

June 26, 2017
Bille Variance Appeal

The meeting was called to order at 6:00 p.m. by Chair Dave Mount.

Present: Barb Crow, Rolf Carlson, Corlis West, Dave Mount and Travis Stolp

Also present: Ann K. Cox Clerk, Town Attorney Scott Witty, Planning Director Sue Lawson and Planning Secretary Beth Mullan

Dave Mount brought the meeting to order and welcomed everyone. Our main business tonight is an appeal of a variance decision by the planning commission. There are a couple of pieces of small business I would like to attend to before we start. You have received from the Town Attorney a proposed letter in response to the letters received from the property owner's attorney. The two letters are very close with the exception of the time line for response to the property owner was added. If there are comments on that or if there is a motion we can start from there what is the boards pleasure.

Barb suggested we start with a motion and go from there therefore I make a motion to approve the most recent draft of the letter, approve that letter and have it sent, Travis seconded.

Discussion on the Motion:

Corlis would like to say that the outcome of this situation is probably the most important thing to the Becks and Hagglands. The most important thing to the town board is to provide a fair and open process and to come to that conclusion everybody should get a chance to go through the process as it is stated in the ordinance. For this particular access, the access was granted without a variance. The variance process is an important process, it gives all the people involved a chance to say their piece, object to it and have the whole process play out. I think that the board's responsibility is to try to go by the ordinance as best they can. We can't go back to the beginning or start again so the changes I made to the letter is probably the next best thing to going back in by doing it correctly the first time. It may be an expensive process for the town and it may be an expensive process for all parties involved. The other parties involved did not make the mistake, it was the township that made the mistake, if anyone bears responsibility for this process in being circumvented, it's the township and I think we need to get back on the right track as quickly as possible. Having said that, I believe there are probably other ways to go that might not be as expensive as the legal process could be in this situation. The parties involved could possibly be convinced to apply for a Cartway. I don't know if that is a viable route to go for this but it possibly could be a lot less expensive for all parties involved and the township. And it is possibly something they could agree to.

Dave I don't disagree with anything you've said except the fact that you said it implies that we might not head in that direction. The only thing I wouldn't agree with is expense doesn't have any bearing on my opinion of the matter. I think the letter represents the town's best way to move forward, given what has transpired. Absolutely the variance process is what the ordinance calls for and that is what the letter calls for to happen.

Dave, with no more discussion on the motion it has been moved and seconded that the town board approve the letter drafted and provided by the Town Attorney, those in favor vote **Aye**; Barb, Dave, Travis and Rolf **No**; Corlis Motion carries.

June 26, 2017
Bille Variance Appeal Hearing

The meeting was called to order at 6:00.m. by Chair Dave Mount. First item on the agenda at tonight's meeting was the Beck Road matter.

6:07 p.m. Bille Variance Appeal Hearing.

Present: Barb Crow, Rolf Carlson, Corlis West, Dave Mount and Travis Stolp

Also present: Ann K. Cox Clerk, Town Attorney Scott Witty, Planning Director Sue Lawson and Planning Secretary Beth Mullan

Applicants Charles Bille and Carol Danielson-Bille represented by Jacob Stonesifer from Johnson, Killen & Seiler. Mr. Bille said his wife was coming but running a bit late.

Dave - the proposed approach for the meeting tonight is to start with Planning Director Sue Lawson who will give background to the Town Board as to how we arrived at this hearing today. Review the variance application and background information the Commission received during its process, details about the project as understood by Sue and the Commission, and the Commission's decision on the matter. After that I'm, going to ask Scott to make sure we are all on the same page from a legal standpoint, what the process is and what our job is here tonight. The appellants will provide basis for their appeal and although we're not going to have a timer on this we are thinking on the order of 20 minutes, if the board has clarifying questions during that time we can ask. The original applicants will be able to speak to their perspective on the matter, a short rebuttal of the appellants, members of the public speak to enter the record, members of the board and we have some written comments. At that point we will close the public part of the process and the board will begin deliberations.

Sue Lawson, welcome everybody. We always start out with communication agreements particularly not interrupting or talking over other folks, sharing time and space equally, refrain from commenting on the views of others in a critical spirit, and not make negative attributions on the motives of others. A brief history of the site: There have been previous hearings, it's important to note major changes have been made since those hearings, the sanitary district came into being on the shore and the statutory definition of practical difficulty changed. In 2012 the statute read "is there any other reasonable use you could make of the property", now it reads "is it a reasonable use of your property". The Commission asked is the definition a reasonable use, is it a reasonable proposal? There is a 15' to 20' bedrock drop off because this particular area is on bedrock it is not an erosion hazard zone. The zoning requirements and the Bille's variance requests are: road setback 110', variance request 68'6 (41.4' variance); nearest side yard is 35', no variance request; nearest side yard 35', variance request 12' (23' variance); minimum set back from the lake 100', variance request 87' (15' variance from Lakeshore vegetation); lot size requirement 2 acres, variance 0.31 (1.69 acre variance); minimum lot width 200', variance request 75' (125' variance). There is an unclassified water course on the east side of the property with a 50' requirement (15' variance), it is unknown if the water course is natural or if it was created by the highway. These are two non-conforming lots that were combined and remain non-conforming in both size and width. There is a letter on file from Joe Jurewicz the D/NSSD district engineer that the property can be connected to the sewer. In the Planning Commission's decision there were requirements for being able to turn around and go back out forward for safety, another requirement was that the height of the structure is not to exceed 25' and finally that a more detailed storm water management plan be developed. To determine slope the property was cut into 3 sections across the lot and they settled on a 13% slope, at the bottom of the lot is a 15' drop off.

Dave is that from the water's edge to the top of the property?

Sue I believe that is what he did yes. On the table before you is a 3 dimensional model of the property and structure, it is between a 13.7% and 16% percent slope depending on where you are on the lot going east to west. Just one note, on the house plans you see that this is a gabled roof, whoever created the model made a hip roof. There are 5 criteria that

the Commission arrived at with the caveat that the commission always acts with due consideration to promoting public health, safety and welfare encouraging most appropriate use of land conserving value, property value and no structure building or use to be detrimental to the neighborhood. The 5 criteria are: Is the proposal in harmony with the general purposes and intent of the ordinance and is it consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical Difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the property owner is due to circumstances unique to the property not created by the property owner; and the variance, if granted, will not alter the essential character of the locality. The summary motion made by the commission was approved with four conditions: the greenspace on the highway side be maintained, improved and put back in place after construction with visual reinforcement; the turnaround must be part of the driveway so cars can enter the highway without having to back up onto it; a more appropriate storm water plan must be in place for storm water retention in the form of rain gardens reviewed by the zoning administrator and because it is a non-conforming lot the height of the building must be no more than 25' from what was grade to the ridge. The commissions summary was that it is in harmony with the general intent of the ordinance as it applies to this area, it is consistent with general development it is reasonable use of the property and the circumstances are not unique to this property but in harmony with the difficulties that exist all along that portion of the shore. Lot size and width were not created by the property owner but by a 1937 division. This is a brief summary of a meeting that happened over 2 months and approximately 9 hours, the commission was serious about looking at this as well as they possibly could.

Scott Witty: Sue very aptly went through the 5 statutory criteria so I'm not going to go over them again. The board must consider each of the 5 factors individually, the applicant has the burden to show all 5 factors have been met for a variance to be properly granted. As you can guess there are circumstances of overlap between the factors, the rational for one factor may very well serve as the rational for others in some cases facts or evidence that are relevant to one criteria may very well be relevant to another. With respect to the two general factors or criteria, the variance must be in harmony with the general purposes and intent of the ordinance. Generally speaking the courts have suggested the relief granted must not so dramatic that it harms the ordinances purpose and intentions, not a very precise guidance but I think it bears some relevance. The second is essentially the same, the criteria listed by Ms. Lawson speaks for itself. With respect to the third, that is how the property owner proposes to use the property in a reasonable manner not permitted by the ordinance. That often means considering whether the proposed variances are consistent with the comprehensive plan and in keeping with the ordinance, I use that as an example of how these overlap. Consider whether the proposed variance is out of keeping with the surrounding neighborhood, again somewhat over lapping with the 5th. With respect to the fourth criteria the plight to the land owner is due to circumstances unique to the property not caused by the land owner, here we're looking at whether there's something sufficiently unusual or unique to the property to justify a zoning authority granting relief from the literal application of the zoning ordinance. Courts have held that actual or constructive knowledge of a zoning ordinance or restriction on the piece of property before purchase is not a bar to granting the variance in that regard. In other words someone who purchases land with knowledge that it cannot be developed without a variance is not for that reason alone disqualified from obtaining a variance. Number 5 is whether the variance will alter the essential character of the locality, that's assessing whether the proposed use is out of character or out of place or not consistent with the neighboring parcels. This factor is often geared to the applicant's neighbors against a variance that might unduly devalue their property. The statute does include one additional statement that economic reasons alone does not constitute practical difficulties thus satisfying points criteria three through five. Perhaps it goes without saying that opposition to a variance application simply because the proposal requests something prohibited by the ordinance is not, as the courts have found, sufficient grounds for denial and misses the mark. The purpose of a variance is to allow relief from the zoning ordinance often referred to as safety valves by the court. But that said, Minnesota courts have also said the applicant has a heavy burden because he or she is asking for something that is prohibited by the zoning ordinance adopted by the town. There is a requirement in a separate statute that you are all familiar with, the 60 day statute that requires a decision in writing. That decision should include the basis for determining whether the appeal is denied or granted. We will discuss whether that is completed tonight depending on how the proceedings go but it could be that the meeting is continued for other additional proceedings or the adoption and consideration of the written finding.

Dave: Rather than just generate a motion that we spend some time as a board discussing, we will try to establish a common understanding of how everybody is seeing different things, it may or may not be obvious from there where we are headed. If it isn't obvious we'll ask someone if they can move one direction or another we'll see how it goes to the motion. I have read through the documents from the commission's process there is a lot of argument and ideas that have been brought forth about what may or may not be important. I think it would be good if we went through those and got on the same page having the same sense of the pros and cons of a particular idea.

Travis: Could you clarify Scott, you said economic reasons are not alone a reason but can be a factor.

Scott: correct. That language is expressly on the statute, seeking a variance simply to save money without proving the 5 criteria stated in the statute is not sufficient.

John Bray: Good evening I am an attorney from Maki and Overom and I am here representing John Shultz and Becky Norine the owners of the property at 5848 North Shore Drive. I know you have a lot of information in front of you to consider so I'm going to try to be very brief and point you in the direction I think the decision should be made tonight. First I think it's important to note from a birds eye view the planning commission grant experience fairly deviated quite a bit from the requirements and if you take a look at it from a birds eye view it almost resembles rezoning the property. I think it's important to note on two of the variances the minimum lot size is 2 acres and the applicants only have .31 acres that's a variance request of almost 1.7 acres. I hope my math is correct, I calculated what percent that variance was and it is 645% variance request. You've got 200 front footage requirements and you've asked for a variance of 87' that's a significant variance request as well. On one side you've got a 35' side yard set-back the variance you've requested is 23' putting you 12' from one of the side yard a fairly significant variance as well. From our perspective does that meet the standards? No that doesn't meet the standards it's not even close in fact. As Mr. Witty your township attorney pointed out the applicants have a heavy burden. Whether you like to give them the variance because they are nice folks and you'd like them to be able to build a retirement home on the property, that's not the question. The question is whether they are clear of the burden and in that respect and from our perspective the variances are not in harmony with the zoning ordinance or comprehensive plan. The properties are located in the shore land overlay district and according to your code the shore land district is to protect the soils and water quality associated with unclassified water flow seeping into Lake Superior. The applicants have requested two variances, a water course setback and a shoreline setback that directly skips the purpose for this district so in that respect no it doesn't harmonize with your code or with your comprehensive plan. The property is also located in an SMU6 district described in your zoning code as the intent of the SMU district is to "provide residential and mixed uses consistent with the recreational and natural attributes of Lake Superior", and this is important, "on a suburban-scale lot size". This property is not in conformity and a non-conforming lot of record clearly is not a suburban scale lot size and so does not harmonize with the code does not harmonize with the comprehensive plan. If this property was a conforming lot of course they would be entitled to build on it without any variances but I do think it's important that these performances are so inconsistent with the ordinance regulations that they require 6 different variances, that is a significant amount of variances to have happen to shoe horn a home onto .31 acres of property. The property is not consistent nor is the property plan consistent with the comprehensive plan. The comprehensive plan specifically provides for strategy in meeting the restrictions on sub-standard lots as defined in your current zoning. The comprehensive plan talks about how past planning and zoning has encouraged preservation of large front yard setbacks, this is not in harmony with that portion of the comprehensive plan. You have to ask yourself whether you want people with small lots like this on Lake Superior to be able to continually come to the town board and planning commission seeking variances. If you allow a building or structure on a .31 acre parcel, there are a lot of parcels like that where there are non-conforming lots both smaller and larger, they are going to remind you that you granted this particular applicant 6 variance requests so why can't they have one too. Hopefully the comprehensive plan discourages development that puts at risk the capacity of the land, if you need 6 variances to build on this small parcel of property that's not in harmony with that requirement. It's important to note your comp plan and zoning ordinance were created with the North Shore Management Plan, the North Shore Management Plan provides that new residents should be welcomed along the shore and encouraged to preserve the natural features, I'm not sure how this does that. Structures along the water should not negatively impact adjacent properties, when you've got one parcel right next door that's not 12' away that certainly negatively impacts that property. Because of how it may impact future applications for variances, it certainly is going to have a negative impact

on this very town. The plight of the property owners was created by the owners themselves it's not due to circumstances unique to the property it was created by the applicants. They first bought the entire property across Highway 61 knowing full well the dangling parcel along Lake Superior was a nonconforming lot and unbuildable. In fact that was one of the bases for variance denial in 1993 and 2004. The planning commission and the board of adjustment quickly made reference to the fact that when the applicants bought those properties they knew full well that the parcel near the lake was non-conforming and too small to build on without a variance. As another added layer of that issue and probably more important, that parcel was not the only parcel the applicants purchased, there was another parcel across the street that had a pre-existing home on it that would have been grandfathered in. The applicant sold that parcel in 2015, if they hadn't sold that property in 2015 they certainly could have made use of a contiguous parcel by having a home, an existing structure on that parcel as a whole. I understand that during the course of the previous planning commission hearings that the planning commission indicated or may have found that while the property across the highway it was noncontiguous. I can tell you that is not the definition of what a contiguous piece of property is that entire parcel even though it was separated by a road was considered a contiguous piece of property. By conveying that away it created a situation where they had a nonconforming lot with a dangling parcel of property down by the lake which they knew when they sold off the previous parcel across the highway would be rendered non buildable. It wasn't created by a 1930's plat situation it was created by the owners themselves. Mr. Bowen is here he can offer you some historical perspective that I can't.

Dave: The relationship between the parcels, there were actually three parcels they created a whole new site where is a home on the north side of the scenic highway, then there were two parcels together that formed the parcel on the south side. When I was looking into this on my personal property the line goes to the middle of the road that I live on so I own the property in the road. For the Bille's parcel the legal description doesn't reach the middle of the road.

John Bray they don't touch but they are considered contiguous by the law.

Dave: well they actually touch, the legal description the end of my property the exact line is the beginning of the next property. There seems to be a set aside of the road bed and a little bit off to the side that is not in ownership according to the county, it seems to me that those don't touch, do you disagree?

John Bray, I do disagree, the reason I disagree is because if you are taking a look at this from a homesteading aspect and you want to look at how contiguous is defined by state law for example if you've got your farmstead on one portion of road and you have to drive down the road to get to your farming property those properties are considered contiguous under the law even though they are not immediately adjacent to each other and not touching. If that was homesteaded property it certainly wouldn't have to touch at all as long as the two parcels are being used in conjunction with one another for the purpose of the homestead they are considered homesteaded. One other issue I would like to touch on, you've got at least two decisions made by the applicants with respect to this property that were denied. I understand the statute defines what practical difficulties means was changed but if you look at the essence of both those decisions you might use one more. They talk about the owners knowing full well that particular parcel was not buildable when they acquired it means part of the essence of their decision to deny the variance request, that aspect of what practical difficulties means you can create a situation yourself, has not been changed by the state statute. I do concede that overall what practical difficulties means is not what it meant prior to the change in the law but that aspect does remain the same and my point is I believe this town is probably bound by those decisions to deny the request, nothing has really changed except one minor aspect of the laws definition of practical difficulties. The aspect that pertains to you can't create the practical difficulties on your own remains the same.

Dave: Scott if we have a stakeholder question after the sort of open comment period is closed it is still on the record?

Scott: it would be a record of the proceedings these are the Boards proceedings you can ask questions as you like.

Dave whatever gets said it is part of the record.

Jake Stonesifer: good evening everyone I am from the law firm of Johnson, Killen & Seiler and we represent the Bille's in their pursuit of this variance, I appreciate everybody coming to the hearing this evening. Reiterating what has already been said, this is an appeal from the Duluth Township's Planning Commission's decision to grant the variance as requested by the Bille's in the application submitted in April. Over the course of two separate hearing over 5 hours each the planning commission thoroughly reviewed everything of the Bille's application at length. After that review it took two motions to deny failing before the planning commission approved the variances requested on Mr. Dahlberg's motion which included some very reasonable conditions which alleviated a lot of concerns. Because there were not any errors in the planning commission's decision I would urge the board to affirm that decision. The whole point of having a planning commission is so that there can be a specialized body that you can defer to, and make decisions on variances and conditional use permits. For that reason you should defer to their decision unless there is some extraordinary circumstance or error you find which I don't believe is. Furthermore the Town Board is an appellate body here it's not for the town board to decide whether or not to issue the variance in the first place that decision was already made by the planning commission rather the town board is here to review the planning commission's decision to see if there is some sort of extraordinary error in that decision which would be grounds for reversal, there is not. But the planning commission's decision was within the bounds of the ordinance so it must be affirmed. In making its decision the town board must review the elements stated in article 14 section 3 E2 of the ordinance which talks about a couple of different things for you to consider. First the rational and consistency of the planning commission's decision in following the ordinance and the planning commission's finding of fact support affirmed its decision. The planning commission reached a very well-reasoned decision which can be seen in review of the record and its finding of facts. In its discussion and findings of fact the planning commission addressed every criteria that was talked about. First that granting this variance allows the Bille's to use their property in a reasonable manner, a house on the Bille's lot is reasonable and in conformance with the neighboring properties. The variance approved by the planning commission really allows the only use on the Bille's property, the Bille's have the right to use their property as more than a camp site and without a variance that's what they're stuck with. The second point that the planning commission talked about is reiterating that granting the variance is certainly in conformance with the essential character of the neighborhood specifically the Greenwood Cliffs locality as Mr. Dahlberg talked about at length. The Greenwood Cliffs subdivision, which occurred in the 1930's, chopped up the lots along the Lake and created small lots people would build on those lots and many people did so now there's a big row of properties 75 or 100 feet wide with buildings on them very similar to the Bille's. If you put a house on the Bille's it will be very similar to the existing neighborhood. This second kind of moment the Town Board is to consider in appeal is whether or not the planning commission's decision achieves the goals and visions of the comprehensive plan and I would say that it does. I've briefed in depth on the application what the comprehensive plan talks about in housing and development, it certainly encourages housing and development and by granting this variance would allow a nice new house on the property which would strongly raise property values that would allow for a higher tax base. Finally the ordinance talks about the Town Board considering any other criteria the planning commission deemed appropriate in rendering a fair and just decision. Again what they considered the most was the essential character of the local you look at maps you look at public record you drive on the road near their property its clear there are a lot of houses on similar sized lots so by granting the variance is in conformance in the locality. I would like to wrap up by addressing a few of the appellants arguments including a few of those stated in their appeal letter and a couple raised by Mr. Bray today. None of those points show an error by the planning commission that would allow for a reversal and for that reason I would ask that the board affirm the planning commission's decision. In their letter the appellants make 5 points as to why the board should reverse the planning commission's decision first they talked about the necessity to protect the character of the neighborhood. I just talked about how the look of the character of the neighborhood is small sized lots with houses on them, granting the variance would not adversely affect them. Second the appellants talk about the necessity to shield their drinking water from contaminants there's been no evidence that building on the Bille's property would in any way contaminate the appellants water, furthermore well requirements are addressed by the State so the planning commission and the board are really not the place to address that issue. The appellants talked about the need to safeguard the shores of Lake Superior, the properties are on bedrock, we are not in an erosion concern area. The planning commission considered this concern in depth and they found 87' given the bedrock aspect of the property was reasonable enough to grant the variance. Furthermore we have a condition in the variance that a storm water management plan be developed so any runoff concerns would be addressed in that the town would have opportunity to make sure that the storm water management plan would cover anything they needed to protect Lake Superior. There has been talk that the ordinance was developed to prevent overdevelopment and

overcrowding on lots too small, again this goes to character of the locality. It wouldn't be over development it would be just another house on a similar size lot close to the other lots along Lake Superior in the neighborhood so I don't think that's a real concern. There was talk that the planning commission did not make findings of fact in the appellants appeal letter, as you are well aware this is false there were findings of fact in the decision. To hit on a few points Mr. Bray talked about, my position would be like you are talking about Mr. Mount that if the lots aren't actually touching according to county records or legal description they are not contiguous. Prior variance requests by the Bille's or previous owners of that property are not precedential they don't bind you, the same property owner can certainly continue to bring variance requests, the variance is likely to differ each time so you have to consider it anew. There is no limit to the number of variance requests the home owner can make I don't think that's a valid concern. Mr. Bray raised the fact that there are 6 variances requested here, I don't see how that's relevant if it's a well-reasoned variance request and the proposed house is reasonable given the property, I don't think 4 variances as compared to 6 should make a difference in the ultimate decision by the board or the planning commission. The bottom line is the Bille's did not create the difficulties here, the property has been the same size for 50 years before the Bille's even had the property, they bought it as it was in its existing size and they didn't do anything to differ the size of the property so to say that they somehow created their difficulty is just incorrect. Finally Mr. Bray touched on the argument that if you grant this variance it will set some kind of precedent where property owners other places along the shore in the township can just come in and get variances because they are on small lots similar to the Bille's obviously you know as well as the planning commission knows that it's taken on a case by case basis. The application is reviewed and new each time, they are certainly denied or certainly approved in the future regardless of what happens here today. So in conclusion the planning commission decision was permissible and supported by the ordinance with a well-reasoned decision and findings of fact. They did not make any error that would warrant or allow reversal here today and for the reasons I have just stated I would respectfully request the board affirm the planning commission's decision. Thank you

Dave: That model does not look like the plan on the variance application which was the proposed development plan. The drawing has a gable roof and a big ship's prow out in front that is a very different design.

Charles Bille: the footprint is exactly the same I eliminated the other roof with the dormers to bring the house down to comply with the spirit of the request to not build over 25'.

Dave: the plan shows it's a 2 story structure with a walk out basement. How much of the structure is on a basement.

Charles Bille: the house is 28' x 32'.

Corlis: does it have a full basement under the whole structure?

Charles Bille: just under the house part.

Dave: there is living space over the garage?

Charles Bille: yes there is living space over the garage.

Dave: Mr. Bray would you like to rebut anything?

Mr. Bray: no, I'm still looking up the definition of contiguous. I think some of the other owners in the area might like to have something to say.

Scott: I don't know the statute Mr. Bray is referring to specifically to give the board an opinion. Mr. Bray you are referring to the homestead aspect a tax for tax purposes. I'm not a tax attorney, my understanding generally is if you have your house, and I'll use the same analogy you did with the farm down the road, those two parcels can be treated as homestead for purposes of taxes I don't know if that's what Mr. Bray is talking about here.

Barb: I believe the statute is 273.124.

John Bray that may not be the only portion of the statute you find.

Dave I don't want to prejudge anything but this did come up in my reading of the commissions deliberations, there were basically two parcels because of the intervening road therefore there was no parcel creating involved. It would seem to me a significant thing but, it may not be easy to do with our cell reception, if there is information that we could get to our attorney and have him comment on that it would be useful. We are into the public comment, anyone who wants to speak signed up on this sheet.

Nancy VonRidel: I am one of the past owners of Dodges Log Lodges I had it 25 years and know many of the neighbors who live around there. I've been friends of John and Jack who have owned the cabin for 40 years I understand what they are going through they've been great neighbors and of course they wouldn't want a house sitting right next to them. When we applied for variances way back to build our house at Dodges Log Lodges we had to go through so much red tape to get a house built. We had to live there because we were running our business right and we had no place to live. Eventually we were granted a permit to build our house which we are still thankful for. But now a few years into our resort when the Bille's were starting to haul in all that dirt, truckloads of dirt brought in a low property which now I wonder if it's even solid ground to build on. During rain storms a lot of that dirt ran into Jack and John's property they were constantly scraping the mud off and I felt so bad for them. The Bille's have been turned down a couple times to build a house there and now all of a sudden I understand they have permits to do that I'm just shocked it's not a very good piece of property at all. Most of those homes in that neighborhood are old homes there's nothing new there people remodeled their homes but they've been there a long time way back when the lots were smaller. I just wanted to say I work in tourism for "Visit Duluth" and we have so many tourists who come in and say the North Shore is a beautiful drive and you can still see the water in many spots they want to keep it that way. The North shore has been voted one of the best scenic drives in the whole country, we don't want it to turn out like a drive in Florida where all you see are condos and house after house and you can't see the water anymore. We want to keep the North Shore beautiful and keep lots of little houses being built in every little spot as possible so I say let's say let's keep it the way it is beautiful and being able to see the water from the street. Thank you

John Bowen and I had two 6 year terms as a planning commission member and more years on the board of adjustment late 1980's and 2000 so I was involved with all the Bille's variances and board of adjustments. *John read from his document which is included as a part of this document.*

John Shultz I'm one of the owners of 5848 North Shore Drive and I am one of the people appealing the decision of the Planning commission. At the planning commission meeting at the end of May I thanked them for having an open meeting it's really good to hear all of you talk about what is going on and I encourage you to have an open discussion about this. At the last meeting there were several people who were very vocal about it and there were a couple people who didn't say anything it was good to get everyone's point of view. The other piece is the zoning commission meeting there are 7 zoning commission members, 5 were there initially, we had public comments and then the 6th member came in after the public comments so having all of you here being able to discuss is very valuable. We're appealing the zoning committee variance approval for 2 reasons the nature of the property and the character of the zoning ordinance. The property itself I believe the zoning commission maybe made an error in granting the decision on this property because the land is too small in many ways for such a large house. Its 1380 square foot house on a 75' lot all of the buildings in the area ours is 577 square feet and the largest is perhaps 1000 square feet so it is dramatically different from what is there. There are 6 variances which are very much out of character for the variance that was granted. It was mentioned before that variances can be brought up again but I think that the zoning regulations can't be ignored. The house will impact the neighbor's house consequently it will have an impact on us. Will have effect on our well, I talked to our well guy who said that it's probably going to have an effect on the well, we don't know what it is yet but it's going to lead to more expense from us and there's going to be runoff from the hard surfaces that are there. It'll change character of the neighborhood as was mentioned before it's going to be a large house on a small lot. There was mention of economic factor the realtors have told us the value of the property will go down if there is a house of this size and scope built next to us. The other thing that I just want to mention briefly is the character of the zoning ordinance itself the variance if let stand it will erode the legitimacy of the town's zoning ordinance, prior to approval the township has consistency in the way variances were handled. You should have in front of you an Excel spreadsheet of

the variances that were granted by the planning commission since 2012 I took look at all of the minutes and noted all of the variance that were there. Only one requested 4 variances and that was granted with conditions all of the rest were for 1-4 variances, the other consideration is that most of those were for existing buildings. It was a matter of tearing down a garage and building it up again this is dramatically out of scope for what you have from before it throws consistency out the window. I hope the township will look at the facts and consider the future of zoning ordinances in Duluth Township and encourage you to reverse the variances. That's it.

Lawrence Burkhard (declined to speak)

Chris Schousboe: I was up here and did a lot of research, I was curious about the terms, and did a lot of reading. We object to the potential allowances of all the variances, history may change, the property has changed, the interest in it has changed, I don't think the township has kept up with what they really want. The comprehensive plan has change on 4 different points if only 2 of the 8 variances were adequately followed. I have a limited well, you cannot take showers for 6, I had my well fracked, it created dirt and mud and it flooded Dodges Log Lodges. We have been paying our taxes and doing our due diligence and being good neighbors. I did find out today that their well hasn't gotten a permit from the State of Minnesota Health department. We don't believe the hardship the owner has stated this owner's plight is from difficulties he did create. I do care about stewardship of the land and of the lake, does it fit into the character of the neighborhood, I think a huge home that is all of a sudden brand new, you have a tear down and put a monopoly size home on there, it does change the character. Practical difficulty I won't go into that we've had enough of that. I'm just supporting the people here we in the neighborhood value our privacy. It will not enhance the neighbors site line is also important, light pollution, sound pollution. Residents continue to come and go but we need to be thoughtful of those who come after us because I'm not going to be here in 20 years. But what will be left and I think we should be proud of what we have.

Howard Seivert: I own the property next to these folks and I'm perfectly happy with whatever they want to build and the reason for the variance I think is so they can do this. That land is absolutely worthless the way it sits right now. Other than a parking lot if they build a house there I guess the taxes will be going up which would help everybody. I can't for the life of me see how improving the area is going to degenerate the neighbors. Everybody would like to have 500 yards on each side of them they should have bought the ground then. I think when you've paid taxes as long as these folks have paid taxes I don't think the neighbors should tell you can't do it, that's what you have boards for and I know that you folks oversee the (planning) board. The Boards heard this they've heard it for a long time and that's what a variance is. That's all I have to say about that except I hope you don't overturn them.

Dave: That is the last person I have on the list. I'm going to make a proposal to the board for a lot of boards, city councils and whatever once the public comment period's over that's it, it's just the board we usually run our meetings a little more informally. Don't interrupt each other, try to raise hands and I would like to suggest as the Board begins its deliberations they feel free to call on members of the audience. If someone in the audience has information that's relevant raise their hand so we can let them speak. Please don't abuse that privilege so we don't feel the need to change that procedure.

Carol Danielson-Billel would like to speak. I am one of the property owners that applied for the variances that were approved and I want to assure our neighbors that we are as interested in our privacy as they are in theirs. And to think that we wouldn't get along and be a part of the community is completely uncalled for I think. It appears there is a lot of opposition to our building although we do have Howard here who is our immediate neighbor. There is a letter from our neighbor across the street who offered us a letter of support. And we have two other letters such as I know you have all of that in your packet. I just wanted to remind you of that because they are not here repeating and repeating and repeating, we do have people in our support.

Dave asked our attorney what's the procedure? We have a quite a number of comment s, some from people that are here I can ask if they want something more. Just in terms of the open record.

Scott: You don't need to read them out loud there is a public copy for anyone here to review or inspect. You certainly are free to read them or summarize them but there is no strict rule for handling those they become part of the public record once you adopt.

Barb some of these e-mails came tonight and I personally didn't have time to see them. It is important for me to hear them or read them before making any decisions. Could we take a little recess to give us a chance to read?

Scott: are the e-mails that came in today in the packet?

Clerk, yes they are included.

Travis: There is some reference to Greenwood Cliffs and Greenwood Beach. Is Greenwood Beach Greenwood Road? Some reference Stoney Point in there too and that doesn't really fall into Greenwood Beach or Greenwood Cliffs. Greenwood Cliffs starts right past Stoney point. Mainly what I was reference to was Greenwood Beach is Greenwood Road.

Dave my understanding is Greenwood Beach is Greenwood Road. John (John Bowen) is that correct? Yes

Public comment period has been completed. 7:35 p.m. break to allow the Board to review the correspondence that arrived today.

Meeting was called back to order at 7:45 p.m.

Dave called the meeting was called back to order at 7:45 p.m. I believe we've heard from everyone who wanted to make a statement. A copy of the Greenwood Cliffs original subdivision plat has been brought in for those who wish to see it. I would like to ask our attorney some procedural questions. Some comments have been made about the Board being an appellat body and the nature of the decision that is in front of us is crafted as groups reviewing somebody else's decision, like rehearing the whole thing. Can you comment on that?

Scott: I'm looking at appeals of decisions of section 3 articles 14, sub part D authorities of Town Board in deciding appeals (read in its entirety from Duluth Township Zoning Ordinance number 5). I interpret that to say that you can decide to approve or reverse the planning commission's conclusion. You may also adopt it in part, reverse it in part or fashion your own because you have all the authority.

Jacob Stonesifer: section 3.E2 mentions criteria on appeal. There needs to be heavy consideration to the planning commission's decision

Scott: I don't disagree with that comment. You are free to reverse in part, adopt in part or make a decision of your own.

Dave: comment what does the law say about the rights of use? There was a structure on the property it burnt down long ago does that have any bearing on the current proposal.

Scott: no it is not relevant to these proceedings.

John Bray: it would have sunset long ago.

Barb: I think Land Use Plan should be #1. I think we should talk about the North Shore corridor and decide what we want it to look like. I do disagree with the finding of fact that the differences are consistent with the comp plan. Let's not build any more in the high density area let's just maintain what we have.

Corlis: as much time as the planning commission has already spent on this and writing of the ordinance back in the early years we got input from all kinds of citizens to guide what development was going to go forward. We can't change the development of the past. But I see this development so far outside this vision.

Rolf: My take is a bit more to defer to the planning commission, that particular neighborhood is really different from the rest of the township.

Travis I would be more with Rolf's thoughts.

Dave I really struggle with this has to do with the marrying of the previous platting and essentially a revisiting of that area, I'm speaking of the abstract not the specifics. We are not dealing with an existing lot all lots are small but this lot is the smallest amongst them, basically the lots are 100' wide this parcel is even smaller than that. I guess maybe the struggle is the idea is that it was platted in 1930 and so it should be developed, in the abstract I find that mildly compelling we aren't talking about one of the original plats. The original platting complicates the decision but in and by itself there is a reason that makes this piece appropriate for development at this scale. I visited this property and walked up and down the road for quite a ways looking from the road there are houses that were bigger than I thought they were going to be when I was looking at the area photo graph but I don't think any were as big as this one and as involved. It strikes me that describing this as a modest house in an area of mixed housing is not my impression while walking around. In context of this neighborhood it is putting the biggest house on the smallest lot. There a lot of small lots but there are also a lot of small seasonal cabins.

Jacob Stonesifer: point well taken.

Carol Bille: when it comes to lot width, they neighbors lot width is no bigger than ours, it is very close to the property line.

Dave: I appreciate that but that isn't the standard, we are looking at this project on this property. Previous decisions are not supposed to influence

On Harmony and general purposes:

Dave: these were really mixed up for me but in terms of the ordinance I see the intent of the two. The road is not terribly bothersome to me in part because of the screening. I'm not sure how you can measure compliance on the side yard the neighbor is fine with 12'. The water course I didn't trace it up to the freeway, but it can't be too big given what was still there after the 2012 storm.

Corlis: The point you made that the neighbor isn't concerned, we have to look down the road into the future.

Travis: I've seen this in the minutes, why does it matter for someone down the road buying the piece of property I don't get the correlation there. No one is twisting the person's arm to buy the property.

Charles Bille: If Mr. Seivert sells that property with our house sitting there whoever buys that will know we are there. This issue of economic considerations do have to be considered, we have a lot the county has assessed at \$100,000.00 if we are not allowed to build on this property what is the value of this property.

Dave that is not for the Town Board that is a matter for the County Assessor.

Charles Bille: we have tried to make this house as small as we can, the height is 25' we are as far away from the property line as we possibly can be, the first time we applied for the variance the planning commission rejected the variance. I don't think there is a property along the shore is 50' and a majority that are 25'. Dodges Log Lodges has 3 cabins on the vegetation line. Mrs. Von Reidel built a home that is on that property as well.

Barb: the set-backs aren't there so we have some control over density and greenspace , those are the things I am concerned about. A 2 acre lot has been reduced to .31 acres, which means the large house has reduced the greenspace to nothing they meet 2 out of 8 criteria.

Travis: blue line vs orange lines (referring to John Bowen's handout). Orange lines came into effect in 1930; blue lines were created in 1958, this is a lot of record.

Corlis: this map actually shows 2 lots.

Barb whether the parcels were created in 1930 or 1958 is not important to tonight's meeting. The findings of fact are incorrect and need to be corrected.

Nancy VonReidel: Those cabins have been there for 80 years.

Carol Bille: prior structure that was on the property the same argument could be made just because we didn't change the building. I don't think we should be penalized for that either.

Dave: this property had a use, the two parcels south of the road had a logical use when the parcels were all together and that was to access the lake for the people on the other side of the road.

Scott: Is a reasonable use access to the lake? The question before the board is whether the proposed variance is a reasonable use to the property.

John Bray: non-conforming lots under common ownership. Our discussion is about whether those lots are contiguous when there is a highway between them.

Scott: it doesn't answer for me whether that answers the size question.

Dave it speaks to whether it was an appropriate sub division or not

Barb is this a reasonable use? Yes, will it alter the character? I believe it is not in harmony with the ordinance I would recommend that we look at harmony and the comp plan.

Charles Bille: we owned two non-conforming lots of record, we were well aware we had two separate non-conforming lots of record. It isn't one lot of record it was two.

Dave: There is a different standard in the matter of defining what a contiguous lot is. We are trying to get our attorney that information.

Dave (referring to John Bowen's handout) let's say we had a full orange lot it was 100' would 25 more feet make a difference.

Barb: I'd have to think about that if it was presented to me.

Dave: if this was an area of 2 acre lots and there was this .31 there I guess my gut reaction is we wouldn't be considered about this at all. This area has the history

Barb: this is a hard one because there are a lot of small lots in this area. I can't help but firmly believe the intent was to stop the high density construction in these areas to slowly reverse the high density.

Corlis: and to motivate owners of these small lots to sell to their neighbors and make 100' lots.

Sue: 25% for an existing non-conforming structure increases the non-conformity but if you had a structure whereupon you could build toward the back of your lot and not increase the non-conformity you could increase by 75%.

Dave: given the history I do think it is the most impaired lot in the immediate area, then putting the largest house on the lot.

Charles Bille: I don't have multiple drawings, we have a handicap son the bathroom is handicapped accessible.

Dave: 820 square feet on the main floor.

Jacob Stonesifer: they address everything in the square footage it included basements but not garages.

Corlis: we aren't really considering the square footage of the neighboring houses.

Travis: it is considering the neighboring houses, it is a bigger house.

Charles Bille: Total living space is 1816 square feet including the garage.

Dave: we have to make assumptions because we don't have your current design.

Travis: the first two are consistent with the comp plan and are in harmony.

Sue: the comp plan revision was July 31, 2002, the Town Board did a review and decided this plan was still sufficient.

Travis: I don't believe the comp plan was put in place if they had the ability in 2002.

Dave: the lot standards were created in 1984.

Barb: you printed this out for us maintaining restrictions on substandard lots as defined in the current ordinances?

Sue: what does it mean to maintain restriction?

Barb: I think it defines hardships which then allow us to allow residents to build or expand something they wouldn't have been allowed to do under the ordinance. When I say I don't think this is consistent with the comp plan it is so extreme in the variance. This one is a little over the top for me.

Corlis: I think of a variance is allowing the property owners a little leeway to do something, I see this as something way over the top.

Rolf: there was a motion to deny it then failed and then tabled. That motion was on the table and discussed at both meetings and failed both times.

Corlis: there were people in this room who worked on this ordinance for months we are trying to go by what is written in the ordinance now that is what the residents wanted the township to look like.

Travis: do we need to go back and revisit the ordinance? None of these lots are two acre lots.

Corlis: a lot of people wanted 2 acre lots.

Dave: SMU-6 is a larger section, this is a narrow subsection, the basic rules have not changed.

Travis somehow it went from a buildable lot to an unbuildable lot.

Dave: no it wasn't a buildable lot from 1984.

Barb: if you have a non-conforming lot you have the right to apply for a variance.

John Bowen we are controlled by St. Louis County, they came down in 1986, I wanted to build a garage it became Platted lots vs lots of record which are not completely related. The plats as platted here have nothing to do with lots of record. You are all familiar with the fish hatchery all the lots are platted here. If we went by those plats we might as well throw our zoning out.

Sue: read the definition of the lot of record (from our zoning ordinance).

Dave: there is no dispute that it is a lot of record.

Sue: this relates to non-conformities and what you can do.

Dave: the issue is if you have a lot of record and it is non-conforming what can you do?

John Bray: It may be unnecessary to address it under section 394.36. Case law might define what contiguous means.

Charles Bille: if I eliminated the walk out basement what size would work?

Dave: unfortunately we don't know.

Charles Bille: it's come out several times it is the biggest house on the smallest lot.

Jacob Stonesifer: if we don't have the definition of contiguous, contiguous means together. I think with a road between the two of them they are not contiguous.

Dave: if in fact they had been contiguous then it would have been an illegal division.

Barb: I'm pulling up other zoning ordinances (on the internet) with other decisions.

Corlis: is there a difference between lot boundaries and parcel boundaries?

Dave: adjoining lots, it has to do with the non-conformity what I find is confusing is the way these lots are described these lots do not meet or touch.

John Bray: I would like to address the contiguous nature of the lots because I think that is important.

Meeting break 9:15 p.m.

Meeting was called back to order at 9:40 p.m.

Barb moved that the Planning Commission's decision to approve the Bille variance requests be overturned based on the boards findings that the variance requests are not consistent with the comprehensive plan nor are they in harmony with the general purposes and intent of the zoning ordinance, Corlis seconded.

Discussion

Dave: if I understand the motion it is for the variance application we received, that doesn't necessarily mean there won't be development it means the proposed set-backs would be denied. Where I am at is I struggle given the pattern that there are a lot of people who have neighbors cheek by jowl I would infer from that there are characteristics of that

which are desirable, basically there aren't any smaller lots, this lot is smaller than the majority, most are at least 100'. I struggle with the decision but this lot cannot be developed and others can but I am uncomfortable with the scope of the current proposal. I believe some sort of dwelling could be developed, one that would be more consistent with the area.

Scott: I recommend only deciding what to do with the planning decision.

Travis: if we over turn this they have to go through this process again?

Corlis: and have twice before

Travis: we are going to deny you but feel free to come back?

Dave: so just as a practical matter we'll have to assume that.

Barb: is there a smaller structure in your mind that would be suitable?

Corlis: because the lot is so much smaller than the ordinance is asking for, unless they increase their lot size by some degree I have a hard time seeing a house put on that small a lot. What kind of a house would I be comfortable with? If we're trying to go by what is in the ordinance I have a hard time crossing that line. If they had an acre and $\frac{3}{4}$ or an acre and a half but they are down to a third of an acre which is so far below what is required. I'm just going by what is in the ordinance

Dave: The ordinance said these are the requirements and those trace to the comp plan but these are extreme variances even for 1984. I have a feeling the parcel sizes of 2 acres were similar when they were set and I'm guessing that sort of got carried along and that is at the heart of where I'm stuck, on the other hand anybody who has a lot that isn't buildable can't build. I think that captures where my angst is maybe it's on the high side it's in the restricted part of the town its only $\frac{1}{4}$ mile that's a restricted stretch but it doesn't stretch all over its not going to defame the townships' character if it gets developed . I'm looking at the criteria and see "is it in harmony with the general purposes and intent of the ordinance". If you extend that logic if it was half the size it doesn't necessarily get around that problem it is then built around an entirely different development problem.

Corlis: we can change that if we want, if it is in the best benefit of the township we can change that if we want to.

Dave: As it is articulated right now, it gets at negotiating the size and the best intention works. This isn't the first time this has happened however it has implications. The words in the comp plan are more open to interpretation than the zoning ordinance, I feel more strongly that item #1 is an issue I don't feel the proposal is in general harmony with the comp plan.

Vote on the Motion: Motion carries, **No:** Rolf and Travis, **Yes:** Dave, Barb and Corlis.

Recess 9:45 to write the Findings of Fact

Meeting resumed 10:25 p.m.

Barb read the findings of fact in their entirety.

Barb made a motion to adopt the written statement of findings, Rolf seconded.

Vote on the Motion: Motion carries, **No:** Rolf and Travis, **Yes:** Barb, Corlis and Dave .

The Bille's have the right to appeal in District Court.

Fire Hall addition project.
June 26, 2017

Open house July 25th.

Put the bid package out, sign nothing. Our attorney should review the bid package.
Scott should review the bid package.

Dave made a motion that the board move forward with soliciting bids for the fire hall addition. That the board authorizes Stolp and Crow to take the draft bid package from the architect and work with the town attorney to assure that the bid terms are acceptable to the three of them after which the package may be put out for bid. Corlis seconded.

Vote on the Motion: Motion passed unopposed.

Meetings closed 11:00 p.m.