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## **BOARD OF ADJUSTMENT MEETING**

**January 6, 2005**

Jack Leo (JL) called the meeting to order at 7:00 P.M.

Members attending - Lee Wright (LW), Ed Hanson (EH), Corliss Hendrickson(CH) and Arby Linder (AL).

Others: Randy & Justin Thompson, and Jim Kleinhans.

The Board established meeting dates on February 17, March 24 and April 28, 2005.

AL made the motion to approve the meeting minutes from the Sep. 16, 2004 meeting.

LW Second. Motion carried.

JL explained the Board of Adjustment authority and meeting procedures. Asked if the public hearing was published.

Jim Kleinhans (JK) read the public hearing notice and verified notification dates.

Discuss/take action to request a setback variance from the required 75 feet to 66 feet to allow for a pole shed on property owned by Randy & Julie Thompson, described as prt of lots 3-4-5-6-7-8 Blk 7 Original Plat, Vil of Diamond Bluff, ly south of RR R/W located in the NW ¼ of the SE ¼ Sec. 13 T25N R19W, Town of Diamond Bluff.

JL Asked Mr. Thompson to come forward to address the board with his request. Randy Thompson (RT) was sworn in. Stated staff provided a drawing and report of this proposal.

RT Is requesting this variance to be able to construct a pole shed even with the existing garage on his property. The pole shed could only be 30 feet wide without a variance.

CH Is it possible to build a 30 foot wide building?

RT I have plans for a 40 foot wide shed.

CH Is there room for a 35 foot shed?

JK NO, the 40 foot shed requires a 9 foot variance.

JL What is the use of the shed?

RT I would use this building for tractors that I have stored around in different locations at this time.

JL There are standards to be met for us to grant a variance. They include unnecessary hardship, unique property limitations and protection of the public interest.

RT Can I ask what public interest concerns would be?

JL It is hard to define. The next person that comes before this board may see a precedence established. We can grant a variance when we have good grounds to defend our decisions. As far as hardship is concerned, let's say you had 5 children with only 1 bedroom, you may have a hardship if we didn't grant a variance for a building expansion.

CH The only thing I question is if he came out further there is a triangle, the streets and the railroad tracks come together at a angle. This building would not obstruct a view and would not hurt other property.

JK Staff tried to average the setbacks on this property from the adjoining parcel that has a residence closer to the road than the standard. That procedure did not provide relief for this parcel.

CH This is a worthless piece of property up against the railroad tracks.

LW The parcel includes a vacated street and lots on Block 6.

EH The report stated the maximum impervious area in the RR-20 district is not an issue. It is a unique piece of property considering what you can do with the remaining open ground on the parcel.

AL His garage is there now. We wouldn't put this out from the garage as it wouldn't stick out further than the existing building. This was approved by the town.

LW of the three variance standards, 2 are not a problem. The public interest and the unique property are okay. Considering hardship which is not easy to meet the definition of hardship.

JL I do not think we do. There are alternatives. Reduce the size of the proposed building.

CH You have to pay property tax on property you can't use.

LW He is already living there.

CH The building would not obstruct anyone's view.

JL The public interest would be served and the unique property limitation we are in agreement with.

LW The parcel is an industrial type with the railroad and the state highway. What is the building height?

RT 10 or 12 feet. The clear span for the high door.

JK Delivered his staff report.

CH You can't build a house due to the railroad tracks.

JK They cannot build another house due to the fact there is only 1.45 acres. There is an existing home and the property is not large enough to subdivide due to density restrictions in the RR-20 district.

LW He has use of the property with the existing home and garage.

CH He would make more use of the property with the new building.

JL Arby do you have any thing more to add?

EH You never have 100 percent use of your land.

Justin Thompson (JT) was sworn in. The best case for the hardship is I have a boat that is stored at my grandparents. Other things are stored are my grandparents in Bay City. It would be nice to have a reasonable size shed to store items we own at home and have room to work on equipment in the winter. We have quite a bit of stuff.

RT We held off buying more as we ran out of room.

JL This sounds like self imposed hardship.

LW It could be a convenience.

RT I just bought this piece of land when it was dropped from the tax rolls in 97.

AL I think we want to consider this as one contiguous parcel.

JK The property is a single parcel that is not large enough to split based on the zoning density restrictions in the Rural Residential-20 District.

LW That is why I wanted to make a distinction if there is one contiguous parcel.

EH The whole parcel must be considered. If a parcel as a whole but not necessarily each portion of a parcel provides some reasonable use for it's owners, then the unnecessary hardship test is not met and a variance cannot be granted.

JL Can we make a motion?

AL Motion to reject this request because we cannot come up with the hardship.

JL Motion was made that the request be denied because the standards have not been met. Do we have a second?

EH Second the motion.

JL All in favor signify by saying aye: LW, EH and AL Against: CH

EH motion to adjourn at 7:44 P.M. LW Second. Motion carried.

Minutes by Jim Kleinhans

March 24, 2005

## **BOARD OF ADJUSTMENT MEETING**

Lee Wright (LW) called the meeting to order at 7:07 P.M.

Members attending – Lee Wright (LW), Ed Hanson (EH), Corliss Hendrickson (CH)

Others Present: Jim Kleinhans & James Kubiak

First item on the agenda is approval of the meeting minutes from 1-6-05.

Ed Hanson (EH) made a motion to approve the minutes as written from the January 6, 2005 meeting. The motion was second by Corliss Hendrickson (CH). Motion carried.

LW The next meeting date is April 28. Future meeting dates will be on May 19, June 23, and July 14<sup>th</sup>. Tonight we have an after-the-fact variance request for a pole shed in Section 1 in the Town of Trimble by James and Lois Kubiak. Was the public hearing noticed in the paper and could you read that for the record?

Jim Kleinhans (JK) read the public hearing notice and verified notification dates.

LW Provided a brief background of the board plus rules for the meeting this evening. There is a recording being made of the meeting and we appreciate all in attendance to sign in the attendance sheet. All witnesses shall be sworn in. Lee asked Mr. Kubiak to join them at the table and swore him under oath.

James Kubiak (JK) My name is James Kubiak and my present address is W7510 State Hwy 65. I am renting out the residence at the site under consideration until May 1, 2005 at which time I plan to move in.

LW Please provide the board with some information concerning your request.

JK The pole shed was built in 2000. At that time we didn't own the adjoining property as we do today. The sanitary drainfield is located north of the house on this lot. I wanted to have a decent

turn around in front of the shed which is why the shed was located where it is. I was my own contractor along with some help from the folks who erect commercial pole sheds. I measured repeatedly the 110 feet from the state highway centerline. Jim K. brought this discrepancy to my attention. This was not intentional on our part to violate the zoning code. My responsibility was placement of the stakes. The hardship is if we have to comply, I would need to slice off a 2 foot portion of the building along the east side to angle that slice 10 feet down the side. I want to have my office in that building

for the company I work for. Moving the building is out of the question as it is set in concrete. The building wouldn't be the same. I intend to utilize the agriculture land behind the building site as long as possible. As far as the unique condition, there are very few parcels with an arc in the road along such a thin lot.

CH Do you own the property here? (Pointing to the survey map)

JK We assumed the fence line was the property line. We measured from the road, but not the arc in the road. There are buildings located closer to the road in the same speed zone. The shape of the lot is unique. The conditions were not intentionally created. With respect to the public interest, the neighbors were contacted with the exception of 2 who are out of state. Mr. Kubiak handed a signed petition to the board with neighborhood support for the present location if approved by the Board. I am a stranger to you so I asked my banker to provide a letter of character. A letter was also handed to the Board.

LW Any more questions for Mr. Kubiak?

EH Do you have a sanitary system?

Jim Kubiak (JK) The building requires a mound system. Our plumber jumped the gun on the installation. When we move in to our home we will ask for the office.

CH Will you be living in this building?

JK I will be living in the ramble dwelling located next to the pole shed. The house is small without enough room for an office.

EH There is a septic system for the house?

JK Yes, that is between the pole shed and the house. We intended to move to Beldenville in 1990, but we couldn't sell a commercial building in downtown Antigo. That building is sold now.

CH Did you obtain bids to move the shed?

JK The area inside the shed is on concrete. Some parts are finished off.

LW The building was built when?

JK The building was built in 2000.

Jim K I wrote a letter to Mr. Kubiak after our department was advised the setback might not be adequate. If a variance as approved, the variance would be relaxing the centerline and right-of-way setback standards.

JK When Mr. Stencil built his house he kept 1.6 acres and sold the remaining land to Mr. Langer.

EH Would 750<sup>th</sup> Street be the limit of Beldenville?

JK We don't have a village limit because Beldenville is unincorporated.

LW Are there any other questions for Mr. Kubiak?

CH You do not have an estimate to move the building?

JK Estimating time and material would be the way I suppose.

CH What would have to be removed?

JK A slice of building 2 feet wide and 10 feet long along the southwest side of the building. It is not a large building we are discussing here and it would make for a strange shaped building.

EH We just had a request in Diamond Bluff. You are very close to county standards. There are two measurements to the right-of-way for the center line.

CH You surveyed this building site yourself?

JK I was firmly in belief that I was outside the setback. The proposed distance of 120 feet according to the plot plan put us into Mr. Langer's fence. The center of the building is 114 feet to the centerline and the angle of the road did not work out in our favor. I can appreciate your position representing the county. The south side of the building is somewhere around 116 feet from centerline. Our house built in 1970 is 111 feet from the centerline.

LW The right-of-way changes from 40 ft. to 60 ft. on this parcel which complicates this.

EH That makes a difference.

LW Could we hear from staff at this time?

Jim K The building was permitted in 2000 on a 1.68 acre parcel for personal storage. A plumber set a tank and delivered mound sand for this building, but we could not issue a sanitary permit or a home business permit for several reasons. The property has a unique limitation based on the lot width, the curve of the road and the varying right-of-way along a state highway. This property is on the north end of the unincorporated community of Beldenville with reduced speed limits and adjoining property with a building located within the standard setback. However, that building was over 200 feet from this structure to allow staff to establish a reduced setback based upon averaging. Averaging with his son's home would have provided a setback of 58 feet from the centerline. So I believe two variance standards are met. The Board has to consider the hardship issue and in light of the recent Supreme Court case decisions.

LW Wisconsin Supreme Court distinguished between use variances and area variances. They define the meaning of the unnecessary hardship to consider if the property owner would be unreasonably restricted on the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. So that is what we have to follow while considering hardship. That is state law. So are there any other questions?

EH This arc in the road is 108 feet from the building?

JK Yes, from the side of the building.

EH Then the next one is 114 and 116 feet from the centerline.

LW Is the 108 foot measurement on the southwest corner of the building? We are looking at two feet along the southwest side of the building.

EH The average setback of the building is about 112 feet based on the curvature of the road.

CH The majority of the building is much further back.

LW Unless there are further comments or questions I would entertain a motion for the petition that is before us.

CH There is such a long space that meets the setback that we should allow him to leave it. There is more than half of the building that is further away.

LW There is a motion of the floor.

EH I would second it because the average of the building setback exceeds the necessary requirement.

LW Motion has been made and seconded to leave the structure as is. All those in favor signify by saying Aye.

Aye. Unanimous

EH I would want that part of the record that the average setback exceeds the requirement.

Jim K. I would suggest we come up with a specific number for the setback variance in the event Mr. Kubiak wants additional construction on this property in the future.

EH The average setback is 112 feet.

LW Any new construction will have to be further back.

Jim K. We should work this so it doesn't exceed the minimum.

EH I seconded the motion based on the average setback of the building.

Jim K So if we stated the setback variance is for 108 feet it covers the portion of the building that encroaches. He doesn't need less because the building is already there. I understand this after-the-fact business is generally more difficult. I just want it to be real clear.

LW We want to establish this so it does not set a precedence of just arbitrarily reducing the setback to 108 feet. You are averaging the portion of the building that is in the setback against the portion that is outside the setback requirement.

EH The majority of the building meets and exceeds the setback.

Jim K I think what you are considering is the minimum amount of relief, which is appropriate while deciding on a variance.

EH We are considering 2 feet. How many times has someone asked for 15 or 20 feet.

LW Isn't it correct that if we took a straight line off the building we would meet the setback until we hit the arc in the road. Normally we are dealing with straight line roads. We have to work within the confines of the law and within our authority. If we exceed our authority, someone could come along and overturn this. The motion has been made and passed so your structure will get the variance.

JK I want to thank you all for your consideration.

LW Is there anything else on our agenda this evening?

Jim K No. I would like to mention you will be considering a conditional use for a land division in the St Croix Riverway on our April 28 meeting.

LW I will entertain a motion to adjourn.

EH I so move.

CH Second

LW Meeting is adjourned at 8:12 P.M.

Minutes by Jim Kleinhans

**MINUTES—Pierce County Board of Adjustment Meeting  
July 21, 2005**

**Present:** Jack Leo, Lee Wright, Ed Hanson, Corliss Hendrickson, and Arby Linder.

**Others present:** Andy Pichotta, Emily Lund, Robert & Joyce Rosene, Paul Mosby, and Gary & Joan Kummer

**Chairperson Jack Leo** called the Board of Adjustment meeting to order at 7:00 p.m. in the Pierce County Boardroom, Ellsworth, Wisconsin. Jack Leo (JL) started the Board of Adjustment meeting with the Pledge of Allegiance.

**BOA Background:** Board introduced themselves. Jack Leo stated that the Board of Adjustment is a 5-member board appointed by the Pierce County Board of Supervisors. Anyone wishing to speak this evening can be and will be heard by first being sworn in. Then give your name and address. Only one person speaking at a time. Each speaker will be provided the opportunity for rebuttal prior to a decision being rendered. Our business tonight is for a discuss/take action on an application to request a variance from the required 100 feet to 80 feet to allow a garage on property owned by Robert and Joyce Rosene located in Government Lot 4, in the N ½ of the NE ¼, Section 23, T 27N, R20W, Lot 6 of Assessor's Plat of Gordon Ahlgren property in the Town of Clifton (W12843 720<sup>th</sup> Ave), Pierce County, WI. Jack Leo then asked the County if the public hearing notice has been properly posted and noted.

**Public Hearing Notice:** Andy Pichotta (AP) said Yes, it has. It was published on July 6<sup>th</sup> and July 13<sup>th</sup> of this year. He also read the public hearing notice.

**Approve Minutes:** Jack Leo stated that before the hearing continues, all the board had a chance to read the minutes to the April 28, 2005 meeting. Are there any additions or corrections to those minutes? Corliss Hendrickson made the motion to approve as written and Ed Hanson second the motion. All approved. Motion Carried.

**Next meeting dates:** August 18, September 15, October 20, all 2005 CH and Lee Wright will not make it to the September 2005 meeting.

**Open Discussion:** Robert Rosene (RR) addressed the Board and was sworn in by JL. RR identified that they want to build a garage 80 feet from the bluff and provided maps to discuss the project. He indicated that there were many trees on the hillside for screening. He described his request for the variance is due to the anticipated road to be built east of his property in the future. The 80-ft setback would allow the garage to be setback enough from the future north-south road.

Corliss Hendrickson (CH) asked for clarification for why the road was not yet laid out.

RR said that CH was correct. The road will be created when the owners plan to subdivide the land to the east of the proposed garage. RR discussed the plot plan that identified where the road could be built. He also stated the property lines on the County submitted map were not accurate. He stated the copy of the Assessor's Plat Map was the most accurate and is recorded. RR stated that it seems logical to plan ahead for a future road to the east of his property and he wants to plan ahead for the setbacks from the proposed road.

Lee Wright (LW) summarized RR's request by stating that he is planning to have an adequate setback between the new proposed garage construction and to the future proposed road.

Ed Hanson (EH) asked if the road has to be in that situation, why the future proposed road could be moved farther East. If this road is not currently laid out, why do we have to worry about the setback?

LW stated that we are discussing the setback for the potential of long-term development.

RR said another reason for his variance request is because the DNR already passed changes to NR 118 to allow a bluffline setback to be 40 feet and he was only asking it to be reduced to 80 feet.

LW stated that he wanted to address the issue regarding NR 118 that Pierce County is yet to adopt. LW asked if he was correct in assuming Pierce County will adopt NR 118 in the near future.

AP stated Yes. The revision is underway. There was an effort that Pierce, Polk, and St. Croix County all adopt similar, if not, identical language. Pierce and Polk County have been waiting for St. Croix County to develop and approve new language. A few weeks ago that was completed, so now we are in the process to customize it to Pierce County. Adoption should be within the next few months.

LW asked AP if the new Pierce County St. Croix Riverway Ordinance would conform to the new NR 118 and adopted within the next 4 to 6 months.

AP stated Yes. In 4 to 6 months, a variance would not be needed because he could build up to 40 feet from the bluffline. He would have to adhere to a number of things including, not visible above the bluffline, not within the slope preservation zone, visually inconspicuous, non-reflective glass, and earth-tone colors.

LW stated that RR was screened by the existing trees. He asked RR if they will be visually inconspicuous as possible.

RR stated the garage would be invisible from the river.

LW stated that if the BOA would grant a variance, it would be to speed up the timetable of this transition to adoption of NR 118.

AP stated that was true.

LW stated that since the setback at that time would only be 40 feet, RR would be well within that setback.

**Public Comment: Jack Leo (JL)** introduced a letter that Michael and Deborah Manteufel wrote on July 11, 2005. The Manteufel's own a cabin south of RR on the St. Croix River. JL read the letter that stated the Manteufel's have no objections to granting the Rosene's the variance. JL then opened the floor to the public comment period.

JL swore in Gary Kummer. Mr. Kummer stated that his address is W12825 720<sup>th</sup> Avenue. He is the neighbor south of the Rosene's and south of Debbie and Mike Manteufel. Kummer stated there was confusion about the road. He went on saying there is no road and there is nothing saying there is going to be a road. If the farmer decides not to develop, there is never going to be a road. The local property owners would like to see a road created out from their property, but that remains to be seen. Mr. Kummer has no objection to the variance, as the garage will not be visible from the St. Croix River. The road should not be discussed because there is no road and it should not be a factor.

JL swore in Joan Kummer. Mrs. Kummer stated that his address is W12825 720<sup>th</sup> Avenue. She stated that she is in support of the variance. The property where he is going to build is not visible from the river, so she doesn't see why he shouldn't be allowed to build in the reduced setback since NR 118 allows 40 feet and RR is only asking for 80 feet. The variance should be granted to him.

JL swore in Paul Mosby. Mr. Mosby stated that his address is W12821 720<sup>th</sup> Avenue. He said he is a neighbor to the south of the Rosene's. He is in complete support of what RR is doing. Mr. Mosby addressed CH by stating that if he made a site visit that the matter regarding the road would be resolved. He went on to describe that the newly revised NR 118 was adopted by the DNR on November 1, 2004. He also stated St. Croix County revised and adopted their updated St. Croix County Riverway Ordinance so it is now in compliance with the new NR 118. Mr.

Mosby stated that the Pierce County Riverway Ordinance is planned to be similar to what St. Croix County adopted. A new item in the ordinance involves mitigation of screening structures to the river. He stated that the mitigation is based on leaf-on conditions. He stated that he believes that one would not even see RR's structure in leaf-off conditions, as there are so many trees on the site.

**Discussion:** JL said that when he read the application, he wondered why he has to visit the site when Pierce County is going to adopt new updates to their ordinance. And he wondered why RR spent the money on the application. JL stated he went out to the site anyway. JL emphasized that the application stated that "IF a road is put in" or "is PROPOSED," then the proposed garage would legally become non-conforming. JL described that the BOA is not the Planning Commission and cannot base their judgement on WHAT IF something happens. JL went on to say that he understands that IF the County Board of Supervisors adopts changes that reflect the DNR newly revised NR 118 then the garage would be in compliance. But if they do, it is a mute point.

RR stated that he wanted to spend \$500.00 in this application because he wanted to build the garage this summer. RR stated he doesn't want to wait another year.

JL said he understands RR. JL stated that the Board couldn't make decisions on WHAT IF something happens. They can only make decisions on what the facts are today. The facts today include the setbacks being 100 feet from the bluffline. He said the road is immaterial. JL offered rebuttals.

RR asked if the Board can offer the variance based on that other County's and the DNR have made changes to the ordinances.

JL said that the Board has to consider the following standards for granting a variance: Existence of an unnecessary hardship; Presence of a unique condition/property limitations; Conditions are not self-created; and Protection of the public interests.

RR said that the setback is a hardship to him and that he is only asking for a variance of a difference of 20 feet. He said that he wished that Pierce County had passed their ordinance updates faster as DNR and St. Croix County did. He doesn't see how the ordinance updates wouldn't be passed. RR was wondering why he should wait another year because Pierce County hasn't completed their work. RR said that if he doesn't get his variance it is unfortunate and not fair. He said that he had very good cooperation from the staff at Pierce County. RR stated that he needs the variance very badly.

EH said that he agrees with JL. EH explained that the Board cannot grant a variance on

something that may or may not happen in the future. EH said that RR could build the garage today if he followed today's standards by moving the garage so it is 100 feet from the bluffline. EH stated that a hardship is not based on something that may or may not happen in the future. EH said that sometimes government rules don't change verbatim. EH said that he doesn't see a big problem based on the 80 feet, but he said he has a problem with the logic basing it on something that may happen in the future.

RR said that his line of logic says that he has the right to build the garage 40 feet from the bluffline in a year from now. But since he wants to build it now, he needs to get a variance. The reason RR located the garage where he did was in anticipation that a north-south road will be built on the neighbor's property in the future. He said he would rather have his garage setback properly not to interfere with road. RR stated he is only supporting long-term planning for the future of the County.

LW said that hardship is hard to meet and an example is based on how you are not able to use your land. LW said you have a cabin so it is hard to meet the case for hardship. But, LW said that from the NR 118 testimony, the NR 118 standards are going to be adopted by our County. For some reason different branches of government work at the same pace and there are some other thoughts interjected from time to time. Pierce County is lagging behind other counties, but LW doesn't find fault with Pierce County. LW said that he would vote in favor of the variance based on the fact that he heard testimony tonight that the County will be adopting changes reflected in NR 118. If it weren't for NR 118, LW said there would be no way he could see the Board accepting the variance.

Arby Linder (AL) stated that he is the chairperson on the Conservation Congress Committee. He said that he was involved with the DNR and St. Croix Riverway throughout the review of NR 118. The NR 118 is now adopted. AL said that he believes Pierce County is waiting to make sure that they are creating a similar ordinance as St. Croix County.

CH asked AP if that is how he read it.

AP said that Pierce County could be more restrictive than the DNR's NR 118, but he was instructed not to be more restrictive. AP said he was directed to have language that is consistent with St. Croix County Ordinance and NR 118. AP said that he was told not to take anything out or put anything in. To the best of AP's knowledge, he said that the version adopted by Pierce County would have the ability to build within 40 feet of the bluffline if the mitigation stipulations are met.

CH said that the Board has to justify their decisions and follow the current law.

JL said that he heard both sides of the issue and that he could make the variance conditional. He would bring out his idea and then entertain comments from the Board. JL said by granting the variance, it would be conditional upon Pierce County adopting NR 118. If Pierce County doesn't adopt NR 118, then the building comes down. JL said that RR and some board members seem confident that NR 118 is going to be adopted, but JL said that stranger things have happened. JL reiterated that they are not the Plan Commission and they cannot make decisions on what might happen.

Mr. Mosby asked that JL restate the condition.

JL said that if RR is granted a variance that is would be based upon Pierce County adopting the revised NR 118 that would revise Pierce County Riverway Ordinance.

Mr. Mosby stated if Pierce County doesn't adopt the revised NR 118, then the DNR would statutorily force NR 118 upon the County.

JL stated that until that happens we can only follow the ordinance that we have today.

EH said that he heard AP state that the County could have greater restrictions than the NR 118's rules. EH doesn't believe hardship is met based on that RR wants to build it today rather than next year. EH said that that reason is not a hardship that the Board can justify. EH said he supports the condition that if the County doesn't adopt the revised NR 118 then RR has to remove the building.

AL asked if he was given a deadline to have the revised NR 118 adopted.

AP stated that he was advised by his committee to wait until St. Croix County developed language. Then AP said that Pierce County was going to utilize their language. The format that St. Croix County gave us requires a lot of revision to make it appropriate to Pierce County. AP said that he had not had the opportunity to get it polished to bring it to the zoning committee. It will be about 3 months before it is adopted. AP said again that he was directed by the Land Management Committee to make our revised ordinance consistent with NR 118. AP said that he would expect that the 40-foot bluffline setback would be in the Pierce County Riverway Ordinance. The DNR is going to have to approve Pierce County revised Riverway Ordinance.

AL said that he thought there was a deadline for the County to have the NR 118 changes adopted.

AP said that the DNR identified a date where Pierce County was supposed to begin working on the ordinance changes.

AL said that he supports the variance because NR 118 is going to become new Pierce County law.

JL asked for the staff report.

**Staff Report: Emily Lund (EL)** explained that Mr. & Mrs. Rosene are requesting a variance from the 100-foot setback to the bluffline to allow a 38-ft by 26-ft garage to be constructed 80 feet from the bluffline. The Rosene's state their reason for seeking a variance to be: "The 100' setback will not allow the deduction of a half street R/W of 30' when the adjacent land is developed. Requested 80' setback provides a good screen of trees that will keep the desired construction not visible from the St. Croix River." They plan to build a 2-story garage with water and sewer. Mr. & Mrs. Rosene could build 20-feet closer to their East lot line, but have indicated that a road is proposed to be constructed to the East of his lot line. If Mr. Rosene did build the garage closer to the East lot line and a road is constructed, his garage would then become a nonconforming structure. It should be noted that NR 118, the administrative code that establishes regulations for the Lower St. Croix National Scenic Riverway, was revised effective November 1, 2004. Pierce County has yet to revise their St. Croix Riverway Ordinance to reflect these revisions. The "new" NR 118 allows structures to be permitted a minimum of 40 feet from the bluffline as long as the four performance standards EL listed. Once Pierce County revises their ordinance to be consistent with the new NR 118 a variance would not be required to grant Mr. Rosene's request. A rewrite of Pierce County's St. Croix Riverway Ordinance is expected to be complete within the next few months. The property is zoned RR-20. Attached plot plans show the property location, existing cabin, boundaries, lot and building lot dimensions, 1-foot contour elevations, two bluff line locations, utility and roadway easements. The proposed garage would be located approximately 332-feet to the East of the primary residence, 80-feet from the second bluff line, and 50-feet from the East property line. EL read existing Pierce County Code § 240-78, 239-14, 239-33, and 239-34. EL also read the newly revised NR 118.09 (b).

**Staff recommendation:** Staff recommends the Board of Adjustment consider the criteria listed above to determine if the granting of a variance to the 100-foot bluffline setback is appropriate. If the variance is granted, the following conditions are recommended:

1. The structure shall not protrude above the bluffline as viewed from at or near the mid-line of the river or from 250 feet riverward from the shoreline, whichever is less.
2. The structure shall utilize earth tone building materials that are of a non reflective nature, except that windows may be made of ordinary window glass or non-reflective glass, but not be made of glass designed to reflect more light than ordinary window glass.
3. The structure shall be visually inconspicuous.
4. A County sanitary and Land Use Permit shall be secured prior to construction.

CH asked if this garage would have two stories.

RR said that one end will be one story and the other end will have a storage area and a workshop below.

EH asked if staff checked to make sure this building is 200 feet beyond the ordinary high watermark.

EL said yes. It is about 332 feet from the existing structure and the ordinary high water mark farther away.

LW said that this case is frustrating. LW asked that if we could make a decision to accept this based on the NR 118 testimony without setting precedence.

JL said if you take NR 118 off the table.

EH asked AL how many regulations he saw up and down the St. Croix River on both sides where the ordinances are all the same.

AL said that they usually are not the same on everything but are close.

EH said that this case doesn't meet the hardship case.

JL said the point is that NR 118 is not yet part of Pierce County regulation. Will it be? Probably. JL said that if he were to accept the motion, how would he address the hardship?

LW said based on the testimony regarding NR 118 and it is going to be adopted within three months.

JL said that there are differing opinions on this issue. Based on the fact that they don't have a new ordinance passed by the County Board and having to fill out why the variance is or is not issued on the criteria that we have to follow, he'd like to make a motion.

**Motion to deny the variance** for Mr. & Mrs. Rosene was made by JL. CH seconded the motion.

### **Final Board Discussion:**

EH said that he agrees to deny the variance because the reason for a hardship is not met.

JL asked if anyone else wanted to discuss the motion. No one spoke up. JL requested a voice

vote. JL addressed CH to begin and asked him if he was in favor of the variance.

CH said, "No."

EH said, "No."

JL said, "No."

LW said, "Yes, grant the variance."

AL said, "Yes, grant the variance."

**Adjourn:** Motion to adjourn the meeting at 8:20 p.m. made by CH. JL second the motion.

Minutes submitted by EL.