

PIERCE COUNTY, WISCONSIN

DEPARTMENT OF LAND MANAGEMENT & RECORDS

Pierce County Courthouse

P.O. Box 647, 414 W. Main St, Ellsworth, WI 54011

Planning Office 715-273-6746

Zoning Office 715-273-6747

Fax 715-273-6864



MINUTES-Pierce County Board of Adjustment Meeting, Thursday, March 23, 2023

Present: (Board of Adjustment Committee) Lee Wright, Ross Christopherson, Kenneth Peterson, Barry Barringer, Jeff Holst, and Walter Betzel. (Staff) Andy Pichotta, Adam Adank, Emily Lund, Jesse Stenske & Anna Anderson

Chairperson Wright called the Board of Adjustment meeting to order on Thursday, March 23, 2023 at 7:00 pm in the Pierce County Courthouse, Lower Level – County Board Room, in Ellsworth, Wisconsin.

Future meeting dates are set for April 27, May 25, and June 22, 2022.

Accept Future Meeting Dates: **Holst made a motion to accept dates. Barringer seconded. All in favor. Motion Carried.**

Approve Minutes: **Peterson made a motion to approve the September 22, 2022 BOA minutes. Barringer seconded. All in favor. Motion Carried.**

Wright read the role of the Board.

Wright swore in Andy Pichotta, Adam Adank, Jesse Stenske & Emily Lund.

Stenske 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 on the 23rd day of March, 2023, at 7pm, in the County Boardroom in the Courthouse, Ellsworth, WI, before the Board of Adjustment to consider and take action on a request for a Conditional Use Permit for a Lift in the St. Croix riverway District, in the Rural Residential-12 Zoning District pursuant to Pierce County Code Chapters §239-8C(4) & §239-10M, owned by Keith Revocable Trust, Charles, on property described as Government Lot 2 of Section 11, T27N, R20W, Town of Clifton, Pierce County, WI.**

Staff Report – Stenske: The applicant owns a 1-acre parcel in the St. Croix Riverway and would like to construct a Lift for access to the river. The entire property is located in a slope preservation zone (slopes greater than 12%) and is mostly wooded. The dwelling is the only structure on the property and there are currently no access points to the river on the property. The property is part of Government Lot 2, Section 11, T27N, R20W in the Town of Clifton. This parcel is located in the Rural Residential-12 base zoning district and is within the St. Croix Riverway overlay district. The purpose of the St. Croix Riverway Code is described in Pierce County Code (PCC) §239-1C as, “Purpose. The purpose of this chapter is to promote the public health, safety, and general welfare by:

- (1) Reducing the adverse effects of overcrowding and poorly planned shoreline and bluff area development.
- (2) Preventing soil erosion and pollution and contamination of surface water and groundwater.
- (3) Providing sufficient space on lots for sanitary facilities.
- (4) Minimizing flood damage.
- (5) Maintaining property values.
- (6) Preserving and maintaining the exceptional scenic, cultural, and natural characteristics of the water and related land of the Lower St. Croix Riverway in a manner consistent with the National Wild and Scenic River Act of 1972 and the Wisconsin Lower St. Croix River Act.

PCC §239-8C(4) allows stairways and lifts in the Riverway District with a Conditional Use Permit subject to the standards of §239-9 & 10. Relevant code sections of PCC Chapter §239-9 include: §239-9E(3) which exempts stairways and lifts from the Ordinary High Water Mark (OHWM) and bluffline setbacks. §239-9E(4) which requires a side yard setback of 25 feet from all exterior lot lines. Relevant code sections of PCC Chapter §239-10 include: §239-10A(1) states, “All new, expanded, or reconstructed structures shall be earthtone in color.” PCC §239-10C(1) states, “No structures, except piers, wharves, structural erosion control measures, stairways, and lifts may be placed in slope preservation zones. “The

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entire parcel has a slope of greater than 12%, which constitutes a Slope Preservation Zone. PCC §239-10M states, "Lifts. Lifts are allowed by conditional use permit if all of the following standards are met:

1. The lift is required to provide pedestrian access to the river because of steep, rocky, unstable or wet site conditions.
2. No lift shall be designed for the transport of boats or machinery up or down the bluff face.
3. The car of the lift may not exceed four feet by six feet. Cars may have handrails, but no canopies or roofs shall be allowed.
4. Lifts shall be located in the most visually inconspicuous portion of the lot. The location of the transporting device or power source shall be visually inconspicuous.
5. All visible parts of the lift shall be painted or finished in earthtone, nonreflective colors and shall be visually inconspicuous.
6. Native vegetation plantings shall be used to form a vegetative canopy to screen the lift from the river.
7. Vegetation shall effectively screen lifts from the river within five years.
8. Existing vegetation may be removed within one foot on either side of the lift route and up to eight feet above the lift floor.
9. Only one lift may be permitted on a lot that abuts the river.
10. A plan shall be submitted to the Zoning Administrator and certified by a registered professional engineer or architect showing that the lift components are securely anchored to prevent them from shifting and from causing accelerated erosion."

PCC Chapter 239 does not place a limit to the amount of area that a landing for a lift may have. Lift details are as follows:

- A general Hill Hiker plan showing the typical Hill Hiker construction standards was submitted, stamped, and signed by a WI Professional Engineer. This plan is not specific to the site.
- The owner submitted an actual design of the lift with upper and lower landings that is specific to the site.
- A topographic survey map was submitted, stamped, and signed by a WI Land Surveyor. The map illustrates existing structures, vegetation, and the proposed lift track/tram. However, it does not display the upper and lower landings.
- The upper landing is proposed to be connected to the house in a U-shape that will wrap around the house. The size is proposed to be 16' x 8' north of the dwelling, 36.25' x 8' west/river side of the dwelling, and 8' x 10' south of the dwelling.
- The dwelling is a nonconforming structure.
- The proposed lift carriage will be 46 7/8" W x 67 5/8" L x 42" H, and it will have no roof or canopy.
- The proposed lift will be 45 feet long starting at the northwest corner of the house and go downhill ending above the OHWM.
- The lift will be used to transport the property owners and guests safely to the river.
- The bluff face towards the river is too steep for safe foot travel down the slope.
- The lift's proposed location was chosen because it presented gentler slopes relative to other slopes on the property. Also, the proposed location also has less impact on vegetation than other locations.
- Three trees (6" in diameter or larger) are proposed to be removed in order for the lift to be constructed. These trees are indicated on the signed topographic survey map.
- The proposed lift area will have a five to six feet wide corridor going down the line of travel. Vegetation over 1 foot high will need to be removed in this corridor going down the line of travel. Vegetation over 1 foot high will need to be removed in this corridor. All grass and low growing weeds, etc. can remain.
- A 6' x 6' concrete pad will be located beneath the upper end of the lift to support the lift motor. The motor would be concealed from view by its placement beneath the lift. This concrete pad will also serve as a footing and have a 2' stem wall to retain uphill dirt.
- There will be 4 additional concrete footings (4' x 2' x 2') supporting the lift track downhill from the top concrete pad/footing.
- The lift will be colored "metallic medium bronze" which is a dark earthen color.
- There will be no exposed soil which should eliminate the need for erosion control measures.

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- Remaining vegetation after construction of the lift will likely screen the view of the lift.
- The proposed lower landing will be 6 feet wide and 12 feet long.
- Both landings will be made of cedar decking and treated pine with concrete footings.

Relevant definitions per PCC §239-7B:

- Bluffline – A line along the top of the slope preservation zone. There can be more than one bluffline.
- Lift – A mechanical device, either temporary or permanent, containing a mobile open-top car including hand or guardrails, a track upon which the open-top car moves, and a mechanical device to provide power to the open-top car.
- Nonconforming Structure – A building or other structure whose location, dimensions or other physical characteristics do not conform to the standards of this chapter but which was legally constructed or placed in its current location prior to the enactment of this chapter or its amendment that made it nonconforming.
- Ordinary High-Water Mark (OHWM) – The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic. Where the bank or shore at any particular place is of such character that is difficult or impossible to ascertain where the point of the ordinary high-water mark is, recourse may be had to the opposite bank of a stream or to other places on the shore of a lake or flowage to determine whether a given stage of water is above or below the ordinary high-water mark.
- Slope Preservation Zone – The area riverward from the bluffline where the slope toward the river is 12% or more, as measured horizontally for a distance of not more than 50 feet or less than 25 feet.
- Use Permitted as a Conditional Use – A use whose nature, character or circumstance is so unique or so dependent upon specific conditions that predetermination of permissibility by right is not practical but which may be permitted on a case-by-case basis subject to the conditional use permit procedure.
- Visually Inconspicuous – Difficult to see, or not readily noticeable, in summer months as viewed from at or near the midline of the Lower St. Croix River.

Lund Builders will be hand-digging to excavate for each footing/pad. Commercial-grade silt fence will be staked below every digging point. It is anticipated that each row of silt fence will be at least 2' high by 20' wide. After concrete forms are removed, displaced soil will be packed against the new pad and footings. Owners will plant native, shade loving plants against the pad, footings, and track. If the CUP is approved, it is recommended that the applicant obtain all necessary permits and approvals from all other applicable agencies (e.g. Town Building Inspector) prior to construction/installation of the lift. The Town of Clifton recommended approval of this request on June 7, 2022 with no concerns or suggested conditions.

Recommendation: Staff recommends the Board of Adjustment determine whether the requested Lift is contrary or consistent with the standards found under the purpose statement and various St. Croix Riverway Zoning Code sections referenced in this report. If determined to be consistent with the code, staff recommends the BOA approve the conditional use permit for the Lift with the following conditions, and any others deemed appropriate by the Board:

1. Activities shall be conducted consistent with the application unless modified by another condition of this approval.
2. All visible parts of the lift shall be painted or finished in earthtone, nonreflective colors and shall be visually inconspicuous.
3. Landings and handrails shall be constructed of unfinished wood or stone, or shall be painted or stained with a uniform earthtone color.
4. Best erosion control practices shall be implemented during construction. Any unforeseen erosion issues shall be addressed to the satisfaction of the county.
5. Clearing of vegetation shall be limited to the minimum necessary for construction and operation of the lift, and it shall not exceed the 5 to 6-foot-wide lift travel corridor. No trees greater than 6" diameter at breast height (DBH) may be cut, aside from the three that are indicated for removal in the signed survey map.

If found to be contrary to the standards contained in, and the purpose of the St. Croix Riverway Code, staff recommends the Board of Adjustment deny the request for a conditional use permit for the Lift. Any decision shall state the specific facts and reasons that are the basis of the Board of Adjustment's determination.

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Wright swore in Harrison Swadley, agent for Charles Keith.

Swadley stated that everything presented was what he had discussed with the Keith's, and that he had nothing to add.

Questions of Applicant – Board Members: Holst stated that this request meets the conditions and requirements that we are obligated to look at under the law, there is not a lot for us to ask. Holst said the one question was the size of the landing on the upper deck/landing. That is not addressed under code. Wright stated it is addressed for stairs but not for a lift. Wright asked if there were any questions for staff. No questions.

Wright opened the public hearing. Pichotta stated we received correspondence from Mike Wenzholz, Shoreland Program Coordinator, with the Department of Natural Resources, much of what was submitted stated the facts, but they did make a recommendation. Recommendation stated, "The departments only comment regarding the Lift request itself is to ensure that the standards listed in the Pierce County St. Croix Riverway Zoning Code are met. The department recommends that the upper and lower landings be located adjacent to the upper and lower termini of the lift, and be equivalent to the allowed area of stairway landings listed in §239-10L(3). While the department notes that a landing area for lifts is not specifically listed in the ordinance, it is reasonable that a landing for either a stairway or lift would be equivalent in area. This landing adjacent to the egress/ingress door on the north side of the lower level of the principal structure would be reasonable. Further, it is not reasonable to assume a proposed wrap-around deck would be used as and/or be a necessary landing for the lift. The department does not believe that the proposed deck should be a part of this CUP request or granted, especially since it is far greater than the area allowed for a stairway landing (not remotely equivalent), there is not an existing door on the front of the principal structure adjacent to the proposed deck, it would be within the slope preservation zone, it would be within the OHWM setback, and be further riverward than the floor of the principal structure it would be attached to." Wright asked if the board had any questions. Holst stated one time he talked to a DNR agent and they told him it was an unwritten law. Holst said in the State of WI, I don't believe there are any unwritten laws, and this is another example of the DNR's unwritten laws in my opinion. Barringer stated in one of the photographs it shows what he's assuming is a temporary dock, and asked what the rules are as far as placement and removal of that dock when it comes to a seasonal situation? How would that be taken out of there? Pichotta stated that docks are outside of our purview, we have no jurisdiction whatsoever. Wright asked for any further questions. Christopherson asked if Lund Builders was doing the whole project. Adank stated that it sounds like Lund Builders are doing the work. Christopherson suggested that there be just one contractor so that they are on the same page with erosion control. Adank stated if it isn't Lund Builders it might be the applicant. Christopherson stated there wasn't anything in there for around the deck portion as far as erosion control, so just making sure its covered. **Public Hearing closed.** Peterson had a question on the upper deck, stating it does seem to be way beyond the lift itself, and that concerns me a bit. Swadley stated as the elevator codes go, we don't have any regulation of what the size of the deck has to be. Typically, we understand it has to be comfortable enough for people, with a walker, to be able to turn around, put some stuff down, or two or three people trying to get into a space. To have the deck wrap around was more for access from the other side, to prevent extra stairs to get up to the landing of that deck. The elevator would have to have stairs, but with this deck you wouldn't have to have those steps. Peterson stated its 8' wide, that seems wide for a walkway. Wright stated that one of the issues we are dealing with is the role of the board, and the role of the board is to apply the facts of each case to the laws that are in our ordinances. Wright said since a lift does not establish a size for the landing, we really have nothing to work with. The Riverway ordinance does not restrict the size of the landing and the Board of Adjustment does not have the authority to make or amend law. Wright asked for any further discussion. No further discussion.

Holst made motion to approve the conditional use permit with conditions 1 – 5 based on it meeting Pierce County Code §239. Barringer seconded. All in favor. Motion carried.

Wright asked for a 10-minute recess at 7:41pm. Barringer made motion to approve. Christopherson seconded. Motion carried.

Wright resumed meeting at 7:51pm.

Adank read the Public Hearing: **Public notice is hereby given to all persons in Pierce County, Wisconsin, that a public hearing will be held on the 23rd day of March, 2023, at 7 pm, in the County Boardroom in the Courthouse, Ellsworth, WI, before the Board of Adjustment to consider and take action on a request for Variances for a detached garage in the St. Croix Riverway District, in the Rural Residential-12 Zoning District pursuant to Pierce County Code Chapter §239-9E(3)(a) for ordinary high water mark setback, §239-9E(3)(b) for bluffline setback & §239-9E(4) for side yard setback, owned by Joseph & Della Boles, on property described as Government Lot 1 of Section 11, T27N, R20W, Town of Clifton, Pierce**

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Staff Report – Adank: The applicant is requesting variances for a detached garage from the following Pierce County Code Sections: §239-9E(3)(a) – 200 ft setback from the Ordinary High Water Mark of the Lower St. Croix River; §239-9E(3)(b) – 100 ft setback from the bluffline; and, §239-pE(4) – 25 ft side yard setback from all exterior lot lines. The subject property is located in the Town of Clifton. A Land Use Permit was issued for the original dwelling/cabin in 1971. The applicants purchased the property in 1991. They received a Conditional Use Permit in 2003 to expand their nonconforming cabin into the existing four-season home. In 2003, the applicants obtained a septic system easement from the adjoining north neighbor allowing them to install and maintain their septic system on the neighboring property. The septic system was replaced in 2004. In 2012 the applicants purchased .084 acres of adjoining land from the neighbor to the north where the septic system is located. The drain field was replaced again in 2019. A variance for a similar structure was applied for by the applicant and denied by the BOA in 2019. The applicant has, since the last consideration, acquired a detailed survey of the site thus addressing the prior confusion regarding lot lines. The applicants are requesting to construct a 24'x24' two level detached garage, that will enable them to park inside during harsh winter months and also to use for personal storage. Due to the layout of the lot, topographical challenges, and the placement of existing buildings and utilities, the applicants are seeking an area variance from three separate setbacks to construct a new garage. The proposed garage location would be: 72 ft from the OHWM, 0 ft to the bluffline, and 2.5 ft from the South side yard (lot line). This parcel is zoned Rural Residential-12. The request pertains to Pierce County Code Chapter §239 St. Croix Riverway Zoning. Much of the north open area of the lot is occupied by the existing building, well, septic system and slope preservation zone. The area west of the house has steep slopes down to the river and floodplain extending up to 691' in elevation. The area east of the house is located within the 1251st Street private road setback area and is also slope preservation zone. On the south side of the house is an existing blacktopped driveway and parking area. The existing parking area is where the applicants propose to build a 24'x24' detached garage. This area is flat and not a slope preservation zone. The top level of the garage would be level with the existing blacktop driveway with an 11' interior ceiling on the west side, tapering down to an 8' interior ceiling on the east side. The lower level will have an 8' interior ceiling throughout. The overall height of the garage is approximately 21.5 ft tall. The topographic survey and site plan for the proposed detached garage was completed by Dan Kugel, Ogden Engineering Co. The map shows the proposed garage location, the existing house, erosion control (silt fence), driveway, and the river access stairway. The property is located in the Rural Residential management zone. Wisconsin Department of Natural Resources staff was, as required, provided the application for this variance request in late November of 2022. The DNR, in January of 2023, requested that the County postpone the public hearing to enable further DNR staff discussion regarding a recommendation. Notice of this meeting was provided in early March. A DNR response/recommendation regarding this request was received yesterday, March 22, 2023. PCC §239-E(3) states, All structures except piers, wharves, structural erosion control measures, stairways, and lifts shall meet the following:

- (a) OHWM setback: at least 200 feet from the OHWM of the Lower St. Croix River.
- (b) Bluffline setback: at least 100 feet from the bluffline in the rural residential management zone, and 200 feet from the bluffline in the conservation management zone.

[1] Structures that do not meet the setback may be permitted within the bluffline setback area if they are set back at least 40 feet from the bluffline and meet all of the following standards:

- [a] The structure does not protrude above the bluffline as viewed from at or near the midline of the river or from 250 feet riverward from the OHWM, whichever is less.
- [b] The structure is not located in a slope preservation zone.
- [c] The structure utilizes building materials that are earthtone in color and of a nonreflective nature, except that windows may be made of ordinary window glass or nonreflective glass but may not be made of glass designed to reflect more light than ordinary window glass.
- [d] The structure is visually inconspicuous.

PCC §239-E94) states, "side yard setback: at least 25 feet from all exterior lot lines." Pierce County Shoreland Zoning Ordinance §242-24 requires a 75' structure setback to the OHWM. Setback averaging provided the necessary relief for the 75' OHWM structure setback. Pierce County Zoning Ordinance §240-27D requires a structure setback of 75' to the centerline of a town/private road. Setback averaging also provided the necessary relief for the 75' structure setback to the centerline of 1251st St. PCC §239-9E(2) states, "On new structures constructed after the effective date of this chapter, all setbacks shall be measured on a horizontal plane from the roof overhang and any cantilevered portions of the structure at the point of the structure that is nearest the OHWM, bluffline, or property line." Adank noted that Mr. Boles

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was unaware of this requirement and we did not notice that the overhang of the building extends 4 ft beyond the bluffline, it's my understanding that he is willing to make that overhang 2' shorter and move his structure 2' further to the east in order to meet that setback of zero feet that was suggested in the survey. Other relevant ordinance information and definitions from Chapters §239 and §240 are listed in Appendix A. Relevant case law is also contained in the appendix. §240-78© establishes standards for a variance in Pierce County and is consistent with §59.694(7)(c). 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(1) are unique, exceptional, extraordinary or unusual circumstances applying only or 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.

The applicant's rationale for seeking the variance is as follows:

- The property is unique because of the presence of steep slopes and the size and shape of the lot
- A garage is a permitted use. There is no location on the property where a structure could be permitted. Conformity with the zoning ordinance is unnecessarily burdensome by preventing the construction of a garage.
- Conditions are not self-created.
- The variance is in the public interest and will not be detrimental to neighboring properties. The construction of the garage will remove the eyesore from having personal items outdoors.

Staff Analysis: There are three main criteria that a variance applicant must satisfy: unnecessary hardship, a unique property condition and no harm to the public interest. The Pierce County Zoning Code (shown in this report) identifies 5 criteria for consideration, but standard three (3) "not self-created" ties into standard number two (2) in that the unique property condition cannot be self-created by the applicant and standard five (5) establishes that the BOA cannot grant a "use variance". The Wisconsin Supreme Court recognizes two types of zoning variances that may be granted by a zoning board: area variances and use variances. However, these terms are not defined by state law. Consequently, this is a critical area for local action to define the terms in the local zoning code because case law establishes separate unnecessary hardship tests for use and area variances.

A use variance applicant must show that they will have no reasonable use of the subject property without the requested variance. This is an extremely difficult burden to satisfy and rightly so. A use variance is effectively a rezoning of property to allow a land use that the governing body of a municipality already determined is incompatible with other uses in the zoning district and risks great changes in neighborhood character. *This request is not for a use variance. Pierce County Zoning Code Chapter §240 does not allow use variances.*

An area variance applicant must show "unnecessary hardship" by demonstrating that "compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome." Thus, it is not enough that an area variance applicant show that a zoning regulation prevents or burdens their planned activity. They must show by competent evidence that the regulation unreasonably prevents or unnecessarily burdens the activity. *A garage (accessory structure) is an allowable use in the St. Croix Riverway District and in the Rural Residential-12 Zoning District. The applicant bought the property with an existing structure in 1991. The hardship is not self-created. When the 200 ft setback from the Ordinary High Water Mark, the 100 ft setback from the bluffline, and the 25 ft side yard setback from all exterior lot lines are applied – there is no compliant building location anywhere on the entire parcel. Staff suggests that compliance with strict letter of the St. Croix Riverway Zoning restrictions governing setbacks unreasonably prevents the owner from using the property for a permitted purpose; thus, creating an*

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“unnecessary hardship”.

All zoning variance applicants must also show that the alleged unnecessary hardship is due to a unique property condition. This phrase is not defined by statute but court decisions establish that it means a special physical feature of the property (soil conditions, steep slope, wetland, etc.) that is not shared by nearby land. More importantly, if a variance applicant fails to prove the existence of a unique property condition and a connection between the condition and the hardship, even if the hardship is great, a zoning board has no power to grant the requested variance. *Nearly the entire property is located in a slope preservation zone (slopes great than 12%) except for a small area as depicted on the survey map. The proposed location of the garage is flat and not in the slope preservation zone, but is still not a compliant location due to other required setbacks. The location of this small lot in the St. Croix Riverway District, on a steep hillside, with no compliant building envelope location is a condition unique to this property. This is not to say that there are no other similarly situated properties, but this condition is not typical of lots located in the Riverway District. The location of the existing residence, well, septic, and steep slopes, also limit the ability to build a structure on the north, west, and east sides of the residence. The only available buildable area on the property, albeit non-compliant by virtue of setbacks, is located south of residence on the existing blacktopped parking pad where the applicant proposes to build. Staff suggests that the applicant’s lot size, location in the Shoreland and St. Croix Riverway Districts is a unique property condition, thus qualifying it for a variance.*

Finally, all variance applicants must show that the requested variance will not be contrary to the public interest. This criteria requires the zoning board to consider the purposes of the ordinance at issue and determine “whether the relief requested is consistent with the public interest such that the variance should be granted, or whether a variance would subvert the purpose of the zoning restriction to such an extent that it must be denied.”

PCC §240-78C(4) states, “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.” 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 by:

- (1) Reducing the adverse effects of overcrowding and poorly planned shoreline and bluff area development.
- (2) Preventing soil erosion and pollution and contamination of surface water and groundwater.
- (3) Providing sufficient space on lots for sanitary facilities.
- (4) Minimizing flood damage.
- (5) Maintaining property values.
- (6) Preserving and maintaining the exceptional scenic, cultural, and natural characteristics of the water and related land of the Lower St. Croix Riverway in a manner consistent with the National Wild and Scenic River Act of 1972 and the Wisconsin Lower St. Croix River Act.

The applicant plans to install silt fence downhill from the proposed construction. The applicant plans to match the siding color of the proposed garage to the color of the siding on the existing home (earth tone). The applicant is also looking into the possibility of putting stonework around the lower portion of the proposed garage. No existing vegetation will be removed as part of the proposed project. The proposed location of the building is not in a floodplain or wetland area. The proposed structure has been planned to minimize both physical and aesthetic impacts. Staff suggests that the structure proposed by the applicant would not be a “substantial detriment” to neighboring properties and, when considering building materials, building location, and erosion control and screening plans, would not subvert or undermine the purpose and intent of the Riverway ordinance. Given this, it would appear that the granting of a variance in this instance would be consistent with the public interest as it relates to the St. Croix Riverway District.

§240-78(B)(2)(a) states that a variance granted shall be the minimum to permit a use of the property and may contain conditions or guarantees attached thereto by the Board of Adjustment. *The relief granted, if approved, should be only the minimum necessary. Staff suggests the BOA consider whether the proposed structure could be designed in such a way to minimize the need for mitigation to alleviate visual concerns. It may be that best building practices require the construction of a structure that lends itself to having two levels. The BOA should consider whether a limitation on usable levels would have an appreciable impact on limiting the visual or aesthetic impact of the structure.*

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. If variance is granted, the decision must be determined to be consistent with the established variance standards regarding unnecessary hardship, protection of the public interest, and presence of unique property limitations.

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If a variance is denied, the decision to deny shall state the Board's determination as to how the application does not meet the variance standards regarding unnecessary hardship, protection of the public interest, and/or the presence of unique property limitations.

Wright swore in Joseph Boles.

Boles stated that he feels that the staff report set out all the standards of how it should be applied to this property. Boles said in regards to the last hearing, it states the variance was denied, and I guess technically it was, but there were only 4 members, so the vote was 2 to 2. It was unfortunate at the time that there were only 4 members. Boles wanted to note that at the first hearing, we didn't hear anything from the DNR, which I took as they did not oppose the variance then, and now in some regards they are objecting to the variance.

Wright asked for questions from the Board for the applicant or staff: Barringer asked what the DNR had to say. Pichotta read the letter from the DNR. "Dear Board Members, The Department of Natural Resources has received the hearing notice for the March 23, 2023, public hearing concerning the variance requests submitted by Joseph and Della Boles to construct a 576 square foot detached garage with an upper east-facing garage door to a driveway and a lower west/river-facing utility door that lies within the bluffline setback, the ordinary high water mark setback, and the side yard setback. The three separate variance requests are from sections §239-9E(3)(a), §239-9E(3)(b), and §239-9E(4) of the Pierce County Code Chapter §239 – St. Croix Riverway Zoning. Thank you to staff for discussing the site and requests with me. Note that while the variance request from the bluffline setback is listed as being from §239-9E(3)(b), it more specifically is a variance from the built-in provision in the ordinance (§239-9E(3)(b)[1]). As such it includes needing to meet the four required standards [a] – [d]. The department understands the request does not include any landing, concrete slab, etc. adjacent to and in combination with the lower west/river-facing utility door portion of the proposed two-tier garage, as would often be the case. The department notes that no such structure would be allowed under §239 – St. Croix Riverway Zoning as it would be within the bluffline and OHWM setbacks, and if not narrow potentially within the slope preservation zone. If the requested variances are granted it should not be assumed that constructing a landing, concrete slab, etc. at a later time would be automatic because a utility door was included as part of this variance request. As the Board reviews the variance requests, please keep in mind that the applicant has the burden of proving that their application meets each of the three statutory requirements for granting of a variance, for each request. The Wisconsin Supreme Court has made it clear that proof of unnecessary hardship by itself does not entitle an applicant to a variance. All three of the statutory variance criteria must be satisfied in order to grant a variance. They are listed. The Board of Adjustment is to ensure that all three statutory standards for the granting of a variance are met, for each request. The applicant's narrative does not appear to demonstrate that a unique property limitation nor an unnecessary hardship exist for this request. According to discussion with staff and air photos of the area near this property it appears that there are other properties with small, narrow lots with steep slopes, similar to the property in question. The applicant wanting a garage to replace the existing open parking area for the reasons expressed in their application narrative, while understandable, is a circumstance of the applicant, not an issue with the property. The property has maintained reasonable legal use in the past and continues to without the garage. For these reasons the department does not believe the three variance criteria have been met for these requests. Further, with the proposed garage larger than the existing parking area, the addition of a lower level with a utility door (access) facing the river replacing what is now well-weathered retaining wall, and all of it being at or within a few feet of the bluffline it is not clear how, nor does it appear, the proposed structure is the minimum relief necessary from Pierce County zoning code, especially §239-9E(3)(b)[1][a] and [d]. And with a structure so close to the bluffline, how will the applicant ensure no immediate or long-term erosion in the slope preservation zone. Perhaps a long-term erosion control and /or storm water management plan will be required, but I did not see anything in the materials I was provided that discussed this as a possibility. For all these reasons the department recommends these requests be denied. Thank you for the opportunity to provide comments. Sincerely, Mike Wenholz, Shoreland Program Coordinator" Holst asked Adank how he came to 2.5' on the §239-9E(4). Adank stated the overhang on the north and south side of the garage is half a foot. On the survey it shows that he is going to be 3' from the property line, but with that overhang, which in the riverway code, we are supposed to measure the overhang as part of the setback, the 1/2-foot overhang is how I got to 2.5'. Betzel stated the DNR makes the statement "nor does it appear" he said he didn't like to go on appearances, he would like to have facts in there, and they haven't provided facts. Betzel said for the erosion control, the DNR said there are no plans submitted. Betzel asked if we can make that a condition on the proposed variance? Wright stated yes. Wright had a question regarding the footing of the proposed structure where the stone was laid down and asked where that related to the bluffline. Boles stated you would step on the stone to get into the door of the garage's lower level.

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Adank stated the stone walkway would be considered a structure and it would have to be part of this request. Wright asked what percent of the properties around this structure would have unique conditions, somewhat similar to this property with steep slopes, small lots and limited setbacks. Adank stated based on his opinion of a quick overview of it, there are far more properties that would have room for a garage and would be able to meet all the applicable setbacks and not have slope preservation zone. Adank read how the ordinance defines unique conditions. Unique, exceptional or unusual circumstances applying only or primarily to the property under consideration and are not of such of general or re-occurring nature elsewhere in the same zoning district as to suggest or establish the basis for ordinance changes or amendments. Adank stated that statement essentially makes us look at the zoning district as a whole. Pichotta stated that he is of the opinion that it is less than a dozen of parcels in the St. Croix Riverway that share these same restrictions. It is basically this neighborhood, and there are a lot more parcels in the Riverway than just those. The unique property condition basically suggests that if there is a class of structures or issues associated with an overlay district or a zoning district, ideally you would amend your code to fix that and wouldn't deal with them on a piecemeal basis, you would deal with them as a class. Pichotta said the problem is that there is not that many of them and we don't have the luxury to be able to amend the St. Croix Riverway code to do what makes sense. We are held to that ordinance by the State. Wright asked about the case laws of Ziervogel and Snyder v. Waukesha Count Bd. of Adjustment being relevant to this case. Holst stated the intent of the bluff land setback ordinance was to keep properties from being sky lined at the top. Through the years the interpretation has changed that every little step that mother nature created when the glaciers melted became a bluff. Holst said when he comes off the hill to go down the nice road that they live in from the top of it, to me that is the top of the bluff, as you go down in there, there are several grades of elevation. When you are on the water, you see the top and the bottom. Holst stated in his own thinking would have a hard time seeing each one as an individual bluff. Wright stated that he didn't know if the case laws help, hurt or are relevant when asking for relief of the entire setback. Pichotta said he thinks Snyder is, in fact, pertinent in this particular case. Unnecessary hardship is present when compliance with the strict letter of restrictions governing setbacks would unreasonable prevent the owner from using the property for a permitted purpose. Basically, when all of the setbacks are applied to these small lots that are on the bluff face, essentially, if Boles had no house there, he couldn't build a house. The strict letter of the law couldn't be followed, so Pichotta suggests it would be unnecessary hardship.

Wright opened the public hearing. No public comment. Public hearing closed.

Christopherson asked if the backside of the parking structure, about 8' high, is an existing accessory structure now. Pichotta stated yes it would be, in the St. Croix Riverway, unlike any other part of the county, even a driveway or flat area with stones on it, is considered to be a structure. Pichotta said Boles is basically proposing to replace an existing accessory structure with another one that goes up a bit taller. Boles stated with that the parking structure there is really different than any other property that he's seen along the river and has to do more with the uniqueness as apposed to unnecessary hardship. Boles said he wanted to address the decision that was made the last time where the Chairman stated about variances that it was too much or too many feet which was the rational for denying it. Boles said he had never heard of that application before of too many variances to a set of facts to deny or support a request for variance. Boles stated he doesn't think there is a case law, statute, or code on what is too many feet on variance. Boles stated he felt that was wrong and he hopes the Chairman would not use that analysis again in the decision this time, as he didn't feel it was appropriate. Boles also said with regards to unnecessary hardship, it exists, without a variance he could not have a garage. Wright responded to the analysis used on decision and read from the NR-118.01, which states "The following rules are necessary to reduce the adverse effects of overcrowding and poorly planned shoreline and bluff area development." Regulations to limit development are setbacks from the OHWM, bluffline, side yard, maximum height of a structure, lot width minimums, etc. Wright said it does not list a number. It lists setbacks to keep development back from the riverway, so that is does not adversely affect the interest of the public, landowners and non-landowners to benefit the health and welfare of the citizens of Wisconsin. Wright stated the intent of the riverway district, in his opinion, was to limit the amount of development, not put in a number, but establish setbacks, where the applicant could them come in and talk to a board, such as this to request a variance.

Board of Adjustment discussion: Wright stated the 5 standards that the County requires and justification behind each one is needed.

1. Unnecessary Hardship. Christopherson stated that he does think it covers unnecessary hardship by referring to page 4 of the staff report. Peterson said the applicant has lived in the house for over 30 years without a garage, if you drive through the countryside, there are many houses that have cars parked in the driveway because there is limited garage

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space. Peterson stated this is nothing new, it has been existing and now the applicant wants a garage, while a garage is nice, Peterson said he has cars parked outside too. Peterson said it is a convenience, not a necessity, and therefore does not think it is a hardship. Barringer stated, he agrees the garage is a convenience, but it creates a hardship if you don't have something besides a basement to put things other than your vehicles. Holst said due to the lay of the land, it would be necessary if you lived there year-round to keep your car away from the elements to have a garage.

2. Unique Conditions. Christopherson due to the size, shape, slope and setbacks, it is a unique piece of property.

Peterson agrees that there are limitations to the property due to slope, due to setbacks and a lot of conditions. Holst stated when it comes to uniqueness, this is one of the more unique properties he has seen in Pierce county.

3. Conditions not self-created. All board members agreed that conditions were not self-created.

4. Public Interest. Christopherson said it is a permitted structure in that area, and he feels it will actually visually help as it will match in with the existing building, the house, and the garage would look nicer than snowmobiles, kayaks, lawnmowers, etc. sitting out. Christopherson stated it will do what the code is trying to do with visual appearance.

Peterson stated the fact there are 2.5' to lot line would limit the neighbor ability to use his lot if you're going to maintain any type of spacing. Peterson said he feels there would be some potential harm to public interest with regard to the neighboring lot. Barringer does not feel this variance would do harm to public interest. Holst said that he appreciated Petersons position on the side lot, but he believed the riverway is why we are coming forward with most of this, and you can't see this spot hardly at all, and the garage will stick out less than vehicles parked there. Boles wanted to comment on Petersons statement that his neighbor is agreeable to this project. Peterson stated you may have a new neighbor tomorrow. Boles stated that is true.

5. Effect on Uses. Wright asked Pichotta to refresh the board on what the effect on uses means. Pichotta stated it basically is something that is contained in the Pierce County Zoning Code that is not typically in all zoning codes as it relates to variances and it does not allow a use variance. Pichotta said a use variance is where you want to establish a use that's not allowed in a particular district, so in essence of giving someone a use variance, you are rezoning a property, and our code does not allow for that. Holst asked to verify that a garage is a permissible use for this district. Pichotta stated yes. The board agreed it was a permitted use in that district.

Wright asked for any further discussion. Holst went over the 4 points in the staff report that pertained to unnecessary hardship. Holst stated they were that a garage is an allowable use, the applicant bought the property with an existing structure in 1991, and that there is no compliant building location anywhere on the entire parcel when applying the St. Croix Riverway Zoning restrictions governing setbacks. Pichotta noted that an unnecessary hardship doesn't have to do with the use itself, it doesn't have to do with whether a garage is necessary or unnecessary, it has to do with whether the conditions, setbacks or rules associated with a given piece of land unnecessarily burdens somebody from doing something that is a permitted use. It really doesn't come down to whether or not it's an unnecessary hardship to have a garage or not, its whether or not the setbacks that are established on this piece of property prevents the applicant from building a structure that is permitted in that district. Wright asked about unique conditions. Christopherson stated the size, slope shape and setbacks make this unique. Pichotta stated the presence of the St. Croix Riverway District is also a unique condition, as it is not present in 90% of the county. Wright asked about #3. Holst stated he purchased the property in 1991 and there was an existing structure. Wright asked for justification to #4. Barringer stated this does not adversely affect the general public interest. Pichotta noted that the applicant plans to install silt fence, match the siding color of the proposed garage to the color of the siding on the existing home, no existing vegetation will be removed and the proposed location of the building is not in a floodplain or wetland area. Holst suggested the wording the staff had should be added. Wright asked about #5. Holst said the garage is a permitted use.

Wright asked Peterson to read his Peterson summarized justification for standards 1 – 5.

Barringer made a motion to approve the Variances referencing the justifications as read by Peterson with conditions 1-4 as written. Christopherson seconded. 4 in favor (Wright, Christopherson, Barringer & Holst). 1 opposed (Peterson). Motion carried.

Wright asked about any future agenda items. Adank stated he was not aware of any future items at this time.

Motion to adjourn at 9:18pm by Barringer and seconded by Ross Christopherson.

Respectfully submitted by A. Anderson