

TOWN BOARD APPEAL HEARING

Good evening, my name is Chuck Bille and this is my wife Carol. As you are aware, we were recently approved for a variance to build our home on our Lake Superior lot by the Planning/Zoning Commission. After meeting with you on July 13th to discuss the Board's decision to reverse an earlier variance approval by the Planning/Zoning Commission, it was suggested that I could either file suit in District Court or apply for a new Variance. We chose the Variance path in an effort to save legal fees for both ourselves and the Town of Duluth, and hopefully reduce the time and expense to begin building our home.

On August 3, 2017, we were granted a variance to build our home by the Planning/Zoning Commission which is now under appeal. There have been a number of remarks presented by the public regarding our Variance, some that I will address. But a good number of these remarks are either inappropriate, inaccurate, or simply false, and I don't believe taking the time to challenge every one of these comments is practical. I hope that the Supervisors will discern the difference between honest and accurate facts from the subjective, prejudicial, and opinionated remarks some people are willing to make in a public forum.

I'm not going to go into detail the Variance Application that was approved by the Planning/Zoning Commission, because what's at issue here is the Planning/Zoning Commission's decision to approve our variance request, so that is what I'd like to discuss with the Town Board. The Planning/Zoning Commissioners have spent a significant amount of time reviewing and discussing our variance request, and after having an earlier approval overturned, were extremely vigilant during this past hearing to cover both the Town's Ordinances, together with the Comprehensive Land Use Plan before moving to approve our request.

After public input was complete, Sue Lawson provided the Commissioners with the specific criteria required for review before a variance request could be approved, as follows:

Criteria for Decisions. The Planning Commission shall always act with due consideration to promoting the public health, safety, and welfare, encouraging the most appropriate use of land and conserving property value, and shall permit no structure, building, or use detrimental to a neighborhood.

1. Variances shall only be permitted
 - a. When they are in harmony with the general purposes and intent of the Ordinance, and
 - b. When the variances are consistent with the comprehensive plan.

*During the hearing, the Commissioners gave the matter of the **Comprehensive Land Use Plan** extremely serious consideration.*

***Section 4A – Housing (p.11)** of the CLUP lays out a vision for “the preservation/conservation of open space and natural resources to energy, conservation, the maintenance of view corridors, and the preservation of large front yard setbacks where space permits.” This was also an issue with the Town Board during a previous appeal, so I will take a few minutes to address this subject. With our house plan, we will be providing 91% of our lot to open space, our driveway and subsequent view of Lake Superior will be maintained as is, and we will be providing one of the largest front yards of any property between Stoney Point Road and the northeast border of the Town of Duluth by a factor of nearly 200%.*

(Show map of view corridor)

Secondly:

***Section 4B – North Shore Corridor (p. 14)** of the CLUP: A. “Discourage development that changes the density as currently zoned.” Our plan does not change the density as currently zoned, but maintains the density that already exists in this corridor between Stoney Point Road and the Northeast boundary of the Town of Duluth. The term discouraging development is quite different from the term denying development. A vacant lot along this corridor is the anomaly, not this lot with a home in place. That said, this home fits well within the nature of the other homes along this corridor, so granting the Variance is well within the parameters of the CLUP.*

(Show map of Houses/Cabins/Garages/Outbuildings along shore)

2. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the Zoning Ordinance
3. **"Practical difficulties"** as used in connection with the granting of a variance, means that:
 - a. The property owner proposes to use the property in a reasonable manner not

permitted by the zoning ordinance;

Remarks have been made regarding the number of variances being considered. I've not found one stated or implied restriction within the Ordinances regarding a limit to the number of variances granted for the construction of a structure. The same consideration holds true for the percent deviation of the variance from the zoning standards...the Ordinances do not restrict the percent deviation variances required to allow for construction of a structure. Applying restrictions to this process becomes extremely subjective and opens the door for nothing more than prejudicial opinion rather than applying the Rule of Law. If it takes every variance listed in the Ordinances to be granted for approval to construct a home or structure, and it cannot be proven that this will adversely affect the health, safety, or general welfare of the community, but does allow for the "most appropriate and reasonable use of land", then the Commission may approve the Variance Request. This is one of the elements the Commissioners took into consideration when reviewing our application, and it was agreed...The most reasonable use of this property for the Bille's is for the construction of a residential home.

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

For anyone to suggest that purchasing a non-conforming lot of record could be considered an owner creating a practical difficulty is absurd. It doesn't matter who buys, sells, or owns a parcel of land...it's about the geography of the land that determines practical difficulties.

and

c. The variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.

In this case, economic issues do come into play. If this variance is not upheld, a significant drop in the value and marketability of this property will take place. It shouldn't have to be pointed out, but clearly, people purchase residentially zoned properties to construct residences, and again, the most reasonable use of this property for the Bille's is for the construction of our home.

4. The Planning Commission may not permit as a variance any use that is not allowed under the Zoning Ordinance for property in the zone where the affected person's land is located.

5. The Planning Commission may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variances.

Conditions set by the Commission: The height of the home cannot be over 25' (we have adjusted the roof design with a 3/12 pitch to keep the home at 22'). A turn-around must be provided to prevent backing onto Hwy 61 (we have designed a back-up area to allow for this condition). A water garden should be included in the lower North-east corner of the lot to address run-off (we will include this garden by the berm that will be built in this area).

The Commissioners considered, discussed at length, voted, and approved each one of these criteria individually before voting on our Variance Application. They did not overlook any details in the Town Ordinances or the Comprehensive Land Use Plan in making their decision. At one point, I asked how the CLUP factors into the procedure. Mr. Wayne Dalberg informed Carol and I that the CLUP provides the Commissioners with an overview and suggestions for development in the Town of Duluth, but it's the Ordinances that give the CLUP teeth.

This Variance approval was clearly based by acting with due consideration to promoting the public health, safety, and welfare, encouraging the most appropriate use of the land while conserving property value for the current property owners...Chuck and Carol Bille.

We believe that the Planning/Zoning Commissioners carefully followed the Intent and Purpose of the Town's Ordinances and CLUP clearly and accurately, without any legal or factual errors.

For these reasons, we respectfully request that the Town Board reject the appeal that has been brought forward, and move to re-affirm the Planning/Zoning Commission's approval for our Variance.

Thank you,
Chuck and Carol Bille