

**CITY OF CROSSLAKE
CITY COUNCIL
SPECIAL MEETING
6:00 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 Abler, Mike Winkels and Nancy Addington; Kenneth Anderson, Community Development Director; Bryan Hargrave, Planner/GIS Coordinator; Mike Couri, City Attorney; Dave Reese, City Engineer.

SPECIAL MEETING/CALL TO ORDER: Mayor Jay Andolshek called the meeting to order at 6:01 P.M. He read the public notice, detailing the purpose of the special meeting.

Appeal 2008-002, Steve and Rebecca Zilka appeal of V2007-014 denial by the City of Crosslake Planning and Zoning Commission

Ken Anderson introduced the appeal, stating that the property in question is located at 37441 County Road 66. Anderson said that the Zilkas' took advantage of the pre-existing structure language of the City ordinance; the previous cabin was located 4.7 ft. from the top-of-bluff outside of the bluff impact zone and was very close to the south side lot line. Anderson displayed the Certificate of Survey completed by Landecker and Associates, which showed the location of the top of the bluff. He said that staff had agreed with the bluff location as indicated on the survey. The zoning permit was issued based on the 4.7-foot setback from the top of the bluff and the proposed 9.5-foot setback from the south sidelot line. Mr. Zilka's contractor then put the forms into place and called for a footings inspection. Lane Braaten, Planning and Zoning staff and Jim Ritter, Public Works went out to do the footings inspection. They attempted to measure the setback from the bottom of the bluff. They approved the location of the forms for the footings based on their measurements. Anderson went on to explain that Planning and Zoning received a call later, complaining about the location of the poured footings. Anderson went out on October 5, 2007 and examined the location of the footings; he found that they were closer to the bluff than was allowed. He put a Stop Work Order on the construction project. Mr. Zilka agreed to apply for an after-the-fact variance and the Commission waived the application fee. He had a surveyor from Landecker and Associates go out and check the existing location of the footings. They found that the front of the house was right at the top of the bluff and the south side of the building was at a setback of 7.8 feet from the side lot line instead of the approved 9.5 feet. Anderson said that the Planning and Zoning Commission denied the after-the-fact variance and Mr. Zilka was appealing that decision to the City Council. Anderson went over the hardship requirements for a variance and stated that the Planning and Zoning Commission found that the hardship requirements were not met.

Lonny Thomas of 34354 CR 3, Crosslake, Mr. Zilkas' Attorney, addressed the Council. Mr. Thomas stated that he wanted to make it very clear that the Zilkas' had made an honest mistake and that the Planning and Zoning staff had also made an honest mistake. He said that they were not arguing that this was the City's fault. Thomas did argue that this is a unique situation. He said that the Zilkas' had measured from the street side and used the wrong pin for the measurements. Thomas reiterated that it was an honest mistake, not something that was changed after City staff made the footings inspection. Thomas referred to a written document that he submitted, which went over case law. He particularly referred to the Kenny case – Thomas said that he felt that case controlled the appeal of this variance. Thomas also asked the City Council to remember that what the Zilkas' can do is not dependent on what their neighbors' think. That should not make a difference. Thomas concluded by saying that, in his legal view, the Kenny case should govern the outcome of the appeal of the variance.

Mike Couri, City Attorney, commented that the courts are conflicted on this issue. He went over the Kenney case. He stated that, since Kenney, the court had settled another case in 2002 called Mohler. The Mohler case involved a city issuing a zoning permit for a garage that was built too tall. The Court ruled that even though the city made an error, it was not sufficient to require the city to approve a variance. Couri stated that the courts have ruled that variance hardship is based on reasonableness, locality (character of the neighborhood) and the uniqueness of the situation and property.

Mayor Jay Andolshek asked for comments from the public. Dan Steffen, 37449 County Road 66, stepped forward and said that he was the Zilkas' neighbor. Steffen stated that he was excited about the new house going in when he first heard about it. However, he said that he knew the footings were in the wrong place as soon as they were put in. Steffen said that if the building went up where the footings were currently located, it would cut off their view of the lake. Steffen also questioned whether this was an honest mistake. He said that the Zilkas' had previously been issued a cease and desist order on operating a business in a residential zoning district. Steffen said that he told the footings contractor that the footings were not in the right location; he was told that he was wrong about that. City Attorney Mike Couri commented that a zoning violation on another property should not have a bearing in this appeal.

Eva Marie Kreitz-Clow, 13797 Daggett Pine Road, said that she felt the footings could be moved back at this point. She didn't think that it was fair to allow the Zilkas' to build 4.7 feet closer to the bluff and the lake. Lisa Steffen, 37449 County Road 66, said that 4.7 feet didn't really sound like a lot, but it made a big difference to them. She said that they bought their property years ago and one of the big reasons was the view. She said that she was not a contractor, but it was very apparent to her that the footings were put in the wrong place.

Lonny Thomas stated that the Mohler case that the City Attorney referred to did not apply. He said that both parties made a mistake.

Dean Swanson agreed that there were errors made on both sides. Swanson said that ultimately the location of the footings were the responsibility of the landowner, not City staff. He said that it was the responsibility of the owners to correct the error. Swanson didn't think that the cost was significant. Mike Couri stated that the only choice the City Council had was to

approve or deny the appeal. Steve Roe stated that the applicant knew the house was in a sensitive area and should have used a surveyor to set the location of the footings so there were no errors.

MOTION 02S2-01-08 WAS MADE BY DEAN SWANSON, SECOND BY RUSTY TAUBERT TO ADOPT RESOLUTION 08-02 WITH THE FINDINGS AND CONCLUSIONS LISTED IN PZ2007-024, A PLANNING AND ZONING COMMISSION RESOLUTION OF DENIAL OF V2007-014. MOTION CARRIED WITH ALL "AYES."

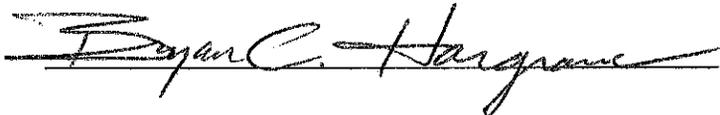
MOTION 02S2-02-08 WAS MADE BY DEAN SWANSON, SECOND BY JAY ANDOLSHEK TO AMEND MOTION 02S2-01-08 TO AMEND RESOLUTION 08-02 AND TAKE OUT THE LAST TWO "BE IT FURTHER RESOLVED" PARAGRAPHS RELATED TO THE 60-DAY RULE AND APPEAL PROCEDURE. MOTION CARRIED WITH ALL "AYES."

Ken Anderson told the applicants that they have 120 days from this date to appeal the decision of the City Council to District Court.

ADJOURN:

MOTION 02S2-03-08 WAS MADE BY JAY ANDOLSHEK, SECOND BY STEVE ROE TO ADJOURN THE MEETING AT 6:52 P.M. MOTION CARRIED WITH ALL "AYES."

Minutes Respectfully Prepared by Bryan Hargrave

A handwritten signature in black ink that reads "Bryan C. Hargrave". The signature is written in a cursive style and is underlined.

Attachments: Resolution No. 08-02, Exhibit A, Exhibit B, Exhibit C,
Resolution No. PZ-2007-024

**CITY OF CROSSLAKE
CITY COUNCIL
RESOLUTION NO. 08-02
DENYING AN APPEAL OF V2007-014 FOR
STEVEN AND REBECCA ZILKA**

Parcel ID Number(s): 141230000040009

Case Number: Variance 2007-014

Property Owner: Steven and Rebecca Zilka

Legal Description: The property is described as Lot 4, Dezellar's East Shore, Section 8, Township 137 North, Range 27 West, Crosslake, MN.

WHEREAS, a special meeting and public hearing of the Planning and Zoning Commission/Board of Zoning Adjustment of the City of Crosslake, Minnesota, was held on the 27th day of November, 2007. Commissioners Peter Abler, Michael Winkels, Nancy Addington, Teri Jo Flynn and Ron Hagen were present, and

WHEREAS, Steven and Rebecca Zilka requested approval of an after-the-fact variance to construct a home approximately 4.7 feet closer to the bluff impact zone than the structure it is replacing vs. the required 30-foot setback in the R-3, Medium Density Residential district, and

WHEREAS, Peter Abler introduced the attached Resolution PZ-2007-024, and moved its adoption, said resolution seconded by Teri Jo Flynn and was subsequently approved by a unanimous vote, and

WHEREAS, the Zilkas' filed an appeal of the Planning and Zoning Commission decision on December 14, 2007, and

WHEREAS, the City Council convened a special meeting on February 11, 2008 at 6:00 P.M., and

WHEREAS, public comment was heard including comments from legal council, and

WHEREAS, a copy of the certificate of survey showing the location of the proposed structure is attached hereto as EXHIBIT A, and

WHEREAS, a copy of the original certificate of survey showing the location of the pre-existing non-conforming cabin and the original, permitted location of the proposed structure is attached hereto as EXHIBIT B, and

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

NOW, THEREFORE BE IT RESOLVED, the City Council shall DENY Appeal 2008-002, which was an appeal of Resolution PZ-2007-024 (a denial of variance V2007-014) for Steven and Rebecca Zilka to construct a home approximately 4.7 feet closer to the bluff impact zone than the structure it is replacing vs. the required 30-foot setback in the R-3, Medium Density Residential district.

BE IT FURTHER RESOLVED, the City Council finds that reasonable use of the property can be achieved without the newly proposed structure location.

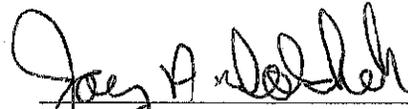
BE IT FURTHER RESOLVED, the applicant was fore warned of the need for the footprint location to be right on due to the heavy scrutiny of outside parties.

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

The following voted against: None.

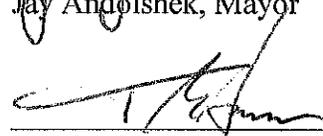
The following abstained from the vote: None.

This resolution was approved and adopted on February 11th, 2008, by a 4/5ths vote of the City Council of the City of Crosslake.



Jay Andolshek, Mayor

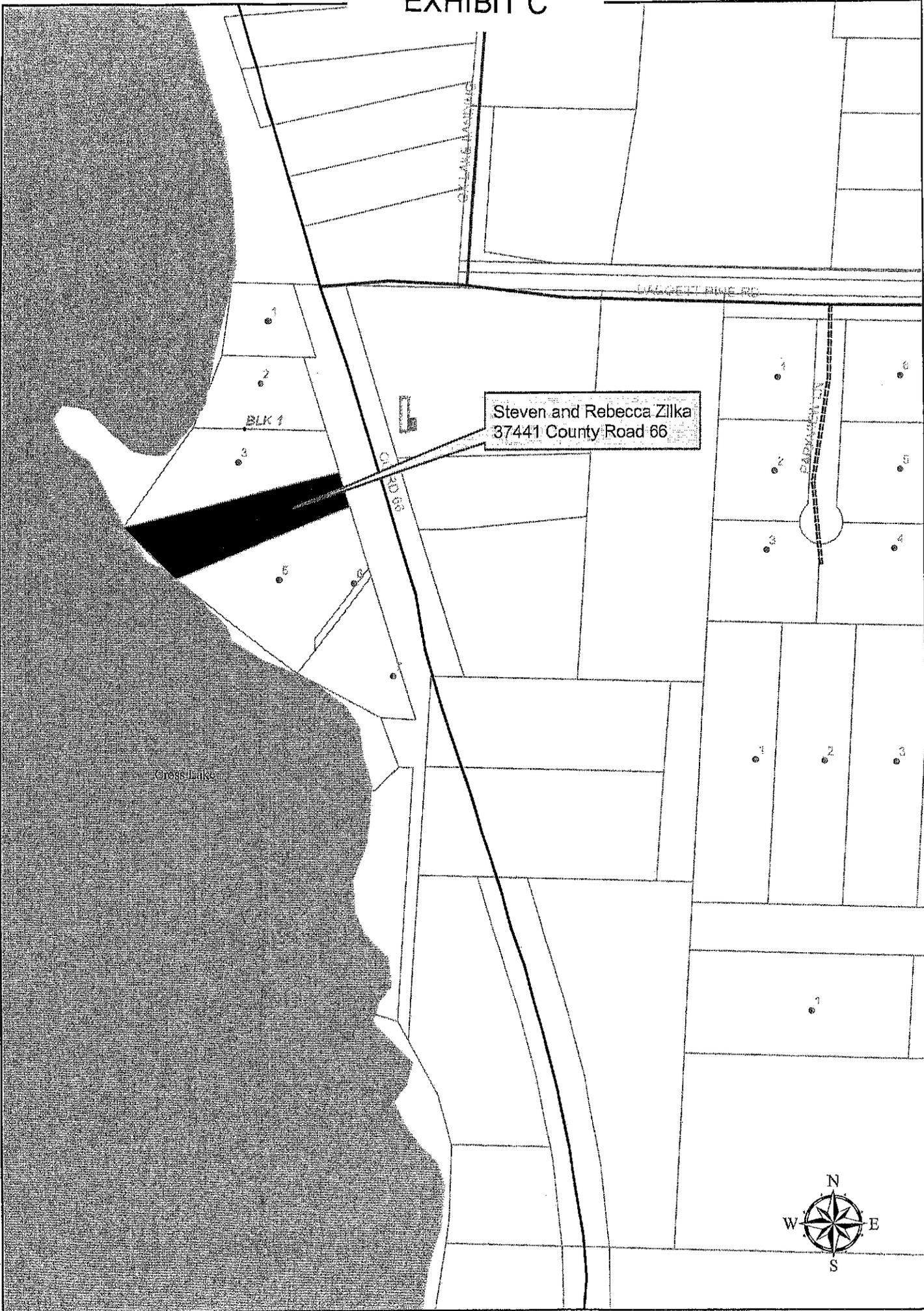
ATTEST:



Thomas N. Swenson
City Administrator

Attachments: PZ-2007-024, Exhibit A, Exhibit B, Exhibit C

EXHIBIT C



**CITY OF CROSSLAKE
PLANNING AND ZONING COMMISSION/BOARD OF ZONING
ADJUSTMENT
RESOLUTION NO. PZ-2007-024**

Parcel ID Number(s): 141230000040009
Case Number: Variance 2007-014
Property Owner: Steven and Rebecca Zilka
Legal Description: The property is described as Lot 4, Dezellar's East Shore, Section 8, Township 137 North, Range 27 West, Crosslake, MN.

Pursuant to due call and notice thereof, a special meeting and public hearing of the Planning and Zoning Commission/Board of Zoning Adjustment of the City of Crosslake, Minnesota, was held on the 27th day of November, 2007. **Commissioners Peter Abler, Michael Winkels, Nancy Addington, Teri Jo Flynn and Ron Hagen were present.**

Peter Abler introduced the following Resolution PZ-2007-024, and moved its adoption:

WHEREAS, Steven and Rebecca Zilka are requesting approval of an after-the-fact variance to construct a home approximately 4.7 feet closer to the bluff impact zone than the structure it is replacing vs. the required 30-foot setback in the R-3, Medium Density Residential district, and

WHEREAS, the applicants have stated that the hardship is that they currently have over \$10,000 in expenses wrapped up in the foundation and that Planning and Zoning originally allowed them to pour the footings in their current location, and

WHEREAS, City Ordinance requires a setback of 30 feet for any structure from the bluff impact zone, and

WHEREAS, City Ordinance allows rebuilding of nonconforming structures at the same setback of the previous structure, and

WHEREAS, the previous structure was located 4.7 feet from the top of the bluff, and

WHEREAS, on August 30th, 2007 City staff approved a zoning permit allowing a new structure to be rebuilt 4.7 feet from the bluff, and

WHEREAS, on October 2nd, 2007 City staff did a footings inspection approving the location of the forms and allowed the applicants to start pouring concrete, and

WHEREAS, on October 5th, 2007 City staff re-inspected the footings due to a complaint by an outside party and found the location of the footings to be within 4.7 feet from the top of the bluff, and

WHEREAS, on October 5th, 2007 City staff issued a stop work order on the subject property, and

WHEREAS, on October 26th, 2007 the Planning and Zoning Commission waived the \$250 residential variance application fee and required that an updated certificate of survey be submitted with the after-the-fact variance application, and

WHEREAS, City staff reminded Mr. Zilka that the placement of the building must be right on due to heavy scrutiny by outside parties, and

WHEREAS, a copy of the certificate of survey showing the location of the proposed structure is attached hereto as EXHIBIT A, and

WHEREAS, a copy of the original certificate of survey showing the location of the pre-existing, non-conforming cabin and the original, permitted location of the proposed structure is attached hereto as EXHIBIT B, and

WHEREAS, an area map showing the location of the property is attached hereto as EXHIBIT C, 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 no comments were received.

NOW, THEREFORE BE IT RESOLVED, the Board of Zoning Adjustment shall DENY Variance 2007-014 for Steven and Rebecca Zilka to construct a home approximately 4.7 feet closer to the bluff impact zone than the structure it is replacing vs. the required 30-foot setback in the R-3, Medium Density Residential district, due to the fact that they are building closer to the bluff impact zone than the footprint of the pre-existing cabin.

BE IT FURTHER RESOLVED, the Board of Zoning Adjustment finds that reasonable use of the property can be achieved without the newly proposed structure location.

BE IT FURTHER RESOLVED, the applicant was fore warned of the need for the footprint location to be right on due to the heavy scrutiny of outside parties.

BE IT FURTHER RESOLVED, the applicant may appeal the Commissions decision to the Crosslake City Council within 25 days or at the next regular meeting of the City Council, whichever is later.

BE IT FURTHER RESOLVED, the 60-day time limit that the Commission has to act on the variance will be extended another 60 days as allowed in State Statute.

The motion for adoption of the foregoing Resolution was duly seconded by Teri Jo Flynn and upon vote being taken thereon, the following voted in favor thereof: Abler, Winkels, Addington, Flynn and Hagen.

The following voted against: None.

The following abstained from the vote: None.

This resolution was approved and adopted on November 27th, 2007, by a 5/5ths vote by the Planning and Zoning Commission/Board of Zoning Adjustments of the City of Crosslake.

Peter Abler, Chair

ATTEST:

Kenneth R. Anderson

Attachments: Exhibit A and Exhibit B and Exhibit C