

Bille Appeal
September 7, 2017

Present: Barb Crow, Rolf Carlson, Travis Stolp, Dave Mount, Corlis West (6:15).

Also Present: Scott Witty, Charles Bille, Sue Lawson, John Bray (Attorney),

Meeting was called to order at: 6:11p.m.

Dave: Mr. Bille do you have an objection to beginning the appeal process without Corlis?

Mr. Bille: No its fine he's very familiar with the material.

Dave: And he has all the introductory material.

Dave: This meeting is for the purpose of hearing an appeal to a prior planning and zoning commission decision on a variance application by the Bille's to build a home on their property by Stoney Point. That variance was granted by the planning commission August 3rd and within the appropriate period the township did receive a request for appeal. I think a lot of you were here for prior proceedings of the same form. We will use the same format tonight as at the previous appeal where Sue Lawson our Planning Director will give us background on the variance application and action by the planning commission. I'll ask Scott Witty our attorney to make a couple of remarks on the process then we will go ahead starting with the appellant, then the Bille's or their representative will offer their comments, the appellants will then be offered time for a brief final comment. There is a sheet of paper if you wish to sign up to speak.

Sue Lawson: I'm going to offer a short synopsis beginning with the communication agreement. The site has been in previous hearings, is there anyone who has not been at one of these previous hearings? There are two major changes since the hearings in the 90's, the statutory definition of reasonable changed and the sanitary district came into being so there is now a sanitary sewer servicing all of the properties. The commission used the statutory definition of reasonable manner and the sanitary district in their decision, the town board then reversed the planning commission's decision of May 25th so this is the second appeal. Sue then took the audience and the Board through the power point presentation showing: vicinity map; vicinity photo; site photo and zoning requirements. The Bille's have two nonconforming lots which were combined into one parcel, they are still non-conforming in size and width. There is a letter on file from Joe Jurewicz the sanitary district engineer indicating that the property can be connected to the sewer. (Power Point) A summary of the variance requests - lot width 125' variance; lot size .31 acres they request 1.69 variance; side yard setback 23' variance, setback from unclassified water course 15'; setback from vegetation line on Lake Superior 13' and road setback of 41.4'. (Power Point) site map; house plans; site sections; house elevations; storm water management and the variance criteria. Site section you could conceivably see through the vegetation from the Highway. The retaining wall will be going around the front of the house there will be plantings for a rain garden and a rock retaining wall. As for the variance criteria #1 is it in harmony with the general purposes and intent of the ordinance? #2 it has to be consistent with the comp plan. #3 does the property owner propose to use the property in a reasonable manner, that is the item that changed a number of years ago it used to be reasonable use, now it's a reasonable manner that they are using their property. #4 circumstances are unique to the property not created by the property owner and #5 it will not alter the essential character of the locality. Those are the basic criteria that are addressed. The Commission approved it 4 to 2. Wayne Dahlberg made a motion that the variance requests be approved with the following conditions: 1) the green space on the highway side be maintained and improved and that it be put back in place after construction with visual reinforcement. 2) A turnaround must be a part of the driveway so that cars can enter the highway without backing onto it. 3) A more appropriate storm water plan must be in place for storm water retention, preferably rain gardens, and it must be reviewed by the zoning administrator. 4) Because it is a nonconforming lot the height of the building can be no more than 25ft from the lowest grade to the ridge. The proposal is in harmony with the general intent of the Ordinance as it applies to this area. It is consistent with existing development. It is a reasonable use of the property. The circumstances are not unique to this property but are in harmony with difficulties that exist all along that portion of the shore. The lot size and width were not created by the property owner, but by the 1930 subdivision. Dave Edblom seconded.

Dave: Sue I don't think it matters but in my reading of the minutes it was 4 to 3.

Sue: I had 4 to 2 which I took from the findings of fact. Oh yes Jo abstained.

Dave: actually that's not correct according to the minutes, the minutes say it was 4 to 3, there were some earlier motions where that was the case but the main motion to approve the variances because they met the criteria stated above was 4 to 3. But again it doesn't matter. Scott any comments other than instructing the board and the audience in the process we need to follow to speak, the criteria and any other comments you'd like to have.

Scott Witty: Sue, would you please put the criteria back on the screen. As the town's attorney it is my role is to advise the town board of supervisors as to what the law requires them to consider in a variance appeal. I'll note first that the ordinance authorizes the town board to, in an appeal such as this, reverse, affirm fully or partially or the town board may modify an appealed order, requirement, decision, or determination of the planning commission and to that end has the powers of the planning director or the planning commission. Ms. Lawson has correctly outlined with the variance criteria, the criteria that the town board must consider under the applicable statute for a variance I don't need to repeat those and at the risk of repeating what I said at the last hearing which I think everybody was here. The couple comments I would note for reminders is that there are inherently some overlap for meeting or not meeting some criteria. What I mean by that is the rationale for one can serve as a rationale as another that is permissible. With respect for the first two criteria listed there, generally speaking, the courts have indicated that the proposed variances consistent in keeping with the purposes and is not so dramatically different from the comprehensive plan and the intent of the ordinance so keep that in mind. Looking at whether there is the question whether the plight of the land owner is due to circumstances unique to the property not caused by the land owner, courts have noted that actual or constructive knowledge of the zoning ordinance at the time of purchase is not a legal bar to taking a variance. Someone who purchases land with knowledge that it cannot be developed without a variance is not for that reason alone disqualified. These are all things I've mentioned, I'm speaking from the same I've talked about before. Looking at the 5th criteria, whether the variance will not alter the essential character of the locality, assessing that question you are looking at whether that proposed variance is so out of character or out of place and not consistent with neighboring parcels those are some additional comments that courts have made.

Dave: Scott could you please repeat that last one.

Scott: The 5th variance criteria is that whether the variance will alter the essential character, the locality, courts have commented that whether use is out of character or out of place or not consistent with neighboring parcels as being facts to look at. That factor is geared toward protecting the applicants neighbors against a variance that if granted would unduly devalue their property or result in a substantial detriment to neighboring properties. Economic reasons alone do not constitute practical difficulties substituting criteria 3 through 5 there. The only other thing the statute says is that the board may impose conditions in granting the variances we saw an example of that with the Planning Commissions conclusion decision in this case. Lastly in the last round of this once a decision has been rendered by the town board whether that is tonight or at continued proceedings written findings in the conclusion will be issued.

Pause to allow Mr. Bille's court recorder to move to a new position.

John Bray speaking for the appellants: I'm not going to belabor the issues; we've addressed these issues before. We're familiar enough with the situation and the extent of the requested variances; nothing has changed since June 26th. The only thing that has changed with respect to the variances requested at all but the plans for structure are a little bit lower profile but that doesn't change the size or extent of the variances requested. I think you are probably bound by the first decision you made because there is nothing that is being presented that is different except the building plans are slightly different. I'll remind the board that it specifically found that the extent and size of the variances are not in harmony with the zoning ordinance and also specifically found they are not consistent with the comprehensive plan. Therefore nothing has changed with the respect to the extent or size of the requested variances they are exactly the same variances as requested before. I would also say that one of the other issues that was raised is that the applicant saying

aren't we allowed reasonable use of our land, you are. I would submit to this board having access to Lake Superior is having reasonable use of the property. I'm raising this issue purely for the issue of this record but I would also submit that the applicants had conveyed their own non-conformity by selling the lots and keeping only the lower lots. On that basis I would submit the applicants themselves created the need for the size and extent of the variances they are requesting, maybe these variances wouldn't have been necessary had they kept the upper lot to build that kind of home on it. Also I do believe this would alter the essential character of the neighborhood, you have a fairly small lot and you got a fairly sizeable home that you are planning to construct. If you take a look at the houses around the area it doesn't fit the neighborhood, it just doesn't. Mr. Bray has no other comments are there any questions?

Travis: at the last meeting we were hearing you talk about the contiguous lots.

Mr. Bray I did find a case it was an extremely old case but then real estate law is not exactly dynamic area of the law so you aren't going to see a lot of changes in the cases. That case and I would be happy to e-mail that too, I was trying to find it it's a product of "fast case", if I had access to my internet I would e-mail it to your attorney just now but I can't. I would submit to you what it says is that if you've got lots that are separated by a right of way be it a public right of way or a railroad right of way, that case says those lots whether they are separated by a right of way they are contiguous to one another. That's the same issue I'm raising tonight, it's fairly to me at least common sense if you have lots that are divided only by right of way as opposed to neighboring properties etcetera they are considered contiguous under the law.

Travis: you do realize you had a lot of time to get this.

Mr. Bray: yes I know and I did find a case I just did not e-mail it to you.

Dave: So you're lacking internet access?

Mr. Bray: yes you don't have great internet access here. I'll find that if it's ok

Dave: I consider that a fairly important point. Up until you said that I wasn't aware there had been any follow-up that would establish that perspective.

Mr. Bray: The other thing is it isn't exactly the most satisfactory follow-up either, it's an extremely low case it isn't exactly on point with what we are talking about today but it does refer to the nature of lots that are separated by right of way.

Mr. Bille: I'm going to read something here, an attorney that shows up and says "I think there's a case out there somewhere but I'm not sure what it is", he (Mr. Bray) did the same thing last year. Definition of contiguous (read from the Webster's dictionary) he referenced in the last hearing the case with regard to homestead determination of special rules for contiguous lot was referenced in that. Agricultural homesteading, you can have a home here residence here a quarter mile down the road you can have a 40 you are farming. For homesteading tax purposes they will consider that contiguous, has nothing to do with zoning, nothing to do with zoning laws. For an attorney to stand here and make that presentation I find that appalling a remark like that would even be made. I won't go any further into that.

Mr. Bille read from a prepared 4 page document attached to this document.

Mr. Bille read to the end of page one paragraph three and then stopped reading to make the following comments: Something I do want to comment here with regard to the changes we made on the house. The foot print has remained the same, to try and make the house itself smaller is just not practical or the garage not practical at all. What we had eliminated was the walkout portion or element to this house to say that's not a significant change. That's a huge change that's a loss of a lot of open area if you will. We have lowered the profile because we are concerned with the nature of the viewing of the other side from the highway. Resumed reading from his written comments page one paragraph four.

Stopped reading at page two where it says "Show map of view corridor" to: provide you with a drawing of our lot (document provided to Town Board, none were provided for the record). If you look at this drawing I took a line from the driveway which is the upper part the corridor view down towards the lake and when you draw the line from the upper left hand corner down to the house and straight down to the lake, all we lose is 12 feet of view of Lake Superior. I don't think there is another property between Stoney Point and the North East corner that offers that much of a view. There are some trees that do block the way those we are not going to remove those trees we want to keep in place because those are a buffer or a screen between us and the Shultz/Nelson property to the North East. I think the checkered area shows a fairly substantial view corridor view and we have the house tucked over as far as we could go. Mr. Sievert said we could build right on the property line as far as he was concerned but I think maintaining a 35 foot setback from the property line to the North East is substantial and that allows us a 12 foot setback on the property line to Mr. Sieverts property. His house is located 100 feet through the woods so there is absolutely no view of his house from our place or our place from his. Mr. Bille began reading from his document again at page 2 paragraph 2 at the word "Secondly".

(Show map of Houses/Cabins/Garages/Outbuildings along shore): Now what I did we drive along old Highway 61 it's fairly hard to see the houses are located along this corridor I have a google overhead photograph of the properties from Stoney Point to the historical turn around. What I did was I traced these pieces down I laid it over this map, I traced the highway, I traced the vegetation line and then I traced each of the houses, garages and the outbuildings on this piece of property. I had to reduce so you could see them. Now the comment has been made that this house one of the largest houses on one of the smallest lots along this corridor that is not accurate at all. There are several homes much larger than our proposed home and there are a number of lots that are much smaller than our lot with buildings on them.

Corlis: is one of these your proposed place, which one is it?

Mr. Bille: That's kind of my point if our house is so large on such a small lot where it does not fit within this it should jump out at you fairly quickly, it's the third house from the left is our property.

Corlis: you say you traced vegetation lines as well?

Mr. Bille: The vegetation lines are right along the front part here. It's not the high water mark anymore now it's the vegetation line. There's a lot of rock if you look, for example there isn't another house or another structure or home along this corridor that is anywhere near the distance from the lake that our proposed house is going to be.

Short Break

Mr. Bille began reading from his document page two #2 "Variances may be granted . . ."

Dave: Thank you. Any questions for Mr. Bille? Is there an additional comment from the appellants, Mr. Bray?

Mr. Bray: I'm still trying to e-mail Mr. Witty. I'll let him read the case, the case I just told you is that lots that are divided by right of way and egress are still never the less contiguous for not necessarily this purpose but contiguous under the law.

From the audience: For what purpose?

Mr. Bray: It doesn't matter for what purpose it says they are never the less contiguous, it's a homestead case and I'm letting the township attorney review the case.

Dave: I want clarification of a couple questions there was a statement made earlier if one accepts the argument that the proposal hasn't changed-- I'm not saying whether that is true or not, I'm just saying if one were to argue that the

proposal hasn't changed (accept the argument) is the town board bound by the previous decision on the previous variance application.

Scott Witty: I'm aware of no statute or case that states that the town board's decision on a particular question precludes it from revisiting that question under a subsequent authorized proceeding under an ordinance or thereby holds any presidential value subsequently. I think that the way you stated the question is the correct way, it is the very same question the very same issue, the very same application particularly where there is a different or a different proposal or a different application or a different concept that is under review or appeal by the town board, I'm aware of no legal requirement that the board must act in a way and make the same decision it made before for a similar appeal. The Board of Supervisors have the right to change their minds of perhaps upon further reflection, education, different facts learned and such.

Dave: another question I have is that the existence of other lots in the area that are in general bounds roughly the same size, of similar general scale that have houses that are of a similar scale. I think Mr. Bille's argument here is there already exists in this area comparably sized home on comparably sized lots already constructed. I think with the implication that supports the application of the variance. My question to you is does the fact that something was done in the past factor into, well it was allowed in this case so it should be allowed now or is that or is our decision still bound instead by the circumstances that apply today by the current ordinance and the current comprehensive plan.

Scott Witty: The role of the Town Board is to enforce its ordinance and analyze or assess the variance appeal pursuant to the factors in the statute that are up on the screen to the extent that the information that's been provided to town board supervisors deemed relevant to the supervisors relevant to one of those criteria that would be the extent of its application. Does that make sense?

Dave: the fact that there were in the past construction of a similar scope on similarly sized lots does not directly bind the town board's decision. It might if the current proposal is not greatly different from those existing circumstances but it doesn't bind the board to see it. In other words if it was done there it doesn't mean it needs to be done here.

Mr. Bille: and that's not what I was suggesting at all. Because there is a house over here in a case of a variance each piece of property is taken by itself there is no precedent, because it was allowed here doesn't mean it should be allowed there, I understand that. My reason for providing that drawing refers to #5 variances if granted will not alter the essential character of the locality. That the locality there has these houses on it, this house is not going to alter the essential character of that neighborhood its going fit in very nicely with the character of that neighborhood, that's where I was going with that. The reason I did that and took all of the trees and plants out of the picture because when you drive along most of those homes are so close to the lake that the trees screen between the highway and the home really blocks those properties from the street. Just walking down the street it's hard to tell there are that many buildings, garages, structures down there its if you are on the lake and look back then you'll see all of the buildings there but by removing the trees you get a better picture of the essential character of that neighborhood and that's what's were appealing.

Dave: first person on the list is John Bowen.

John Bowen: Good evening my name is John Bowen and I live at 5409 Greenwood Road. I'm going back to some things Sue said. Mr. Bille owns 2 lots of record and Sue states that they are combined, Sue and I disagree on that. To me lots would have one portion of the statement of the definition of the lot of record, is a lot of is parcel. A lot is part of a sub division, a parcell can be half lots but currently they own two parcels, essentially two lots of record and then our ordinance under section 4 (Article IV: Non conformities, Section 4, part B, #2) construction of non-conforming lots of record if there is in a group of 2 more lots of record under common ownership an individual lot would be considered as a separate parcel of land for the purpose of sale or development if it meets the following requirements that it meets 66% of the dimensions. There are two lots there one is 25 foot lot one is a 50 foot lot as neither one of them meets the 66% then it goes to B3 (Article IV: nonconformities page 28) "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". To me when you come back you are going to have one parcel number you are not going to have two parcels so right now they are two lots of record. Even if they were combined tomorrow they would not be a lot of record because a lot of record has to be in being prior to the current zoning. But currently right now they have two lots and each one of them has to be considered individually so you have to consider a 25 foot lot and a 55 foot lot.

Dave: so if I may, I heard what you said and I'm trying to turn it into where the argument goes.

Barb: No we read what you just said.

John Bowen: You should have had a visual that showed. This will explain as best

Barb Crow: I understand the content of what you are saying but I would also like to hear what Sue has to say because Sue disagrees with you and I'm sure she disagrees for a reason and I'd like to hear that as well.

John Bowen: Sue how do you figure they are combined.

Sue: there's a note that it was combined. The date you combined your lots you had that in your application.

Mr. Bille: 1958 was when those two lots were in existence. They are considered a single lot of record they are considered a single non-conforming lot of record. If you read the ordinance, don't take it out of context, read the ordinance it clearly points that out.

Sue: Article 4 non-conformities,

Dave: so I'm in B2, that's in article 4 as well, page 28 as the ordinance is written.

Sue: Article 4 section 4, non-conforming lots, and lots of record "a lot of record may be permitted as a buildable lot if all of the following criteria can be met." B2 "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" 66% of the dimensional standard for lot width. B3 "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." The commission since I've been on it and Wayne can also speak to that, if you have two or three 25 foot lots you need to combine as many as possible to meet the lot width and lot size requirements. So the two lots that the Bille's had when they applied for their variance was combining those and that I saw was in accordance of the ordinance.

Dave: so I don't read this that way but I also don't read it the way you read it. It says it can be considered as a separate parcel so what this says is if you have two adjoining lots, which we do here, for the purpose of sale or development they are considered as a separate parcel of land. These two if they meet the following requirements, and they do not, they do not have to be considered as a separate parcel.

John Bowen: They do not meet the requirement of one lot.

Dave: So they cannot be considered as a separate parcel.

John Bowen: So then you go to B3.

Dave: No I don't have to go to B3. It says in a group of two or more contiguous lots of record, 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. And neither one does which means you can't sell one and keep the other that's what this says.

John Bowen: and they can't construct on one.

Dave: it doesn't say that.

John Bowen: In a group of two or more contiguous lots of record under a common ownership, an individual lot

Dave: This is one or the other.

John Bowen: will be considered as separate parcel of land for the purpose of sale or development if it meets the following requirements

Dave: he isn't asking them to be considered individually he's asking them to be considered together.

John Bowen: But our manual says they will be considered separate. The manual is telling us we shall.

Dave: we will only be doing that if they meet the requirement and they do not.

John Bowen: they don't meet the requirement

Dave: so they can't be sold or developed individually.

John Bowen: So in the end if it can't meet the requirements if you go to 3 what does 3 say?

Dave: They must be combined.

John Bowen: A lot subject to B.2, above, not meeting the requirements and those two don't meet the requirements, so now they must be combined as one contiguous lot so they equal one conforming lot as much as possible. So you have to go to St. Louis County and combine those parcels and make them one parcel now and you've got one parcel, right now you've got two parcels that are considered lots of record.

Dave: I am disagreeing with your logic because what it is saying is they can't be sold or developed individually. He's not asking to do that.

John Bowen: No but they have to be combined legally before they can be considered.

Barb: it doesn't say anywhere in the ordinance that they have to be combined into one parcel

John Bowen: B 3 says a lot subject to B.2 above is where it says it will be considered as separate parcels for sale or development. We agree on that?

Corlis: what you are saying John is that they haven't been legally combined yet.

John Bowen: That's correct.

Barb: I understand that's what you are saying I'm also saying that it doesn't say they have to be. It doesn't say they have to have a legal parcel.

John Bowen: Ok but what does B3 say

Barb: read it to me I don't have the exact wording in front of me, read it again.

John Bowen: It doesn't say they have to be combined to equal one contiguous parcel.

Barb: it doesn't say they have to be combined by making them one parcel number. I can combine two lots by having them next door to each other they are both mine they are combined. It doesn't say anything about requiring a legal parcel number with those two lots.

John Bowen: We were talking lots of record a lot of record is a parcel or a lot.

Barb: I agree with a lot of what you have to say but I'm going to disagree on this point.

Travis: by following your logic you are saying they've created this by selling the house. Even if they still owned their house you're telling me they can't consider because that's a separate lot.

John Bowen: no I'm not saying anything of that nature.

Travis: you're saying they still aren't able to build on that property if they own more property across the road because they can't combine it because it's a separate lot.

John Bower: no no no.

Dave: you're point is in the record.

John Bowen: I've had three lots, one is a lot of record and then I had bought two parcels, and then I combined them to make one parcel and now I have one lot of record.

Dave: so I understand your perspective, I'm not sure I agree with your read of what this is.

Carol Bille: the benefit to us of going to the County and combining them would be tax benefits to us we probably would not pay the amount of taxes we're paying if we were combined.

Dave: actually the county started looking at them, the valuation change that happened this year I think the county is now considering parcels that way, one of the parcels went down one went up. The county used to value them separately as building sites and they changed that this past cycle so actually I think unfortunately even though your total value went up for 2018 I think that the way they shifted it is reflecting them looking at it basically in the way you are developing it. Anyway I'm sorry John.

John Bowen: I hadn't planned on talking about lots. The last appeal there was two there, that's why I brought up two lots. I talked to Sue she agreed there were two lots before everything is being considered one lot but it is not one lot it is two lots. Ok, we are back to reading from my document.

Carol Bille: My apologies for being late. I think the planning and zoning commission thought long and hard to come to the decision they came to it wasn't reached lightly. I would very much appreciate your approving the planning and zoning commission approval.

John Shultz: 5848 North Shore Drive. I have to admit this is a little nerve wracking for me. I've probably spent almost as much time in this town hall in this past 5 months as all of you and the Bille's just going back and forth so I've gotten to know this pretty well. We sent in some comments prior to the meeting did you all get them?

Town Board: yes

John Shultz: did you get a chance to read them?

Town Board: yes

John Shultz: I won't go over them again I just want to mention a couple things. It was mentioned earlier about the size of the property and the size of the Bille home. It's been mentioned before that the homes on either side have been grandfathered in I believe the comprehensive plan looks forward rather than backwards and to compare the homes in the area would be looking backwards and this is new development whereas those homes aren't. When I initially talked to or sent information to the planning commission the homes in the area were the cabins at Dodges above 500 and 600 square feet there is a large one set back a large home set back that's true it's a lodge. Ours is 755 square feet shows off by the 1500 new development here so in my view they are very different. I just want to highlight a couple things from the note that I sent along. One of the things I consider key here is the number of variances, Mr. Bille suggested there is nothing that prevents him from submitting a lot of them. I would suggest that what good is the ordinance if it is completely ignored through variances, I would think that any reasonable person would conclude that 6 variances on this property are too much. And finally I just want to mention that we are urging the town board to do the right thing and over-turn the planning commission. Thank you very much

Dave: Thank you very much.

Wayne Dahlberg: lifetime resident of Duluth Township, I was born and raised on the shore not too far where we are talking about. Went away for a while and came back got involved with planning and zoning. I've lived here all my life it's important to be part of commissions like this to have a say in what the shore wants to be and what our township wants to be. I think a couple of things, we all talk about the number of variances that are being requested, and I have comments about some of them. Unclassified water course, requirement is 50' they have 35', the fact of the matter is that was created by MN Dot when they did the highway they collected the water from above and created a water course. In my mind it shouldn't be there but it is, that's my candid opinion of it, it was created it isn't natural. The lot size and the side yard variance, and I go back to as previous zoning administrator for 10/12 years I've looked often at the Greenwood Cliffs area in terms of administering offering zoning requests. What wisdom in the 1930's it was created as a subdivision of at that time basically undersized lots. It is something that not only happens here it happens in other parts of our township, Greenwood Beach, Wonderland it is something that we need to be cognizant of and have an understanding for the property owners as to what they bought into and what the state or county or whomever created these subdivisions. We need to have somewhat of a sympathetic ear to what the circumstances are in the small lots, 50 to 60 percent of our township is burdened with these small lots. Side yard setbacks for many years in 1976 we created our own zoning ordinance the side yard lot was 20 feet for primary structures, 10 feet for accessory structures like a garage. In 2005 when we rewrote the ordinance that went to 35 feet across the board even though we have many lots that are 85, 90, 95, 80, 75 feet. That new rule went across the board.

Corlis: do you know why that was put in place Wayne?

Wayne: I do not, I was part of the committee but for whatever reason it got in there and I don't know why it got in there.

Corlis: Because the State of Minnesota set up these standards for the North Shore of Minnesota. The legislature set these up to protect the North Shore of Lake Superior with special zoning as part of the North Shore Management Board set to enforce those. And this was prior to the sewer system and obviously the density along the shore was thought to be too much and was causing issues with all the septic systems being put in at the time so they decided to change the density for new development to 2 acres along the shore at that time before the sewer system went in.

Wayne: The 2 acre did exist prior to 2005

Corlis: but that's why that was put in because the legislature of Minnesota imposed that on the Counties and Townships and governmental bodies along the North Shore of Minnesota

Wayne: because of onsite systems?

Corlis: correct

Wayne: This ultimately went away because we have sewer systems.

Corlis: in some areas.

Wayne: like this one. So my point being is that it's another one of the variance requests looks pretty extreme going from 35 to 12 but if it were from 20 to 12 it isn't very extreme at all it's a very reasonable request. Granted it isn't 20 anymore its 35 but I'm here to say a lot of the properties along the shore have the same burden. That is exactly why we were looking at that along the Greenwood Beach area and I won't go into that but in fact is a big part of what the planning commission is looking at right now. My message as a citizen and as only one member of the planning commission, I can only speak for myself, we take this charge of being on the planning commission very seriously, it's not a light mattered thing so I as one planning commission member hold that dear and just want to convey to all of you that I did not take this decision lightly, it was not an easy decision but was one I did not take lightly. A couple other comments and that has to do with, unfortunately I was out of the state when this occurred last time but I read the report and this decision basically says which speaks to housing along the North Shore corridor provides to maintain the current development density and mix of housing lot sizes. This in fact is exactly is what it is doing is maintaining what is there now. The fabric of that shore and that area is pretty intense no doubt about it, what he is bringing to the table does not in my mind negatively impact what the shoreline in that area is. The other point had to do with increase in density and increase view corridors and greenspace, I think he did a wonderful job on offsetting to the West behind the existing trees so that the view from the highway and from the property owners to the North still have their views. I think it is an exceptional way of doing it and the low profile, he has a right to be higher but he is trying to respond sympathetically to a lot of concerns to those around there.

Dave: part of the comp plans says to maintain restrictions on substandard lots as defined in the current ordinance. A minute ago you were saying that the development density of lot size there is what it is but also in the comprehensive plan specifically about the shoreland actually it says what I just said I wonder how you think those two intersect.

Wayne: the comp plan is a guide for setting up the actual zoning ordinance and I think the individual sites and circumstances you have to take that into consideration but it's not a slam dunk deal that is the whole purpose of variance requests. To listen and hear these things through, in this case it looks more of a blighted situation because of its present state than if it were to be built upon and taken care of it would be far superior than what we are looking at right now. You try to weigh things, what is the end result here for them and for ourselves and the people of the township and for the visitors that go by, it's going to be far more appealing to let this thing go forward then if you have it in its present state. It's a balancing act there is no absolute right or wrong.

Corlis: Wayne I just want to get your opinion what I see the zoning commissions duties to uphold the zoning ordinance for the township as it is written today not as it was written years gone by but our present current ordinance as it is written. From what I can tell is you guys are totally ignoring the plain written language in the ordinance and spot zoning in an area that is clearly zoned one way and clearly ignoring the language and the ordinance and variances in my mind allow the zoning commission some wiggle room and I see it as that a little wiggle room not fast rezoning of certain parcels within an overlay.

Wayne: spot zoning.

Corlis: correct spot zoning is where you are totally ignoring the zoning in an overlay and taking out one spot and zoning it totally different than what it says in the ordinance to do. I am totally mystified, I'm very dismayed that we are here again in such short order and not dismayed with Mr. Bille but mostly dismayed at the zoning commission and members of the town board are seeing it and just totally ignore the ordinance as it is written. There are ways if you don't like what's in the zoning ordinance there are ways that can be changed but as it stands right now that is the written rule it's what in the zoning ordinance. If we want to change the rules in the zoning ordinance there are processes and

procedures and input from the public that allows us to do that, those are not being considered by the zoning commission, they are taking this little spot.

Dave: I wonder if we are on topic.

Corlis: Do you feel like the zoning ordinance is relevant.

Wayne: the zoning ordinance comes with certain instruments to look at individual situations and it gives the public the right to in this case a variance request situation and they are exercising that and that's in our zoning ordinance right now we are not making this up.

Barb: this is a very stressful situation for everybody and I was just about to say something dissimilar, I was going to say Thank you for your work both to you and to the planning commission I appreciate all you do.

Dave: from all of the votes that have been taken with regard to this piece of property it's very clear reasonable people who can disagree. All votes that I'm aware of have been divided I think it's clear that thinking people can come to different conclusions.

Carol Bille: I was just going to say with regard to the variances it states what the most appropriate use of the property is or what is the most appropriate use, reasonable use for that land. I don't think there is a single person sitting in this room that has lost a penny, they have absolutely nothing to lose by our variance being granted, and the only people who have something to lose is us. We are trying to abide as best we can with the setbacks and the view corridor and the concerns of our neighbors. With respect for these questions and the decision of the planning board we are trying to comply by our view.

Dave: The ordinance directs

Carol: the most appropriate – reasonable use, not appropriate.

Dave: Reasonable use #3, reasonable manner, no it doesn't say the most reasonable.

Carol: I think building a home on our property is a reasonable use. If we were looking to not live there year round perhaps we would consider a 500 square foot structure. If we didn't have a son in a wheel chair, wheel chairs take up a lot of space, we want him to come and visit us there has to be room for him to navigate and sometimes that requires more space, just wider hallways and wider doorways. But we are going to live there year round, would anyone live in a 500 square foot house year round.

Mr. Bille: Of properties that are located in this area the majority of them have separate garages our footprint is a garage and a house, we are putting rooms over a garage. Our neighbor said their house is roughly 750 feet my question is does that include the deck does that include the storage shed they have along that property. I think if you add those up you are close to 1000 square feet. There have been realtors at zoning and planning and more who have suggested a home under 1000 square feet, really an unreasonable size home and is unmarketable. There have been variances granted to properties in the last 8 to 10 years for purely economic reasons so someone could sell their property. The property next to the bluebird landing Bieraugel that property was granted a variance exclusively for economic reasons so they could sell that property. The 6 lots that are listed by Odyssey Corporation by Stoney Point were all granted variances to build houses closer to the lake. Odyssey isn't building homes on there that was strictly a marketing reason. Your ordinance clearly says economic reasons alone are not to be used and yet there are 9 properties where economic reasons alone were applied. We're looking at living on this property and to look at this and say this house does not fit in the character of this neighborhood. I think it fits very nicely in the neighborhood we're going to be residents there it's not going to adversely affect anybody property value. With regard to the green space and the corridor there are a number of turn

offs along Scenic 61 for the general public to park and picnic and look at the property. I feel as though we as a private property owner are being required to provide this property for the public's use, am I wrong?

Dave: first of all I would say in fairness the planning commissions decisions for the prior things you are saying when for financial reasons. The decisions don't reflect that was their thinking. You are entitled to your opinion if that's the case but I just wanted to clarify that's not what the rationale for the commission was. You are free to disagree.

Mr. Bille. I can only go by the minutes, what was written down.

Dave: But the decisions that were handed down did not say that this is greenspace. You are free to feel that way but I'm just saying but that wasn't stated.

John Schulz: Not to belabor and there are various points of view but we've had a real estate agent tell us that our property value would go down if a house of that size was built on that lot.

Scott: I've reviewed two cases offered by council here and I have seen nothing that indicates to me that there is a control in authority applicable to the properties that we are talking about here saying that they are in any way legally contiguous. The cases I reviewed are dissimilar in a factual basis to an extent I believe do not apply so I think your question to me whether the law says the parcel above the highway and the parcels below the highway are considered legally contiguous. I have not seen a controlling legal authority that says they are.

Mr. Bray: would like to add I have said my piece it's in the record I disagree. Scott and I agree to disagree with the conclusion of the contiguous nature of the lots and that's all I'm saying.

Dave: We've been at this for a while let's take a 5 minute break not for discussion but just for a break.

5 minute break

Meeting was called back to order at 8:01 p.m.

Dave: The matter is now before the board, there are small differences in the plan that were presented by Sue. Mr. Bille if you could summarize the changes to the building proposal.

Mr. Bille: The footprint is the same 22 x 24 garage 22 x 24 house, we dropped the pitch of the roof from a 4/12 to a 3/12 so we are well below the 25 feet the planning commission wanted us to have giving a lower overall appearance. We eliminated the walkout to the house, where we show the rock retaining wall will actually be about 5 feet from the house and more of a terrace. If you are on the lake looking up you won't look at this great big house and walkout. At first I said there wouldn't be living space downstairs, there is now, we are terracing the front. It will be more of a prairie style. We are putting a deck onto the house (pointing to the power point presentation). The very first house we designed had a very steep roof and we've brought that down.

Dave: Any other questions from the board?

Mr. Bille: There were comments a while back about putting a well on the property and contaminating the aquifer. We are putting a cistern unit in the house, 8-250 gallon containers, the water will be collected from the roof. There is a water source in Two Harbors and another in Duluth, the water on the roof will go into our water cistern. There are a lot of wells along the shore that do not work well, this is a neat approach. So no living space in the basement, it will be for our cisterns instead.

Corlis: will you still be required to hook up to the septic system?

Mr. Bille: Yes.

Dave: I had a conversation with Scott about the well. It had been brought up before and it wasn't clear to me that it was the town's responsibility, to what degree is it something we need to consider? Scott was hesitant that we would be making decisions about something that would be under other agency's purview. If a well would be placed on the property the State looks at the citing of the well, it is not something that the town would concern themselves with

Comments from the Board:

Corlis: I believe it is the obligation of the town board and the planning commission to follow the zoning ordinance as closely as they can. If it is believed the zoning ordinance is out of date and needs to be changed then we should do that. If the zoning along the shoreline is not correct then we need to change the ordinance. I believe it is the responsibility of the zoning commission and the town board to follow the ordinance as closely as possible with a little wiggle room but I don't believe this is a little wiggle room.

A number of public and written comments were received and reviewed by the board.

Dave: We have received a lot of comments indicating the applicants were of good character and that the home would increase the tax base. It is all nice to hear but I don't believe they directly address the issues. There are a number of comments that are for and/or against the proposal but not a number that changes the decision. The substandard lot was changed, the current lots that comprise the Bille's land do not follow that plot, and this is not a lot that was platted in 1930. The issue of the situation being created by selling three pieces of property across the road, I don't see that they could be legally contiguous. Reading the ordinance, then it would have been an illegal subdivision, but it wasn't so it shouldn't influence the board's decision. The application that is being appealed is for a specific development being judged, if the board were to support the appeal and withdraw the variance it simply means the current project does not satisfy the criteria. There is some discussion of a prior structure on the lot, that structure was lost to fire so it does not have any bearing on the current variance. One other matter that was discussed in the application and that is zoning supporting building on a suburban scale. As others have said, the ordinance is the intent of the comprehensive plan, a 200' minimum width does give some indication as to how that was viewed, perhaps how that was influenced.

Corlis: it wasn't a random thought imposed upon the township

Dave: There have been comments that the board isn't following the rule of the law in its decision which implies there are strictly quantitative rules. I believe that is not an appropriate comment, the decision as to whether or not it is acceptable under the ordinance has to do with many other factors. My prior concerns about this proposal is the size of the variance, I think it is the proportion in most respects, I don't find that my sense of the construction, the side wall heights and the position of the foot print are the same, I don't think anything has changed. My previous issue was with the proportionality, the current proposal doesn't change the proportionality that I found troubling the last time.

Travis: I feel like it isn't the biggest house on the smallest lot. If you look at all of the houses, this house is no bigger than any other house, there are some big houses in there and they are closer to the lake, they did a very fine job showing that. I have a hard time believing that it's ok to tell someone you can't build on your property; we are discouraging building the planning commission did a fine job reviewing the variance; it is troubling that they are asking for 6 variances but the ditch was put in after they bought the property. They are hooking up to the sanitary district or they don't need a septic system now. It's a reasonable use, it isn't going to make the neighborhood any different, and I feel this country is founded on the right to build (property rights). I find it hard to believe we are going to deny them the right to build on their property, we could put more restrictions on it but to deny it and tell them to come back with a different plan that seems wrong

Rolf: I agree somewhat with Travis, I defer to the commission also. This is a real different part of the township, this doesn't seem, in that spirit, it doesn't seem to be changing the density. It is nothing we would consider above the

expressway, there it is a reasonable use but it wouldn't be anywhere north of the expressway. It is a really unusual area of the township, this seems like something that fits in the current density, and it does fit within the general spirit of the comprehensive plan and goes with the commissions' decision.

Dave: I believe the Bille's proposed house is compared with the walls. With the 3 foot overhang it is roughly ½ the size as shown if you compare the overhead view. This house is just as big.

Corlis: there are several members on the town board and on the planning commission who have been aware of this zone, if they would have liked they could have made changes to our zoning ordinance years ago. There was opportunity to correct our zoning ordinance before this variance came up. Until the ordinance is changed or if people think the ordinance is correct then that is the law of the land with a little wiggle room.

Travis: Is there anything that says is there a degree to where a variance is?

Mr. Bille: the zoning book setback on the property was 20' lakeshore averaging was 55' we complied with the setback from the lake. There were two variances we were appealing for at the time (2005) which were denied. In 2012 when the sewer system came through I owned 3 properties in Lake Nebagamon and I've had to get variances, an arbitrary 200' is typical on lakeshore property. Once the city sewer systems came in the setbacks were not adjusted. We bought the property and applied for a variance and were denied for pretty rude reasons, we were denied because we owned a home across the road. I asked one gentleman why he said no, he said you can't show hardship. We've spent a lot of money and time in the last 6 to 8 months on this process and to hear someone says we have to change, we have to stick to the ordinance. I thought that's what variances are for. What we are asking and what we are doing fits very well into the neighborhood.

Dave: I don't think that it is true that there aren't undeveloped lots or combined lots.

Mr. Bille: I think the planning and zoning commission reviewed this carefully and I think they took the economic look into consideration. We have a house on White Bear Lake we want to sell and downsize, we want to wake up and see Lake Superior there is no one who is going to be affected by building our house. Their properties are not going to go down in value, in all likelihood values will go up, it will be very difficult to get our money back out by selling.

Joh Schulz: The documents from the board of adjustment, the ordinance as it stands and the lot as it stands, nothing has really changed since the town boards overturning of the variance last time.

Travis: if they owned the property in 1991 and we've changed the ordinance.

John Schulz: they couldn't build on it then.

Travis: but it does change things in my mind.

Corlis: but the state changed the rules.

John Bowen: if you look at the first part of the comp plan, I was on the planning commission, this variance should not be granted.

Travis: do you come to all the variance hearings?

John Bowen: not all of them.

John Shulz: Is there a relevance to this question

Travis: the decision the board made in 2002 has nothing to do with this.

John Bowen: That's what the shoreline management plan was for.

Travis: could we make a process of changing the ordinance? What makes you think that this wouldn't create the same kind of hoopla?

Corlis: I think it might, but I think it would give people the right to have their property zoned how they want it zoned. There is a process and if there is a majority of people who agree then the process is working.

Carol Bille: in one of the variance hearings we were told that once the city sewer system comes in that we should come back. We are citizens of this township and we have a voice in that, we have a right to our little slice of heaven and have a right to build on our piece of property.

Dave: the variance criteria are here I am not of a mind that this property cannot be built with a structure that fits. I continue to feel that proportionally, that the structure to be built is out of constraints of the lot. The dwelling is a good use of the property, I am not of the opinion that the circumstances were created by the property owner and I would stop short of saying it would alter the character for the town to grant the variance. My issue for the proposal falls within the first 2 criteria. I will need a moment to craft language, I am prepared to offer a motion to grant the appeal and reverse the Planning Commission's decision.

Corlis: if you decide to make the motion I will decide to second that motion.

Dave: I am denying because of proportionality. To me the impact has to do with the in ground volume of the structure and has to do with the above ground structure. I think it is morally unfair to ask people to keep coming back.

Travis: the footprint?

Dave: no the above ground volume the difference between a structure that is 8' high instead of a 20' high. We are considering what is a development proposal using the comp plan of today and the zoning ordinance today.

Travis: you aren't going to see it when you drive by. Why is it cumbersome?

Dave: I'm not condoning what exists if those houses weren't there

Travis: it doesn't alter the neighborhood at all.

Corlis: it exists.

Travis: I have a hard time with thinking that the ordinance was developed after they bought the property.

Corlis: I won't have a problem with Mr. Bille building his house where he is building if we change the zoning ordinance.

Barb: it was a 7 member board and the decision was 4/3. I am having a really tough time balancing the ordinance, the comp plan and neighbors with the rights of the property owners. It is a good idea for us to get together and have a community decision and have a path forward.

Travis: this is an easy decision to make. I know looking at their house plans they have it isn't any different than the other houses that are there. You can drive through some places and a house will jump out in the neighborhood this house won't.

Corlis: even if we did away with our zoning ordinance you would have to deal with the county zoning ordinance. To legally do things on your property there is always going to be limits.

Carol: we aren't asking to do just anything there is a purpose for the variance hearing we are trying to abide by that

Corlis: The ordinance as it is written today says you need a bigger lot and you need bigger setbacks.

Dave: even though you said you would second my motion I don't agree with the fullness of your rationale.

Scott: I think the relevant criteria being discussed is the harmony with the intent and purpose of the ordinance as opposed to the strict compliance with the ordinance. I want to make sure the conversation is based on the criteria presented before you.

Barb: in the shoreline overlay, that section of the ordinance says something about discouraging of building on undersized lots.

Bille: We have owned this property for 26 years and I'm not getting any younger, this property has an assessed valuation of just under \$100,000.00. Nonconformity was read and Mr. Bille requested the Town considered purchasing the property.

Scott: statute was 394 which is County not Town.

Dave all board members have articulated some position.

Barb: I agree with everybody and that is the problem.

Dave: could we suspend the meeting to a later date and have perhaps two proposals.

Barb: No we need to come to a conclusion tonight. Two months ago I spoke about one variance in particular on the extremely small lot size and the size of the house, my problem tonight is that I am questioning if I interpreted the comp plan correctly. I find it hard to believe a group of reasonable people who have come together would deny these folks a right to build their retirement home. For their particular situation the size of the home needs to be a particular size for their son to come visit. Why can't we talk about what that home might look like so it utilizes the underground space instead of the above ground space.

Dave: I think we could have that conversation.

Barb: we all want them to build a home but we are uncomfortable with the size of the home.

Dave: What I said earlier is it is not a desirable situation to say no not that, an above ground volume it isn't just about volume, we have a relatively large footprint and to me that has an impact with which I am struggling. We talk about the size of the home and the size of the garage.

Scott: the Statute allows the board to impose conditions if the variance were to be granted (read from the variance) sounds to me that's where the tension is.

Barb: decrease the size.

Scott: there is no hardline where it is rewritten.

Dave: if we were in business we would all sit down in a room and have a conversation.

Sue: in another matter we had before the commission it was a subdivision and getting a variance. The owner came before the town board to decide if he was to go to court or not. After a decision had been made the commission got together with the applicant and came up with some parameters. When you do that there is no guarantee.

Barb: can we put some conditions on this and come back.

Scott: the risk you run is then you are no longer are making a decision on the appeal. Can you postpone the decision yes the statute would allow that.

Barb: no that's not what I am asking.

Dave: we can take a break and put something together. I feel it is a waste of time if we are then going to vote that motion down and take another break and make another motion. In my business I try to persuade people through writing I would be more than comfortable that if we don't know where we are going then trying to sort that out would be useful.

Carol: so if you suspend because you need more time to think would you get together and talk?

Dave: no that would be a violation of the open meeting law.

Scott: you can adopt as your reasons the reasons the planning commission did.

9:10 Recess so Scott, Travis and Rolf can put together a motion.

Meeting reconvened at 9:40 p.m.

Travis made a motion to deny the appeal, the basis for the denial is the planning commission properly granted the variance application based on the August 3, 2017 approval of variances. Rolf seconded.

Scott: this does not negate the need to create a Findings of Fact.

Dave: it has been moved and seconded is there any discussion on the motion? No discussion. Motion to deny the appeal passed on a 3/2 vote. Vote: Aye Barb, Rolf, Travis. No Corlis and Dave. Motion to deny appeal passed.

Travis made a motion to adopt the written statement of reasons for the Board's decision to reject the appeal, Rolf seconded. Motion passed on a 3/2 vote. The vote was as follows: Aye Rolf, Travis and Barb; No Corlis; Abstained Dave.

Dave made a motion that the town board refund to the appellants of the Bille Variance per June 26, 2017 the amount of \$1100.00 pursuant article 16 section 1 C 2 of the Township zoning ordinance, Travis seconded. Motion passed unopposed.

Motion to adjourn 10:00 p.m