of the property is permitted by the Ordinance, a modest home is the only reasonable use of the property.

The neighboring properties exemplify that a single home on a 75’ wide lot is a reasonable use in the SMU-6 District. (See Exhibit D, included in the application). For example, Dodge’s Log Lodges has 5 cabins located on a lot approximately 215’ wide. That is one cabin every 43 feet. The directly adjacent lot to the northeast (5848 North Shore Drive) of the property has a cabin on it and a width of only 75’. Two properties to the southwest (5844 North Shore Drive), there is a building on a lot that is only 40’ wide on the Lake Superior side.

The preceding discussion shows that applicants propose to use the property in a reasonable manner not permitted by the zoning ordinance.

b. The plight of the applicants is that they cannot reasonably use the property for any purpose under the Ordinance besides leaving it as vacant land. This situation is unique to the property due to its dimensions of only being 75’ wide and 169’ long. The property was this size when applicants purchased it in 1992, and was the same at that time as it had stood for at least fifty (50) years. There is nothing that can be done to change the property’s dimensions to meet the current Ordinance. The applicants did not create the property’s dimensions.

c. If the variance request is granted the property will be in conformance with the essential character of the locality, which is characterized by homes and cabins existing on lots similar in size. The variance will not alter the essential character of the locality. The locality is generally the lakeside lots in The Greenwood Cliffs Subdivision. Most lots in The Greenwood Cliffs Subdivision have a residential building on them. Furthermore, none of those lots with buildings on them comply with all lot size and setback requirements set forth in the Ordinance. A table has been provided showing several properties right by the property which do not comply with the zoning requirements set forth in the Ordinance. Overhead views of these properties and approximate measurements have been provided as well. The table makes it clear that the essential character of The Greenwood Cliffs Subdivision is residential buildings on Lake Superior lots smaller than those required by the Ordinance. Nearly every property located on Lake Superior along Highway 61 between Stony Point Road and the Historical turn-in a half mile northeast has a home or cabin on it. The neighboring northeastern lot (5848 North Shore Drive) to the Property is similar in size and has a house. Next to that lot is Dodges Log Lodges with multiple cabins and a house in place. The House proposed by Applicants has a relatively small footprint and would add to the appearance and values of the area. In fact, requiring the property to exist without a home detracts from the character of the locality. A vacant lot with no development is certainly worse than a well-built, well-maintained home. Granting the variance request would contribute to the essential character of the locality. It does not make sense that all of the other property owners in the neighborhood – some with much larger houses than proposed here – could use and enjoy their property with a building on it, but applicants are required to only use their property as a vacant piece of land.

Because the locality of the property is characterized by small Lake Superior lots with homes on them, granting the variance request would be in conformance with the locality’s essential character.

Economic considerations. Granting the variance request is adequately and independently supported by both economic and non-economic factors. This is not a case where applicants are relying on economic considerations to prove practical difficulties. The practical difficulty is that applicants have a beautiful piece of property they

would like to live on, but cannot, due to an inability to comply with the Ordinance. The applicants have maintained ownership of the property (and paid taxes on it) for 25 years with the intent and hope of building their retirement home and establishing permanent residence in the Township. That time has now arrived, and the applicants believe that a new and attractive home will provide the best use of the property.

However, there certainly are economic considerations here. The property has an assessed market value of approximately \$70,000. Not being allowed to build a home on the property makes it virtually worthless. It is unlikely that anyone would pay \$70,000 and be taxed about \$700.00 a year for a mere campsite. On the flip-side, additional tax revenues derived from the property with a house built on it provides an economic advantage to the Township if the variance request is granted.

The applicants' variance request is not economically driven, but economic considerations favor granting the variance request.

Is the proposed variance a use that is allowed under the Zoning?

Applicant's response: The property is in the SMU-6 District, which "is intended to provide residential and mixed uses consistent with the recreational and natural attributes of Lake Superior, on a suburban-scale lot size." Art. V.2.E. (p. 32). Residential use is the main contemplated use for the property. As such, the proposed variance is allowed under the Ordinance.

Sue read the concluding statement from the application:

The Applicants have owned the property for 25 years and have been able to get very little practical use out of it. They are now requesting a modest variance so they can build a retirement home on the property. Granting the variance request would allow the property to have a practical use. Granting the variance request would facilitate the essential character of the locality – modest homes on lake lots. Granting the variance request would increase the Township's property tax revenue and property values. For the foregoing reasons, the applicants respectfully request the Board to grant the variance request.

Jacob Stonesifer, attorney for the Billes, provided copies of the most recent tax information for the Bille's properties. The lots have not been combined yet. He also provided copies of the survey. He thanked Sue for her professionalism and courtesy throughout the application process and in presenting the application tonight. He said the Ordinance does allow the Commission to grant the variance requests. The Billes face practical difficulties in complying with the Zoning Ordinance because they would like to use their property in a reasonable manner by putting a house on it. But that reasonable use is not allowed by the Ordinance because of lot size and setback restrictions. Putting a house on the property is the only way the property can be used in a reasonable way.

Jake continued. The purpose of the Ordinance is to promote the health safety and welfare of the general community. Granting the variances would further all of these points. It is in the best interest of the Township because having a home on the site will create additional tax revenues and allow for two more residents to become a part of the community. It is in the best interest of neighbors because it will increase property values. He quoted a letter from Mary and Joe Gummerson supporting the variance.

He said that granting the variances would allow the Billes to put their property to a reasonable use. Without the variances, the only permissible use of the property would be as a camp site. The purpose of the variance process is to allow a reasonable use of a property that is not allowed by the Ordinance. Nearby properties have similarly sized lots with houses on them. The Billes proposed house is very modest. They have located the house on the lot so that it is set back as far as possible from Lake Superior. Because city sewer hookup is available, there is not

the additional concern of a septic system. Because the lot is primarily bedrock, erosion is not an issue. Allowing the Billes to build on their lot would make their lot more in conformance with the essential character of the locality. The Billes' lot is one of the few in the neighborhood that does not have a house or cabin on it. The neighborhood is not a rural neighborhood. The only difference between the Billes and their neighbors who already have homes on their lots is that the Billes are seeking to build later in time than their neighbors. The Billes house would also further the Town's comprehensive plan which states that "Well-maintained housing contributes to building community pride and a positive community image and it reflects the overall quality of life in the community."

He said he would like to address some of the arguments against the variance. Denial of the Billes' prior variance requests are not relevant to this new request because there is a new statute, enacted in 2015, setting a new standard for granting variances. The prior statute required that the applicant show that the property could not be put to any reasonable use under the Ordinance. The new statute only requires that the proposed use is a reasonable use.

There was also a comment that the Billes created their plight by selling the property across the highway. That property is not an issue. Only the property for which they are requesting the variances is at issue tonight.

Wayne asked for clarification of the parcels being referred to.

Charles Bille said that there were five lots. They sold the three on the upper side of the road and now have the two on the lake side of the road.

Jake said that under the Ordinance, it is required that the plight of the property owner is unique to the property and not created by the owner. The lots are the same size as when they were purchased by the Billes. They did not do anything to affect the size of those lots. Therefore they did not create their plight. Whether or not they own the property across the street has no bearing on the request.

Jake said that someone else made an argument that placing a house on the property will lower neighboring property values. Having a brand new house on a property will make the neighborhood more desirable and will increase property values. The fact that the Billes' market value increased approximately 40% this tax year is indicative that having close neighboring homes does not negatively impact property values. The Billes are only asking for what their neighbors already have – a residence on their property.

Jo asked what they plan to do on the northwest corner of the property where the terrain goes down pretty steeply.

Charles said that when they bring the driveway in and build the garage, excavated material will go there as well as under the garage.

Jo said that the west side of the property is a wetland. Has the County looked at that? It is right by the stake for the home site. The vegetation indicates that it is a perennial wetland.

Charles said that it is as wet as it ever gets now. Everything slopes towards the lake.

Jo asked if the basement is going to be a walkout.

Charles said that it would be a walkout. From the walkout to the rocks will be almost level. The fill will be moved to other spots.

Wayne asked what the lot size and setback requirements were at the time they purchased the property in 1992.

Charles said that at the time the road setback was 100 ft. The lake setback was a lake shore averaging setback that the Commission said at the time of their first variance request did not apply to Lake Superior. When they used the lake shore averaging, their setback would have been 55 or 60 ft.

John Bowen said that at the time the North Shore Management Board setbacks overrode the shoreline averaging setback.

Liz asked what the zone district was then.

Charles said it was Small Lot W-2. He read from an older Township Ordinance on shoreline averaging:

Regardless of the minimum setbacks set forth in Section 1 of Article V, a principal structure exclusive of decks shall be permitted to be set back from the shoreline a distance equal to the average shoreline setback of certain nearby principal structures, plus the greater of ten feet or twenty percent of the average. To determine the allowable setback for a principal structure for a given zone district, the following method shall be used...

He explained that the method takes the setbacks from neighboring properties, averages them and then adds 20% of the average or 10 ft, whichever is greater. He said that the majority of structures on either side of them are less than 20 ft from the vegetation line.

Wayne read the dimensional requirements for zone district W-2a from the 1991 Town Zoning Ordinance. Lot width was 150 ft; lot coverage was 10%; side yard, principal structure was 20 ft and side yard accessory structure was 10 ft; rear yard principal structure was 45 ft and rear yard accessory structure was 10 ft; shoreline for both principal and accessory structures was 100 ft. The vegetation line delineation came in with the North Shore Management Board in the mid-nineties, so they must have measured from the Ordinary High Water Line. So these were the rules and requirements in place prior to the Billes purchasing the lots.

Public Testimony

John Schulz spoke. He is one of the owners at 5848 North Shore Drive next door to the Billes' property. He read the letter (attached) he had previously submitted to the Commission.

John also said that the house the Billes plan to build is 1368 sq ft. His cabin next door to the Billes is 577 sq ft, so the Billes proposed house is three times the size of his cabin. Looking at recent real estate purchases in Duluth, the average two bedroom home sold was 1200 to 1500 sq ft. He said that he would not classify the Billes proposed house as modest, as the Billes describe it.

John Nelson spoke next. He is a partner of John Schulz's with the cabin next door to Billes. They have owned it for over half his lifetime. When the Billes bought the lot in 1992 it was a beautiful lot, covered with trees. Mr Bille cut many of the trees down and brought in dirt. There is a sailboat stored there now. He said that there has not been a 25 ft by 40 ft building on that lot, at least since 1980. He has photographic evidence of that if necessary.

Rebecca Norine spoke next. She, too, is an owner of the cabin next door to Billes. She said that a cabin is not just a building and land, it is an experience, a place you go to rejuvenate the soul. Having a home so close to their cabin would destroy the experience.

John Bowen spoke next. Regarding the shoreline averaging, he quoted from the minutes of the September 1992 Zoning Commission meeting. "Mr Charles Bille then spoke regarding the variance application. He brought up the safety of the grade. The Billes would have fill hauled in to level the property. He then brought up the shoreline averaging. He showed the Commission the sketches of his property and surrounding properties. Commission member Peggy Dahlberg pointed out that the Lake Superior Area and the North Shore Management Plan took precedence." So Mr Bille was aware that shoreline averaging was no longer being used to determine setback. At the time there were two zoning areas along the shore, one from the Nordling Road to McQuade Road and the other from the Nordling Road to the County line.

John said that during the period from the late 1980s to the mid-2000s he served two six year terms on the Planning Commission and served additionally on the Board of Adjustment. So he was involved in both of Mr Bille's prior variance requests. He was on the Board of Adjustments in January of 1993 when they denied Mr Bille's appeal. He was also on the BOA in August 2004 when Mr Bille appealed again. John said that he disqualified himself from hearing that appeal because he had spoken against the variance when the Planning Commission denied it. He stated that he was here tonight to speak against it again. He did not see anything in Mr Bille's introduction about the fact that in June of 1991 the Planning Commission denied a variance request for the property by the previous owner, Leo Watson. As stated in the State Statutes, the plight of the property owner must be due to circumstances unique to the property and not created by the property owner. He believes that Mr Bille created his own plight in that he purchased the property in 1992 knowing, or having should have known, the zoning restrictions that were in effect at that time. John said that all of the zoning minutes from that time show that the minimum lot width was 200 ft and the minimum lot size was 2 acres. Mr Bille stated in his request that the practical difficulty is that the applicants have a beautiful piece of property that they would like to live on but cannot due to minor inability to comply with the Ordinance. John said that he disagrees with the word minor. He does not consider asking for a variance from 2 acres to .35 acres and lot width from 200 ft to 75 ft minor. Even using the 66% of lot width and lot size criteria, the criteria for permitting construction on nonconforming lots of record in the Shoreline Overlay Area, would not make their variance requests reasonable. He was on the committees that drafted the comprehensive plan and the Zoning Ordinance. He said he has some knowledge of the intent of the CLUP and it was not to promote growth by building nonconforming structures on nonconforming lots. In the mid-80s the zoning changed, enlarging the size of building lots along the shore. The provision allowing for construction on nonconforming lots of record was put in to help owners who were zoned out of compliance by the zoning change. In addition, the structures on the properties that were cited in the Billes' variance application for comparison were all in existence prior to zoning being enacted in the Township. The variance requests are major and he feels that the variance requests are not in harmony with the general purposes and intent of the Zoning Ordinance and are not consistent with the comprehensive plan. The Town enacted zoning to prevent this type of building.

Howard Sievert spoke. He said that he owns property down on the Lake. He talked at the time to some people about whether he would be able to remodel or rebuild the cabin on his property. But what he is hearing from the neighbors now is that they are against anyone improving anything because they want to preserve their little spot of heaven. But everyone wants a spot of heaven. He said he didn't know what he will say when he comes before the Commission to get a license to build on his property. When he bought the property in 1995 or 96 the taxes were \$700. Since then they have gone up to over \$3000. He said that he thought it was ridiculous that you have to beg to build on your property. When he bought the land he didn't know he was going to have to come up and beg people to build on it. He has sympathy for the Billes.

Beth read the letters and comments submitted prior to the hearing. John Schulz read his letter earlier in the public testimony, so it was not read again. Letters and emails read were from Loren Slette, Nanette Corbett, Lawrence Burkhard, Mary and Joe Gummerson, Daniel Watkins, and Lavonne Christensen. All are attached.

End of Public Testimony

Dave asked Sue if the lot is a lot of record.

Sue read from the Ordinance Article IV, Section 4B, Construction on Nonconforming Lots of Record, Lots of Record within the Shoreland Overlay Area:

1. A nonconforming single lot of record located within the Shoreland Overlay Area may be allowed as a building site without variances from lot size requirements, provided that:
 - a. All structure and septic system setback distance requirements can be met;
 - b. A Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, can be installed or the lot is connected to a public sewer; and
 - c. The impervious surface coverage does not exceed twenty-five percent (25%) of the lot.
2. In a group of two or more contiguous lots of record under a common ownership, an individual lot will be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements:
 - a. The lot must be at least sixty-six percent (66%) of the dimensional standard for lot width and lot size for the shoreland classification consistent with Minnesota Rules, chapter 6120;
 - b. The lot must be connected to a public sewer, if available, or must be suitable for the installation of a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, and this Ordinance;
 - c. Impervious surface coverage must not exceed twenty-five percent (25%) of each lot;
 - d. Development of the lot must be consistent with the comprehensive plan.
3. A lot subject to B.2, above, not meeting the requirements of B.2 must be combined with the one or more contiguous lots so they equal one or more conforming lots as much as possible.
4. Notwithstanding B.2, contiguous nonconforming lots of record in the Shoreland Overlay Area under a common ownership will be able to be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots are suitable for, or served by, a sewage treatment system consistent with the requirements of section 115.55 and Minnesota Rules, chapter 7080, or connected to a public sewer.
5. In evaluating all variances, zoning and building permit applications, or conditional use requests, the Planning Commission shall require the property owner to address the applicable provisions of Article VI of this Ordinance.
6. A portion of a conforming lot may be separated from an existing parcel as long as the remainder of the existing parcel meets the lot size and sewage treatment requirements of the zoning district for a new lot and the newly created parcel is combined with an adjacent parcel.

Wayne asked about contiguous. He said that there's a highway in between the lots that the Billes sold and the lots they are asking for the variances on.

Jo said that contiguous means you share a common boundary, so lots on either side of a road would not be considered contiguous.

Jo said that she visited the site and looked at the neighborhood. She said that some of the structures on properties in the area looked quite new. Have all of those gotten variances since 1992?

Wayne said that they were existing structures that were remodeled and improved.

Jo closed the discussion to public input in order for the Commission to deliberate.

Wayne said that there are six variances to consider. He would like to consider each variance individually. He also said that he would like to clear up what required lot size and width were in 1992.

Jake asked why the Commission was considering a prior Ordinance at this time.

Wayne said that he wanted to establish what the requirements were when the lot was purchased.

Charles said that the lot was created in 1952. So it is a lot of record. At the time of their initial variance request it was zoned Small Lot W-2a which was 1 acre with a lot width of 150 ft. When he used the shoreline averaging at the time it said that “Regardless of the minimum setbacks set forth in Section 1 of Article V, a principal structure exclusive of decks shall be permitted to be set back from the shoreline a distance equal to the average shoreline setback of certain nearby principal structures, plus the greater of ten feet or twenty percent of the average. To determine the allowable setback for a principal structure for a given zone district, the following method shall be used...” He explained again how the setback was determined. This was the setback, he said, that the Board refused to acknowledge at the time.

The zoning map from the 1991 Ordinance was located. It indicated that the area in question was zoned W-2. The Ordinance stated that W-2a was the area eastward from McQuade Road to Nordling Road and W-2b was eastward from Nordling Road to the Township boundary. So the property was zoned W-2b at the time. Requirements for W-2b were 2 acre lot size, 200 ft lot width, 10% impervious surface, 100 ft setback from the shoreline, 110 ft road setback, and 35 ft height.

John Schulz had the Board of Adjustment decision from January of 1993 which states the zoning requirements for the zone district. He offered it as a part of the record. He gave it to Wayne.

Wayne reiterated that when they purchased the property it was zoned W-2b and required a minimum of a 2 acre lot and a 200 ft lot width.

Jo said that she did not think it was relevant that there may or may not have been a structure on the property at the time. Even if there had been and it had been destroyed, they would have had to rebuild within a certain time.

Liz felt like the variances should be considered together. She said that each one of them impacts the other.

Liz made a motion to deny the variance requests because they are not in harmony with or consistent with the Ordinance or the Comprehensive Land Use Plan. None of the variance requests is in harmony, mostly because of the amount of variance requested in each case. The gross entirety of the variance requests combined alter the essential character of the locality.

Dave seconded.

Jo asked what Liz meant when she said the variances were not in harmony with or consistent with the Ordinance or the CLUP.

Liz said that putting a house on the lot would increase the density of the area. If the lot were a conforming lot, they would have every right to do that. But it is not. If it were just one or two variances, she feels like it would be different. She also thinks that the magnitude of the variances being requested, especially lot size, two acres vs .31 acre, and lot width, 200 ft vs 75 ft, is not reasonable. Approving variances of those amounts is not consistent with the CLUP. She said that she also took into consideration the input from the neighbors.

Wayne said that he felt like Greenwood Cliffs, the plat this property is in, is very similar to the Greenwood Beach plat in that it is subdivided into small lots. It is typical of some of the subdivision done in the 1930s. To him, it does fit the neighborhood. He felt that the way the zoning was set up with the 200 ft minimum lot width and 2 acre minimum lot size was a bad decision and did not reflect the existing subdivision.

Dave said that he agreed with Wayne. What is a reasonable use for a piece of land? Is being able to do nothing with it reasonable? He has some problems with that. It wasn't contiguous with the three other lots.

Liz said that they kept the two lower lots to build on, knowing that they didn't meet the zoning requirements.

Dave said that variances are for looking at situations like this. The lot was an existing lot.

Wayne said that as a lot of record, if you comply with lot coverage do the lot size and width require a variance? Does the 66% rule just apply for sale of a parcel?

Sue said that the Ordinance says that "In a group of two or more contiguous lots of record under a common ownership, an individual lot will be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements: a. The lot must be at least sixty-six percent (66%) of the dimensional standard for lot width and lot size." It says "for purpose of sale or development." So they have to have variances for the lot size and width.

Sue suggested discussing each variance request referring back to the site and the purpose behind the requirements. They meet the side yard setback on the east side but not the west side. Purposes for side yard setbacks are, in part, to keep some privacy between houses and to allow for fire protection. The required setback from the vegetation line on Lake Superior is 100 feet. The vegetation line is at the top of a considerable drop down to the lake. Setbacks from Lake Superior are in part to keep homes safe from the lake and to protect the lake. Is 87 ft enough to accomplish this? Setbacks from roads are required for safety, to allow room for infrastructure, and for privacy and noise. Is 68.6 ft from the centerline reasonable? She reiterated that there has been a change in the State statutes on criteria for a variance from "is there any reasonable use the property can be put to without a variance" to "is the proposed use reasonable?" One way to argue would be that if the setbacks are reasonable then it would follow that the lot size and width are adequate.

Jo said that she looked at the site and, although it is in an erosion hazard area, it is all bedrock. It will erode, but it will erode slowly, not like clay. There is no vegetation there. So the lake setback variance seems reasonable to her. The 12 ft side yard setback seems too close to her. Especially during construction. The requested road setback seems reasonable.

Howard Sievert spoke. He said that he is the next door neighbor to the west and he does not object to the Billes building 12 ft from his property line.

Jo said that she could understand the neighbors to east not wanting another house there. But the proposed house would be further from them than the existing homes on their other side. She feels that a vacant lot has great environmental value. But it is the Billes' prerogative to build on their lot if they can get permission.

Charles said that regarding the road setback, there is a substantial screen between the house and the street. In addition, there are a number of homes in the area that are closer to the road and do not have screening.

Wayne said that he had reservations about the 68 ft road setback. He would encourage them to strengthen the buffer. Because of the grade, he would be inclined to go closer to the lake to give them more room to access the road.

Charles said that when they evaluated the setbacks, they prioritized the setback from Lake Superior. They wanted to be as far from the lake as is reasonable and possible. They also wanted to place the house such that it would not interfere with their neighbor's home.

Dave asked if they could reduce the footprint.

Carol said that they have a son in a wheelchair and they need accessibility for him.

Liz said that their current neighbor may not mind if they build their home 12 ft from the property line, but future owners might. She said that more importantly, the variance requests do not seem consistent with the Ordinance and CLUP. A common reason for property owners to seek a variance is to work with an existing structure. This number of variances, as well as the degree of the variances, for a new structure do not seem reasonable to her.

Charles said that their neighbor's home to the east is 10 ft from the property line. How could someone purchasing that property complain if the Billes' home was 12 ft from the line? He said that if you look at the properties from Stony Point Road to the historic turn-around, the density is the same. His building on this particular lot would have an imperceptible impact on the density of the area. He does not see how anyone can show that their project would adversely affect the health or safety of the community.

Liz said that if everyone were to say that their variance should be approved because it is just one place, then you would have everyone building on every imaginable lot. The reason we have the Ordinance and the CLUP is to keep the character of Township neighborhoods the way the community has envisioned them.

Dave said that if they were to put a 20 ft by 20 ft shed on the property it still wouldn't work due to the constraints of the lot size. To him, use of the property is what it comes down to. They should be able to use their property.

Liz said that they purchased the property knowing it might not be buildable.

A vote was taken and the motion failed 3 to 1.

Jo noted that it was quite late and it would take time to put another motion together and have the necessary discussion.

Wayne made a motion to table the discussion until next meeting and resume the hearing then,

Jo seconded.

Charles said that a quorum of Commissioners was present this evening and he would rather not have to do this all over again.

Jo said that the Commission could not come to a decision this evening and needed more time to think.

The motion passed unanimously.

Concerns from the Audience

None.

The findings of fact and decision for the Tennis/LaVres variance was written and approved.

The meeting was adjourned.

Subject: Bille house

From: Loren Slette <lslette@northerntrends.com>

Date: 4/20/2017 1:26 PM

To: "suelawson@lakeconnections.net" <suelawson@lakeconnections.net>

Hi Sue

I just wanted to say I am in support of the Bille's building project just East of Stony Point! Thank You for your consideration.

Loren Slette
5339 North Shore Drive
218-590-5009

Sent from my iPhone

This email has been checked for viruses by AVG.

<http://www.avg.com>

Subject: Danielson/Bille variance request

From: "Nanette J. Corbett, RDR" <nansoffice@gmail.com>

Date: 4/25/2017 7:19 PM

To: Sue Lawson <suelawson@lakeconnections.net>

CC: "Carol Danielson Bille, RPR" <caroldanielson@comcast.net>, Chuck Bille <cebille@comcast.net>

Ms. Lawson:

As I am unable to attend the hearing on 4-28-17, I am writing in support of the Danielson/Bille request for a variance to build a home on their property in the Town of Duluth.

I've known Carol Danielson for over 30 years, having first met as freelance court reporters. I can speak to her honesty and integrity, both as a business person and as a friend.

My understanding is that none of the lots between Stoney Point and the historical monument meet the current zoning ordinances and that every lot has a home or a cabin on it except for their lot, which did have a structure on it at some time in the past.

Their plan to build a home on their property would fit in with the neighboring properties, would not infringe on the rights of neighboring property owners, and would also add to the general welfare of the community through increased tax revenues.

My husband, Jim Sage, and I are long-time residents of the Town of Duluth, and we support their request for a variance.

Thank you,
Nanette J. Corbett
2212 Hegberg Road
Duluth, MN 55804-9630
218-390-5408

This email has been checked for viruses by AVG.

<http://www.avg.com>

5820 North Shore Drive
Duluth, MN 55804

April 23, 2017

Planning Department
Duluth Town Hall
6092 Homestead Road
Duluth, MN 55804

Dear Planning Commission:

Subject: Variances Request by Charles Bille and Carol Daniel-Bille.

After looking over the lot on North Shore Drive, I'm against granting the variances requested. The variances requests, all six of them, give the feel of building a home that is much too big for the lot and the structure would impose upon the lot's immediate neighbors.

Now, if this request was for relieve of one of the variances, I might consider such a request in a positive light.

Thanks for your considered of my written testimony.

Sincerely,

A handwritten signature in cursive script that reads "Lawrence Burkhard". The signature is written in black ink and is positioned above the printed name.

Lawrence Burkhard

5820 North Shore Drive
Duluth, MN 55804

April 17, 2017

Ms. Sue Lawson, Planning Director
Duluth Township
6092 Homestead Road
Duluth, MN 55807

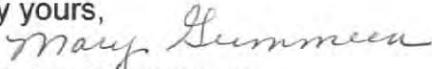
Dear Ms. Lawson,

I am writing in support of a variance for Chuck and Carol Bille. They are requesting to build a home on their lot on the North Shore. We live at 5845 North Shore Drive which is south a bit to their property. Due to a previous commitment, we unable to attend the public hearing regarding the variance.

We have known the Billes' for many years personally and professionally. They have always taken great pride in building and maintaining previous homes.

Thank you for your time and consideration in this matter. Please feel to call us at 218-390-8697 with any further questions or concerns.

Sincerely yours,



Mary and Joe Gummerson
5845 North Shore Drive
Duluth, MN 55804
218-390-8697

Planning and Zoning
Town of Duluth
6092 Homestead Road
Duluth, MN 55804

Planning Commission Board Members:

We are writing this letter to state that we are firmly against granting any variance for the property at 315-0060-00585 and 315-0060-00580 owned by Charles Bille and Carol Danielson-Bille.

This property has had variance applications turned down at least three times (Watson '91, Bille '92, and Bille '04) and the property dimensions haven't changed. The property *has been and still is a non-conforming property. We see no reason to grant the variance request for such egregious violation of the zoning requirements of the Town of Duluth.*

Regarding the Variance Request on page 2 of the Attachment:

Of the nine requirements by the zoning district for property in the district this request is for forgiveness of six of the requirements (66%). The requested variances range from inadequacies of 13% up to 85% (lot size). This is requesting a considerable variation from the ordinance.

In the conclusion for the Variance Denial in 1992 it was stated that the "lower portion is woefully inadequate as a building site under the zoning ordinance" (p.5). This was repeated in 2004: "...reasoning of the vote was that the lot is significantly inadequate under our ordinance, road and shoreline setbacks are significantly lacking, and no hardship is demonstrated" (p2). The property hasn't changed since then and is still "woefully inadequate".

We would also like to address the misleading and inaccurate statements in the *Attachment to Variance Application ...*"

"This ordinance seeks to encourage the most appropriate use of land in the Township, to maintain the community as rural and in balance with its many natural amenities" (p3).

In a discussion of a possible PUD in the township at the September 22, 2016 meeting of the Zoning Commission Sue Lawson noted "There is an emphasis, too, in the Comprehensive Plan on avoiding sprawl." Building this house so close to two others would create "sprawl" that the Township seeks to avoid.

"The house ...would increase surrounding property values " (p3).

Asked her professional opinion on the impact of a house on the Bille's lot next to ours a real estate agent for Odyssey Realty stated "As a real estate agent it would bring your value down if there was a neighbor 'that' close... People like privacy... so that would be a hindrance in selling your cabin"

"Having year round occupancy of the property allows it to be properly maintained ...and insure that no dangerous conditions exist on the property" (p3).

It is unlikely that dangerous conditions will develop on the property any more than they are now with residents across the street. Mr. Bille has parked a sailboat on the property since 1995 and that is both nuisance and a potential safety hazard.

The Applicants Proposal to Build the House on the Property In Not Permitted by the Zoningbut is Reasonable Because It Will Allow for the Highest and best Use of the Property for Both the Applicants and The Township.(p6)

"When the Applicants purchased the Property in 1992, there was a structure located on it as indicated by the sketches. ...The fact that there was a large structure on the Property at the time of purchase indicates that having a modest sized house on the Property is reasonable use.(p6)
"The house would only be a little bit bigger than the 40' x 25' building that was located on the property when the applicants purchased it." (p1). There was no such building on the property. Having owned 5848 North Shore drive since 1980 we recall only a small, unused shack at the water's edge – perhaps no bigger than 10'x10'. If a larger building existed, Bill Watson, the owner of the property in 1991, would not have needed to request a variance to build if such a "large structure" existed.

"The Plight of the Applicants Is Due to the property's Small Size Which the Applicants Did Not Cause or Create" (p6).

The Billes created their own hardship by selling the northern portion of their property to Dan Watkins. They owned a house which could have been remodeled (which Dan Watkins has done a wonderful job of remodeling) to be their retirement home and could have had access to Lake Superior via the property in question. When the house side of the property was sold to Dan, Duluth Township was made aware that the Bille's were sub-dividing a property that would create a non-conforming lot. Further, in the Board of Adjustment hearing in January, 1993 it was stated that "Mr. Bille either knew or at least should have known about the restrictions prior to the time he purchased the property."(p6) Again, the Adjustment Board stated "This Board has power to vary the Ordinance if hardship is shown, but cannot ignore the Ordinance altogether" (p.5)

If the Variance Request is Granted the Property will be in Conformance with the Essential Character of the Locality, which is Characterized by Home and Cabins Existing on Lots Similar in Size"(p6)

Many of the houses and cabins in Greenwood Cliffs do not fit into the current Zoning Ordinance because they were built prior to the ordinance being in place; they were grandfathered in. There are no year-round homes on the shore south of Dodge's Log Lodge's all the way around Stoney Point and south. In addition to the Township's zoning ordinance, the North Shore Management Plan overlays property along Lake Superior. The NSMP plan calls for "New residential development along the shoreline should be designed in order to preserve natural features and minimize impacts." (p51) This building clearly does not.

Conclusion

We have loved owning our property for close to 40 years. We use it as a respite from city life and enjoy and maintain its rural nature. A dwelling 50 feet from our bedroom window would destroy our serenity and mitigate our respite. The value of our property would be reduced with a dwelling that close to us. We have maintained our property, honored the rules, and we've thoroughly enjoyed friendships with

our neighbors – Bruce and Nancy VonReidel, Dale and Cathy Krueger, and now Dan Watkins at Dodge's. We want to continue to enjoy our north shore retreat.

We are sure the Planning and Zoning Committee will give the Bille's current Variance Proposal due diligence as the Committee has been done before in '91, '92, and '04 but we cannot see how the Committee can do anything but come to the same conclusions. As citizens and seasonal residents of the north shore community we rely on our public officials to protect everyone's property rights.

Once again, we are against granting any variance for this property.

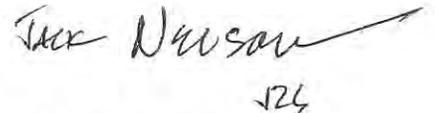
Sincerely,



John Schulz



Rebecca Norine



John (Jack) Nelson

Owners of 5848 North Shore Drive

Duluth, MN

April 26, 2017

To whom it may concern:

I am a real estate agent who works diligently to give my clients the correct information on property that is sold to them.

In October 2015 I went to Duluth Township to discuss a property that was being sold at 5849 North Shore Drive. This property had a total of 1 Acre and had a home on the North Side. Because the property had 5 parcel ID #'s, the Seller, Mr Bille, thought he could sell off any portion of the parcels. It was explained to him that when you break up the non-conforming property, the other portions would become non- buildable.

Since the Seller already had a non-conforming lot and he chose to sell the portion with a house on it, why would a variance be allowed to build a house on a non-conforming lot that was the Sellers choice to sell?

If someone had a smaller lot that they owned before the 2A regulation rule was put into effect that is understandable and 'grandfathered in' would be acceptable but this is clearly not the case.

There are good reasons for the 2 Acre and 200' of shoreline regulations, thank you for consistency in maintaining the rule.

Thank you,

Lavonne Christensen

Odyssey Real Estate

April 26, 2017

Dear Duluth Township,

In October 2015 when contemplating purchasing the home at 5849 North Shore Drive from Mr. Bille, it was stated that the lot on the lake side, across from the home was not buildable.

Therefore I was under the impression that I would have a lake view from the home. This factored into my decision to purchase the home.

Zoning and planning guidelines are established for a reason. I am opposed to the variance request.

Thank you,

Daniel Watkins

Dodges Log Lodges