

PUBLIC HEARING
CITY OF CROSSLAKE
MONDAY, MAY 12, 2003
6:00 P.M. – CITY HALL

Pursuant to due notice and call, the City Council met in the Chambers of City Hall to hear an appeal for Variance 2002-038 submitted by Earl and Pauline Underbrink. The request is an appeal to the City Council regarding a decision made by the Planning and Zoning Commission to deny a variance request for an after-the-fact variance to allow for the construction of a new structure to remain at a setback of less than the required 75 foot setback from Rush Lake. The property is zoned Medium-Density Residential (R-3) and is located on the southeast side of Rush Lake off of C.S.A.H. 16. The property is described as Part of Gov't Lot 2, Section 17, Township 137N, Range 27W. Present at the hearing was Mayor Darrell Swanson, Councilmembers Dean Eggena, Chuck Miller, Dick Phillips and Irene Schultz. Also present was City Administrator Tom Swenson, City Attorney Paul Sandelin, Clerk/Treasurer Darlene Roach, Planner-Zoning Coordinator Nancy Vernon and Lake Country Echo Reporter Betty Ryan. (Sign in sheet attached as a permanent part of the minutes.) Attorney Stanford Hill was present to represent the applicants.

Mayor Swanson called the Public Hearing to order at 6:00 P.M. and stated that the hearing would begin with a presentation from Planning and Zoning Staff. Nancy Vernon stated that during an inventory of lakeshore properties, it was discovered that a boathouse had been constructed on the Underbrink property less than 75' from the required setback from Rush Lake. On September 10, 2002 Carla Backstrom, of the Planning and Zoning Department, wrote a letter to Mr. Underbrink explaining the situation and detailing three options that were available to him. These three options included: (1) removal of the structure from the property; (2) application for appropriate permits to relocate the structure to a conforming location; or (3) request for approval of an after-the-fact variance.

On December 27, 2003 Earl Underbrink submitted a Variance Application which requested retroactive approval for the repair and replacement of a window and door on a lakeshore storage shed. Mr. Underbrink stated on the application that the removal of the existing structure would leave a bare concrete retaining wall, which would be aesthetically unpleasant and cause erosion of the entire bank. At the February 28th, Planning and Zoning Commission Meeting, the after-the-fact variance request was denied on a 3-2 vote. This decision by the Planning and Zoning Commission was appealed to the City Council on March 20, 2003.

Attorney Hill addressed the Council and showed a picture of the current structure situated on the property. Attorney Hill stated that the reasons for the appeal were two-fold in that one of the Commission Members stated that he had never voted for an after-the-fact variance and never would, which is directly contrary to the Ordinance, and another Commission Member stated that he was tired of people coming up from the cities, building whatever they want, and then come to the Commission or City Council for

rubber stamp approval. Attorney Hill stated that generally he would be in agreement with these members, however if Mr. Underbrink had followed the procedures he could have rebuilt the structure. Attorney Hill stated the Ordinance does allow for after-the-fact variances and includes a penalty of ten times the permit fee that Mr. Underbrink is agreeable to paying. Attorney Hill stated Mr. Underbrink could have repaired the windows, doors and etc. on the structure, but admittedly made a mistake, partly because of being eighty-five years of age and partly because he wants everything to look good on the property. Mayor Swanson asked Nancy Vernon if Mr. Underbrink could have torn down and rebuilt the structure had he obtained a permit. Vernon stated that under the Ordinance, if a non-conforming structure is more than 50% damaged or destroyed, it needs to meet conforming standards. What the applicant could have done was maintenance, but he could not have torn down the structure and built a new structure on the same site. Nancy Vernon stated that after the letter was sent to Mr. Underbrink by Carla Backstrom, a letter was sent to the City dated October 9th from Attorney Hill stating that the roof was replaced, a window and storm door was replaced and new siding was put on the building. It was during the Planning and Zoning Commission Meeting, when the applicant was asked about the work, was it discovered that the building had actually been torn down. Mayor Swanson asked for a clarification on the Variance Application dated December 27th where it states the applicant repaired and replaced a window and door on lakeshore storage shed without a permit. Mayor Swanson asked if that was inaccurate. Attorney Hill stated that the application submitted by his father-in-law is in error in that the building was torn down and rebuilt. Regarding his letter to the City, he stated that he was acting on information received from his father-in-law which was incorrect information.

Councilmember Miller stated that in his opinion the rebuilt structure looks much better than the previous structure and agreed it was an innocent mistake on the part of Mr. Underbrink. The difficulty is determining reasonable use versus strict interpretation. Mayor Swanson agreed that Mr. Underbrink has been a good steward of the land and tries to keep the property in excellent condition. Councilmember Miller stated that an adjacent neighbor has submitted a letter in support of the structure remaining where it is on the property.

Councilmember Eggena stated that he would support approval of an after-the-fact variance. He stated that the Ordinance has been very difficult to understand in that it deals with non-conforming structures that existed at the time the City adopted the first Ordinance. Later on when the Shoreland Act was adopted, this property was grandfathered in, however the Ordinance goes on to say that you can do any maintenance you want without a permit, however, if you replace more than 50% of the structure at a time you are required to obtain a variance. As a builder I find that it's very difficult to determine what 50% of the value is and I see a lot of people starting work on these structures and get caught up in an Ordinance that is hard to interpret. Regarding a hardship, I feel that having a storage facility down by the lake allows them to leave items by the lake that they physically cannot maneuver back and forth due to their age. Councilmember Miller agreed that the hardship is that there was a use that is being taken away due to a mistake. Councilmember Eggena stated that he would like the Ordinance

to be reviewed by the Planning and Zoning Commission so other property owners don't get caught in these types of situations. Councilmember Phillips stated that he also visited the Underbrink property to examine the structure and found that it appears to be a movable building, not situated on footings, and fairly easy to move. His concern is that many of these grandfathered in structures have become beautiful guest houses and cabins down by the lake due to remodeling and reconstruction. Councilmember Eggena commented that it is his understanding that the DNR will never challenge the local level of government as it relates to administering the Shoreland Act, but leaves enforcement up to the local municipality. Councilmember Eggena stated that it is his position that there will always be structures located less than the required 75' setback and property owners should be allowed to keep them under the grandfathering rules. Councilmember Phillips again stated that his only concern is with the fact that it is a movable structure. Councilmember Schultz agreed with Councilmember Phillips.

Mayor Swanson stated that grandfathering in is always a problem, but there has to be a hardship to grant a variance and the hardship in this situation cannot be due to the fact that the property owner cannot have storage by the lake because storage is allowed provided it is no larger than 4'x8'x3'.

Discussion ensued regarding what the hardship would be in this situation that could be applied uniquely to this situation without opening the floodgates to future requests. Councilmember Miller stated that he sees the hardship as taking away a use where a mistake was made and there was a reasonable request by the applicant for a grandfathered structure. City Attorney Sandlin stated that the burden is on the applicant to determine the hardship but the Council sets the policy and the decision lies with the Council. Being no further discussion, MOTION PH5-1-03 WAS MADE BY CHUCK MILLER AND SECONDED BY DEAN EGGENA TO GRANT VARIANCE 2002-038 FOR EARL UNDERBRINK DUE TO THE STRUCTURE EXISTED AND HAD GRANDFATHERING RIGHTS AND A MISTAKE WAS MADE WHERE IT WAS TORN DOWN AND IT LOST ITS GRANDFATHERING RIGHTS WITH AN AFTER THE FACT FEE OF TEN TIMES THE PERMIT FEE OF \$2500. MOTION CARRIED WITH MAYOR SWANSON AND COUNCILMEMBERS EGGENA AND MILLER VOTING AYE AND COUNCILMEMBERS PHILLIPS AND SCHULTZ VOTING NAY.

MOTION PH5-02-03 WAS MADE BY CHUCK MILLER AND SECONDED BY DICK PHILLIPS TO ADJOURN THIS PUBLIC HEARING AT 6:50 P.M. MOTION CARRIED WITH ALL AYES.

Recorded and transcribed by,



Darlene J. Roach
Clerk/Treasurer

