

## **WRIGHT COUNTY BOARD OF ADJUSTMENT**

**Meeting of: July 29, 2022**

### **MINUTES – (Informational)**

The Wright County Board of Adjustment met July 29, 2022, in the County Commissioner's Board Room at the Wright County Government Center, Buffalo, Minnesota. Chairman, Paul Aarestad, called the meeting to order at 8:30 a.m. with Board members present: John Jones, III, Dan Mol, Dan Vick, and Bob Neumann. Representing the Planning & Zoning Office was Aaron Ogle, Planner; Greg Kryzer, Assistant County Attorney, legal counsel.

### **ACTION ON MINUTES FOR THE July 08, 2022, MEETING**

On a motion by Jones, seconded by Vick, all voted to approve the July 8, 2022, minutes as printed.

#### **A. ALLAN DOERING – Cont. 7/8**

LOCATION: 10701 Grover Ave SW – Terra Teresa Lot 39 of Section 25, Township 118, Range 27, Wright County, MN (Mary Lake - Victor Twp.) Tax #219-016-000390. Property Owners: Allan & Deidre Doering

Requests a variance as regulated in section 155.026, 155.049(F)(3), 155.057(E)(1), & 155.006 of Chapter 155, Title XV, Land Usage & Zoning of the Wright County Code of Ordinances to allow an addition to the existing home that would be 1.1 ft. from the west side lot line and approximately 8 ft. from the east side lot line (15 ft. required). The existing home is approximately 48 ft. from Lake Mary (100 ft. required). Building coverage proposed is 15.5% (15% allowed).

Present: Allan Doering & Jordan Hirsch, Building Contractor

- A. Ogle – with the site plan displayed the property details and request were reviewed. The item was continued from the July 8<sup>th</sup> meeting to allow time for the applicant to revise plans with direction from the Board that they would like to see the proposed addition no more than 4 ft., or further, from the west side line and not any closer to the east lot line. The Board had also indicated they would like to see the building coverage at or under the 15%. Revised plan was displayed and reviewed. The area of the addition that was 1.1 ft. from the west line was removed, leaving the addition area, at the closest point, 3.1 ft. from the west line. The building coverage was reduced to 15.3% on the new plan.
- B. Doering – understands the idea is to look for a hardship with a variance. Feels the hardship is the size of the lot and the configuration of the existing cabin. Most cabins were set up to face more of the lake and is not ideal for adding on. The 15.3% is roughly 20 sq. ft. of overage on the building coverage. Feels that is not a noticeable amount of coverage. The size of the rooms are already pretty small. Knows that the room size and layout of the addition is not a hardship but when you have to live in the home and look at the building everyday it does make a difference. Did speak with the neighbor to the west and has a written statement he is okay with the distance of the addition because it is not any closer than the existing home.
- C. Hirsch stated they looked hard at the plan and already gave up the closet as they tried to make changes to get to down to the 15%. It is hard with the layout of the existing home and the lot size to make adjustments. Doering added they will be getting rid of the existing patio, pavers and small storage shed. The removal of that small storage shed will created a burden for storage on the property, but the addition outweighs the storage needs.
- D. No public comment

- E. Mol – was not at the last meeting but did review all of the minutes and understands the direction the Board was looking for with changes to the proposed plans. Struggles with how close to the line the building is. He can tell with lot coverage and the existing location of the house the area is difficult to work with. In the end it is a desire to get a larger house. Would like to see the building coverage at 15%. These old lots were created with the intentions of having small cabins on them. More and more the Board is seeing the desire for larger homes and cabins on these small lots that were not meant for that. There are a lot of lakes in Wright County that need to be protected. He would like to see the building coverage brought down to the allowed 15%.
- F. Vick – agrees that the coverage should be 15%. The Board asked for 4 ft. from the west line and the revised proposal is sitting at 3.1 ft. Since that is no closer than the existing building, he could go along with the 3.1 ft. setback. The building coverage does need to be at 15% or less.
- G. Jones – agrees with both members regarding the 15%. He does not want to see the building coverage over the 15%. Concerned there is not enough room to get around the home to the lake and would like to see the property line setback increased.
- H. Neumann – the addition is trying to stay square with existing cabin. Feels that the building can be turned to run parallel with the property lines. Instead of working with what will fit better with the existing cabin design the addition should be designed to fit with the property lines. Any work with large equipment by the lake will be very difficult to access around the home. Currently as neighbors they get along, but one cannot predict what the future will hold. The next neighbor might not allow use of their property to access the lake side. With available distance from the building to the road the addition can be turned to work with the property lines and improve the setbacks. The existing building setbacks cannot be changed but there are ways to adjust the proposed plan and get more of a setback. He will not approve the request at 3.1 ft. from the west line. The applicant is asking for a 40% increase in space, and that is fine. The rest of the Board has already mentioned the 15% building coverage.
- I. Aarestad – would like to see the setback at 4 ft. from the west line and the impervious brought down to the 15%. Does not really see a hardship.
- J. Mol questioned how the applicant feels with what has been said by the Board.
- K. Doering – disagree, with the 4 ft., and turning the addition. Feels that would be an unjust cost. The home is already at 2.2 ft. from the line. He does not see the need to bring the home back to 4 ft. getting down to the lake shore is currently not a problem. The only way for the neighbor to get to the lake is by going on his property, so no matter who owns the property there would have to be an agreement for lake access or neither of them would be able to access the lake. Hirsch – displayed the proposed building plan and reviewed the mechanical room that could be removed. If that change is made would the plans be acceptable? Aarestad – feels that would go a long way with the impervious coverage. The 3.1 ft. setback was addressed at the last meeting as a concern with even just using a ladder on the side of the home and not trespassing. Recognizes the existing home is close and it is common in the area, but this Board wants to see a new structure meeting minimum setbacks that will allow for access without crossing the property line. Can the wall be moved 11 inches? Hirsch – it is already so tight in the cabin with every little adjustment felt in another area.
- L. Aarestad – the Board has shared their thoughts that they would like to see the west side at 4 ft. or more from the line and 15% or less building coverage. If those items can be accomplished the Board can move forward.

- M. Vick questioned if thought was had on putting an angle on the west most corner. Hirsch and Vick continued discussing options where changes could be made. Mol reminded the Board it is not up to them to design the addition. It is their job to provide an approval for what they are willing to accept for the variance and the applicant needs to work on how to make that happen.
- N. Hirsch – asked if the 4 ft. was the exact number. Mol – yes, 4 ft. but 4.5 ft. would be better. Vick questioned if the 4 ft. will be obtainable. Hirsch – the 15% isn't a problem the 4 ft. is difficult.
- O. Doering – asked if they are able to get to 4 ft. and under the 15% will they need to come back to the Board. Aarestad – the variance motion can be specified to those conditions and as long as they are meet at time of application there is not a need to come back to the Board.
- P. Vick motioned to approve an addition to the existing home to be no less than 4 ft. from the west lot line and no closer to the east lot line than existing proposal. With no more than 15% building coverage allowed. Seconded by Mol.

*DISCUSSION: Ogle recommended adding to the motion an updated site plan as well as a stormwater management plan.*

- Q. Vick moved to amend the motion to include an updated site plan as well as a stormwater management plan. Mol seconded.

*DISCUSSION: Kryzer – given the tightness of this request he would suggest requiring an as-built survey to verify the 4 ft. setback.*

- R. Vick moved to amend the motion to include an as-built survey. Mol seconded.

VOTE: CARRIED, Neumann opposed

2. **NEAL SAWATZKE** – Cont. 7/8

LOCATION: 4999 53<sup>rd</sup> Street SW – Lot 1, Poplar Heights, according to plat of record and part of Gov't Lot 5, Section 32, Township 119, Range 26, Wright County, MN (Little Waverly Lake - Marysville Twp.) Tax # 211-000-322300, 211-017-000010. Property Owners: Karen M. Sawatzke Revocable Trust

Requests a variance as regulated in section 155.026, 155.057(E)(1), & 155.090(Table 3) of Chapter 155, Title XV, Land Usage & Zoning of the Wright County Code of Ordinances to allow the construction of a 24.2 ft x 32 ft. two story addition to an existing home that is 41 ft. from Little Waverly Lake (100 ft. required). The request is also to allow the construction of a new septic system that would be 30 ft. from the lake (75 ft. required).

Present: Curt Karau, Jennifer Sawatzke, Kendal Kubasch with Kubasch Excavating

- A. Ogle displayed the proposed site plan while the property details and request were reviewed. The Board continued the request from the July 8<sup>th</sup> meeting and wanted more information on the septic design and location. There was concern with the proposed septic site being less than half the required distance to the lake. The Board had indicated they would like more information from one of the Counties Environmental Health Officers (EHO) or a septic professional. At the prior meeting it appeared the Board found the location of the proposed addition not as big of a concern as the septic. The Board had indicated they would rather see the proposed addition location where it is shown on the site plan compared to the addition on the west side of the home and going up.
- B. No comment from applicant.
- C. Scott Deckert and Troy Johnson, EHO's with Planning and Zoning, stepped to the podium to take questions from the Board. Aarestad – concerns from the Board is the proposed location and if EHO feels the proposed system is adequate with being so close to the lake. There was mention of a pretreatment system as another option. Deckert – not a particular reason behind the required lake setback number. Some lakes have 50 ft., and some have 100 ft., this lake has 75 ft. Generally, the statement is true that as you get closer to the lake the chance of contamination or pollution increases. Particularly if you have a system that would malfunction. This proposed system makes EHO Staff a little uneasy. If the mound were to freeze or any issue causes surfacing the system sits on what is basically a bluff and is right next to the lake. The State does say all that is needed is 3 ft. of dry soil for the effluent to be cleaned up. Looking at the history of the lot, 22 years ago the garage location is where the septic system should have gone. EHO Staff feels uneasy about the mound being perched on a bluff so close the lake. Johnson – opinion can be stated, or the rules provided. The rule states a 75 ft. lake setback, and the variance decision is up to the Board. Questioned if the Board has specific questions or would they like the stated rules. Aarestad – general knowledge of the overall proposal, as this is new to the Board as well. Recognizes that being so close to the lake could be an issue if the system fails. Deckert – if technology, such as an echo-pod or multi-flow, is added the effluent waste being sent to the drainfield would be cleaner. In some states a pretreatment system filters the water well enough that it is allowed to be used to water the lawn. In Minnesota, a foot of soil for the effluent to go into is required. If a pretreatment system is added the risk would be lowered at the site. However, a pretreatment system needs to be monitored. So, if not monitored the risk is still present. Everything done at this site would have its pros and cons. Even with a holding tank there is a risk of the owner deciding to pump the tank on their own. The Board was directed to the septic designer for additional questions.
- D. Mol questioned if he is reading the design correctly in that the proposed septic system is for a standard mound system without any extras added. Johnson – confirmed that was accurate. In Minnesota a pretreatment system requires the drainfield water to be in the ground. Other states will allow for surface

discharge after pretreatment system. With pretreatment, if there is a spill, there is not such a high risk of contamination involved. The setbacks to the lake are there because water still filters to the lake.

- E. Aarestad questioned how often systems fail. Johnson – it is rare. A system will occasionally freeze and fail. There is a breaking point for anything and really any system can fail but it is pretty rare. Mol – what would be the definition of the system breaking. Personally, has a mound system and there is no water running out but on one side, about 20 ft. out, the ground is moister than in the field and greener. Johnson – the biggest failure is abuse of some sort. Most times the soil gets plugged and the water surfaces.
- F. Kubasch – Kendal Kubasch with Kubasch Excavating introduced himself as a certified septic inspector, designer, and installer. This lot has a lot of difficulties to address, from lake setbacks to right-of-way lines and lot coverage availability. It is not a matter of 4-5 choices, this lot has really no choices. The proposed mound is made narrower to accommodate more length than width. The topography in this area actually goes away from the lake. The site plan was displayed and reviewed in greater detail. Kubasch stated that if the septic sight was moved to the area near the road there would be a much larger lake setback and other issues with the distance to the road and elevation come into play. Feels the proposed site is the least dangerous location. Every septic system requires the attentiveness of the operator to keep an eye on their system and notice issues. A pretreatment or time dosed system still needs adequate square footage to be treated. The area between the garage and addition would not accommodate any system that would allow for treatment. You still need to have the 1 ft. of separation and proper square footage. The well is going to be relocated, which is another setback to watch. Not the most ideal location, but with proper maintenance and awareness of the operator there will not be a lot of danger of failure occurring. The technology sounds nice, but it is expensive, needs to be maintained and still is required to be monitored. County Staff can tell you that people have shut off the technology part of the system and then is not doing the treatment it is intended to do.
- G. No public comment.
- H. Vick – concern is the potential of the septic leaking into the lake. Questioned if there is a county inspection that can be done yearly to check for issues. Johnson – with the performance system there are additional requirements listed on the permit, which includes an annual inspection by a professional. The chances of Staff inspecting the day after a problem was started is minimal. In concept a yearly inspection, by Staff, is a good idea but in reality, it probably won't help much. Vick – the inspection could see that the system was not being take care of. Johnson – by that point the neighbor would most likely be complaining, especially on those tighter lots.
- I. Jones – personally has a mound system and in over 20 years has never had a problem. Would be okay with the proposed plan, does not see a big disaster situation developing.
- J. Neumann – feels there are situations where a holding tank is the best option, and this is one of those scenarios. Questioned what kind of system is there currently. Kubasch – there is a septic tank near the house that runs to a pump and down into a small shallow drainfield that is non-conforming and will have to eventually be addressed. Neumann – addressed Mr. Kubasch and asked if in his opinion this new system would be as safe as a holding tank. Kubasch stated that would depend on the operator of the holding tank. The potential problem seen with holding tanks is the owner doing the pumping on their own. With a holding tank every drop of water has to be pumped out and therefore it fills up fast. Holding tanks are cheaper to install but in the long run can be more expensive with the amount of pumping involved. In his experience the County would rather see anything but a holding tank. If there is room for a small treatment area, they would prefer to not see a holding tank.

- K. Mol – struggling with this request. This County has a lot of lakes and have been striving to clean-up these old non-compliant septic tanks. This site is not even half of the required 75 ft. which feels this is going backwards. Once the system is approved it is there for 20 or more years. If there is an issue it might not be surface visible and the 30 ft. to the lake isn't enough room to protect the lake from contaminated ground water. The County is trying to clean-up old systems that are close to the lake. He isn't sure this plan is going along with that thought. A 3-bedroom home is a full size family with plenty of water being used.
- L. Aarestad – feels this is an improvement. It sounds like the chances of the system failing are pretty slim and if something were to happen it would be noticed inside the home or pretty quickly by a neighbor. Personally, does not see a big advantage of the pretreatment. State law requires 1 ft. of flat surface for overflow. Johnson – on a standard septic system the State of Minnesota wants 3 ft. of soil to treat and clean the sewage and 1 ft. for the pretreatment systems. Aarestad – feels the proposed request is the best option.
- M. Vick questioned if this is the best system to go in by the lake or is there another option. Kubasch – visited the site several times with the contractor and owner and feels this system design is the best option. Vertical separation is also an area to review. Looking at the topography, if the septic site is moved back towards the road there is distance gained from the lake but there is less vertical height for filtration. Vick – if money did not matter would this still be the system recommended? Kubasch – yes, cannot speak for the person living there and maintaining the system. Technology cost is more on the front-end and does a good job, if properly maintained. In the end it doesn't matter the system if it is not properly maintained. If the DNR patrols the lake and they see something of concern they will be addressing the concern. Vick – still does not want to leave it to risk, would like some type of inspection.
- N. Neumann motioned to approve the construction of a 24.2 ft x 32 ft. two story addition to an existing home that is 41 ft. from Little Waverly Lake and will require a holding tank for a 3-bedroom home.

Aarestad called for a second, hearing none – MOTION FAILED

- O. Aarestad motion to approve the variance as regulated in section 155.026, 155.057(E)(1), & 155.090(Table 3) of Chapter 155, Title XV, Land Usage & Zoning of the Wright County Code of Ordinances to allow the construction of a 24.2 ft x 32 ft. two story addition to an existing home that is 41 ft. from Little Waverly Lake (100 ft. required). The request is also to allow the construction of a new septic system that would be 30 ft. from the lake (75 ft. required). Seconded by Vick.

*DISCUSSION: Vick asked if a yearly or biyearly inspection can be done. Ogle referred the question to EHO Staff. Deckert – would like clarification on what is wanted from the inspection. If it is merely a walk around the system, that would be acceptable. Inspection to Staff means full pumping of the tanks and a more in-depth review. Vick – inspection would be a walk around to make sure nothing is leaking into the lake or potentially getting into the ground water.*

Aarestad moved to amend the motion to add condition: 1) a walk around inspection conducted every two years by Wright County Environmental Health Officer. Vick seconded the amendment to the motion.

*FURTHER DISCUSSION: Neumann stated he feels that a pretreatment should be a must. Aarestad stated he would like to vote on the motion that is currently in front of the Board.*

MOTION CALLED FOR ACTION THAT INCLUDES THE AMENDMENT:

VOTE: Vick, Aarestad in favor; Nay: Jones, Neumann & Mol MOTION FAILED

- O. Aarestad motion to approve the variance as regulated in section 155.026, 155.057(E)(1), & 155.090(Table 3) of Chapter 155, Title XV, Land Usage & Zoning of the Wright County Code of Ordinances to allow the construction of a 24.2 ft x 32 ft. two story addition to an existing home that is 41 ft. from Little Waverly Lake and allow the construction of a performance septic system 30 ft. from the lake and a walk around inspection conducted every two years by Wright County Environmental Health Officer. Seconded by Vick.

VOTE: Vick, Aarestad and Jones in favor; Nay: Mol, Neumann MOTION PASSED

3. **PAM MATHESON** – New

LOCATION: 16083 62<sup>nd</sup> Street – Lot 5, block 6, Johnson Park Second Addition, Section 32, Township 121, Range 28, Wright County, MN (W. Lake Sylvia – Southside Twp.) Tax # 217-029-006050. Property Owners: Pamela Matheson & Gregory S. Matheson

Requests a variance as regulated in section 155.026, 155.049(F)(2), 155.049(C)(5), & 155.003(B)(1) of Chapter 155, Title XV, Land Usage & Zoning of the Wright County Code of Ordinances to construct a two story (only one story allowed) 32 ft. x 32 ft. detached garage with a tuck under that would be 14.8 ft. from the right-of-way (20 ft. required) and 32.1 ft. from the centerline of 62<sup>nd</sup> St. NW (65 ft. required). The detached garage sidewall height proposed at 18 ft. (14 ft. maximum).

Present: Pam and Greg Matheson

- A. Ogle displayed the site plan. The R1 property is located on Lake Sylvia, in Southside Township and is roughly 20,960 sq. ft. The request is to construct a two story 32 ft. x 32 ft. detached garage where only one story allowed for this size of parcel. The garage will have a tuck under that would be 14.8 ft. from the right-of-way, where 20 ft. is required and 32.1 ft. from the centerline of 62<sup>nd</sup> St. NW, where 65 ft. is required. The detached garage sidewall height is proposed at 18 ft. with 14 ft. as the allowed maximum height. The Township approved the two story 32 ft. x 32 ft. detached garage 14.8 ft. from the right-of-way due to lot coverage being met and the contour of the land. The Township did not address the wall height as that was not mentioned by the applicant at the Township meeting and they had yet to receive the formal Planning & Zoning request form. P. Matheson – confirmed that was the case.
- B. P. Matheson – the old garage was damaged from the road washing out and was about a foot under dirt and has been removed. The road has been redone and is now not a problem. They are looking to replace that garage with a slightly larger building.
- C. No public comment.
- D. Jones questioned what the sidewall height is. Ogle – 18 ft. is proposed. The building is considered two-story because more than 50 % of lowest level is exposed. Jones stated concern is if the applicant is planning to have any livable space in the garage. P. Matheson – no, there will be storage space in the lower level with the upper level for the pontoon and vehicle. Jones – the Board has seen this before where there is suddenly a 2<sup>nd</sup> living residence on the property. G. Matheson – have a side-by-side and jet skis so there won't be much room for anything else. Asking for the garage door to be 9 ft. with a 10 ft. opening so that the pontoon can fit.
- E. Neumann – when initially reviewed the proposal he questioned the living area potential and realized that a person is not going to want to park their vehicles on top of a living area. The lakeside will be the full 18 ft. G. Matheson – correct. Neumann – the east side will also be exposed 18 ft. so the neighbor to the east will look at the building. G. Matheson – there is a 6-8 ft. privacy fence. Neumann – the building will be at least a single story above that fence. Makes good use of the available space but worried with the height it will look like a tower, especially from the lake. P. Matheson – not much room from the side of the house to the property line, where the fence is, that area looks down to the lake. The arial photo was displayed for P. Matheson to explain the layout of the property and sight lines. Neumann – how much excavation will be needed? P. Matheson – there is some that needs to be leveled to the west side of the house for the drainage.
- F. Mol – is there any way to move it a little more from the property line? G. Matheson – can't move it back farther and can't go more west because that is where the septic tank comes up. P. Matheson – drainfield is at the top and pumps up. Mol – this is pretty much the only location. Already tore a garage down. G.



Matheson – the sidewalk and steps will remain the same. Mol – concern is the height and becoming living quarters. Recognizes they might not have plans for the building to have living quarters but new owners down the line might think differently. Not sure there is way to address the living quarters concern. Kryzer– would suggest not allowing windows and therefore making the building uninhabitable during the summer.

- G. Vick – thought about the living area as well. The basement would be the area more likely to be the habitable area and there are no proposed windows. Some work with the retaining wall could possibly make the building not look so tall. The grade appears to fit with the building. G. Matheson – have been there since 1954 and have seen a lot of water problems on his lot and other lots. Does not want any more water problems. Vick questioned if there is a plan to get the water to get around without intruding on the neighbor. G. Matheson – plan is to put in some granite wall and also slightly slope the driveway to direct water.
- H. Aarestad questioned if the road is a Township or private road. P. Matheson – Township. Aarestad – not concerned with the impact or close to the road, appears to be a dead end. Appears the house will shield the structure from the lake, so the height isn't as much of a concern. Questioned access to the lake. G. Matheson – access is on the other side of the home. Have been going that way for years. Aarestad – to address the livable area, would ask to not have a stairway internally. G. Matheson – the idea with those is for access during the winter months. P. Matheson – the area is steep and could get icy so accessing through the interior stairs is safer. Aarestad stated he can live with that explanation and reasoning.
- I. Motion made by Vick to approve the construction of a two-story 32 ft. x 32 ft. detached garage with 18 ft. sidewalls that would be 14.8 ft. from the right-of-way and 32.1 ft. from the centerline of 62nd St. NW. There is to be no water to the building and a stormwater management plan submitted at the time of building permit application. Seconded by Neumann.

VOTE: CARRIED, Mol opposed

4. **MOORES & MAAS PROPERTIES, LLC** – New

LOCATION: Up The Creek Bar and Grill - 4246 112<sup>th</sup> Street NW – Lot P & Lot K of Gov. Lot 1, Section 05, Township 121, Range 26, Wright County, MN (Silver Creek Twp.) Tax # 216-000-054110, 216-000-054112, 216-000-054105, 216-000-054106. Property Owners: Moores & Maas Properties, LLC.

Requests a variance as regulated in section 155.026, 155.057, & 155.030 of Chapter 155, Title XV, Land Usage & Zoning of the Wright County Code of Ordinances to allow the approval of a 22.5 ft. x 31.5 ft. unpermitted covered patio that is approximately 50 ft. from the centerline of County Road 123 where 130 ft. is required.

Present: Larry Moores, Christina Maas, Jennifer Doherty

- A. Ogle displayed the site plan and reminded the Board and public that there are two items on the agenda for this applicant and the conversation will need stay related to the request being discussed. The property is non-riparian and located in Silver Creek Township. All four parcels involved total roughly 1.31 acres. The request is to allow the approval of a 22.5 ft. x 31.5 ft. unpermitted covered patio that is approximately 50 ft. from the centerline of County Road 123 where 130 ft. is required. The covered patio was constructed without a permit. The applicant is asking for the Boards approval to keep the patio at the current size and location. In 1997 the Board allowed the expansion of a nonconforming use to install an outdoor volleyball court, horseshoe pits, and a serving bar. It was conditioned that snow removal or a fence that can be collapsed during the winter months be installed to meet County Highway Dept. specifications. Volleyball, horseshoe, and other outdoor activities may be no later than 10:30 pm when outdoor lighting must be shut off. Minimum 6 ft. high fence installed with screening to prevent balls from going out into the public road or adjoining properties. Agreement between the business and adjoining neighbors of the parking lot be submitted. Entry to the outdoor courts be controlled according to code. Certificate of Survey submitted prior to any construction. Permit reviewed once a year beginning in April 1999 by the Town Board and the Township is to advise the BOA of any violations or reasons that warrant a new review by the Board. In 2002 the Board approved a 20 ft. x 20 ft. addition to update the bathrooms and include an office and utility room on an undersized lot. In 2012 the Board approved a 20 ft. x 28 ft. two-story addition to the bar that would be used for kitchen space and an office on the second floor which is not permitted for seating patrons or for meetings for the public 54.5 ft. from the county road at its closest point and allowed impervious surface coverage up to 42%. The Township did accept the setback request for the covered patio. The applicant is set to be on the August 2<sup>nd</sup> Township agenda regarding the next item on the agenda.
- B. Moores – the volleyball court was taken out many years ago to allow for the installation of a new septic system.
- C. Aarestad addressed the public regarding the public comment process. There is a 3 minute limit with the focus being the request currently before the Board, which is the covered patio.
- Cyrene Bastien – the patio is so close to the road and a safety concern. Parking is very close to the road and also on the corner of the bar. There is a T intersection, so when a vehicle approaches the intersection, you have to double check to make sure you can go, and it can be difficult to see around the vehicles parked in the roadway.
  - Rod Quist – feels the patio has brought more traffic into town. Glad it is a successful operation, but the extra traffic has become a big issue. The increase in traffic has affected the quality of life in town and brought property values down. Quoted President Richard L. Borges, of The Appraisal Institute. “External situations, such as living near a bad neighbor, lowered home values

- by 5-10%.” Does not think the neighbors can afford their property value to go down 10%. Feels the patio brings in a lot of traffic that is disrespectful to the neighborhood. They are noisy and create a safety concern with those walking along the road. Is against the patio because it is bringing everyone’s property value down and there is a related safety hazard from the people that are drawn in.
- Scott Johnson – this is an after-the-fact request. Since the patio has been put up there has been issues with the increase in traffic and inadequate parking. This request is about expansion and there just isn’t adequate parking for amount of expansion that has occurred. Feels the septic system is not properly sized. The patio at least doubled the number of people that come to the establishment. There are days you can smell the septic. There is noise, traffic and possibly more than one unpermitted structure. There are two other sheds that might not have been permitted. The request is asking for a setback variance from County Road 123 there might need to be a variance from County Road 143 as well. Questioned the mention of the addition done in 2012 and if that included the outdoor walk-in freezer. Ogle – would need to pull up the permit to verify. Statement is that in 2012 the Board approved a 20 ft. x 28 ft. two-story addition to the bar that would be used for kitchen space and an office on the second floor which is not permitted for seating patrons or for meetings for the public. Johnson – this patio was not given a variance, is unpermitted, not inspected, and open to general public. The big issue is the traffic now coming in and leaving town. When they leave town, they do not leave quietly. Not unusual to have so many motorcycles on a Saturday or Sunday that they park wherever they want along the county roads. The parking lot is completely full, and vehicles are parking on the grass. There is just not enough parking for the number of people visiting the establishment. Understands the business is doing great, and appreciates that, but it has caused a negative impact on the neighborhood that needs to be addressed. Ogle – parking would be more related to the next request. This conversation is regarding the covered patio and the distance to the centerline of the county road. Johnson – the covered patio is bringing extra traffic into town and there isn’t adequate parking. Aarestad questioned if the noise is from the cars or the people dining outside. Johnson – the noise is from the next issue with the outdoor music. The most noise is from the people coming or leaving town on their motorcycles. There was a Saturday afternoon a few years ago where the motorcycles, easily 200 bikes, that had both county roads blocked and they were having a burnout contest. Aarestad – understands the car and bike issue and will address that with the next item. Johnson – expansion already happened, and the negative impact has been seen.
- D. Maas – the patio has not grown. The covered roof was added over existing patio area. Know they did not get a permit, but they did use a licensed contractor. The roof was added to an already existing area because the walnut trees above the patio area will drop walnuts and they did not want anyone to get hurt.
- E. Neumann – it does not appear there is a lot of other places that a covered patio could go. This is an older town with the buildings right next to each other. Personally, has been at the site. Thinks the covered patio is nice. Asking himself if he would allow this building if this was just a proposal and he does believe he would. It is unfortunate that bar itself is on a corner. There really is no other place to go with the septic system. Can’t get further away from the road. The roof did not encroach closer than what the patio was before it was covered.
- F. Mol – grew up in the area and has a lot of history with the town. He has seen the little bar grow and change though he does not patronize the bar often. The corner has always had people parking very close to the intersection. Can attest to it has grown and the town has become more busy. Realizes, as a past motorcycle rider, that people like to get on their bikes and rap the engine and that it can be disturbing to the neighborhood. Regarding the covered patio, wishes they would have done this correctly from the start and gotten permits. Staying to the after-the-fact patio, people were already dining outside when the roof

went up. With after-the-fact buildings they would need a permit and pay double the permit fee. Ogle – confirmed. Mol – would want to see an Engineer inspect the entire patio and confirm the building is correctly built. This would ensure safety for the public and be on record. Feels that he can approve the requested variance.

- G. Vick – agrees with the comments from member Mol. Definitely wants to see the covered patio inspected and ensure it is safe. It is hard to make someone move a building that is already there. Think that the comments and concerns from other members have been brought up and discussed.
- H. Aarestad – feels there are two issues before the Board. One is the quality of life for the neighbors, that will probably be addressed in the discussion of the next item. The second item is the covered patio that was built without a permit and is not compliant. Sometimes this is done maliciously and sometimes out of ignorance. It sounds like a lot of the noise is coming from traffic coming and going, which is not really related to the patio. Feels that the noise from the public was already there with the patio, covered or not. In favor of the variance for the covered patio to the county road.
- I. Mol questioned if the roof on the patio is adding additional patrons and the septic system does need to be looked at for adequate sizing. Is there some discussion that needs to be had for waste disposal? Aarestad – possibly adding a limit to the amount of seating on the patio. Mol – difficult with the ability to stand around and drink a beverage, you are still served. There have been statements made regarding the amount of patrons and concern with the waste disposal being adequate. The Board just had significant discussion centered around a 3-bedroom home septic system. Aarestad asked if the idea is to have an inspection or a review of the system. Mol – inspection from the County to make sure the system is adequate for the number of patrons, including the patio area. Does it need to be maintained in a different way or added holding tanks? It should be smelled by the neighbors. As a business expands the septic system should be reviewed. Jones – when was the last inspection? Moores – Bernie, with Miller Sewage Treatment Solutions, just inspected the system. That will be done by him once a year, for the State of MN. A new system was put in with 5 tanks, aerators in one, and he has been working with Miller for a few years on the smell. They finally came up with a plan this year with the installation of a charcoal filter and the smell was gone. There has not been any smell for the last few months. Bernie also aeriated the drainfield, felt it was over compacted and now it gets more air flow. Believes that an inspection report was provided to the County. Ogle- confirmed. Moores – the drainfield is protected by a fence to prevent parking and driving on.
- Johnson – asked for clarification on the outdoor patio. Last he heard it was volleyball and horseshoe pit. Ogle – in 1997 the Board allowed the expansion of a nonconforming use to install an outdoor volleyball court, horseshoe pits, and a serving bar. Johnson – the comment has been made that the patio has been there and it was just covered. Was the patio permitted? Ogle – a concrete patio does not require a permit. The issue is that covering the patio created a building structure. Building structures need to meet the 130 ft. setback from the centerline of county road. Johnson – removing the volleyball court and adding a concrete patio does not need a permit. Ogle – certain at-grade structures do not require a permit.
- J. Jones – visited the site many times. Parking is obviously a problem that will be discussed with the next item. There doesn't seem to be a lot going on with the Sheriff addressing the road and traffic concerns.
- Neysa Ballman – has lived in the area since 1991 and witnessed the changes. The patio was not there until a few years ago. Ogle – the problem isn't the patio; it is the covering of the patio. Ballman – they are saying the patio was there already the roof was just added. Ogle – whether the patio was there or not is not the question, it is the covered patio that is causing the need for a variance. Ballman – the covering of the patio created more people. There has

been an increase in the amount of vehicles being disrespectful with noise and also leaving garbage in yards.

- Mark Irmiter – lived in the area for over 50 years. Understands the septic may or may not be compliant or adequate. Concerned with the satellites at the sight that where are originally meant to be temporary that are out there permanently. That is a concern he would like to discuss. Ogle – Miller Sewage Treatment Solutions completed a septic system compliance inspection on July 7<sup>th</sup>, 2022.

K. Kryzer reminded the Board that the Township has not reviewed the request yet. They have a meeting coming up August 2nd. Ogle – there was confusion amongst the Town Board with what was discussed and formally motioned on. The Township sent 3 different responses. As of yesterday, the Clerk mentioned the outdoor music was not motioned on or formally addressed but the covered patio portion was recommended for approval. Kryzer – for clarification this item being discussed has been reviewed. Ogle – confirmed.

L. Motion made by Neumann to approve a 22.5 ft. x 31.5 ft. covered patio that is approximately 50 ft. from the centerline of County Road 123 with the following condition: 1) the covered patio is to be inspected by an Engineer for strength and integrity. Seconded by Jones.

*DISCUSSION: Vick – would like to add they be required to obtain a building permit. Mol – consider yearly inspections of wastewater, a full inspection, not just a walk around. Kryzer – the Board would be looking for an annual compliance inspection done by a professional. Mol – correct.*

M. Neumann amended his motion to include a building permit is required as well as an annual compliance inspection must be completed by a septic professional.

VOTE: CARRIED UNANIMOUSLY

5. **MOORES & MAAS PROPERTIES, LLC** – New

LOCATION: Up The Creek Bar and Grill – 4246 112<sup>th</sup> Street NW – Lot P & Lot K of Gov. Lot 1, Section 05, Township 121, Range 26, Wright County, MN (Silver Creek Twp.) Tax # 216-000-054110, 216-000-054112, 216-000-054105, 216-000-054106. Property Owners: Moores & Maas Properties, LLC.

Requests a variance as regulated in section 155.026 of Chapter 155, Title XV, Land Usage & Zoning of the Wright County Code of Ordinances to allow the expansion of an existing nonconforming use. The expansion would be to include live outdoor music.

Present: Larry Moores, Christina Maas, Jennifer Doherty

- A. Ogle displayed the site plan. This request is related to the expansion of a nonconforming use. The property is non-riparian and located in Silver Creek Township. All four parcels involved total roughly 1.31 acres. The expansion request is to include live outdoor music. In 1997 the Board allowed the expansion of a nonconforming use to install an outdoor volleyball court, horseshoe pits, and a serving bar. It was conditioned that snow removal or a fence that can be collapsed during the winter months be installed to meet County Highway Dept. specifications. Volleyball, horseshoe, and other outdoor activities may be no later than 10:30pm when outdoor lighting must be shut off. Minimum 6 ft. high fence installed with screening to prevent balls from going out into the public road or adjoining properties. Agreement between the business and adjoining neighbors of the parking lot were to be submitted. Entry to the outdoor courts be controlled according to code. Certificate of Survey submitted prior to any construction. Permit reviewed once a year beginning in April 1999 by the Town Board and the Township is to advise the BOA of any violations or reasons that warrant a new review by the Board. In 2002 the Board approved a 20 ft. x 20 ft. addition to update the bathrooms and include an office and utility room on an undersized lot. In 2012 the Board approved a 20 ft. x 28 ft. two-story addition to the bar that would be used for kitchen space and an office on the second floor which is not permitted for seating patrons or for public meetings. The addition can be 54.5 ft. from the county road at its closest point and allowed impervious surface coverage up to 42%. Up the Creek did not go before the Town Board to discuss the live music. The expansion of the nonconforming use was not addressed or acted on at the Silver Creek Township meeting. The applicant is set to meet with the Township August 2<sup>nd</sup>.
- B. Maas – 2007 they bought the bar. A lot of the items mentioned were prior to them owning the bar. With the expansion of the kitchen there were plans submitted that included the layout of the property with the stage, patio, and outdoor bar. They were under the assumption that live music comes with a bar and that is why the stage was installed. It has been popular Thursday music goes from 6 pm – 9 pm and it used to be from 7 pm – 11 pm. They had music Saturday and Sunday 3 pm – 6 pm. Saturday was removed after the town stated it was too much and asked for a day to be removed. Later it was decided to go with 2 pm – 5 pm on Sundays. They are now at 6 hours a week. A lot of people do like the live music, and it does bring in quite a bit of business. That increase in business has allowed them to staff many local residents.
- C. Moores – regarding the porta-potties (satellites), they are brought in during the summer months. The bathrooms are not that big so the porta-potties allow availability to use the restroom outside versus going around the corner or on the other property. Mol questioned how often the porta-potties are cleaned. Moores – they are cleaned weekly by Steve O Septic. The main tank of the septic system is pumped monthly. Mol – would there be a possibility of pumping those more frequently during the weekends? It might be a way to remedy some concern if they are pumped more frequently, like daily on the weekends with large events. Moores – during the street dance they do bring in additional porta-potties that are there for the event only. He stated that he can certainly look into more frequent pumping.

- D. Maas – the live music it is different every time. Usually, one to three people are in the band. They don't have drums or air guitars. Doherty – books the bands. Generally, it is an acoustic guitar with a singer that is amplified. There is one band where a keyboard is played, otherwise there is no electric guitars, base guitars, or drums. In most cases there is a single speaker and no elaborate sound system.
- E. Aarestad addressed the public regarding the public comment process, with a reminder of the 3 minute limit.
- Cyrene Bastien – lives in Silver Creek but must be over the 500 ft. notice requirement as she did not get a notice. At her home the music is clearly heard. The music and the clientele that attends the concerts are a concern. Would like clarification on the terms unpermitted and nonconforming related to what is currently already up or happening at the property. Ogle – the unpermitted covered patio was constructed without a required building permit. Live music was happening but not allowed without proper approval from the Board. Recently Up the Creek was notified that live music needed to cease. An existing nonconforming use on the property needs to be addressed by the Board of Adjustment. This request is before the Board to determine if live music can happen. The question is if they are allowed an expansion of the nonconforming use, which is the live music. Bastien – thanked Ogle for the explanation and has no further comment.
  - Mark Irmiter – lives within a 1,000 ft. of the bar. Would like to see 16 days a year they can have music and would like to see a street dance. Feels that the street dance is beneficial to the community and has been a long standing tradition that the community appreciates. The noise level problem is that some bands he can hear the noise in his front yard. A Sheriff Deputy has been to his home during a night of music and agreed that the noise level is crazy, but there is nothing that can be done because there is no noise ordinance in Silver Creek Township. Believes with most concerts and bands there is a sound board that can be adjusted so that people enjoying the music at an appropriate level in the front and back of the venue. This doesn't happen and the music is cranked as loud as they want. The Sheriff has been notified of concerns. The bar is contacted and have been asked to turn down the music, but you end up talking with a bartender or someone that has no control over what is happening. He is asking someone stand on the edge of their property and do their due diligence that the music is too loud. They are paying customers and should hear the music, but the neighbors don't need to be bothered by the band. Some bands are great, and you don't even know they are there. Other ones you can feel the drums beating in your chest. With Thursday nights music he cannot sit in living room and listen to the TV without feeling the drum beating, it is that intense.
  - Neysa Ballman – the music is very loud. Lives quite a ways down from the bar and can still hear it. Usually with the music you see a different crowd that gets some liquid courage and eventually they are doing burn outs in the street. This is a small town, and the bar is in a residential area. Sure, the bar has always been there, but the past owners cared more about the residences. They cleaned up after the street dance beyond the small area near the bar. She is not seeing the same care with the new owners. The people that come in get the liquid courage and they are doing spinouts and causing a disturbance. This is not a big town; this is a small united town. Aarestad questioned if she is seeing trash linger around after events or is it cleaned up right away. Ballman – yes, they park all along the road and leave behind trash. The trash is picked up around the bar, but they do not go down the streets like the previous owners did.
  - Rod Quist – big item for the locals is the noise. Believes there was a letter dropped off by a relative that lives out on Lake Indian, which is 2 miles away, and she has stated occasionally on Sunday nights she has heard the music. On Thursday and Sunday nights there are parents saying

- that their kids can't fall asleep, and it is a school night. The trash and speed is an issue. This bar is in the middle of a residential area. None of the problems really started until the outside patio and music came in. Through advertising and during COVID patrons starting coming from well outside the County. Silver Creek Township does not pay for any extra patrolling. The Sheriff Department stated they can send a deputy through as they are going home. There is no enforcement because the Township does not pay for that service. Everyone is seeing property value go down. The stress level has increased, you don't know if someone is going to trash your yard. Since the music has stopped there is no hardship for the bar, they have had plenty of people dining. Personally, rides his motorcycle to bars in the other counties and has never seen a bar that put up with what is happening in their neighborhood. While visiting these other bars there has been a rare exception of seeing someone racing out of town. No one in the community has a problem with the annual street dance, that isn't an issue. The other music happening regularly all the time is the issue. A person can't have company over on the weekend because you can't have a pleasant conversation. He would like to see the music limited to once or twice month and hours where it will not operate during hours that will hinder a person's sleep. Oaky with music on Sunday ending at 6 pm, if not every week. There are a few people in the area looking to sell their property because of the current issues. If they are going to have music it should be limited to twice a month, have the street dance, and figure out something with the parking problem.
- Scott Johnson – would like clarification if the septic system is sized properly for the amount of patrons. What is the capacity limit? There has to be some type of capacity limit with the system. Ogle – can address that question with an Environmental Health Officer. Right now, the system has been determined compliant. The number of people allowed could be looked at as well. Aarestad – possibly require a septic capacity plan that might indicate the number of patrons at an event could require a wastewater plan. Johnson – would like to see the bar go back to a more family orientated establishment. The bar has really changed in the last 4 years with new owners. The outdoor noise, if that is allowed, is great but there are neighbors right there and some sound mitigation or fencing around the area could help.
  - Bill Antonson – lives directly to the north of the bar. The entire property abuts his property. Bought the property almost 6 years ago, after a year and half living there the music started. He can't sit in the living room to watch TV, even with the windows closed he can't hear the TV. Complained to the Township but with no noise ordinance nothing can be done. All for entrepreneurship and the business but does not understand why the landowners have to be in discomfort. The owners have allowed this for years and they do not care about the residence. At the Township meeting the owner's wife stated that a person knew the bar was there when they purchased the home so if they don't like the noise of the bar they can sell. He has been trying to get property to the point of selling. All for the bar making money. Told when purchased the property the bar is a nice little bar with an excellent restaurant. When is at the expense of the residences on the traffic coming in, no policing, the noise, fencing taking off the back of parking. Is there any regulation for a privacy fence or can a requirement be imposed? He worries about his property. The snow fence he does have gets pushed over, consistently has trash tossed in his yard and the patrons park right up against the fence. He has watched the Board be so stern and strict on codes and regulations for the other items heard today and it is mentioned that once it is there, we have to live with it. He has had to live with this situation for 4 years. This is his house and his life, why does he have to be discomforted in his life? He would like to see a privacy fence. If they are allowed a band, does there need to be a limit on the number of patrons allowed? Are they going to get some police force to the area? There are weekends it feels like Sturgis. When he does call the Sheriff, he is told no-one ever calls. He did attend the June 7<sup>th</sup> Township meeting and when the owner showed disrespect to the landowners adjacent to the property it was upsetting. They are a business making a lot of money at his discomfort. He is all for a band and



- music, if there is sound barriers and the noise level is set for only the patrons to hear the music. Glad the business is doing well and is making money, just not at his expense. Does not want his property value to go down if he decides to sell. Does not want to see rules written in stone that he just has to deal with and there isn't anything he can do about it.
- Cyrene Bastien – the Board was very concerned with the pervious items being looked at as historic decisions that could impact future decisions. Would like the Board to take a good hard look at this and also look at how this impacts the future for Silver Creek.
- F. Ogle asked the applicant where specifically the music stage is located on the property. Using the aerial map Maas indicated the location of the stage. Ogle questioned where the patrons listening to the music are seated or standing. Would they be in the street or parking lot? Maas – they are in the greenspace and patio area. Ogle stated this could be a situation where the Board would like to visit the site.
- G. Mol – hears what everyone is saying. Historically very firm on not making a decision if they have not heard from the Township. He does not want to discount what was said today but will want to hear from the Township before any decision is made. He is very familiar with the area and does not need to visit the site but is willing to go along with a site inspection, if that is the direction others would like to go. In favor of continuing the item to allow time to hear form the Township. Will currently abstain from comments until hearing from the Township first.
- H. Vick stated he feels the bar owners and citizens can work it out. A situation in Delano was worked out, it took time, but they were able to work out an arrangement that worked for both parties. Agrees, will not make a decision without hearing from the Township. Would like to visit the site.
- I. Jones – missed the Silver Creek Township June meeting, he usually attends. He has never heard someone complain about that noise at a meeting. Also, has not seen public or people complaining. The gravel pit situation going on now has the board room packed full of people screaming and yelling about gravel and the noise. Yet, hearing at the bar there is a heck of a lot more noise and no one ever shows up at a board meeting. The board hasn't even commented even though they commented on the patio roof. Would strongly suggest that someone in the public call the Township and let them know they want this item to put on the board agenda so that it can be discussed by the community and have the community show up. Agree, without Township comment will not vote for this, one way or the other. He will plan on attending the August 2<sup>nd</sup> Township meeting.
- J. Neumann – taking notes on the suggestions being made. He has heard sound mitigation, capacity limits, privacy fence, 16 days a year. It seems like the bar might be the cause, not sure limiting them solves all of the problems. If problems are parking, traffic and motorcycles doing burnouts that would be more of a law enforcement problem not a bar problem. Just because Silver Creek Township doesn't hire police protection doesn't mean they can't have a conversation with the Sheriff and staff. Especially if the outdoor music creates extra problems that extra patrols could occur during that time or after. His experience has been that the Sheriff is usually very accommodating to discussing extra patrols.
- K. Aarestad – clarified for the applicant and public that the Board wants to respect the opinion of the Township as they have done for them tonight. Tonight, the Board tried to get feedback and views as to what is being thought. His thought is that this is a quality of life issue with a few items contributing. There is a sound issue, a parking issue, traffic issue and a septic issue. The Board can possibly help with the sound and hears that issue loud and clear. Would like to hear for the Township before stating anymore but is well aware there is a sound issue.

- L. Mol moved to continue the hearing to the August 19, 2022, to allow time for the applicant to meet with the Township and a site inspection to be conducted. Seconded by Vick.

*DISCUSSION: Rod Quist - questioned John Jones on not hearing complaints. There are a lot of people in Silver Creek that do not want to make comments because they are afraid of repercussions from customers. There have been online comments that there is a potential problem and residents are afraid to speak up and attend meetings.*

*Mol reminded the Board there is a motion on the floor. Aarestad stated comments have to be kept quick.*

*Bill Antonson – will not attend the Township meeting. He will provide a written comment. He is worried about repercussions to his property.*

- M. Aarestad – brought the meeting back to the Board to address the motion.

VOTE: CARRIED UNANIMOUSLY

### **SITE INSPECTION**

Board scheduled Friday, August 12th at 8:00 a.m. for site inspection.

Meeting adjourned at 11:07 a.m.

Respectfully submitted,

**Aaron D. Ogle**

Aaron D. Ogle  
Planning & Zoning Planner

AR:sld

Cc: Board of Adjustment  
Applicants/Owners  
Twp. Clerks