

PIERCE COUNTY, WISCONSIN
DEPARTMENT OF LAND MANAGEMENT & RECORDS
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MINUTES-Pierce County Board of Adjustment Meeting, Thursday, May 26, 2022

Present: (Board of Adjustment Committee) Lee Wright, Ross Christopherson, Barry Barringer, Walter Betzel and (Staff) Brad Roy, Adam Adank & Anna Anderson

Chairperson Lee Wright called the Board of Adjustment meeting to order on Thursday, May 26, 2022 at 7:00 pm in the Pierce County Courthouse Annex/ Lower Level – County Board Room, in Ellsworth, Wisconsin.

Future meeting dates are set for June 23, July 28, and August 25, 2022.

Accept Future Meeting Dates: **Ross Christopherson made a motion to accept dates. Walter Betzel seconded. All in favor. Motion Carried.**

Approve Minutes: **Ross Christopherson made a motion to approve the April 28, 2022 BOA minutes. Walter Betzel seconded. All in favor. Motion Carried.**

Chairperson stated that we are here this evening to consider and take-action on two different requests, the first one is for a conditional use permit and the second one is for an area variance.

Chairperson Wright read the role of the Board.

Chairperson Wright swore in Adam Adank

Chairperson Wright swore in Brad Roy

Adam read the notice of Public Hearing: **Public Hearing is hereby given to all persons in Pierce County, Wisconsin, that a public hearing will be held before the Board of Adjustment on the 26th day of May, 2022 at 7:00 p.m. in the County Board Room, Pierce County Courthouse, Ellsworth, Wisconsin, to consider and take action on a request for a conditional use permit, pursuant to Chapter §239-8C (4) & 239-10L of the Pierce County Code, for a Stairway, on property zoned General Rural Flexible-8 in the St. Croix Riverway District, by Willow River Company, Erik Hokeness (agent) for owners Karissa & Derek Turtle on property described as Lot 3, Certified Survey Map (CSM) V6, P80, Government Lot 2 of Section 26, T27N, R20W, Town of Clifton in Pierce County, WI.**

Chairperson Wright swore in Erik Hokeness.

Project Presentation – Erik Hokeness: The project is to put in some stairs at a partial bluff line for access to the river. There will be aluminum stairs and run and maybe 60 steps. Lee asked if there will be a dock or landing? Hokeness stated there probably will be but I'm not involved with that at all. Lee stated ok. Lee asked does it go down to like a flat surface? Hokeness stated it goes close to it. It's very rocky down there but we will be above the current elevation right now. I think the elevation was 683 or something that we were shooting for. It will be down to the shoreline and as the water fluctuates we will have to have a ramp or something eventually.

Approved

Questions of Applicant – Board Members: Barry Barringer asked you will be coming down to what we consider the ordinary high-water mark with your stairway? Hokeness stated our goal is to be just above that. I think its at 680. Barringer stated that answers my question. Lee asked if board members had any questions for staff. Mr. Christopherson stated he had a question regarding the landings. There will be an approach landing where it starts and then it steps and then a mid-landing and lower landing. Where are the plans as this Willow River contractor mentioned that he has nothing to do with the landing. So, who is doing the landings? Roy stated I believe he stated that he would have nothing to do with the dock or pier but for the stair project they are in charge of the 3 landings and the sizes of them. Going from the stairs to the water, that would be part of a dock project, which the DNR permits, we are not involved in. Ross stated understood. Walter Betzel asked on his proposed use he is proposing metal stairs. Hokeness stated yes, that is correct. Betzel stated that the Pierce County code §239-10 (7) stairways should be constructed of unfinished wood or stone. So, would he have to change this? Wright asked is staff wished to comment on that. Roy stated as it states stairways shall be constructed of unfinished wood or stone or shall be painted or stained with earth tone colors. Walter stated so it has to be wood. Roy stated no, or it can be another material stained to earth tone colors. Walter stated I thought it meant to the wood or stone could be painted or stained. Roy stated no it could be metal, even the lifts that we permit in the riverway have that same language in it and its just to not have it stand out. If it is a different material other than stone or wood that it would just be an earth tone color to make it less visible from the river.

Chairperson Lee Wright asked if the Turtle's wanted to make any comments. Karissa Turtle stated she is listening in and has no comments at this time.

Chairperson Lee Wright opened it up for public comment. No comments. Wright closed the public hearing.

Staff Report – Adam Adank: The property has a residence which was permitted in 2018. Currently there is no access to the river due to the terrain of the lot. The river access is very steep, and the proposed stairway and landings will provide safer access from the residence to the St. Croix River. The applicants plan to install metal stairs from the 725' contour down to the river. The metal will be powder coated an earth tone color and all installation activities will be done by hand due to limited access. Issues pertaining to the request: The legal description is in the SW ¼ of the NW ¼, of Section 26, T27N, R20W in the Town of Clifton. This parcel is zoned Rural Residential-12. The street address is N7167 1280th St. The application was filed on 4-21-2022. The request pertains to Pierce County Code Chapter 242 Shoreland Zoning, Chapter 238 Floodplain Zoning, and Chapter 239 St. Croix Riverway Zoning. The purpose of the St. Croix Riverway Code is stated in Pierce County Code Chapter 239-1 C. as, Purpose. The purpose of this chapter is to promote the public health, safety, and general welfare as described below in this report. Pierce County Code § 239-8C (4) lists Stairways as a Conditionally Permitted Use subject to the standards of §239-9 and 239-10 and approved by the Board of Adjustment. PCC §239-10. Performance standards enumerated states, "A. Structure color. (1) All new, expanded, or reconstructed structures shall be earth tone in color." §239-10 L. Stairways. Stairways are allowed by conditional use permit if all of the following standards are met: (1) The stairway is required to provide pedestrian access to the river because of steep, rocky, unstable or wet site conditions. (2) The tread width of the stairway may not exceed 48 inches. (3) Landings are located at a vertical interval of not less than 20 feet and shall not exceed 40 square feet in area. (4) Handrails may be permitted in conjunction with stairways and shall be painted or stained the same color as the stairways. (5) Canopies or roofs are not allowed on stairways. (6) Stairways, handrails and landings shall be anchored and supported above grade with pilings or footings. (7) Stairways shall be constructed of unfinished wood or stone or shall be painted or stained with earth tone colors. (8) Stairways shall be visually inconspicuous and shall be located in the most visually inconspicuous portion of the lot. (9) Native vegetation plantings shall be used to form a vegetative canopy to screen the stairway from the river. (10) Vegetation shall effectively screen stairways from the river within five years. (11) Existing vegetation may be removed within one foot of either side of the stairway route and up to eight feet above the stairway floor. (12) Only one stairway may be permitted on a lot that abuts the river. A plan shall be submitted to the Zoning Administrator and

Approved

certified by a registered professional engineer or architect showing that the stairway components are securely anchored to prevent them from shifting and from causing accelerated erosion on. The property boundary, topographic survey, landing, connections, and foundation details were completed by Willow River Company and Kimley-Horn design consultants. The slope of the project area is greater than 12% and designated as a slope preservation zone. ENGINEERED STAIRWAY FOUNDATION DETAILS: (1) Foundation shall bear a minimum of 48" below grade. If bedrock is encountered within this depth, it shall be permitted to bear the pier directly on the bedrock. The bedrock shall be cleaned of all earth prior to foundation placement. Pier foundation is not necessary if the stair posts can be founded directly on sound bedrock directly at finished grade. (2) All concrete shall be designed and constructed in accordance with IBC Chapter 19 and ACI 301, latest code adopted edition. Cast-in-place concrete shall have a minimum compressive strength of 4000 PSI. (3) All concrete reinforcing steel shall be ASTM A615 grade 60 deformed bars. (4) All exposed concrete corners shall be chamfered ¼". (5) Foundations shall be spaced at 9'-0" maximum along length of stairs. LANDING: The elevation of the top landing is proposed to start at the 725' contour. The top landing will be 4' x 4' (16 sq. ft. total). There will be approximately 27.16 feet of steps between the top landing and the middle landing. The middle landing will be 4 ft. x 8 ft (32 sq. ft. total). The bottom portion of the stairway will be 39.64 ft in length. The bottom landing will also be 4' x 4' (16 sq. ft. total) and will end at an elevation between 683-685 ft, which is above the Ordinary High-Water Mark of 680 feet. The stairway is within the floodway at 691 ft. EROSION CONTROL & SITE PREPARATION: No native deciduous trees like oak or maple to be removed and no trees over 6" in diameter are proposed to be removed. Small trees, brush, and buckthorn will be removed to prepare area for metal stairs. Debris to be left onsite and placed along path for added trail support. Grass seed and straw blanket will be applied to areas disturbed. The applicants also plan to plant (6) #2 grey dogwoods along the stairs. Attached photos demonstrate that existing screening for the stairway appears to be adequate and visually inconspicuous. The project area is within a Slope Preservation Zone. Pierce County Code §239-10 C. (1) states, "No structures, except piers, wharves, structural erosion control measures, stairways, and lifts may be placed in slope preservation zones." Please refer to attached photos taken where the location of the proposed stairway will begin on the land, location where the proposed stairway will end near the water, and midline of the St. Croix River with leaf-on conditions. Relevant definitions per Chapter §239-7B, which are provided here in this report. Pierce County Shoreland Zoning Code Ch. 242-23A (6) exempts a list of structures from the shoreland setback standard of 75 feet from the OHWM and exempts, "Walkways, stairways, or rail systems that are necessary to provide pedestrian access to the shoreline and are a maximum of 60-inches in width." The proposed stairway is designed for a 48-inch maximum width and complies with the shoreland regulation. Pierce County Floodplain Zoning Code Ch. 238-23B allows structures accessory to permanent open space use or functionally dependent on a waterfront location. One landing and several steps of the proposed stairway are between the Ordinary High Water Mark (OHWM, 680 ft) and the extent of the Floodway (691 ft). The plans appear to meet this code section requirement. The Town Board of Clifton recommended approval of this request on April 6, 2022 with no concerns or suggested conditions.

Recommendation: Staff recommends that the Board of Adjustment consider whether construction of the stairways, landings, landscape, and erosion control measures proposed in this application are consistent with the purpose and intent and the performance standards contained in the St. Croix Riverway Code. If determined to be consistent, staff recommends the BOA consider approval of the conditional use permit with the following conditions: (1) The landings and stairway shall be earth tone in color and shall comply with §239-10.A (1). (2) Applicant and contractor shall follow all design plans (stairways, landings, anchoring, landscape, and erosion control measures) as submitted by Willow River Company and Kimley-Horn. (3) Land Management Department staff shall be notified at the project completion to verify permit compliance. Project shall be started within 12 months of approval and completed within 24 months of approval. (4) Applicant shall ensure that the stairway is adequately screened within 5 years. (5) Stairway shall be located at least 25' from North and South property lines. If found to be contrary to the above, staff recommends the Board of Adjustment deny the request for a conditional use permit for the Stairway. Adank also wanted to note that Mike Wenzel with the DNR did review this application and the DNR did not oppose the request.

Wright stated that it is time for the Board of Adjustment have a discussion regarding this request. Mr. Christopherson stated that he did view the project, walked down there and looked at it, talked to our staff about the location and some other questions. I think it covers all our recommendations and points that are required to meet. I just had a question to make sure its 25' from the north line, it was kind of hard to see, but it seems pretty close to the north side, so make sure that the 25' distance is held. Adank stated Erik is aware of that and they know they have to be 25' from that property line, they may have to shift it just a little bit. The area that they had picked, they thought would impact the least number of trees,

Approved

but they are aware that if it doesn't meet the 25' setback they will have to shift it a few feet as is outlined in one of our conditions. Ross stated otherwise I thought it met all our conditions for approval. Wright asked for any other comment from board members. Barringer stated I made a visit before he came to the meeting so I guess if everything between the contractor and staff it looks like I would have no problems with the project.

Walter Betzel made a motion to approve it based on the fact that it does comply Pierce County Code §239-8 C 4, 239-9 and 239-10.

Chairperson Wright asked Mr. Adank if that addresses the conditions that you've listed. Mr. Roy stated if you want to put conditions on there. You could state with the staff recommended conditions or any other conditions you feel are necessary. Wright asked if Walter Betzel wished to amend his motion. Betzel amended the motion to include the recommended staff conditions, numbers 1 – 5.

Barry Barringer seconded. Lee Wright stated motion has been made and seconded. Wright asked if there were any discussions of the motion before us. No comments. All in favor. Motion is carried.

Chairperson Wright stated the next order of business is to contact the Land Management department to make sure all appropriate permits and documents are made out and signed so you can start your project. Wright asked if Mr. Hokeness had any other questions. Mr. Hokeness stated he will follow up with Adam or Brad to get the ball rolling.

Wright stated that concludes our first agenda item this evening.

Wright stated we are going to continue with the 2nd request this evening. The second request is to consider and take action on a request for a variance pursuant to chapter §240-27 A and 240-27 C of the Pierce County Code for a reduction to the required setback on a state and town road highway by Dylan Holes, agent for Paul K Hotchkiss, owner of property described as lot 16 CSM 15-80, in the NE ¼ of the SE ¼ of Section 3, T24N, R18W, Town of Trenton in Pierce County, WI.

Mr. Roy read the notice of public hearing: **Public notice is hereby given to all persons in Pierce County, Wisconsin, that a public hearing will be held before the Board of Adjustment on the 26th day of May, 2022 at 7:00 p.m. in the County Board Room, Pierce County Courthouse, Ellsworth, Wisconsin, to consider and take action on a request for a variance pursuant to Chapter §240-27A and §240-27C of the Pierce County Code, for a reduction to the required setback on a state and/or town highway, on property zoned Commercial, by Dylan Holes agent for Paul K. Hotchkiss, owner on property described as Lot 16 CSM 15-80, in the NE ¼ of the SE ¼ of Section 3, T24N, R18W, Town of Trenton in Pierce County, WI.**

Chairperson Lee Wright asked Mr. Holes if he was buying this property or have you bought this property? Dylan Holes stated that currently we have a signed purchase agreement with a set closing date here in the next couple weeks. Lee

Approved

asked if that was from Paul Hotchkiss and if he planned on building two storage structures. Mr. Holes stated that is correct.

Chairperson swore in Dylan Holes.

Chairperson Wright asked Holes what his plans were and why he feels he should be considered for a variance on this request.

Presentation of project – Dylan Holes: So, this particular parcel, it faces a variety of challenges. First off, it's a triangular shape, and we are encountering setbacks from both the highway and 810th and the southern portion of the property has surveyed burial mounds on it and then others that are unmapped and some that have been mapped previously back around the 1900 era. So, we are trying to focus these buildings up to the northern portion of the parcel to avoid any disruption to the burial mounds. With the setbacks there is just not any space left. Lee asked if the board members had any questions of Mr. Holes. Walter Betzel asked Mr. Holes, you are requesting a setback for that size of building, has any consideration been given to any smaller buildings that wouldn't require a setback? Holes stated he has looked at a variety of different configurations to make it work. We are having a difficult time with the width of the building and to get two buildings on there. The particular length of the building isn't the problem, it's the width that we are running into that the setbacks are kind of withholding. This particular plan is probably 1/3rd to 1/2 of the size as far as volume of cubic feet to the building size compared to some of the storage facilities in the nearby area. So, it's a relatively small build relatively speaking to the other two storage facilities in Hager City. Betzel asked if you didn't build the second building, then you would have room for the first building without the variance? Holes stated that there is a possibility that you could but in order to get it in there, you would have to shift it and then you would be running into some of the burial mounds that sit kind of on the northern portion of the site. If you look at the map here, it would be the last page of your packet, on the very northeastern portion, the white mounds that are there, as you start to reposition that building, there is a higher likelihood you are going to start to come into contact with some of those mounds. That's why we have them angled the way we do, is to stay away from those mounds as best we can. Mr. Christopherson stated he had a question in regards to these two, colored maps here. The first one which has the four blue circles in there, those are actually mapped sites, correct? Or what is the difference between the blue ones and the yellow ones? Holes stated so the legend on the map states the blue circles are potential unmapped mounds, those would have been unmapped. Theodore Lewis had surveyed these maps back in like 1890 or the early 1900's. This actual map that you're looking at is referred to lidar and what that is, is an airplane that cruises over this field, because this has been plowed for a couple hundred years and cultivated, and it is detecting slight elevation changes throughout the field and giving you potential mound locations. If you go to the last page, the only two catalogue mounds that have actually been excavated and surveyed off are the ones that are outlined in blue. The white ones that are this page are the ones that were mapped and surveyed by Theodore Lewis back in 1900. The page that you are referring to, the blue ones are potential unmapped mounds and then the yellow ones are there interpretations of the Theodore Lewis mounds. The Wisconsin Historical Society, the map that they base everything on is this map here. The other ones were given to me by an archeologist we've been in contact with that is going to do the monitoring for the project. As far as what the Wisconsin Historic Society goes by this is the map they provide to everybody. We just provided the other ones to give everybody a full idea on the broadest picture available to the scope of this project. Mr. Christopherson asked Brad Roy, they could put there building along 810th as long as they are off the setback from 810th north and south and be ok if they wanted to the same size building and not be around the marked cataloged mounds. That would be a permitted use without a variance. Mr. Roy stated the use is permitted, anything that meets our setbacks could be permitted. Now, the tricky thing is the burial sites, obviously the county does not have its own mapping of where the burial sites are. That is done by the Historical Society and they are going to regulate it. So, in essence we could permit a structure anywhere on this site that isn't on the two cataloged pieces. Christopherson stated then it would be up to the applicant to work with the Historical Society to see if they actually could be placed there, and has that been asked yet? Mr. Holes stated that that has been addressed and that is one of the avenues they explored. The Historical Society has pretty specific restrictions when you start getting into the burial mounds, in particular if human remains are discovered. You can excavate and you can move dirt around in them. In my opinion it's a little bit of an ethical issue to go in and dig

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around within those mounds, but you could technically take a bull dozer in there and go until you found a body. If there is a body found the project is going to stop. So, what they've told me is this Theodore Lewis that did the original mapping, his maps are pretty spot on, we have a rough 50' buffer from the absolute nearest point to any of these mounds and from what I've been advised from Amy at the WI Historical Society that although it's impossible to say for certain that it should be an adequate buffer zone for it and that his mapping has been on. So, there is burials in here and it's just a matter of whether or not anybody wants to turn them up I guess. Mr. Christopherson stated I guess that answers my question. Wright asked about the construction you are proposing how much manipulation of the soil will take place, in other words footings, things like that, are you going to bring in fill, are you going to use the existing soil onsite, how deep will your footings, if any go? Holes stated, we would like to do a slab on grade construction. Essentially, we would need to strip top soil to get down to non-organic ground to build on top of. So, from the stand point of the buildings those will have to be strip down to remove any organic soil on top and then we would build up. Any parking lots, anything like that, we should be able to put in breaker run and build on top of it to not disturb the ground any more than we would have to. We are going to know, from what I understood from the archeologist, we will know based on soil staining whether or not there is burials on that northern portion for certain before there would be anything built. So, we're doing everything we can concentrate to the northern portion of this, as you look at this red map, you can see on the very northern point. This shaded red area, that's the WI Historical Society outline of the burial site. The northern part of this parcel is falling out of that territory. So, what we've done in designing this is try to keep everything north, everything as far from the mounds as we possibly can, we've turned the buildings to avoid the mounds. Lastly, our construction style is going to be as least intrusive as possible and not dig any further than we have to. There will be no septic, no well. Nothing like that, that is going to go really beyond the current plow line of the field. Lee stated you said you are going to go down below organic soil, so does that mean you would be going below the plow layer? Holes stated currently on the north portion of this, if you run parallel along the right away on the northeast side of it, it's actually a sandy silt that's already coming up. The thought is we can't go in there and start digging without having an archeologist on site to monitor. So, the hope is that we don't have to go down far to get down to good ground that we can build on. Lee stated so if you don't go down very far your dealing with ground that has potentially been plowed for 100 years? Holes stated yes, we need to get just below that. Mr. Betzel questioned the size of the buildings or the first building as 40' x 300' and the other at 40' x 140', is that the footprint of the building without the parking lot or access to it or is that the size of the building with the road going in for people to access it? Mr. Holes stated that would be the size of the building and those are more than likely going to shrink down. Probably roughly 40' in length for both of them. We are kind of in the preliminary stages until we know how the variance and things sort out, that will dictate what we do. We have a surveyor that's going to survey it to make sure that everything is right. Hwy 63 curves there a little bit, to know exactly where that setback is going to lay, I was doing my best at GIS to give you an idea mapping wise. I would say that the building size is not going to increase if anything it will decrease, but to answer your question, that does not include any parking lot areas. Mr. Betzel asked so have you looked at whether any of the roads would come nearer the mounds than what you have thought the buildings were? Mr. Holes stated that we are taking that into account as well. As we put driveways around the buildings that we do our best to avoid that. I don't think anybody wants to have a driveway running over top, so we've taken that into account as well. That is why we got that plus or minus 40' that will allow us that little bit of wiggle room to shift the driveway over in one direction and things like that. Chairperson Wright asked if the Board had any more questions for Mr. Holes or staff? Wright asked if we were going to go back to talking about like one structure, obviously you are aware that this parcel comes with some challenges. Burial mounds and setbacks. Is there any way to get by with one structure that would maybe be longer if it was repositioned on this lot giving you more square feet than just that long building? Mr. Holes stated I have looked at different configurations. If you look at the last map, and from my understanding the only way to get a longer building or potentially wider or longer building is to hug that setback of 810th St. That is where you have the most northern mounds on the parcel. Does that make sense? Lee stated yes, so in this request you're basically asking for 37' feet of relief from the Hwy 63 setback. Mr. Holes stated yes, and if we're worried about if there was going to be a problem taking too much from one or the other, as a secondary proposal to where we could split the difference between the two set-backs between 810th and Hwy 63. I think for the sake of the neighborhood, ideally would be to push back closer to Hwy 63.

Chairperson Lee Wright opened the public hearing for public comment.

Chairperson Lee Wright swore in Mary Tharalson.

Approved

Mary stated I'm going to start out, I moved there when I was 5 years old, cause the Highway of Lake City took our house in Red Wing, so my parents built their house there. They bought it from one of the descendent of the Adams, it was their granddaughter that originally had the land, Metzel. Anyway, then my mom and dad bought the land next to them. I grew up there, met my husband and we bought the house next to mom and dad and built there. We have been there all our married life, we've been married 51 years. And anyway, for those years there, when we moved there, they were just getting the new Highway 63. 810th was the old Highway 63. So that went by our house, so, that land where they're going to do this, that has been very well dug up, for changes in the highway down. For many years, we saw many deaths at that intersection, many deaths. Now, it is one of the safest designs they have done to that intersection. We would hear them hit their breaks, and the crash, and that intersection and the one up by the chicken are the two worst supposedly at that time in Pierce County. Now they have it all designed very nice, but at that stop sign, you can't have any signs, you can't have anything, cause that traffic comes up over the hill. So, that's a safety thing there. I'm not sure what the setback is, but I used to know that from a circumference from the intersection, it has to be 300' back from that. That is just no room there for any of that stuff, to have anything there to obstruct the view. So anyway, this land that we are talking about was given to Charlotte. Charlotte Adams and she married Carl Mahler, they never had any children, she was the last living descendent that was in that house that's on the end of the road there. They lived down below the hill, then they built that, her grandfather was given all that land, where Meyers is and across the road and all that. He was given that land because he fought in the Civil War. In the late 1860's they built their new house up on top of the hill and they moved up there. That land has been farmed for 168 years, back to the time when they would have their tractor and they shucked the corn. Charlie only had two daughters, and after their 3 children died in the Sea Wing accident, they were left to the two children, so they split up the land down 810th Street. Metzel's the eastside and Charlie got the westside. So, all my life I have seen who would come down there. U of M would come down there, and I have made many calls. Emma Fuller was the agent when she sold that house, that house had 14 rooms in it. They built that house, 14 rooms in it. They had the two kids, separated the land, ok, so I would witness, the U of M would come down there all the time and they would put their strings and they would sift through the property in front of my house and property over across the road, across the highway, that was supposed to be Indian burial grounds. I'm going to read this to you what I got from this history. Trenton Township has a long history of native American settlement, the Mississippi and culture had a presence around 1000-1200 A.D. and left behind nearly 100 mounds, you realize how old that we're talking? Once it's gone, we don't get this stuff back. Remember that. In sections 3 and 4, now I think 4 is downthere, where they mowed over everything and took over where the campground down there, someone told Kleinhans, this is pristine property and it's our job to keep it that way. Well, Jim Kleinhans didn't hold up to that. Now known as the Adam's site by archeologist, some of these large animal shaped mounds which have disappeared in modern times, now we are not talking just about a body buried there, we're talking about where they made and they buried the people and then it says it can be 100's of feet around there, and then it says to honor the people that died, they put pottery in there, you might find copper hatchets, utensils and everything like that was put in that ground, not just right by the bodies, we're talking about the whole burial site. These are effigy mounds, not just regular mounds. I don't know these people can go over in airplanes, but you know, like Emma Fuller said, when she was selling the place, she had a stack of papers this high, that were all of the stipulations having to do with that. Chub's barn burnt and she put up a metal shed, well her metal shed did not have cement in the floor because she couldn't do that. There were so many things that she could not do because of the stipulations that she was given by the U of M and now over the years the U of M has transferred this to Madison. Now the people of the U of M, these people are into saving this stuff. The guy down there in Madison is making a freeway to destroy everything, so I guess if we're just going to do this, and move something so we have this obstruction on this little piece of 10 acres, I mean there are 100's of acres that are for sale right now across the highway right now that are listed. Why can't storage units go over there. Back years before Kmart ever came into Red Wing, they put money down and gave it the Adam's girls, Dolly and Chub, they gave it to them and they were going to build right across the highway there. Well, they got this booklet of all these stipulations, their billion-dollar corporation, they could have found ways to get around it. They could have worked around it. They had everything opened to them to do it. They backed out. No way! Then Hiawatha Bank was going to build in this little triangular spot, they got the stuff where they could to this too, and they saw all those restrictions, and nope, we're not going to do this.

Approved

So, you know there is a reason that this flat property has been this way and nobody's touched it, and I want to address one last thing. The last page on here, where it shows that property, where it shows that triangular thing, ok, now up here, this is where the house sits up here, now they can't have industrial there. Why can't they have industrial? Because if have industrial, you have a lot of stuff to set around outside, right? They're allowed to do that. This is zoned the same up here. Why is all that stuff sitting around outside, somebody answer me that question please. Why is all that stuff sitting around outside when its zoned commercial? I would like to know. You guys all see that picture, can anybody answer me that? Mr. Roy began to answer. Mary stated you don't have to answer me it, I know, I pretty much know. It didn't look like that when Chub had it. We got a conditional use permit, we had a TV shop and on my abstract, what you get when your land is paid for, that is on there that the Adam's wanted no businesses, there is to be no businesses on that property. We had a conditional use permit, Chub signed it. I'll sign that, Bob always keeps his yard mowed and looking neat, I'll sign that. Bob would do anything for Chub too. I'm so sad, I was so worked up over this today, I broke down crying, I went to the cemetery and cried to my dad's grave, this here, I know it's so against what these Adam's believed in. The age of it, there are storage units up the road, we spoke with the storage unit owners, and the one up by the chicken, he has 30 open units up there. The ones that are along the highway, they keep so nice and neat there too. They have a lot of open units, so we don't have a demand for storage units. We have properties that are valued there, and this is beautiful land and I mean for crying out loud, before I even give a variance for that, to ruin the good land owners that have been there and pay their property taxes and love it and take care of it. For them to move next to that highway to cause it to be unsafe, then let them go up and dig up those things, because you know the Adam's lost 3 children in the Sea Wing that day, after they built that house up there and after Hotchkiss went down, I'm sorry, not Hotchkiss, after Willgrubs went down there and laughed at me at the town board meeting, when I said those are Indian burial mounds down in that campground property and he said it's just like clam shells, my grandchildren are native American and I just gasped for breath, well it wasn't too long after that, that his 16 year old daughter died of an overdose, so you know, go ahead and dig it up, if you've got kids and you love your kids, dig those Indian burial mounds up, I wish you well with it. I'm sorry, but I've lived there all my life and I know more about it than anyone in this room. I wish they would have done what she always said, she always said when I'm gone, I'm going to give it back to the Indians, and I wish she would have. Chairperson Lee Wright asked is there any other public comment?

Chairperson swore in Robert Tharalson.

Robert stated I am going to make this really short. Like Mary said, we've lived on 810th Street for over 50 years. We have 2 properties on 810th Street. All I'm going to say is we are against this, I have a little document here from almost all of the people that live on 810th Street. Basically, all it says is we are not in favor of having commercial storage on our street. We are against the setback variance requested by Paul Hotchkiss and Dylan Holes. I've got most of the people that live on that street. I couldn't get ahold of a couple of them, because one guy lives up, he lives down here, but he has a cabin up north. I didn't have his phone number, so I didn't get all of them, but I've got most of them on here. They are all against this, whether this means anything to you or not. I can give it to you. Chairperson Wright stated we will accept them, Mr. Tharalson. Mr. Roy stated I did hear from Darlene and Frank Schummer, who live at N1446 810th St and they are opposed to any relief towards the 810th Street setback. I've also heard from Brian Berg, the Town Chairperson of Trenton, and he also would prefer there would not be any relief to the 810th Street setback.

Chairperson swore in Dr. Ronald C. Schirmer and Andy Brown.

Dr. Schirmer stated I will try to keep my comments fairly brief, although as anybody who's met me, knows I can at times go on a bit. I am professor that's what I'm supposed to do. So, I've been working with the Prairie Island Community for more than 20 years, I am the regional expert in MN archaeology for the southern half of the state. I've been researching the Red Wing area for better than 20 years. My former doctorate advisor, Dr. Clark Dobbs, was the one who did the original studies out at the Adam's site back in the 80's and 90's stuff like that. Over the years I've acquired a whole bunch of documents and information including the original T. H. Lewis records. We have scans of them. We've gone through the process of making high resolution scans of those and relaying those out on the landscape, making GIS layers where we re draft the positions of all of the mounds and all of that sort of stuff, and so we have been involved with a number of cases

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for the State of WI understand what the correct locations of various different sites and mounds and things like that are. So we actually are the ones who offered to the Historical Society of WI information to help them correct there previously incorrect locations of the mounds that are located in question. We are the ones that identified additional probable mound locations that were previously unmapped. It may strike you as odd that somebody was in the 1880's, 100 and some years later here we are identifying locations that are probable mound locations, but in Lewis's own notes from the 1880's he indicated that there were additional mounds on the property that he did not map because at the time he ran out of time or maybe the crops were too tall or whatever, but he notes that there are additional mounds on the property that he did not map. This is the case with many of Lewis's mounds. So, when we received the high resolution lidar that was flown recently, we were able to identify additional locations where we determined there to be additional mounds. Those are the ones indicated in blue here that two previous speakers ago mentioned. We have been working on a number of different mound sites doing high resolution looking at electrical resistance, ground penetrating radar, magnetic susceptibility and finding that the way that people currently understand mound groups is pretty flawed. The way people tend to think about mounds or mound groups is that here is a mound and here is mound over here and that the space in between doesn't really quite matter. To make it kind of a little bit more interpretable for all of you, if you go to a modern cemetery today, you can drive into the gate of the cemetery and you can look and see all kinds of graves over here and look and see all kinds of graves over here, but is that all that is actually in a cemetery? No, I mean there are reflecting pools, and benches and little groves where you can go and sit and meditate and the question is, is that part of the cemetery, well if anybody went into any of those locations and just started digging a hole or something, you would get in a lot of trouble. Ancient native American cemeteries are really no different. Simply the location of the mound, well that's where the mound was built but the spaces between the mounds and the spaces around them, those were used for coming and making a prayer, making an offering to your ancestors, that sort of thing. It's a false idea to think that because there is a circle here and circle there that nothing is around those that is essentially part of the mound group itself or the cemetery more broadly conceived. So, the ones that we have identified are most likely there, we can see them in the lidar and there is no reason to think that they are not there, but in the areas outside of that, where we didn't identify anything else that doesn't mean nothing is there, that doesn't mean that there aren't other mounds there, that doesn't mean that there aren't other sacred aspect of the cemetery ritual that are present there. So, it would be pretty darn risky, it would certainly violate the spirit of what a cemetery is to permit that sort of thing to go on so close to or possibly even within areas where there either are or used to be. Part of the problem that a lot of times we have is that when an area has been cultivated and you don't see the surface expression of a mound anymore people think the mound isn't there anymore. But, in fact, as we've done all our geophysical research, yes, it is still there, the burial pits can be there, various different offering pits can still be there. So, there is a great deal of sensitivity that pertains to these areas that are in the vicinity of cemeteries. So, that all I would note, that it is a really, really sensitive area, there is undoubtedly more there than anybody is aware of and wading into providing a variance as I understand the discussion is about providing a variance to zoning regulation, providing that variance may indeed cause a certain amount of problematic discovery. That is what I have. Andy, do you have anything. Andy, stated that was pretty thorough.

Chairperson Lee Wright swore in Carly Bowen.

Carly stated my question is going to be a little different. I know we've talked a lot about the Indian burials, and I agree with that, that if its truly an Indian cemetery, we don't need to mess with that. I haven't lived here long enough to know all the history. We are newer to the neighborhood and we loved that it's a safe, family friendly area. We do have quite a bit of traffic already, so if there is anything that's going to increase traffic, I don't think that's really a good idea. My question was more along the lines of if they do go forward with building the storage buildings, what kind of security measures are there going to be around it? Are there going to be gates? Are going to be cameras? We don't want our area to be a crime area. As of right now, it's a very safe place to live. We don't want it to become a high crime area. Second, for Mr. Holes, my question would just be if there is so many restrictions of building this, is there is not anything else you could do with the property, because the land we all know is listed at \$250,000. If you're only able to build one or two small storage buildings, you're not going to recuperate your money very quickly. That is just kind of my questions, is it going to be safe, where is the right of way, where is the road going to be to it, because we just don't need crime in our area.

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Chairman Wright stated we will have to refer that back to Mr. Holes, but before that are there any other public comments?

Chairperson Wright swore in Melissa Petersen.

Melissa stated that she represents the people in this area as a County Board Member and I had some people call with some concerns about this. My only thing would be that we ensure that any variance from the setback isn't going to cause any issues regarding safety with the highway. Since I've lived in this area, it seems like you get a number of accidents sometimes and having things too close to the road, there is a reason why we have a setback. So, if there is going to be a variance, that I don't what the impact is going to be on safety that it is along Highway 63. I would just have concerns about that. That would be a concern that I don't think that people have raised much of is the closeness to the highway that if there is a variance to the setback. I think the burial grounds have already been addressed.

Chairperson Wright asked for any other public comment. No comments.

Wright asked Mr. Holes to come up again for the question that was basically was asking if any security was going to be provided around these structures such as a fence? Holes stated we are pretty preliminary right now with designing this. This is kind of the first step, we are not even sure what the building size is going to be, but I would say for the sake of customers and things like that, there will be some level of security. Wright asked and other than a fence what type of security could there be? Holes stated I think cameras are probably almost better than a fence in my opinion, but it could be a mixture of both. Wright asked if possibly lighting? Mr. Holes, absolutely. I would venture to say, I don't know the code, but I would venture to say there is probably some level of lighting that is going to be required by code. Wright asked if Mr. Roy had any comments. Mr. Roy stated just onto that security question, once he gets a permit for a mini storage that will have to go to the Land Management Committee for site plan review and there we will be looking at lighting, fencing and those types of concerns. So, it would be a public meeting again where anybody would be welcomed to attend and voice concerns. Mr. Holes asked to provide some other information to other concerns brought up. So, with the sightline problems that were presented to the building being setback, what we're looking at doing is moving that building within 40' of the right of way. For most people that are familiar with that area the easiest way to understand that is currently where that field line is, we will be 40' inside of the field for the building, currently there is on this northern portion and all along that field line, there is trees and shrubs that are probably 15' to 20' tall and one of the previous people that spoke that right now safety has been perfect there and that this is the best design they've had. These trees that are currently on this property, on that fence line, those are taller than what the building itself is probably going to be. They are far closer to the highway than what this building will be. They are 40' closer. We are trying to push these buildings as far from these burial sites as we can. That is the purpose of this variance. We could restructure it and start to disturb into some of these mounds. That is not our goal. Our goal is to push it back. So, I would like to think that the people are going to be supportive in that sense, that we are trying to push the buildings back and keep them away from the mounds. All of these houses on the eastern side, they're all into burial mounds. They are all part of this burial site, if you look at the lidar, that Andy Brown, who I believe is sitting here, his name is on this map. All of these houses have mounds on them. These people, these houses fall under the same restrictions as I do. If they wanted to dig a flag pole, they need to have an archeologist on site monitoring it. If they want to build a deck, they have to jump through the same hoops that we do. We are following all the rules, we've been in constant coordination with the WI Historical Society, the WI DNR, we are following the rules to do it. We already have a request to disturb that's being granted for excavating inside a burial site. I don't know that there is a packet of things this thick in order of what you can or can't do, I've talked to Amy, the head of WI Historical Society, and what she has told me is that they are supportive and we are in complete compliance, we are pushing the buildings as far from the burial sites as we can provided the parcel size. We are really trying to do everything that we can here to do it ethically and by the book. So, I wanted to address those couple things. I'll leave you guys with that. Chairperson Wright asked if the Board had any questions for staff at this time. No questions.

Chairperson asked Mr. Roy for the staff report.

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Staff Report – Brad Roy: The applicant/agent, Dylan Holes, has an agreement to purchase the property from the owner, Paul Hotchkiss. Mr. Holes plans to construct and operate a commercial Mini-storage facility on the site. The property has setbacks from US Hwy. 63 and 810th Street as well as the presence of Native American Burial Mounds, identified by the Wisconsin Historical Society, which limits the developable area of the property. The applicant is requesting to reduce the setback to US Hwy. 63 to 40-feet so that he can construct two Mini-Storage structures on the property. The applicant is also willing to accept a reduction of the setback to 810th St. if the Board of Adjustment determines that is more appropriate. Issues Pertaining to the Request: The parcel is legally described Lot 16 CSM 15-80, being part of the NE¼ of the SE¼ of Section 3, T24N, R18W, Town of Trenton. This parcel is zoned Commercial. The application was filed on 5- 4-2022. The property is 10.23 acres. The Commercial district is established to provide for retail shopping and personal service uses to be developed either as a unit or in individual parcels to serve the needs of nearby residential neighborhoods as well as the entire county. The purpose of the district is to provide sufficient space in appropriate locations for certain commercial and other nonresidential uses while affording protection to surrounding properties from excessive noise, traffic, drainage or other nuisance factors. The setback from US Hwy. 63 is 110 feet from the center line of the road or 77 feet from the edge of the right-of-way, whichever is greater. The right-of-way width in the proposed building area is 97', this requires any structure to be 174' from the centerline of US Hwy. 63. The right-of-way width on the southern portion of the lot is even greater at 140' requiring a setback of 217' in that area. The setback from 810th St is 75' ft from the centerline of the road or 42' from the right-of-way, whichever is greater. The applicants are seeking a variance to construct a building 137' from US Hwy. 63 that would encroach 37' into the required setback. The proposed structures are 40'x300' and 40'x140'. The Wisconsin Historical Society has mapped Native American Burial sites on the southern area property. New technology has identified other possible/probable burial sites in the same area. The applicant is trying to avoid any disturbance of that area primarily for ethical reasons as well as financial reasons. Burial sites are protected. If human remains are unearthed, the project may not be able to be completed. The applicant considered many alternatives to developing the site including repositioning the buildings, but due to the property limitations, setbacks, and stormwater management measures. Any development would require a setback reduction. The applicant has also considered reducing the US Hwy. 63 setback 20' as well as the 810th St. setback 20' to provide the necessary relief, if the Board of Adjustment determines that to be more appropriate. The applicant's justification to meet the criteria for a variance: (1) Unnecessary hardship. The property limitations and unique characteristics of this parcel create unnecessary hardship by reducing the properties' developable area significantly. Excavation into the burial site could prove to be both an ethical hardship as well as a development hardship due to what could be unearthed. (2) Unique condition. The property has a variety of unique property limitations: The triangular shape of the property has created limitations as the current setbacks make much of the parcel unusable from a commercial zoning aspect. There are believed to be native American Burial Mounds throughout the majority of the parcel that have been mapped by TH Lewis in the late 1800s and remapped with more technological mapping systems. The preferred treatment of the burial area is to not disturb the site. This parcel is subject to a relatively large right-of-way for a 2-lane highway. This 97' right- of-way has an additional 77' setback beyond the right-of-way. This setback coupled with the 75' from the center of the road on 810th St. significantly reduces the area in which the property can be developed for its intended commercial use. (3) Conditions not self-created. The limitation was not caused by the land owner or agent. The rights- of-way are determined by the DOT and the burial sites were in existence prior to the creation of the lot. (4) Public interest. No harm in issuing the variance, but do see tremendous positives to the public interest by not disturbing the burial site. (5) Effect on uses. Mini-Storage is as permitted use in the Commercial District. The proposed variance will not have an effect on uses. The purpose of the Pierce County Zoning Code (PCC) is stated in § 240-4, "The purpose of this chapter is to promote and protect public health, safety, aesthetics and other aspects of the general welfare. Further purposes of this chapter are listed in this report. PCC § 240-15E describes the purpose and intent of the Commercial district, which was previously stated. PCC Ch. 240, Attachment 1, Table of Uses lists Mini-storage as permitted in the Commercial District. PCC Ch. 240 Attachment 2 requires a 10' setback for structures from side and rear yard lot lines. PCC § 240-27A states, "State and federal highways. Except as provided in Subsections E and F, the required setback for all structures fronting on state and federal highways shall be 110 feet from the center line of the road or 77 feet from the edge of the right-of-way, whichever is greater." PCC § 240-27C states, "Town Highways. Except as provided in Subsection E, the required setback for all structures fronting on all town highways shall be 75 feet from the centerline of the road or 42 feet from the edge of the right-of-way, whichever is greater." Since there are no structures within 200' of the proposed

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structure, the setback reduction per PCC § 240-27E could not provide the applicants with the necessary relief from the setback requirements. The particular use requirements for Mini-storage are listed in PCC § 240-436K Mini-storage. (1) Except in industrial districts, all buildings shall be located a minimum of 50 feet from all lot lines. (2) Commercial storage facilities shall not be used as workshops or retail shops. (3) Outside storage shall be prohibited. (4) Screening with vegetation and/or fencing as approved by the Land Management Committee shall be provided along property lines bordering residential districts. (5) Lighting shall be shielded to prevent direct illumination of adjacent properties not in industrial and commercial districts or public rights-of-way. The Board of Adjustment has the authority to make decisions on applications for Variances per PCC §240-78 B & C. Relevant definitions per PCC § 240-88 are listed in this report. Variance Standards: Wisconsin Statutes § 59.694(7)(c) regarding the Powers of the Board states "To authorize upon appeal in specific cases variances from the terms of the ordinance that will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done." PCC § 240-78C describe the, "Standards for variance. The Board of Adjustment shall consider the following standards for granting a variance. The burden of proof at all times remains with the applicant to establish that the proposed variance meets the following standards: (1) Unnecessary hardship. That there are present actual physical conditions applying to the lot, parcel, building, structure, use or intended use on that parcel which are creating the unnecessary hardship in the application of this chapter, as distinguished from a mere inconvenience to the owner if the strict letter of the regulations is required. (2) Unique condition. That the conditions described in Subsection C(l) are unique, exceptional, extraordinary or unusual circumstances applying only primarily to the property under consideration and are not of such a general or recurrent nature elsewhere in the same zoning district as to suggest or establish the basis for ordinance changes or amendments or of having that effect if relied upon as the basis for granting a variance. (3) Conditions not self-created. That the condition creating the hardship or difficulty was not caused by the petitioner nor by any person still having an interest in the property. (4) Public interest. That in granting the variance there will not be a substantial detriment to neighboring property and the grant of variance will not be contrary to the purpose of this chapter and the public interest. (5) Effect on uses. No variance shall have the effect of allowing in any district a use not permitted in that district." Relevant Case Law are listed in the STATE EX REL. ZIERVOGEL V. WASHINGTON COUNTY BOARD OF ADJUSTMENT, CASE NO. 02-1618 (2014, STATE OF WISCONSIN VS. WAUSHARA COUNTY BOARD OF ADJUSTMENT, CASE NO. 02-2004 (2004), and LAMAR CENTRAL OUTDOOR, INC. VS. BOARD OF ZONING APPEALS OF CITY OF MILWAUKEE, 2005 WI 117 (Wis. Sup. Ct. July 12,2005).

Staff analysis: The applicant is proposing to construct the nearest structure 137' from the centerline of US Hwy 63. The natural relief of the site provides some protection of/from any northbound traffic as much of the lot is elevated above the highway. However, the northern portion of the proposed construction area is at a similar elevation of the highway. Mini-storage is a permitted use in the Commercial District. The property is bordered by residential to the east, agricultural land to the west (zoned Commercial), commercial to the south, and commercial and agriculture (zoned Industrial) to the north. WI DNR stormwater requirements will be necessary if 1 acre or more is disturbed. Wisconsin State Statutes restrict disturbance of burial sites. Excavations of areas of possible/probable burial sites must be coordinated with the Wisconsin Historical Society. The applicant is attempting to avoid the burial areas as much as possible, but will be working with the Historical Society throughout the development of the site. To grant the variance, the Board of Adjustment must determine that the request meets the five criteria of PCC § 240-78C: (which I have read)

Recommendation: Staff recommends the Board of Adjustment review the proposal and approve or deny the variance request. The Board should state the specific facts and reasons that are the basis of the Board of Adjustment's determination. Any decision shall state how the request is consistent or inconsistent with the established variance standards regarding unnecessary hardship, presence of unique property limitations, conditions not self-created, protection of the public interest, and no effect on uses.

If the variance is granted, staff recommends that conditions be established regarding: (1) Timeframe for commencing and completing the project and (2) Establish the extent of relief granted.

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Mary Tharalson asked to speak about two examples of variances. A few years back Dallas from Diamond Bluff put a thing over his front door with the posts in the ground, well, that had to be taken down, because it wasn't within the setback length. On our corner 150th Dwight had a stone fireplace there, he had to take that down, now these are a thing over a house that's not legal and then this stone fireplace that's not legal, so now we want to grant a variance for something that's not needed and it's a whole lot bigger than a thing over a house and that. You know that your job, these rules are made up for a reason. It's not like we don't have so much land around Trenton township, that corner, that intersection, yes, those trees are there, they weren't there when Chub owned the property, because she had it all cut down. After the place was sold, stuff started to grow up. The trees are not in the way of that, they are more to the south of that. That farmland is not above the highway.

Wright closed the public comment.

Wright stated it is time for the Board to have a discussion. We need to address the 5 standards. In order for this application to be successful, it will have to meet all 5 standards. We have to attach some rationale to each of these standards. In the order that staff has them listed. Let's start with number 1, which is the issue of unnecessary hardship. Walter Betzel spoke and said that he thinks it comes on the bottom of it where it is an inconvenience to him more than anything else because he doesn't want to have to be bothered with working with the mounds or anything if he hits them. Walter does have another question and that is on the proposed buildings when he was testifying, he was talking about varying the sizes of these buildings, and that it is not a set thing yet, if we grant a variance, will he have to stick to the 40'x300' and the 40'x 140' or will he be able to put any size building on there? That might be a question for Brad. Mr. Roy stated you could establish what relief you're willing to give, you could say, if you're going to give the relief to 40', you could put a maximum size to what the buildings are proposed now, so it could not be more than that. You could grant it for 200', you guys have the ability to establish the relief you feel is necessary. Wright stated I think that could be a condition. Wright stated we are basically dealing with the issue of setback. Ross Christopherson stated we are talking about unnecessary hardship. I feel like the setbacks are very important on a state highway, there could be improvements there down the lane, or down the road for more lanes, there is a roadcut there, so if ever improved, they will probably lower the grade, they'll have to widen the back slopes, so the setbacks are important on a state road for planning and also with that intersection, coming on the north with future improvements of the intersection, Thomas and Betz, bigger trucks pulling out, there could be development for a larger intersection, round-about, turn lanes, setbacks are important. I cannot support number 1 as a justification. I can't support that at this time without more information. Barry Barringer stated I have to agree with Ross. Everything 1-5 becomes a non-issue if it's left as is. I guess if Trenton township wanted to consider rezoning that area, that would be within their right, I would think. It's just not a real good developable site all the way around, in my opinion. Wright stated for the record it is currently zoned Commercial is that correct Mr. Roy. Mr. Roy stated that is correct. Wright stated he is also struggling with it as he thinks it is more of convenience for that second building because the applicant could build without a variance the larger building meeting all setbacks. Is that correct the way you understand it Mr. Roy? Mr. Roy stated I wouldn't be able to say that for sure without getting into the mapped mounds, but I can say, confidently a storage building could be built on there that meets the setbacks. Wright stated not to minimize the issue of the mounds I was approaching it more from the issue of the setback, we're asking for 37' of relief. Applicant is proposing this second 40' wide building and if we eliminate that second building and just go with that original 40' building would that meet highway setback. Mr. Roy stated again if we are not talking about the mounds and talking about the building setbacks there is ample room without requesting a variance to the highway setbacks. Wright stated we are going to move on to number 2, unique conditions. Do unique conditions exist on this property? Barry Barringer stated I think there are a lot of unique conditions, the burial mounds, that goes without talking about it much, there again, if you do run into a burial mound situation, you basically have to quit. Also, the intersection siting might meet DOT restrictions, but there again I have a problem with the proposal. Mr. Christopherson stated I think it passes the test on that, it has unique conditions on that. The

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conditions would be the setbacks, limits on both sides, two sides of his property, cutting down his usable foot print. I would have to admit that it passes the test for number 2, unique conditions. Wright said number 3, conditions not self-created. Mr. Christopherson stated I can start on that and I think they are self-created because it's been farmed for a number of years, and now somebody wants to change it, so they know what the issues are with the burial mounds, the setbacks, they are jumping into that knowing it up front that it has limitations. So, what your planning on it better fit the limitations of what your planning on doing. I think it is self-created. Wright stated just for me to understand this obviously if the applicant wishes to put these two structures on there, he's creating a problem of trying to put too much on too small of an area. But, the issue of the burial mounds and the setbacks, the applicant really did not do that. I think I am approaching that from a little bit different perspective. Mr. Christopherson stated I see where you're going, but the owner has used it for a number of years as is, the use of farming, and now if it's a change of use, I think he then bares some of the problems of what he can use it for. Wright stated let's go on to public interest. Mr. Christopherson stated once again under public interest, I think it will harm public interest, we've heard from the public, it seems that the burial grounds, the highways, the setbacks are important, I don't think we should cut back on the setbacks, they are there for a reason for safety, for future improvements. I think by granting a variance and squeezing everything up in that corner will harm the public. Wright stated that, in my opinion if we feel that it does not meet the standard of unnecessary hardship, it would not be in the public interest to approve something that doesn't meet that, so from that perspective I would say it doesn't meet public interest. Wright stated we have the last one – effect on uses. Mr. Roy can you maybe help us on that. Mr. Roy stated this will not have an effect on uses, his proposed use of mini-storage is permitted in the commercial district, so granting this variance will not create a use issue. Wright stated we have gone through the five standards and justification for those standards, is there any need for further discussion? No further discussion. Wright stated he would entertain a motion, but requested that we withhold a second to make sure that each of these standards meet the justifications of the approval or denial of each. So, we will make sure we have justification, then I will ask for a second. Barry Barringer asked Wright to elaborate and go through his words again. Wright stated that we would like to have a motion in which we address each of the five standards and we have to have justification as to why they meet that standard or they do not.

Barry Barringer made motion to deny the variance. I don't believe there is an unnecessary hardship, that basically 1-5, the conditions are self-created, there is unique conditions, the public interest is not really addressed, the person that selling the property, it's in his interest to sell it, and the person making use of it, it's in their interest and that's the end of it, it's not in the public interest. The effect on uses, if its left as is, there is no future effect that isn't already there. Wright stated let's go back to unnecessary hardship, if it doesn't meet unnecessary hardship, why doesn't it meet it? Walter Betzel stated I would say it does not meet it because they could adjust the plans for the buildings they are proposing that would not require the variance. They could still build a storage unit, with a different size and only one. Wright asked Barringer if that makes sense for your motion. Barringer agreed with Walter's comment and stated, you could adjust the size of it, and just get a permit without asking for a variance. We wouldn't be involved. Wright asked Barringer about number 2 in his motion with unique conditions, what would that be? Barringer stated the burial mounds are a unique condition, I think because of the shape of the property and just where its located, I think the property has some not positive conditions for development, setbacks as well. Wright asked about conditions not self-created. Did the applicant create the conditions that exist on the property? Barry Barringer stated no, the applicant didn't create those conditions. Conditions are not self-created. Wright asked about number 4, public interest? Barringer stated it is not in the public interest, only financial interest for the applicant. Wright stated that it is also requesting 37' relief of the setback. Wright stated the last one effect on uses, would your motion be no effect on uses, as its allowable. Barringer stated right. Mr. Christopherson made an addition on public interest that it is also that the current setback is there for a reason for possibly future improvements, safety, intersection of a state highway, county road, town road and in the future if there is improvements, more residential or whatever improvements, that the setback might be needed for additional public trails, or bike trails or whatever type of transportation we might have in 100 years from now, so that footprint of the highway is important to the public to preserve it, if you would approve that in the number 4 criteria of the motion. Barringer stated

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he would. Wright stated we have worked our way through the motion. Wright stated we are lacking our secretary this evening, we've had several people helping with the notes, do the conditions make sense as they have come forth in this motion. Mr. Roy stated yes. Wright asked if any further Board discussion, no further discussion. Wright asked for a second motion.

Motion made and seconded by Walter Betzel. All in favor of the motion. Motion is unanimous and the variance is denied.

Chairperson stated that the findings of the Board is that we are not going to grant the variance. Wright asked if there was any other business this evening. Mr. Roy can you think of anything else that needs to be addressed? Mr. Roy stated not tonight.

Motion to adjourn by Walter Betzel and seconded by Ross Christopherson.

Respectfully submitted by A. Anderson