CHUCK AND CAROL BILLE VARIANCE

I'd first like to thank you for allowing me the opportunity to address the Board this evening. There are a some questions/concerns that I asked at the Appeal Hearing on June 26th that were not answered, which could assist Carol and I in how we decide to proceed.

The first question relates to the numerous comments about the size of our proposed home and the size of our lot. I asked: "If we removed the basement and some of the space over the garage, what would be an acceptable square footage?" I received two replies: 1) "That's a good question", and 2) "I'm not sure, do you have another house plan". Here's my dilemma; I didn't have an alternative set of plans available at your hearing, and, why would I..... the house I designed had been approved by the Planning/Zoning Commission.

What I have done is design an alternative design that I would like you to look at, and tell me if this design would be acceptable from your perspective to construct on our lot. I've removed the garage and the second floor to reduce the footprint significantly. I've retained the walkout basement, and we will be finishing a small area off for an office space, but the majority will be used for a workshop, mechanical room, and storage. As a former licensed MN Realtor, Real Estate Broker, and Appraiser; I will once again submit to you that areas below grade are not included in "living area square footage" when computing that total, even if the area is finished. It's always included in the form of a description, but not added to "total living space". That said, the resulting reduction in size will move the variance request for set-back from Lake Superior from 87 feet to 90 feet, and will increase the set-back from the center line of Scenic Hwy 61 by 11 feet to nearly 80 feet.

The other questions/concerns I have relate to the definitions of the following terms:

1) <u>Non-conforming lot of Record</u>: A lot which is part of a subdivision recorded in the office of the County Recorder or Registrar of Titles of St. Louis County, Minnesota, or a lot or parcel described by metes and bounds, the description of which has been lawfully created and recorded prior to the

date of enactment of this Ordinance or amendments thereto, provided that a lot on federal, state, tax forfeited or Minnesota Power lands that has been leased out prior to June 14, 1979 shall be considered a lot of record even though that lot has not been individually recorded in the office of the County Recorder or Registrar of Titles. This property is described in our abstract in 1958 exactly as it exists today. There should have been no debate, or consideration that this is anything but a non-conforming lot of record.

2) 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; (this element seemed to give people issues because we had sold the lots on the upper side of the highway. The facts are simple and straight forward...by the Town Ordinance definition, we owned two separate non-conforming lots of record...one on the upper side of 61 and one on the lake side of 61)
    c. The variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.
3) Unclassified Watercourse: A naturally occurring named or unnamed water with a defined bottom.

The Board spent an inordinate amount of time debating these terms and how they applied to our property and our situation. These terms are all clearly defined in the Town Ordinance Document, and were thoroughly evaluated during the two extended hearings with the Planning/Zoning Commission. The opposing counsel couldn't have been more incorrect with his interpretation of the status of our lots on the Lake side of Hwy 61. He incorrectly applied the Homestead Taxation Statute **(273.124 HOMESTEAD DETERMINATION; SPECIAL RULES) (see attached document)**, which has absolutely no bearing on our property. Additionally, the conditions that fall under Practical Difficulties were miss-applied numerous times

by the opposing counsel and members of the community who either wrote in, or spoke in opposition to our variance. Again, the condition of Practical Difficulties was covered in detail by the Planning/Zoning Commission. And finally, the term Unclassified Watercourse is defined as a naturally occurring named or unnamed water with a defined bottom. There is nothing naturally occurring about the St. Louis County Highway Department's culvert and subsequent drainage ditch on the northeast border of our property, so requiring a variance from that set-back is not applicable, so we do meet the 35-foot set-back from that side-line.

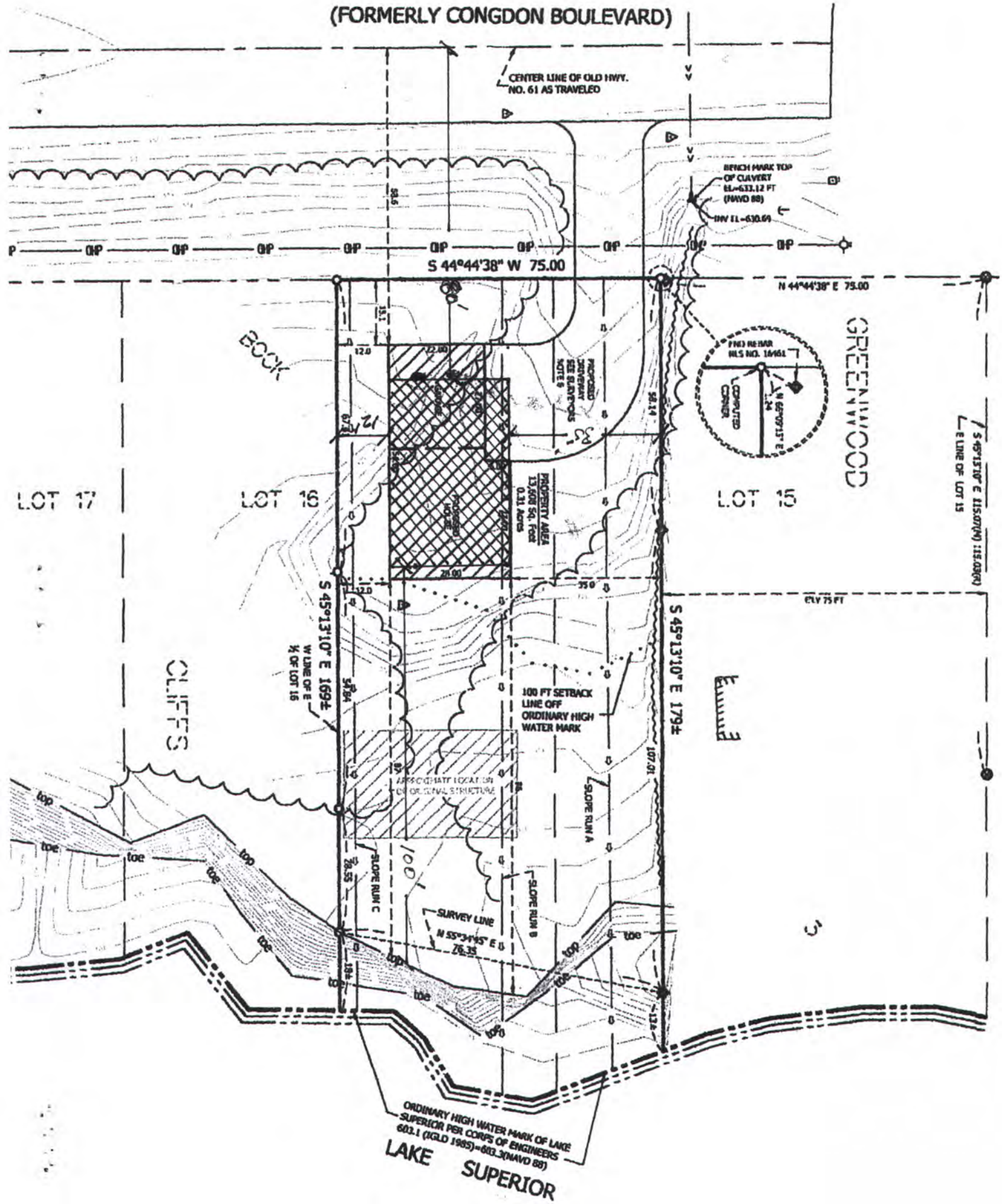
My point in presenting these concerns isn't to re-try the hearing from June 26th, but ask your assistance and direction for moving forward. As I read the Basis for your Decision for overturning our Variance, a couple of points deem reconsideration: 1) Section 4A of the Comprehensive Plan lays out a vision for "the preservation/conservation of open space and natural resources to energy conservation, the maintenance of view corridors, and the preservation of large front yard setbacks where space permits." With our new house plan, we will be providing 92.5% of our lot to open space, our driveway and subsequent view of Lake Superior will be maintained as is, and we will be providing the largest front yard of any property between Stoney Point Road and the northeast border of the Town of Duluth by a factor of 200%. 2) Reference is made to the number of variances for the proposed home. I've thoroughly reviewed the Town's Ordinances, and cannot find a single statement limiting the number of ordinances an individual is limited to when applying for a Variance. 3) And again, the reference to the degree of deviation from the stated requirements. There are no statements of limitation to the degree of deviation from the stated requirements. All three of these "Basis for Decision" are extremely subjective and based on opinion rather than the Rule of Law. In the neighborhood where our lot (Stoney Point Road to the northeast border of the Town of Duluth), we own the only lot that does not have a home or cabin in place. The status of a vacant lot is the anomaly or lack of harmony to the statutory criteria of this neighborhood. That said, we are trying our best to make the necessary changes to the design of our home, in an effort to provide a suitable option to meet the conditions and the essential character of the locality that you determine appropriate. I do not believe that this house design on this lot will adversely affect, in any way, the health, safety, or general welfare to the Town of Duluth. What your decision did,

was demand that we, as private land owners give up our rights to use our property in a manner that does comply with the Comprehensive Plan, but instead turn it over to the public. Where is the consideration for our interests in this decision?

Carol and I have too much invested, both financially and emotionally, to accept your decision from June 26th and simply walk away from this matter. We have gone through two extensive and complete public hearings with the Planning/Zoning Commission, we have complied with every request made of us by the Director of the Planning/Zoning Commission, we have agreed to comply with the conditions set by the Planning/Zoning Commission for the construction of our home, and have gone through a third public hearing with the Town Board. This has been an emotional roller coaster ride that no one should be subjected to, and it has taken a toll on both Carol and myself. We would much prefer to work with the Town Board and the community to achieve our dream of living on our property. To be denied our dream of building our home and residing on our lot by one vote is simply not acceptable. Please take the time to reconsider this matter, and allow us to proceed without any further delay.

At this time, I would respectfully request that a Supervisor on this Board make a motion to reverse the decision made on the overturning of the Variance approval made by the Planning/Zoning Commission, approve this new design, and eliminate the need to continue down any further legal challenges.

Thank you very much for your time, consideration, and compassion on this issue...


(FORMERLY CONGDON BOULEVARD)
CENTER LINE OF OLD HWY. NO. 61 AS TRAVELED
BENCH MARK TOP OF CULVERT EL=633.12 FT (NAVD 88)
INV EL=630.69
S 44°44'38" W 75.00
N 44°44'38" E 75.00
BOOK
GREENWOOD
FND REBAR RLS NO. 16461
COMPUTED CORNER
PROPOSED DRIVEWAY SEE SURVEYORS NOTE 6
PROPERTY AREA 13,608 Sq. Feet 0.31 Acres
PROPOSED HOUSE
LOT 17
LOT 16
LOT 15
S 45°13'10" E 115.07(M) 115.03(R)
E LINE OF LOT 15
S 45°13'10" E 169±
W LINE OF E ½ OF LOT 16
S 45°13'10" E 179±
ELY 75 FT
CLIFFS
100 FT SETBACK LINE OFF ORDINARY HIGH WATER MARK
APPROXIMATE LOCATION OF ORIGINAL STRUCTURE
SLOPE RUN A
SLOPE RUN B
SLOPE RUN C
SURVEY LINE
N 55°34'45" E 76.35
top
toe
ORDINARY HIGH WATER MARK OF LAKE SUPERIOR PER CORPS OF ENGINEERS 603.1 (IGLD 1985)=603.3(NAVD 88)
LAKE SUPERIOR

2016 Minnesota Statutes

This section has been affected by law enacted during the 2017 legislative session. More info...

Found 10 matches for contiguous lot

273.124 HOMESTEAD DETERMINATION; SPECIAL RULES.

Subdivision 1. **General rule.** (a) Residential real estate that is occupied and used for the purposes of a homestead by its owner, who must be a Minnesota resident, is a residential homestead.

Agricultural land, as defined in section 273.13, subdivision 23, that is occupied and used as a homestead by its owner, who must be a Minnesota resident, is an agricultural homestead.

Dates for establishment of a homestead and homestead treatment provided to particular types of property are as provided in this section.

Property held by a trustee under a trust is eligible for homestead classification if the requirements under this chapter are satisfied.

The assessor shall require proof, as provided in subdivision 13, of the facts upon which classification as a homestead may be determined. Notwithstanding any other law, the assessor may at any time require a homestead application to be filed in order to verify that any property classified as a homestead continues to be eligible for homestead status. Notwithstanding any other law to the contrary, the Department of Revenue may, upon request from an assessor, verify whether an individual who is requesting or receiving homestead classification has filed a Minnesota income tax return as a resident for the most recent taxable year for which the information is available.

When there is a name change or a transfer of homestead property, the assessor may reclassify the property in the next assessment unless a homestead application is filed to verify that the property continues to qualify for homestead classification.

(b) For purposes of this section, homestead property shall include property which is used for purposes of the homestead but is separated from the homestead by a road, street, lot , waterway, or other similar intervening property. The term "used for purposes of the homestead" shall include but not be limited to uses for gardens, garages, or other outbuildings commonly associated with a homestead, but shall not include vacant land held primarily for future development. In order to receive homestead treatment for the noncontiguous property, the owner must use the property for the purposes of the homestead, and must apply to the assessor, both by the deadlines given in subdivision 9. After initial qualification for the homestead treatment, additional applications for subsequent years are not required.

(c) Residential real estate that is occupied and used for purposes of a homestead by a relative of the owner is a homestead but only to the extent of the homestead treatment that would be provided if the related owner occupied the property. For purposes of this paragraph and paragraph (g), "relative" means a parent, stepparent, child, stepchild, grandparent, grandchild, brother, sister, uncle, aunt, nephew, or niece. This relationship may be by blood or marriage. Property that has been classified as seasonal residential recreational property at any time during which it has been owned by the current owner or