

**CITY OF CROSSLAKE
CITY COUNCIL
SPECIAL MEETING AND PUBLIC HEARING
2:00 P.M., MONDAY, FEBRUARY 11, 2008
CITY COUNCIL CHAMBERS, CITY HALL
MINUTES**

MEMBERS PRESENT: Mayor Jay Andolshek, Steve Roe, Dean Swanson and Rusty Taubert.

OTHERS PRESENT: Tom Swenson, City Administrator; Planning and Zoning Commissioners Peter Ablner, Mike Winkels and Nancy Addington; Kenneth Anderson, Community Development Director; Bryan Hargrave, Planner/GIS Coordinator; Mike Couri, City Attorney, Jeff Miller, City Surveyor.

SPECIAL MEETING/CALL TO ORDER: Mayor Jay Andolshek called the meeting to order at 2:00 P.M. He read the public notice for the purpose of the special meeting.

Appeal 2008-001, Leslie and Nancy Jones appeal of V2007-013 denial by the City of Crosslake Planning and Zoning Commission

Ken Anderson stated that the major dispute in this application was the location of the Bluff Impact Zone (BIZ). He stated that the City had received a letter of support for the denial of the variance from Christine Reichl. Anderson then went over a history of the application. He stated that the Planning and Zoning Commission considered the original application on November 16, 2007. It was tabled at that time to allow the applicant more time to reconfigure the proposed plans to show the addition to the north of the existing home to a point behind the bluff setback before it was expanded to the west. Anderson then showed the new survey and proposal that the Jones' came back with after the November meeting. It showed all of the additions behind the BIZ, as shown on the Certificate of Survey completed by Landecker and Associates. They proposed a total addition of about 2,800 sq. ft. Anderson said that the structure was very unique and the Planning and Zoning Commission recognized that.

Anderson then went on to show the City Council the disagreement over the delineation of the top of the bluff. He showed a photograph looking east from the west property line. There is a four to six foot plateau used as a walkway and water path across the bluff. The surveyor called this the top of the bluff. However, staff disagreed with this designation. Anderson then showed a map indicating where staff thought the top of bluff should have been. He gave an explanation of the way staff derived this line – slope is rise over run. The survey showed topographic lines in two-foot increments. Anderson said that City ordinance requires a 30-foot setback from the top of the bluff. He stated that the majority of the proposed addition would be in the bluff setback area if the top of bluff were located where the Certificate of Survey showed it, but it would be located mostly in the BIZ if the staff delineation were correct.

Anderson then asked the City Attorney, Mike Couri to go over the proposed Resolution of Denial that he had prepared. Joseph Christensen of Christensen & Laue, P.A., legal counsel representing Leslie and Nancy Jones protested that it was inappropriate for the City Attorney

to talk about the Resolution of Denial before he had a chance to rebut the information Mr. Anderson had gone over. He also thought that a Resolution of Approval as well as a Resolution of Denial should have been prepared. Further, he stated that they had received a copy of the Resolution of Denial just before the meeting and did not have sufficient time to read it. Mike Couri, City Attorney, stated that he had no problem with the Jones' stating their case before he went over the Resolution. He also apologized for the short notice of the Resolution of Denial.

Joseph Christensen started by stating that the Jones' did not agree with the conclusion the Planning and Zoning Commission came to in the January meeting. He said that the Planning and Zoning Commission had considered a variance application for a neighboring property owner (the Molitors') in October of 2007 and approved that variance. Christensen said that the bluff determination in that application had been done by WSN (Widseth, Smith and Nolting) and the Planning and Zoning Commission had accepted the placement of their top of bluff determination. Christensen said the Molitors' building was put in at a 9.3-foot setback from the BIZ; the Jones' were proposing a 15.7-foot setback of their addition from the BIZ as shown on the submitted Certificate of Survey. He showed the Resolution of Approval of the Molitor variance.

Christensen then went on to address the Jones' matter. He showed the original plan that was submitted at the November 16, 2007 Planning and Zoning Commission regular meeting. He stated that the Commission had agreed at that meeting that the top of bluff was where it was indicated on the Certificate of Survey. The Commission requested the Jones' to come up with a new plan where the addition would be 30 feet from the BIZ. The Jones' then came up with a new plan. They eliminated the deck over the bluff, pushed the addition on the west side as far back as they could. Christensen said that the Jones' were trying to preserve some large red and white pine trees. He said the footprint showed that 838 sq. ft. of the addition would be in the bluff setback area. They had trouble coming up with a footprint that met the setback; he said the Molitors' were not required to do that. Christensen said that City staff took a different approach after the new plans were submitted. He said they defined a new top of bluff that runs against the slope – the reason being that they had to match up with the top of bluff delineation on the Molitors' property. He thought that this “new” delineation was unreasonable and arbitrary and that the courts would overturn decisions based on those types of things.

Christensen then went over the definition of the “top of the bluff” in the City ordinance. He talked about the “clearly identifiable break in the slope from steeper to gentler slope above” was what should be considered and showed where he thought that break was on the Jones' property. He said that if there were a clearly identifiable break, then the second sentence would not apply. He said that the bluff on the Jones' property had a clearly identifiable break and that is what the City should consider. Christensen went on to discuss the current plan, the uniqueness of the existing building and the catchment basins that were planned for the site. Christensen concluded his statement by talking about the reasonableness of the variance application and the uniqueness of the building and site.

Ken Anderson responded to Mr. Christensen's remarks. He said that he heard some words like “ridiculous” and “strategy” and “tactics” that he thought were inappropriate. Anderson

showed the graphic of the bluff determination and went over the definition of the top of bluff. He said there was only a four to six foot break in the slope and that the slope above the break was still greater than 30 percent. He noted that the Molitors' variance was not granted for the 9.3-foot setback from the BIZ – it was granted for the setback from the lake access right-of-way along their west property line. They were not allowed to get closer to the BIZ than the original building setback, which is currently allowed by City ordinance. Anderson said that staff would not dispute there is a break in the slope, but that break does not establish the top of bluff in this situation. He also emphasized that the photograph was not misleading.

Mike Couri, City Attorney, went over the legal standard required in a variance. He said that the City might grant a variance where there is an undue hardship in keeping with the spirit of the ordinance. Couri went over the three-part legal test of a hardship: 1. It requires a reasonable request – is the proposed use a reasonable use; 2. There has to be unique circumstance – i.e., a unique structure built before the ordinance went into effect; 3. The proposed use cannot alter the essential character of the locality. Couri said that in this application, it was not a reasonable request because the Jones' have room to expand to the north on their property. Couri also talked about the essential character of the locality – the neighborhood does not have other structures that are built into the BIZ.

Couri covered the Resolution of Denial in detail. He took the Planning and Zoning Commission Resolution of denial and put in more concrete words. He said that the Courts look at the ordinance in totality, not as individual pieces – they have looked at keeping within the spirit and intent of the ordinance. Items 4 through 8 in the findings of fact defined where the house would be. Number 8 comes from the Planning and Zoning Commission. Numbers 9 through 11 were “reasonableness” issues. Numbers 12 through 14 dealt with the character of the locality and how this application fit in with those matters. Number 15 dealt with no findings of undue hardship. Finally, numbers 16 and 17 dealt with “uniqueness” issues.

Joseph Christensen went over the top of bluff definition in the City ordinance again. He claimed there was a clearly identifiable break and that the City has a duty to enforce the ordinance as it is written. He stated that the City couldn't come up with creative methods of determining the top of the bluff. He said that it was not the method used for the Molitors' – they were allowed to expand within the bluff setback. Christensen then discussed the drainage and erosion issues. He emphasized the uniqueness of the structure and went over some of the special environmental features planned for the addition – such as a green roof that will hold rain water as it comes down and replacing vegetation taken out during the development process. He summarized by saying that approval of the variance application is warranted.

Rusty Taubert felt that the City Council couldn't really make a decision on the appeal until they could agree where the top of bluff was. Mike Couri said that the City Council needed to make a decision using the data that had been presented to them. He said that if they didn't make a decision, then the variance would automatically be approved. Couri stated that the City Council needed to make the decision based on the City ordinance and that if the Jones' disagree, they could appeal it to the District Court. He went on to say that if the City Council had a valid reason to deny the appeal, the Courts would probably agree with them. Mr. Christensen said that the hardship was that the building was in the BIZ. Dean Swanson asked

if the structure were not there, where would the top of the bluff be. Jeff Miller, City Surveyor, said that it would be difficult to determine that. Miller said that the surveyor can go out to the property and determine where the topographic lines are, but the top of bluff determination still comes down to City staff going out and making the determination. He emphasized that it was important to determine where the top of bluff was presently. Steve Roe said that if the City Council approved the variance, then it would set a precedent, just as the Molitor application was being used as a precedent. He also said that feet should be added in line 2 of Number 2 of the Resolution of Denial. Joe Christensen refuted Roe's comment by saying that the Planning and Zoning Commission agreed to the top of bluff determination by the surveyor at the November 16, 2007 meeting; then the top of bluff was changed by City staff after that. He said that it was not going to set a precedent. Mike Couri stated that he went through the minutes of the November 16th meeting and did not see where the Planning and Zoning Commission had accepted the top of bluff determination by the Jones' surveyor.

Peter Abler, Crosslake Planning and Zoning Commission Chairperson, stated that the Commission struggled with the concept of the reasonableness of the application. Abler said that the Molitors' property had a unique situation also – the closest part of the structure was 9.3 feet from the top of bluff. With the Jones' application, the whole structure was in the BIZ. The Commission used the 30-foot line back from the survey determined top of bluff and said that any addition would have to go back of that – from there, the Jones' could expand out to the limits of the setbacks. Abler said that it wasn't an easy application. He said the Commission tried to come up with a reasonable approach and was looking for compromise. Abler said that the Commission had tacitly accepted the top of bluff line as shown on the survey (when they suggested the existing home could be expanded north at it's current width until the 30-foot setback was reached, after which it could be expanded to the west).

Les Jones, the property owner, commented that this was the third time he had stood in front of City officials. He emphasized that the property was very unique in the Whitefish chain and went over the history of the structure. Jones said that they were looking to do the right thing. He addressed the drainage issue. He stated that if they built to the north, they would have to take out a lot of trees. Jones said that it was unfair to approve the Molitor application and deny their application. Pat Trottier, a surveyor for Landecker and Associates, said that they took the City ordinance and determined the top of bluff from that. He showed a map indicating the slope breaks – he showed slopes at less than 30 percent from the top of bluff (clearly identifiable break) to a point above the present structure. Bryan Hargrave, City staff, said that he and Lane Braaten had gone out and measured the slope above the present structure using a clinometer. The slope was greater than 30 percent above the surveyors line showing the top of bluff.

Rusty Taubert asked the City Attorney if the City Council had any latitude in their decision. Mike Couri answered that the variance application had to be approved or denied within 120 days of the date of application. If no action were taken, then the variance would be automatically approved. Dean Swanson asked if the applicants had further recourse if the appeal was denied. Mike Couri answered that the Jones' could appeal to the District Court.

MOTION 02S1-01-08 WAS MADE BY JAY ANDOLSHEK, SECOND BY STEVE ROE TO ADOPT RESOLUTION 08-01, A DENIAL OF VARIANCE 2007-013 WITH A CHANGE IN LANGUAGE IN NUMBER 2 OF THE FINDINGS OF FACT, ADDING "FEET" BETWEEN "FEW" AND "WIDE". MOTION PASSED ON A 3 TO 1 VOTE WITH JAY ANDOLSHEK, STEVE ROE AND RUSTY TAUBERT VOTING "AYE" AND DEAN SWANSON VOTING "NAY".

ADJOURN:

MOTION 02S1-02-08 WAS MADE BY JAY ANDOLSHEK, SECOND BY STEVE ROE TO ADJOURN THE MEETING AT 3:58 P.M. MOTION CARRIED WITH ALL "AYES."

Minutes Respectfully Prepared by Bryan Hargrave

A handwritten signature in cursive script, appearing to read "Bryan Hargrave", is written over a horizontal line.

Attachment: Resolution 08-01

**CITY OF CROSSLAKE
CITY COUNCIL
RESOLUTION NO. 08-01
DENYING AN APPEAL OF V2007-013 FOR
LESLIE AND NANCY JONES**

Parcel ID Number(s): 141470240080009
Case Number: Variance 2007-013
Property Owner: Leslie and Nancy Jones
Legal Description: The property is described as Lots 6B, 7 and 8, Block 24 of Manhattan Beach (a replat of Twin Beach), Section 6, Township 137 North, Range 27 West, Crosslake, MN.

Pursuant to due call and notice thereof, a special meeting and public hearing of the City Council of the City of Crosslake, Minnesota, was held on February 11, 2008 at 2:00 P.M.

Mayor Jay Andolshek introduced the following Resolution 08-01, and moved its adoption:

WHEREAS, the Applicants Leslie and Nancy Jones are requesting approval of a variance to construct a home addition in and behind the bluff impact zone vs. the required 30-foot setback in the R-3, Medium Density Residential zoning district, and

WHEREAS, City Ordinance requires a minimum 30-foot setback from the top of a bluff, and

WHEREAS, City Ordinance requires a Variance be approved for an addition to an existing building that is within the bluff and the 30-foot setback from a bluff, and

WHEREAS, the Applicants have stated that the existing non-conforming location of the building within the bluff impact zone restricts them from expanding the existing structure in a logical manner that is back and away from the lake and the shore impact zone, and

WHEREAS, the required public hearing was held and conducted by the Planning and Zoning Commission/Board of Zoning Adjustments as scheduled on November 16, 2007 and January 25, 2008 and all public comment was heard by the Commission in writing and/or in person, and

WHEREAS, the Applicants were given direction from the Planning and Zoning Commission on November 16, 2007 regarding acceptable areas for expansion on the site, most notably directly north of the existing structure at the same width of the existing structure (about 30 ft.) until the 30 ft. bluff setback was met, and

WHEREAS, the variance was tabled on November 16, 2007 allowing the Applicants time to redesign their original plans and the 60-day time limit was extended an additional 60 days, and

WHEREAS, the Applicants revised plans do not conform to the Commissions suggestions, and

WHEREAS, the City of Crosslake Planning Commission/Board of Adjustment denied the requested variance at its January 25, 2008 meeting; and

WHEREAS, the Applicants have appealed the decision of the Planning Commission/ Board of Adjustments to the City Council; and

WHEREAS, a copy of the certificate of survey showing the location of the proposed structure as revised and dated 01/11/2008 is attached hereto as EXHIBIT A, and

WHEREAS, an area map showing the location of the property is attached hereto as EXHIBIT B, and

WHEREAS, the public hearing notice was published and mailed per ordinance requirements and said notice was forwarded to the Minnesota Department of Natural Resources and comments were received from Tim Brastrup, Area Fisheries Supervisor, and

WHEREAS, a written response was received from Jonathan Miller, 318 N. Carson Street, Suite 214, Carson City, Nevada, the neighbor directly to the east of the subject property (in favor of the approval of the variance) and is included in the packet, and

WHEREAS, a written response was received from Christine Reichl, 12043 Whitefish Avenue, Crosslake, Minnesota, opposed to the approval of the variance, and is included in the packet; and

NOW, THEREFORE, be it resolved that the City Council of the City of Crosslake makes the following findings of fact and decision:

FINDINGS OF FACT

1. The top of the bluff determined by City Staff is the actual bluff line under the City's zoning ordinance.
2. The "clearly identifiable break" in the bluff identified by the Applicant is a man-made break in the bluff, is only a few feet wide, and does not sufficiently

- interrupt the bluff to be considered the top of the bluff, particularly since the bluff as defined in the zoning ordinance continues above the purported "break" for approximately 50 additional feet at a slope greater than 30%.
3. Applicant's proposed pervious paver patio is located within the bluff impact zone.
 4. City Ordinance states that a patio cannot exceed 250 square feet and Applicant's proposed pervious paver patio would exceed 250 square feet by approximately 66 feet.
 5. Applicant's proposed pervious paver patio would be located within the bluff impact zone/bluff setback.
 6. Applicant's proposed staircase on the west side of the home is located within the bluff impact zone.
 7. Applicant's proposed 2,870 sq. ft. home expansion is located in the bluff impact zone and bluff setback.
 8. Applicant's proposed 2,870 sq. ft. home expansion would extensively encroach into the steep sloped, environmentally sensitive, erosion prone bluff impact zone and will create significant additional impervious surfaces leading to increased surface water runoff and erosion potential within the bluff impact zone.
 9. The requested variance is not reasonable in that the Applicant can design a home expansion of comparable size directly north of the existing structure, thus impacting only bluff directly up-slope from the existing house, which will reduce the erosion impact on the bluff.
 10. The requested variance is not reasonable in that the proposed storm water ponding system would collect and pool waters that previously flowed down the slope on the Jones' property in a dispersed manner and would, during heavy rain events, overflow storm water collected from the expanded building in a concentrated manner down the neighboring property owners' bluff, thus increasing the likelihood of erosion of the neighboring bluff.
 11. Reasonable use of the property can be achieved and maintained without the proposed home addition or with a home addition located directly north of the existing home.
 12. Very few homes on Lower Whitefish Lake significantly encroach into the bluff impact zone.
 13. The Applicant's proposed addition would alter the essential character of the neighborhood in that it would represent a significant encroachment into the bluff impact zone and would be one of the very few homes on Lower Whitefish Lake to do so.
 14. The Applicant's proposed addition would alter the essential character of the neighborhood in that it would increase the likelihood of erosion of the neighboring property owners' bluff by concentrating storm water down that bluff during periods of heavy rain.
 15. There is no finding of undue hardship as a result of strict interpretation of the City's land use regulations.
 16. While the location of the 1950's era existing structure in the bluff impact zone was not created by the existing landowner, the Applicants have not sufficiently

demonstrated that they do not have reasonable use of the property in its existing condition and scale.

17. The Applicant has demonstrated that the existing home constitutes unique circumstances, as the existing home is a legal, non-conforming structure built into the bluff impact zone.

DECISION

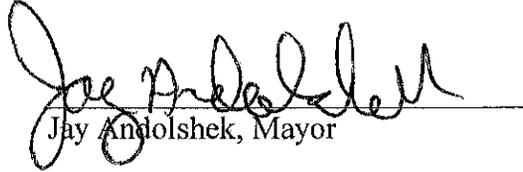
Accordingly, based on the findings set out above and the record before it, the City Council DENIES variance 2007-013 for Leslie and Nancy Jones to construct a home addition with a 316 sq. ft. patio in and behind the bluff impact zone vs. the required 30-foot setback in the R-3, Medium Density Residential zoning district.

The motion for adoption of the foregoing Resolution was duly seconded by Steve Roe and upon vote being taken thereon, the following voted in favor thereof: Jay Andolshek, Rusty Taubert and Steve Roe.

The following voted against: Dean Swanson.

The following abstained from the vote: None

This resolution was approved and adopted on February 11, 2008, by a 3/5ths vote of the City Council of the City of Crosslake.


Jay Andolshek, Mayor

ATTEST:


Darlene Roach, Clerk

Attachments: Exhibit A and Exhibit B

