

PUBLIC HEARING
CITY OF CROSSLAKE
MONDAY, SEPTEMBER 9, 2002
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 2002-019, submitted by Mathew and Kathryn Johnson. The appeal to the City Council is in regards to a decision made by the Planning and Zoning Commission to deny an after-the-fact variance to allow a dwelling to remain at a setback of less than the required 100 foot setback from Fawn Lake. The property is zoned Medium-Density Residential (R-3) and is located on the southwest side of Fawn Lake off of Border Point Road. The property is described as Part of Government Lot 2, Section 31, Township 137N, Range 27W. Present at the hearing was Mayor Darrell Swanson, Councilmembers Sandy Eliason, Chuck Miller, Irene Schultz and Dean Swanson. Also present was City Administrator Tom Swenson, City Attorney Paul Sandelin, Community Development Director Paul Larson and Clerk/Treasurer Darlene Roach. (Sign in sheet attached as a permanent part of the minutes.)

Mayor Swanson called the Public Hearing to order at 6:00 P.M. and stated that the purpose of the meeting was to hear an appeal of Variance 2002-019 for the Johnson's. He stated that the order of events would include a presentation by the Planning and Zoning Staff, a legal opinion by the City Attorney, a presentation by the Applicant, comments from the public and final questions and comments by the City Council.

Community Development Director Paul Larson addressed the Council and read the public hearing notice describing the reason for the appeal. Various documents were presented to the Council for their review prior to the hearing. These documents include: (1) Planning and Zoning Staff Report with attachments dated May 29, 2002; (2) Minutes of the July 26, 2002 Planning and Zoning Commission Public Hearing; (3) Notice sent to property owners of the Planning and Zoning Commission's decision on Variance 2002-019; (4) Appeal letter from Mathew Johnson; (5) Public hearing notice sent to adjacent property owners; and (6) Certificate of Survey of the subject property.

Community Development Director Paul Larson stated that the Planning and Zoning Commission denied an after-the fact variance for the house which was constructed 80' from the lake and the deck which was constructed 70' from the lake. On October 29, 2001, a permit was issued to construct a 30'x34' house at a setback of 110' from Fawn Lake. Paul Larson stated that Staff did visit the site, however they are not surveyors and the distance was difficult to determine since there was a large hole on the property. In May, 2002 the City was notified that the house appeared to be located closer to the lake than the required 100' setback. On June 26, 2002, Staff sent a letter to the Johnson's informing them of the situation. As a result of this letter, the Johnson's applied for an after-the-fact variance. It was noted that the property owner did continue working on the house after they were advised in the letter that any further work done would be at their own risk. The applicant also owns the adjacent lot known as Tract B. The building envelope in Tract A contains 16,000 square feet and the house is 1,020 square feet in area

which means sufficient space was available to locate the house at the required setback. Staff recommends denial and relocation of the building with reclamation of the site.

Councilmember Miller asked if the setback on Fawn Lake differed from the setback on Cross Lake and he was told that the lake classification is different on the two lakes mentioned and the setback on Fawn Lake is 100' and the setback on Cross Lake is 75'. Councilmember Miller then stated that the City adopted the Shoreland Act which the DNR has developed based on the size of the lake and the classification of the lake. Mayor Swanson stated that the reason for different classifications is that the larger lakes can take more impact than the smaller lakes. The third class of lake is the natural environment lake, which requires a 150' setback. Mayor Swanson asked if a site plan had been submitted with the application. It was noted that a site plan was provided to the City showing a setback of 110'. Councilmember Miller stated that the setbacks are not an arbitrary number, but are recognized by every City that has adopted the Shoreland act. A letter received from Ron Morreim of the DNR expressed the DNR's opposition to the granting of a variance for this property.

City Attorney Paul Sandelin advised the Council of the standards that needed to be considered for granting a variance under City Code. These standards are as follows: (1) the strict interpretation of the City Code would create undue hardship; (2) the strict interpretation of the City Code would be impractical because of circumstances relating to lot size, shape, topographic or other characteristics of the property not created by the land owner; (3) the deviation from the City Code with any attached conditions will still be in keeping with the spirit and intent of the City Code; (4) the variance will not create a land use not permitted in the zone; (5) the variance will not alter the essential character of the locality; and (6) the variance is not for economic reasons alone, but reasonable use of the property does not exist under the City Code.

Mayor Swanson asked if a property owner can request a change in lake classification from that which has been established by the DNR. City Attorney Sandelin stated that the City could make the classification more restrictive, but not less restrictive.

John Erickson, Attorney for the applicant, addressed the Council. Attorney Erickson proceeded to explain the situation creating the hardship for the applicant. He stated that three years ago the applicant purchased two lots on Fawn Lake and decided to build a house on the second lot. A general contractor was hired along with an excavator who proceeded to cut trees, dig the basement and set the blocks. A permit was applied for and Staff did make an on-site visit to the property. Attorney Erickson stated that the applicant took the word of the excavator and did not measure the distance from the lake to the dwelling. The estimated costs of moving the house to meet the setback requirements would be financially restrictive for the applicant since the cost is estimated at approximately \$58,150. Also, approximately 16 - 20 mature oak trees would need to be removed in order to relocate the house. Since the Johnson's house is the only house on this side of Fawn Lake, they do not feel their house is impacting the view of any other homeowner. Also, moving the house back would raise the elevation of the house by 10'. Several exhibits were distributed showing the house and the surrounding area. Attorney

Erickson stated that historically variances have been granted which help develop what neighborhoods look like. Mr. Erickson reviewed several variances, which were previously approved by the Planning and Zoning Commission.

Mr. Johnson addressed the Council and stated that he had relied on assurances from the contractor, as well as an understanding from the City, that the foundation and wall work were constructed at the proper location to meet the setback. He stated that the house is 95% finished and would be very costly to move due to having log construction which contain a lot of seams and joints. There would be considerable tree loss with the heavy equipment that would be required to move the house. Mr. Johnson stated that he would do additional screening if the house were allowed to remain at its current location.

Community Development Director Paul Larson read an excerpt from the Zoning Permit Application signed by Mr. Johnson stating that he would have the work performed in accordance with the terms of the Ordinance and that the City is not responsible for locating any lot lines, road right-of-way boundaries, wetlands, bluffs or ordinary high water marks and that the property owner and any contractors involved in the project will be liable for meeting all required setbacks and applicable requirements. City Administrator Swenson asked if the site plan included with the Zoning Permit Application showed the setback from the lake and Paul Larson stated that the site plan showed the setback at 110'.

Attorney John Erickson stated that the Johnson's were not intending to violate the Ordinance and had only made the mistake of relying on their contractor and excavator.

Councilmember Swanson asked Paul Larson when he made his visit to the site and Paul Larson stated he was on the property in the Fall of 2001. The City was advised of the violation in May of the following year.

Councilmember Miller commented on the variances that Attorney Erickson referenced earlier and stated that most of these variances were for additions and were not for new construction. He stated that this is a new area and property owners need to adhere to the law.

Vicky Olson, property owner on Fawn Lake stated that the Johnson's wouldn't do any thing wrong that would be detrimental. She stated that she supports the house remaining were it is located since it will not destroy the lake.

MOTION PH2-01-01-02 WAS MADE BY SANDY ELIASON AND SECONDED BY CHUCK MILLER TO DENY VARIANCE REQUEST 2002-019 FOR MATHEW AND KATHRYN JOHNSON SINCE THE STRICT INTERPRETATION OF THE ORDINANCE DOES NOT CREATE UNDUE HARDSHIP AND THAT THE PROPERTY CAN BE PUT TO REASONABLE USE. Councilmember Swanson stated that the Ordinance requires 100' setback and while he feels badly for the applicant because mistakes do happen but sometimes people have to suffer for their mistakes. Councilmember Eliason stated that it will take a lot of money to move the house, but the

property does contain enough land to meet the ordinance requirements. Councilmember Schultz stated that she hates to see so many trees lost due to the relocation of the home. Mayor Swanson stated that he has heard no testimony that there was an intent to violate the law. He stated that the excavator made a mistake which is very unfortunate for the Johnson's. Also, the DNR who set the rules recommends that the Council not approve the variance and, therefore, must feel that the location will have an impact on the lake.

MOTION WAS AMENDED TO INCLUDE THE FOLLOWING RECOMMENDATIONS: (1) A PERMIT IS APPLIED FOR AND APPROVED TO RELOCATE THE STRUCTURE TO A CONFORMING LOCATION, INCLUDING THE REMOVAL OF THE EXISTING FOUNDATION. A PERMIT FOR THE DOCK WILL ALSO BE REQUIRED AND SHOULD BE INDICATED ON THE SITE PLAN; (2) SILT FENCING MUST BE PLACED BETWEEN ANY AREAS OF EXCAVATION AND FAWN LAKE UNTIL A PERMANENT GROUND COVER IS ESTABLISHED; (3) A TOPOGRAPHIC ALTERATION SITE PLAN MUST BE SUBMITTED FOR FILLING OF THE EXISTING BASEMENT AND INCLUDE THE INFORMATION LISTED IN CHAPTER 8, SECTION 8.50, SUBD.14.E.8. THE FOLLOWING CONDITIONS SHALL APPLY TO ALL TOPOGRAPHIC ALTERATIONS: (a) ALTERATIONS MUST BE DESIGNED AND CONDUCTED IN A MANNER THAT ENSURES ONLY THE SMALLEST AMOUNT OF BARE GROUND IS EXPOSED FOR AS SHORT A TIME AS FEASIBLE; (b) ANY AREA DISTURBED DURING ANY GRADING OPERATION SHALL HAVE FOUR INCHES OF ORGANIC SOIL EQUIVALENT TO THE NATIVE TOPSOIL REPLACED AND SEEDED WITH PERENNIAL GRASSES. A TEMPORARY GROUND COVER SUCH AS MULCH MUST BE USED UNTIL A PERMANENT GROUND COVER IS ESTABLISHED; (c) METHODS TO MINIMIZE SOIL EROSION AND TRAP SEDIMENTS BEFORE THEY REACH ANY SURFACE WATER MUST BE USED; (d) ALTERED AREAS MUST BE STABILIZED TO ACCEPTABLE ENGINEERING STANDARDS AS OUTLINED IN "MINNESOTA'S STORMWATER BEST MANAGEMENT PRACTICES" AND MUST NOT CREATE AN UNSTABLE SLOPE; (4) VEGETATION REMOVAL WITHIN THE CONSTRUCTION IMPACT ZONE IS LIMITED TO SELECTIVE CUTTING. AUTHORIZED VEGETATION REMOVAL BETWEEN THE SHORE IMPACT ZONE AND BUILDING SETBACK LINE SHALL BE LIMITED TO THE REMOVAL OF NOT MORE THAN 10% OF THE TREES, EXCEPT FOR THE PLACEMENT OF AUTHORIZED STRUCTURES. TREE REMOVAL HAS TAKEN PLACE WITHIN THE CONSTRUCTION IMPACT ZONE FOR THE PLACEMENT OF AN UNAUTHORIZED STRUCTURE. TREE REMOVAL THAT RESULTS IN A PERCENTAGE OF VEGETATION TO BE LESS THAN THE AUTHORIZED PRESCRIBED PERCENTAGE OF VEGETATION REMOVAL SHALL BE REPLACED WITH SUITABLE LIVE TREES TO MEET THOSE LIMITS BASED ON THE QUANTITY, SIZE AND PLACEMENT OF TREES PRIOR TO SUCH REMOVAL. (5) ONCE THE STRUCTURE HAS BEEN RELOCATED TO A CONFORMING LOCATION, STAFF WILL CONDUCT AN ONSITE INSPECTION TO DETERMINE IF THE PRESCRIBED PERCENTAGE OF TREE REMOVAL HAS BEEN EXCEEDED AND RECOMMEND A REPLACEMENT PLAN ACCORDING TO THE TREE REPLACEMENT SCHEDULE IN SECTION 8.15, SUBD. 7 OF CHAPTER

8.; AND (6) THE STRUCTURE RELOCATION AND ANY REQUIRED TREE REPLACEMENT MUST BE COMPLETED NO LATER THAN SEPTEMBER 9, 2003, WHICH GIVES THE APPLICANT ONE YEAR. MOTION CARRIED WITH ALL AYES.

MOTION PH2-09-02-02 WAS MADE BY CHUCK MILLER AND SECONDED BY SANDY ELIASON TO ADJOURN THIS PUBLIC HEARING AT 7:10 P.M. MOTION CARRIED WITH ALL AYES.

Recorded and transcribed by,

A handwritten signature in cursive script, reading "Darlene J. Roach". The signature is fluid and elegant, with the first letters of the first and last names being capitalized and prominent.

Darlene J. Roach
Clerk/Treasurer

JOHNSON APPEAL
PUBLIC HEARING
6:00 P.M.
SEPTEMBER 9, 2002
SIGN-IN SHEET

NAME	ADDRESS	PHONE
Dean Swanson	Crosslake Council	692-2688
Jacky Elson	City Council	692-3109
Vicki Olson	PO Box 348 Crosslake MN	543-6298
Allen Klason	35424 Maroda Dr CL	692-3108
John Erickson	Box 525 Brainerd 56401	829-7852
Charles Fuller	CITY COUNCIL	692-3471
Jack	City Council	692-2688
Kate & Mat Johnson	15318 BIRCHNARROWS CROSSLAKE	543-4131
Bruce Lyn Thompson	P.O. Box 322 Nettie, MN 56431	927-2443
Evel Larson	City Hall	692-2689
Sethy Reizen	Echo Park	
Jack	ABCC / repairs	
John A	City Public Works	692-2748
Walter Jones	13053 Anchor Pt. Rd	692-3451
Jon Hink	CITY OF CROSSLAKE	692-4271
Alden Hendrick	37661 Brown Lake Rd	692-1426
Dennis Leaser	Crosslake Comm.	692-2777
David Reese	WSN	829-5117
Tom Swenson	City Administrator	
Maureen Roach	City Clerk	692-2688

**CITY OF CROSSLAKE
COUNTY OF CROW WING
STATE OF MINNESOTA**

**IN RE: VARIANCE OF
MATHEW AND
KATHRYN JOHNSON**

**FINDINGS OF FACT AND
CONCLUSIONS OF THE
CITY COUNCIL**
September 9, 2002

INTRODUCTION

The City of Crosslake Planning Commission met on July 26, 2002 at the City of Crosslake City Hall to hear and decide a request for an after-the fact variance by Mathew and Kathryn Johnson (the "Applicant") to allow the construction of a single family residence and deck at a setback of less than 100 feet from Fawn Lake. The subject property is zoned R-3, Medium Density Residential. The subject property is approximately 40,366 square feet and is legally described as follows (the "Subject Property"): (See **Exhibit A**)

The Planning Commission denied the variance and this matter was appealed to the City Council. The City Council heard the appeal on September 9, 2002. The Applicants were present at the City Council Hearing, including their attorney, John Erickson. The City Council heard comments from the Applicants, the Planning and Zoning Administrator, City Attorney, City Council members, and interested citizens. Based upon the evidence presented to the City Council at the September 9, 2002 hearing, and all of the files, records and proceedings, including the prior decision and record of the City of Crosslake Planning Commission relating to the Application, the Council hereby makes the following:

FINDINGS OF FACT

The City Council adopted the written Findings of Fact as adopted by the Crosslake Planning Commission dated July 26, 2002 and incorporates those findings herein. The City Council makes the following Findings of Fact with respect to the Johnson appeal:

1. The property is zoned Medium-Density Residential (R-3) and is located on the southwest side of Fawn Lake off of Border Point Road.
2. The legal description for the property, which is located in Crow Wing County, is as follows (the "Subject Property"): **See Exhibit A.**
3. The Applicant is Mathew and Kathryn Johnson, 15318 Birch Narrows Road, Crosslake, MN 56442 (the "Applicant").
4. The Applicant requested an after-the-fact variance to allow a 30'x 34' dwelling to remain at a set back of less than the required 100 feet from Fawn Lake. Fawn Lake has a lake classification for zoning purposes of Residential Development with a setback from the ordinary high water mark ("OHW") of 100 feet.
5. On October 29, 2001, Permit Number 8256 was issued by the City of Crosslake for the construction of a 30'x34' dwelling and septic system on the Subject Property. The site plan that was submitted with the permit application indicated that the dwelling would be constructed 110 feet from Fawn Lake. The permit and site plan did not include the construction of a deck.
6. A copy of the zoning permit application is attached as **Exhibit B.** The permit signed by the Applicant includes a certification by the Applicant that all required setbacks and other zoning regulations and requirements would be met by the Property owner and contractor.
7. On May 21, 2002 it was brought to the attention of the City that the house being constructed on the property pursuant to Permit Number 8256 appeared to be closer than the required 100' set back from a Residential Development Lake. City staff conducted an onsite inspection that indicated that the dwelling being constructed, including deck was at a setback of approximately 70 feet from the Ordinary High Water Mark (OHW) of Fawn Lake, which resulted in a dwelling set back of approximately 80 feet from the lake (10-foot deck).
8. City staff notified the Applicant by letter dated May 21, 2002 (**Exhibit C**) informing Applicants of the violation and the requirement and options to bring the Subject Property into compliance.
9. The Applicant applied for an after-the-fact variance on May 29, 2002 (**Exhibit D**).

The Applicant submitted a Certificate of Survey and the matter was heard by the Planning Commission on July 26, 2002. The Planning Commission denied the application.

10. The Planning Commission minutes and decision are attached hereto as **Exhibit E** and made a part of this record.
11. At the City Council Meeting on September 9, 2002, the Applicant argued that the City should grant the variance as the building was mistakenly located too close to the OHW by the excavator despite the representation contained within the zoning permit application.
12. The Applicant argued that a hardship existed because the Applicant's requested variance was reasonable despite existing sufficient reasonable use of the property without the necessity of a variance.
13. The Applicant also argued that the cost of moving the home to the required setback was approximately \$50,000.00. No evidence was provided regarding the source of the estimate.
14. The Applicant also argued that the current location of the home did not alter the essential character of the neighborhood.
15. No evidence was presented by the Applicant indicating any reason why the home was not constructed at the required setback from the lake as indicated in the approved permit from the City.
16. City Staff did not represent or state to the Applicant that prior to May 21, 2002, the building as constructed met all required setbacks as suggested by the Applicant.
17. Despite notification to the Applicant by the City that there was a setback violation, including confirmation of such violation by a Certificate of Survey, the Applicant continued with completion of construction of the home.
18. At the City Council Meeting the Applicants testified that the current location of the home was a better location than within the required setback as Applicant testified the home would be more visible from the lake at a location 30 to 40 feet further from the lake. This representation however was not supported by evidence submitted to the City.

CONCLUSIONS

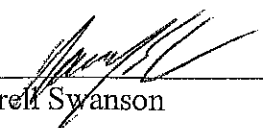
Based upon the aforementioned Findings of Fact, the City Council makes the following

conclusions:

1. Variance Application Number 2002-019 should be denied.
2. Denial of the variance is based upon no showing of undue hardship by the Applicant and that reasonable use exists for the property without a variance.
3. Under Minnesota Law Applicant has the burden of proof to establish that the elements of a variance have been met and Applicant has failed to do so.
4. The following elements of a variance pursuant to the Crosslake City Code and Minnesota Law cannot be met by the Applicant:
 - a. The strict interpretation of this Chapter would create undue hardship; and
 - b. The strict interpretation of this Chapter would be impractical because of circumstances relating to lot size, shape, topographic or other characteristics of the property not created by the land owner; and
 - c. The deviation from this Chapter with any attached conditions will still be in keeping with the spirit and intent of this Chapter; and
 - d. The variance will not create a land use not permitted in the zone; and
 - e. The variance will not alter the essential character of the locality; and
 - f. The variance is not for economic reasons alone, but reasonable use of the property does not exist under this Chapter.
5. The Applicant has until September 9, 2003 to bring the violation into conformance with the Crosslake City Code and all other appropriate codes and regulations. In addition the following City Staff recommendations must be complied with as well:
 - a. A permit is applied for and approved to relocate the structure to a conforming location, including the removal of the existing foundation. A permit for the deck will also be required and should be indicated on the site plan.
 - b. Silt fencing must be placed between any areas of excavation and Fawn Lake until a permanent ground cover is established.
 - c. A Topographic Alteration Site Plan must be submitted for the filling of the existing basement and include the information listed in Chapter 8, Section 8.50, Subd. 14.E.8. The following conditions shall apply to all topographic alterations:

1. Alterations must be designed and conducted in a manner that ensures only the smallest amount of bare ground is exposed for as short a time as feasible.
 2. Any area disturbed during any grading operation shall have four inches of organic soil equivalent to the native topsoil replaced and seeded with perennial grasses. A temporary ground cover such as mulch must be used until a permanent ground cover is established.
 3. Methods to minimize soil erosion and trap sediments before they reach any surface water must be used.
 4. Altered areas must be stabilized to acceptable engineering standards as outlined in Minnesota's "Stormwater Best Management Practices" and must not create an unstable slope.
- d. Vegetation Removal within the Construction Impact Zone (the area between the shore impact zone and the structure setback) is limited to Selective Cutting. Authorized vegetation removal between the shore impact zone and building setback line shall be limited to the removal of not more than 10% of the trees, except for the placement of authorized structures. Tree removal has taken place within the Construction Impact Zone for the placement of an unauthorized structure. Tree removal that results in a percentage of vegetation to be less than the authorized prescribed percentage of vegetation removal shall be replaced with suitable live trees to meet those limits based on the quantity, size and placement of trees prior to such removal.
- e. Once the structure has been relocated to a conforming location, staff will conduct an onsite inspection to determine if the prescribed percentage of tree removal has been exceeded and recommend a replacement plan according to the Tree Replacement Schedule in Section 8.15, Subd. 7 of the Chapter 8.
- f. The structure relocation and any required tree replacement must be completed no later than July 26, 2003.

Passed by the City Council this 9th day of September 2002 with 5 Council Members voting to deny the variance.



Darren Swanson
Mayor



Tom Swenson
City Administrator

ATTEST: _____

This document was drafted by:

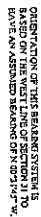
Paul J. Sandelin (#188359)
GAMMELLO, SANDELIN & QUALLEY, P.A.
30849 First Street, P.O. Box 298
Pequot Lakes, MN 56472
218-568-8481
PALAWTEXT\70424.303\FINDINGS.doc

PART OF GOVERNMENT LOT 2,
SECTION 31, TOWNSHIP 137 NORTH, RANGE 27 WEST,
CROW WING COUNTY, MINNESOTA.

LEGAL DESCRIPTION PROVIDED BY CLIENT.

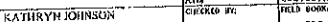
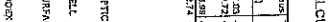
NOTES:

3. CUSTODY OF THE LAND WAS IN THE FLOOD INSURED ON 10/25/87.
4. DAVISON, PER, AND DAIR.
5. ZONING FOR SUBJECT TRACT = "M-1 RESIDENTIAL-MEDIUM DENSITY".
6. PROPERTY IS IN "ZONE C" AND "ZONE A-1" THE FIRST FLOOD ZONE.
7. THE FLOOD ZONE DESCRIPTIONS ARE AS OF 1987-1991 FLOOD PLAIN ELEVATIONS AND FLOOD HAZARD FLOODING IN DETACHED. ZONE C DEFINITION: AREAS OF MINORAL FLOODING.
8. THERE ARE NO WETLANDS OR BULFERS ON SURVEYED PARCEL.



SW CORNER SECTION 31

SOUTH LINE OF SECTION 21



— SHORELINE AND OHW
AS LOCATED ON 7/2/01

FAYN LAKE
FEDERAL DEVELOPMENT CORPORATION
LAKE ELEVATION - 714.78 IN DGS QUADRANGLE 81MAY

Improvements		Total Net		Percent Improvement (sq. ft.)
Area (sq. ft.)	Area (sq. ft.)	Area (sq. ft.)	Per cent (sq. ft.)	
Structures	1,037.03	40,386.00	2.9	
House	819.72	40,386.00	2.0	
Driveway	2,037.98	40,386.00	5.0	
Total	2,882.74	42,386.00	9.9	

IMPERVIOUS CALCULATIONS

THE END

- ③ DEMOTES WELL
 ↑ DEMOTES SURFACE DAMAGE
 FLOW
 — DEMOTES IN-OUT CONTROLS
 — DEMOTES INTERMEDIATE CONTROLS
 — DEMOTES NONINDEPENDENT
 DEMOTES INDEPENDENT KEY
 MARKED BY LETTERS NO. 17002

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CITY OF CROSSLAKE, MN
Zoning Permit Application

Permit No. 82560

Applicant's Name: MAH Johnson
Mailing Address: 15318 Birch Narrows Crosslake
Telephone: 892 5711
Directions from City Hall to property: ~~from State St~~ Farm Lake Rd. last place on R.

Type of Permit Requested:
SEPTIC: K FEE \$ 100.-
BUILDING: K FEE \$ 198
OTHER: E911 FEE \$ 35.- TOTAL: \$ 333.00
OTHER: _____ FEE \$ _____

Legal Description: P+6 cont Lot 2 SEC. 31, TWP. 137N, R. 27W

Real Estate Code No: 120313302 F00009 Zoning District: _____

Project Description: 30x34 BASEMENT
30x34 1st floor 15x34 lot

Staff Estimated Project Value: 142,800.-

Conditions: _____

Building Contractor: Rob Rollof License No. 20274979

ISTS Contractor: Martz Etc. License No. _____

ISTS (existing): Installation Date: _____ OR Certificate of Compliance Date: _____

I HEREBY CERTIFY, WITH MY SIGNATURE, THAT ALL DATA ON MY APPLICATION FORM, PLANS AND SPECIFICATIONS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, AND THAT IF THE PERMIT APPLIED FOR IS ISSUED, I AGREE TO HAVE THE WORK PERFORMED THEREUNDER IN ACCORDANCE WITH THE TERMS OF THE CITY OF CROSSLAKE ORDINANCE, ITS STANDARDS, AND ANY REQUIREMENTS ORDERED BY THE CROSSLAKE PLANNING & ZONING COMMISSION, AND ALL OTHER APPLICABLE LAWS AND REGULATIONS. THE CITY OF CROSSLAKE IS NOT RESPONSIBLE FOR LOCATING ANY LOT LINES, ROAD RIGHT-OF-WAY BOUNDARIES, WETLANDS, BLUFFS OR ORDINARY HIGH WATER MARKS. THE PROPERTY OWNER AND ANY CONTRACTORS INVOLVED IN THE PROJECT WILL BE LIABLE FOR MEETING ALL REQUIRED SETBACKS AND APPLICABLE REQUIREMENTS.

[Signature] _____
Signature of Applicant Date

Received in Zoning Office By: [Signature] Date: 10/18/01
Planning and Zoning Approval: [Signature] Date: 10/29/01
Public Works Approval: N/A Date: _____
Permit Issued By: [Signature] Date: 10/29/01

City of Crosslake

37028 COUNTY ROAD 66
CROW WING COUNTY
CROSSLAKE, MINNESOTA 56442

May 21, 2002

Mathew and Kathryn Johnson
15318 Birch Narrows Rd
Crosslake, MN 56442

Dear Mr. and Mrs. Johnson,

The City of Crosslake issued Permit No. 8256 to Matt Johnson for the construction of a 30'x34' dwelling to be located 110 feet from Fawn Lake. City staff conducted an onsite inspection to verify the setback of the dwelling being constructed on your property described as Part of Gov't Lot 2, Sec. 31, Twp. 137, Rge 27, Crow Wing County, Minnesota.

The site inspection determined that the dwelling is being constructed at a setback of approximately 71 feet from the Ordinary High Water (OHW) mark of Fawn Lake. The City of Crosslake Zoning Ordinance and DNR Shoreland Management Act require a structure setback of 100 feet from a Recreational Development Lake. The Department of Natural Resources has classified Fawn Lake as a Recreational Development Lake.

You are currently in violation of the Crosslake Zoning Ordinance and we request that one of the following options be taken towards bringing your property into compliance:

- The structure is relocated to meet the 100-foot setback from Fawn Lake
- An after-the fact variance is applied for to request that the structure remain in the current location.

Please contact our office no later than May 29, 2002 with your plans for bringing your property into compliance. If you choose to apply for an after-the-fact variance, May 29, 2002 is the application deadline for the June 28, 2002 Planning and Zoning Commission meeting.

If you have any questions, please contact the Planning and Zoning Office at (218) 692-2689.

Sincerely,



Carla Backstrom
Planning and Zoning

CC: file 120313302F00009

EXHIBIT

C

City of Crosslake, MN

Variance Number: V2002019

Variance Application

Applicant's Name: MATHEW B & KATHRYN C JOHNSON

Mailing Address: 15318 BIRCH NARROWS RD, CROSSLAKE, MN 56442

Telephone: (218)

Property Owner, if different from Applicant: MATHEW B & KATHRYN C JOHNSON

Directions from City

Hall to Property:

Type of Variance Requested:

RESIDENTIAL: \$200.00

VARIANCE FEE \$250.00

COMMERCIAL: \$250.00

OTHER FEE \$0.00

TOTAL \$250.00

Legal Description: THAT PART OF GOV. LOT 2 SECTION 31 DESCRIBED AS FOLL

SEC31 , TWP137 , R27 W

Zoning District: R-3 **Plat Name:**

Real Estate Code Number: 120313302F00009

Please state the nature of the Variance you are requesting:

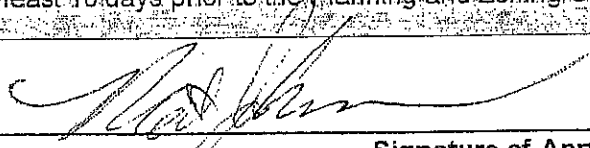
SETBACK FROM FAWN LAKE

Submit survey showing
current setback and
building envelope by
June 14, 2002

Explain the hardship which this Variance would alleviate:

Applications WILL NOT be processed unless all required information for a Variance is submitted and fees are paid by the application deadline.

The City of Crosslake Planning and Zoning Commission will review and/or take action on this request at its meeting. The meeting starts at 9:00 AM at Crosslake City Hall. The fee or contract owner of the property or his authorized agent shall be present at the public hearing to answer any questions the Commission may have. All proposed improvements MUST BE STAKED at least 10 days prior to the Planning and Zoning Commission meeting.


Signature of Applicant


Date

Date received in Zoning Office: 05/29/2002 **By:** CJB

- Failure to act on this Variance within one (1) year will void the Variance

Staff Use Only

Planning and Zoning Action: _____ **Date of P&Z Action:** _____

Planning and Zoning Findings: _____

Conditions: _____

EXHIBIT

D

VARIANCE 2002-019, MATHEW AND KATHRYN JOHNSON, 11790 BORDER POINT RD, PIN: 120313302F00009. (Tabled from June 28, 2002)

This application was tabled at the June 28, 2002 meeting at the request of the applicant for the reason that a survey could not be completed by the deadline date.

The application is for an after-the-fact variance to allow a 30'x34' dwelling to remain at a setback of less than the required 100 foot setback from Fawn Lake. Community Development Director Paul Larson summarized the applicant's request and stated that the survey indicated that the structure is located 70.4 feet from the lake to the deck.

Matt and Kathryn Johnson, owners of the property were present to represent the application. Matt Johnson gave a summary on how the situation occurred. Mr. Johnson explained that they are their own building contractor to save money and that they have made a mistake on where they have set the house. Mr. Johnson stated that he has retraced his steps to try and figure out how this error occurred. Mr. Johnson stated that he spoke with an excavator to do the work and then was on vacation out of town. Mr. Johnson stated that the City Planning and Zoning was contacted to check the site to make sure everything was being done properly. Mr. Johnson stated that an official came out from the City and a building permit was issued.

Mr. Johnson stated that he is trying to do everything he can to make things right and he is planning on planting 100 trees between the neighboring property line. Mr. Johnson stated that their house is the only house you cannot see from the lake.

Mr. Johnson commented that the Planning and Zoning Commission has the power to grant a variance to allow the house to stay at the current location, which they would like to see. The other option would be to move the house, which is not financially feasible for them and he realizes that variances cannot be granted for financial reasons alone but they can be granted for other reasons. Mr. Johnson quoted Subd. 7 of Minnesota Statute 394, which states that a Variance shall be permitted when they are in harmony with the general purpose and intent of the official control and cases where there are practical difficulties when the terms of the variance are consistent with the Comprehensive Plan. Mr. Johnson stated that it would cost them a minimum of \$50,000.00 to move the house, with utilities, electric, plumbing and septic already in. Mr. Johnson stated that time is on their hands and they have to move out of their house in two weeks. Mr. Johnson commented that moving the house would cause extensive environmental damage to the surrounding area including the loss of some mature oaks. Mr. Johnson added that by moving the house back, the roof line would be 10 feet higher which would then be seen from the lake.

Mr. Johnson made reference to Statute 394, Subd. 7 and the harmony of the structure, the structure is now screened by the trees and the house is keeping with the other houses in the neighborhood and area with its design. Mr. Johnson explained that moving the house would also create erosion and damage to the lake by heavy equipment. Mr. Johnson stated that the house is in no way blocking or obstructing the views to the lake to any

EXHIBIT

E

this case the landowner has created his own hardship by either knowingly or unknowingly constructing the house at its present location. Locating the structure at the present location is not necessary to allow for reasonable use of this property." And the commission wanted the letter from Ron Morreim to be made part of the record. Matt Johnson commented that variances are granted not only for financial reasons, but if there is a hardship. Mr. Johnson stated that it will create a hardship to the trees in the area and the environment and stated that this is what the DNR is saying. It is located in the setback zone, but to move it and change it's position would cause extensive damage to the environment. Jim Trautmann commented that there were places to move it that would not require a lot of tree removal. Terri Curtis commented that there was recommended conditions that would protect the environment from damage. Richard Dietz commented that if this application is denied they have the opportunity to appeal to the City Council. Paul Larson recommended that if the application is denied, staff recommendations become part of the permit for relocating the structure to a conforming location to minimize environmental impacts.

ALL MEMBERS VOTED "AYE", MOTION CARRIED.

The Planning and Zoning Commission directed that the violation be brought into conformance no later than July 26, 2003 with the staff recommended conditions to minimize the environmental impacts.