

WRIGHT COUNTY BOARD OF ADJUSTMENT

Meeting of: August 19, 2022

MINUTES – (Informational)

The Wright County Board of Adjustment met August 19, 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 29, 2022, MEETING

On a motion by Mol, seconded by Jones, all voted to approve the July 29, 2022, minutes as printed.

1. RANDY KLATT – Cont. 7/29

LOCATION: 1281 20th St. NE, 1339 20th St. NE & 1259 20th St. NE - part of the NE 1/4 of the NW 1/4 and part of Government Lot 1 of Section 29, Township 120, Range 25, Wright County, MN (Buffalo Twp.) Tax # 202-000-292101, -292100, -291200. Property Owners: John F. Klatt, LGK Inc., Randolph M. Klatt

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 adjust the lot line of parcels 202-000-292101 and parcel 202-000-291200. The proposed lot line adjustment would require variances as regulated in section 155.048(F) to allow 202-000-292101 to be less than 150 ft. in width and to allow a setback of ± 12.5 ft. to an existing detached accessory building on parcel 202-000-291200. Also requests to adjust the lot line of parcels 202-000-292100 and 202-000-291200 to expand the lot to the south to incorporate an existing accessory building. The proposed lot line adjust would also require a variance of Section 155.048(F) to allow a setback to an existing detached accessory building on parcel 202-000-291200 to be ± 20 ft. to the property line and a variance of Section 155.003(B)(1) to allow an existing detached accessory building currently on parcel 202-000-291200 that is 6,840 sq. ft. (2,400 sq. ft. maximum) to be within the parcel boundary of parcel 202-000-292100. The lot line between parcel 202-000-292101 and 202-000-291200 currently intersects two detached accessory buildings. The proposed lot line request would not resolve that issue but improve the current lot line location regarding the referenced buildings.

Present: Randolph Klatt

- A. Ogle displayed the revised site plan and provided the Board with details. The properties are zoned AG General Agriculture in Buffalo Township. The request is to adjust the lot line of parcel 202-000-292101 and parcel 202-000-291200 (Lot A and B on site plan) and parcel 202-000-291200 and parcel 202-000-292100 (Lot B and Lot C on site plan). The initial proposal included a property line intersecting an accessory building between Lots A and B. The Township had originally provided their approval, as they thought it would help them out. The Board continued the item from the July 8th meeting to allow time for the applicant to update their plan. The Board was looking for a survey or concept plan that shows no lot lines intersecting any buildings and no impervious or building coverage issue. The updated site plan appears to have addressed the concern with lot lines intersecting buildings and impervious surface coverage is being met. The Board will still need to consider setback, accessory building overage, and lot width issues that come with the proposed lot line adjustments.
- B. Klatt had no additional comments as well as no public comment.
- C. Mol – not at the original meeting. Awful close to the property line with the building at 1 ft., questioned why the line is so tight to the sheds. Klatt – at the last meeting the Board said that if the line didn't intersect any of the buildings or the roof line, it would be okay. The idea is to keep that parcel as wide as

possible. The roof line of that building is a 1ft. overhang. Ogle pointed out a parcel this size the proper road frontage is 150 ft., with proposal showing 112.63 ft. That number will change if the lot line is moved. Mol – if the line is set at 150 ft. it will go down the middle of a shed, that is one thing the Board probably doesn't want. Concern is to get ample room around the shed, at 1ft. a lawnmower wouldn't fit. To maintain the building, one would have to go onto the neighbor's property, whether it is owned by family or not. If someone puts up a fence on the property line you wouldn't be able to fit around the shed to maintain.

- D. Vick – understands the concern from member Mol but the Board did state they would not allow the line to split the building. Likes that there is no need for a driveway easement, which was a concern at the last meeting. Feels that everything the Board had asked to be addressed was done. Thought that Lot C originally was over on the impervious. Ogle – was proposed over 25%, with the new proposal indicating coverage at 19.6%. Vick stated he is okay with the changes that have been made, even if that 1 ft. setback.
- E. Jones – others have expressed concerns that he has. What happens when and if that property is sold with a 1ft. setback. Questioned how the building is built. Klatt – foundation with a concrete slab. That shed will eventually be torn down. If sold he believes a commercial property would come in and tear down the shed. Jones – approval could be setting up for problems in the future. People may even walk away from buying the property, because of the line being so close. This is a difficult situation; not sure it would be reasonable to take a chunk of the slab and tear it out at least 5 ft. of the slab and shorten the shed. Klatt – wants to keep the one parcel as wide as they can. The parcel is supposed to have 150 ft. frontage and is way less than that now. Jones – looking at moving the line into B, not away. Working with 270 ft. of frontage and take that line to the right instead of the left. The 1 ft. is a concern and the future issues it could create. Klatt – doesn't see a problem. Jones – the Board has to deal with an entire county. Klatt – the way he understood the Board at the last meeting is that if the line was away from the roof line it would be okay and would be approved. That is why he did the line at 1 ft. he could have gone to 2 ft.
- F. Neumann – there are some steps in the right direction. Have heard from other members there is still some dissatisfaction. Lot C is over 2.5 acres, no problem with that parcel. Also, with the line between Lot B and Lot C, has no problem. Maybe Lots A and B should not be split and instead combined. Doubt that the Board would approve a new shed 1 ft. from the property line. Does not feel the line between Lots A and B should be approved. There are quite a few small lake lots that are 90 ft. wide. There is another shed with only 6.2 ft. setback. Maybe Lot A can be made skinnier and longer to maintain the 1 acre. Either the buildings need to be shortened to get proper setbacks or he will vote no. Ogle – Lots A and B would not be allowed to be combined as they both have a single family home on them and are only allowed one single family home per parcel.
- G. Aarestad – this is a unique situation; all variances might not be able to be solved. The Board did ask to have the line moved but assumed common sense would indicate the line be moved enough to maintain the building with a ladder. Questioned if the parcel is zoned commercial. Ogle – zoned AG. Aarestad – can't assume, but because of location might eventually be commercial. Originally stated did not want to remove the shed and the shed is the problem. Would like to see the property lines moved over at least 3 ft., to allow room to maintain the shed. Can live with approving a narrow lot.
- H. Vick moved to approve the request as proposed.

Aarestad called for a second three times and hearing no response MOTION FAILED

- I. Kryzer – at this point in time the Board and applicant need to decide how they would like to proceed. If the Board and applicant do not feel there is any design that would be acceptable, for both parties, maybe

a denial, with Findings, is in order. If there is more work to be done on the proposal, with direction from the Board, the item could be continued. The applicant also has the option to withdraw the request. Vick questioned if he could amend his motion. Kryzer – or could add approval at a certain distance.

- J. Vick moved to approve the request to allow Lot A to be 110 ft. wide with the corner of the shed on Lot B to be 3.63 ft. off of the line, as well, as Lot B and Lot C approved as proposed. Seconded by Aarestad.

DISCUSSION: Mol – that is still only 3 ft. and already too narrow at the road. The setback for a shed should be 10 ft. If the line is backed up so the shed has a setback of 10 ft., then the house will be 15 ft. and the other sheds will also be compliant. The applicant stated the shed will someday probably be removed. There is no guarantee the shed will be removed. There are two homes here, so there are potentially two separate property owners. Moving the line another 9 ft. would be at a distance that the Board has allowed on lake lots and other small lots. The 1 ft. is extremely close, and the 3 ft. is still close. He is okay with the proposed line between Lot B and Lot C. Vick questioned Mol if he would okay with the road frontage that is supposed to be 150 ft. at 110 ft. Mol – the proposed line is already needing a variance for the frontage; what is 10 more feet at 102 ft. wide. The road frontage is already proposed 30 ft. too short. This Board has been involved in allowing access strips and frontage variances for less. Kryzer – wondering if the Board would consider approving as presented with a condition that the sheds, in the middle, are brought into setback requirements. They can be moved or bulldozed, that is up to the applicant. As soon as the sheds are brought into compliance, he can move forward with the lot split. Vick – saying leave the line as is but state he needs to move the building off the line an additional 9 ft. Kryzer – yes, that would be a reasonable condition. The applicant can decide if he would like to comply.

Vick amended his motion to approve the plan as submitted, marked “Exhibit A”, with the large shed noted as Shed #1, currently shown 1 ft. from the property line, and the shed shown 2.1 ft from the property line, marked as Shed #2 with the condition that both sheds must be brought into compliance prior to the lot line adjustment.

Mol questioned if the lot line can be moved. If he was to re-survey and move the lot line over, that is where he was coming from. Already have a variance at 112 ft. and would be okay with a variance at 103 ft., instead of needing to remove the shed. One way or another he wants to see a 10 ft. setback. Kryzer – can also say the variance on the road frontage can go down to 103 ft. Ogle – impervious coverage at a parcel width of 103 ft. is closer to 22%, which is under the 25 % limit. Vick questioned the home setback requirement. Ogle stated 15 ft. Vick stated he was ready to amend his motion. Kryzer suggested the motion start over and not go through another amendment. What he is hearing from the Board is a suggestion motion to approve site plan submitted as "Exhibit A" with conditions that Lots A & B shared lot line would be adjusted so that Lot A has 103 ft. of road frontage, provided that the sheds in the middle of Lot B receive at least a 10 ft. setback.

- K. Vick moved to approve the site plan submitted as "Exhibit A" with conditions; 1) Lots A & B's shared lot line would be adjusted so that Lot A has 103 ft. of road frontage; 2) the sheds in the middle of proposed Lot B receive at least a 10 ft. property line setback. Seconded by Mol.

VOTE: Mol, Vick, Aarestad, Jones

NAY: Neumann

MOTION CARRIES

2. **JOHN LAWTON** – New

LOCATION: 2883 62nd Street NW – Lot 8 & 9 in Block 1 of Maple Shores in Section 34, Township 121, Range 26, Wright County, MN (Maple – Maple Lake Twp.) Tax # 210-117-001080. Property Owners: John C. Lawton & Tammy R. Lawton

Requests a variance as regulated in section 155.026 and 155.057(E) of Chapter 155, Title XV, Land Usage & Zoning of the Wright County Code of Ordinances to convert a 226 sq. ft. portion of an existing deck into a sunroom. The existing deck is 59 ft. to Maple Lake where 75 ft. is required.

Present: John Lawton

- A. Ogle displayed an aerial photo of the parcel and proposed site plan. The 0.81 acre property is located in Maple Lake Township on Maple Lake, which is a Recreational Development Lake. The request is to convert a 226 sq. ft. portion of the existing deck into a sunroom. The existing deck is 59 ft. to Maple Lake where 75 ft. is required. The Township approved of the four-season porch to be built on the existing deck. It was noted the application provided by Mr. Lawton stated four-season porch and the plans submitted termed it a sunroom (sunroom/four-season was used interchangeably).
- B. Lawton – beneath the existing deck is concrete with a walkout. No other comments.
- C. No public comment.
- D. Vick questioned the impervious coverage. Ogle – currently 33%, will not increase but allowed is 25%. Lawton – the driveway carries a large portion of the water from 62nd street, if removed it would cause issues in his yard. He would like to keep the driveway to control the water flow. Vick – the proposal would increase the roof coverage. Ogle – from an impervious coverage standpoint the overhang could potentially increase stormwater runoff but not affect coverage calculations. Vick – would like to hear what others have to say. Impervious coverage and a stormwater management plan are his concerns.
- E. Jones – agrees with the impervious and stormwater as a concern. Lawton – replaced a damaged culvert, that was causing issues, from the farm field across the road that goes into his yard. Jones – who owns the popery across the road? Lawton – he does not. It was an old metal culvert that rotted and needed to be replaced. Jones – at this point not sure what can be done with stormwater management. Questioned the location of the septic system. Lawton used the site plan to explain the layout of the septic system. Currently there is a culvert to the left of the driveway that comes across the road and runs into the neighboring property, which he also owns.
- F. Neumann – bothered by living space 59 ft. from a lake. As far as stormwater management goes, a professional could be hired. See the neighbor's house is not very far from the lake but he is still not sure he is in favor of moving living space closer to the lake.
- G. Mol stated he has some of the same concerns. This Board has approved decks closer than allowed to the lake and a few years later an applicant is asking to convert that deck into living space. Feels this request is a lot closer than what has been allowed with other additions. In the end the house is becoming bigger, and he is not sure there is a hardship. It is a desire to turn a deck into more living space. The stormwater is a concern with the property already at 33% impervious coverage.

Impervious coverage is one item this Board has a tendency to be hard on. Where is the hardship and need?

- H. Aarestad – shares similar concerns. The impervious coverage is a big concern. The Board will argue over allowing 1-2% over the allowed coverage. The first hurdle he sees needing to be addresses is getting the impervious to 25% or below. The 2nd hurdle is turning the deck into a four-season structure. Does not believe this Board would allow a new addition to be built this close to the lake. The concern is the room becomes a year round use. The presence of a four-season porch, from the lake, has a different affect and impact than a deck. Sympathizes with the runoff and culvert issues but this plan would add additional roof surface to an already present run off issue. As presented, he does not see that he would be willing to approve the request. Based on comments there is a chance a motion would fail. There is opportunity to withdraw or continue and come back with a revised plan. Lawton – questioned how he would be able to add any square footage to the house. Aarestad – going to the backside of the house could possibly be an option. Right now, the biggest hurdle is the impervious coverage and that will come into question with any request.
- I. Lawton stated he would like to withdraw and come back with new plans. He would need to redo his plans and won't have that done in time for the next meeting. He might not even move forward with plan.
- J. Ogle – misspoke with coverage closer to 31% not the 33% as first stated. Vick – would like to point out that if the impervious was at or below the 25% he would be more willing to approve.
- K. Mol moved to dismiss the matter at the applicant's request. Neumann seconded the motion.

VOTE: CARRIED UNANIMOUSLY

3. **JEFFREY MATTHEWS** – new

LOCATION: 6370 Quinn Ave. NW – Lot 5 of Sylvan Shores on Lake Sylvia in Section 32, Township 121, Range 28, Wright County, MN (W. Sylvia – Southside Twp.) Tax # 217-058-000050. Property Owners: Jeffrey A & Beth W Matthews

Requests a variance as regulated in section 155.026 and 155.057(E) of Chapter 155, Title XV, Land Usage & Zoning of the Wright County Code of Ordinances to convert existing sunroom and deck which are 18 ft. x 26 ft. into a four-season space, add a loft over the existing cabin, extend the roadside overhang 2 ft. x 14 ft., and add a 4 ft. x 10 ft. deck. The request would not further encroach the shoreland setback than the existing home which is 67.5 ft. to West Lake Sylvia where 75 ft. is required.

Present: Jeff Matthews

- A. Ogle displayed the proposed site plan while describing the details of the property. The 22,474 sq. ft. parcel is located in Southside Township on West Lake Sylvia, which is a Recreational Development Lake. The request is to convert the existing sunroom and deck into a four-season space, add a loft over the existing cabin, extend the roadside overhang and add a new 4 ft. x 10 ft. deck. The request would not further encroach the lake than the existing home at 67.5 ft. to West Lake Sylvia, where 75 ft. is required. The Township approved of the request, as it would not further encroach the shoreland setback and the septic system is compliant. In 1992 the Planning Commission approved a land alteration permit for a driveway and site preparation for a garage. In 2021 the Board of Adjustment approved the replacement of the existing 12 ft. x 18 ft. enclosed porch and 14 ft. x 18 ft. deck with a new 18 ft. x 26 ft. addition on the lakeside of the dwelling that would be 67.5 ft. from the ordinary high-water mark of the lake. The Board also approved a 4 ft. x 10 ft. deck on the north side of the structure. The 2021 request has not yet expired but also no permit applications have been submitted or approved.
- B. Matthews – in 2021, before starting the building permit process it was discussed that his wife needed an area to work and see clients remotely. It was decided a solution could be to add a loft area to the already approved addition. The addition will be higher than it was approved as well as the overhang tied into the home. Thought they had approval with the 2021 variance and realized they did need approval from the Board.
- C. No public comment.
- D. Jones asked to have the building plan displayed for review of the building peaks. Ogle – height is proposed at 24', lake side would be taller. Jones – not any closer to the lake than previously approved. Matthews – correct. Will actually be moving back 3 ft. from where the building is today. Jones – is there a stormwater management plan in place or anything to address water runoff? Matthews – has no issues with water and run off and water flows well away from the septic site.
- E. Neumann – clarified that the 18 ft. x 26 ft. addition has not been built. Matthews – confirmed did not get the project started. Neumann – the request includes the loft as a new part of the proposal and the rest of what was approved in 2021 is staying the same. Matthews – confirmed. The lot is steep with many elevation grades from Quinn Ave. to the lake. Matthews – with photos of the existing home displayed the grading and elevations around the home was described. There is a backside of the house that is fairly flat. Neumann questioned the impervious coverage. Ogle – roughly 23.2%

proposed lot coverage. With a stormwater management plan and since the addition isn't getting closer to what was previously approved, he feels he can support the request.

- F. Mol – comment was the loft is intended for wife to see clients. Is a business going to be run out of the home. Matthews – clients would not be coming to the home. The loft would be an at home office. Mol – okay with a home office. The request is not moving closer to the lake. Most of the variance was already granted in 2021, other than the loft going up and the impervious coverage is meeting the requirements. Would go along with the request.
- G. Vick – agrees with comments from the other members. Would like to see a stormwater management plan and gutters. Matthews questioned what a stormwater management plan entails. Aarestad – a way that accounts for the water related to the additional roof coverage. The water coming off the roof during a heavy storm can impact the lake. The county can provide guidance on what is needed for a plan or direction to a professional. A simple plan could be gutters to direct water or lakeshore vegetation to slow the water to the lake. Ogle – when applying for the building permit a stormwater management plan would be included as part of required documents. Kryzer – suggested contacting Wright County Soil and Water for guidance.
- H. Aarestad – small concern with the loft and the height impacting the view from the lake. Did not hear any others voice concern. The plan seems to have minimal impact and will be far enough back so any impact would be marginal. Would be fine with the variance request.
- I. Neumann moved to approve the request to convert the existing sunroom and deck which are 18 ft. x 26 ft. into a four-season space, add a loft over the existing cabin, extend the roadside overhang 2 ft. x 14 ft., and add a 4 ft. x 10 ft. deck which would not further encroach the shoreland setback than the existing home which is 67.5 ft., contingent on a stormwater management plan being submitted at the time of the building permit application, and impervious surface coverage stays below 25%. Motion seconded by Mol.

DISCUSSION: Vick – could gutters be added as part of the motion. Mol – that should be included in the stormwater management plan.

VOTE: CARRIED UNANIMOUSLY

4. **MOORES & MAAS PROPERTIES, LLC** – Cont. from 7/29

LOCATION: Up The Creek Bar and Grill - 4246 112th 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 and Jennifer Doherty with Up The Creek Bar and Grill

- A. Ogle displayed the site plan and Beacon aerial photo of the property. The Silver Creek property is non-riparian and a combination of four parcels that total roughly 1.31 acres. The request is to expand on an existing nonconforming use with 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. In 2012 the Board approved a 20 ft. x 28 ft. two-story addition for kitchen space and an office on the second floor. The Board continued this request from the July 29th meeting to allow time for Silver Creek Township to formally address the request. During the July 29th meeting, the Board had asked how many people the existing septic system can handle. The Board also voted to conduct a site inspection, which was done on August 12, 2022. The Township approved of live music on Thursdays from 5:00 pm to 8:30 pm and Sundays from 2:00 pm to 5:00 pm. Numerous neighbors have spoken out against the request. Issues being the noise and a lack of concern for the nearby residents. The County Highway Department has no concerns, provided that parked vehicles are not in the thru lane of traffic. While minutes have not yet been approved the Township Clerk did provide some clarification as to what was discussed at the Township meeting. According to the Clerk the Township Board supported all live music, including outdoor. The Township did not distinguish support between amplified or non-amplified music or the location of the music. However, according to the Township, the discussion did include description of the live music being amplified and questioned if one of the live music days requested could be “acoustic”. The response was “no” and was not added to their recommended conditions. The Township Board supported live music being amplified. The discussion regarding location of the outdoor music was only around live music occurring on the outdoor stage, and where the speakers were projecting. The Township asked that the speakers point to the south, not the north. It was understood from discussion that outdoor live music would be occurring only from the stage.
- B. Doherty – looking to continue what has been occurring since 2015. When she came back to the company in 2019 the outdoor music on Thursdays did go until 10:00 pm. After hearing some complaints, the music end time was changed to 9:00 pm. Sundays music is 2:00 pm to 5:00 pm. They do acknowledge they are located in a neighborhood and that is why they adjusted the Thursday music times. Though the Township did approve an 8:30 pm end time it was mentioned that the Wright County Noise Ordinance has an end time of 10:00 pm and they are asking for 9:00 pm. Kryzer questioned Doherty if the music has been occurring since 2015, without approval. Doherty – July 2015 is when the live outdoor music started. Kryzer – that would be 7 years without coming to the Board for approval. Moores – did not know they needed to come to the Board. Kryzer – knew the business was nonconforming in 2012 when applied with the Board for the expansion of the kitchen and other areas. Moores – did not apply, it was the builder that applied. Kryzer – confirmed at that time Moores was the owner and would be aware of the Board reviewing the request for

expansion, because of the nonconforming nature of the property. Expansion of a nonconformity must be approved by the Board. Moores – confirmed. Kryzer – in 2015 expanded and have been operating for 7 years. Moores confirmed and stated the street dance has been occurring for 15 years.

C. Moores – the Township did approve of the street dance for one year. Ogle – The street dance itself is not something this Board can approve or address. Moores – do not have a volleyball court, that court has been gone for years. They have never received anything regarding permission from the County for the volleyball court. It was stated once a year there was supposed to be a conditional use, they have never seen that.

D. Aarestad addressed the public regarding the public comment process is limited to 3 minutes.

- John Krause – lives at across the street. Concern is the same as it has been since day one, with parking and garbage littered throughout the entire area. The other problem is in 1998, with the approved variance for the volleyball, they were required to fence in the outdoor area so that the customers would have to pass through the building. That has since changed, and the outdoor area is wide open with ability to access without going into the building. Feels the business has outgrown the property.
- Rod Quist stated his neighbor, Amy Meyer, typed up her thoughts as she was not able to attend tonight's meeting so he would be reading her written reply to the request. (full letter is available at the Planning & Zoning Office) Amy has lived directly across from the patio and parking lot of the bar for 22 years. Over the years the bar expanded their seating with a pavilion without permission. Over the last few years outdoor live music has started in the outside area. Music brings in more people and with more people the noise and obnoxious behavior is present. She does not feel that she should be subjected to this behavior as she has been in the area longer than the current owner and the pavilion. The music is so loud at times she has to close her windows and it can be difficult to fall asleep. Headlights into her windows are a constant. The bar used to be much smaller with the clientele mostly locals. She should not have to adjust her living so that the bar can make an extra buck. The bar has been extremely busy over the last three years, and she does not feel it is asking too much for them to put a fence and sound barrier up. The area also needs additional patrols on the nights of music, as that is when most of the rotten behavior occurs. Would like those that have supported their favorite watering hole to have a little empathy for the people that have to live near the bar. If asked 4 years ago how she felt about the bar she would have said it was a great family bar and if asked today she would not feel that way. Quist added that roughly a year ago Amy had a graduation party and a family reunion at her home and patrons from the bar parking lot joined her festivities as unwanted guests.
- Bill Antonson – property is on the backside of the parking lot at 11372 Elliot Ave NW. He is all for the bar making it. He has lived here for almost 6 years and for the last 3 years has been trying to get his home ready to sell, because of what is going on. It was nice to hear someone mention the bar has been doing this for a long time without a permit. Feels Silver Creek Township has been turning a blind eye to the situation. Complaints were made to the Township, all the time, and the reply is referencing the noise ordinance. Right now, customers are parking all the way back to the snow fence he has up, and his fence is constantly being pushed over. There is also a lot of littering along the fence line. He would like to see a privacy fence. He did not attend the Silver Creek Township meeting because of

the intimidation he was feeling in the media. A neighbor that is between him and the bar, Leslie Theisen, purchased her home in 2020 and has stated her kids are scared to ride a bike in the street. She mentioned she had gone to the Township with a complaint and was told they don't even hear the music. His home is on the other side of hers and for the last 5 years he can't sit in his living room without hearing music. Heard that the bar owner, Larry, is trying to purchase Leslie's property; that would put his property completely butting up to the bar. If that does happen good luck to him to try and sell his home. He is for the music but keep the music within the area they want the customers to hear the music and away from disturbing the neighbors.

- Rod Quist – buying a business and required permits allows one to run a business it does not guarantee that the business will make money. Business are required to operate within set rules. Up The Creek Bar has been operating on the model of doing things without proper permits and variances. Building without permits and now being caught and using the excuse of grandfathered or ignorance. The bar has now applied for a music variance, after more than 4 years of operating without permission. When the music started the nuisance to residents started. The noise that is generated by the bands and the increase in traffic have made life miserable. Feels it is time for the county to reign in the business. Recommendations had been made on how to curtail the problems with the Township Board not including them in the approval of the variance. Suggestion would be to deny the variance for a year and require the business to correct the current issues and determined if the owner is serious about following the rules and addressing some concerns of the neighbors. After a year they could reapply. If the variance is granted, he would like to see stipulations put in place for the business. Suggested stipulations are: 1) enclose the outside patio and band area with a privacy fence of a minimum height of 10 ft.; 2) install a 6 ft. privacy fence on the north property line to prevent patrons from trespassing; 3) install a 6 ft. privacy fence on the east property line; 4) the music variance would be limited to 14 events a summer with a permit required to pay for policing during the events. The annual street dance would not be included in this and would be considered a separate event; 5) no more than 1 event a week and none on Sundays; 6) hours limited to 3 hours of music between the hours of 3:00 pm and 9:00 pm; 5) the music variance would be subject to an annual renewal. If the Board grants this variance, it is asked that the Board articulates what immediate hardship is being addressed and what documentation lead to the decision and how bad faith was taken into account for the decision for after the fact. As far as the Township stating speakers should point to the south because there is nothing in that direction; his house is directly south of the stage.

E. Ogle reminded the public and Board that a variance for the street dance is not something the Board can grant.

- Barry Heikkinen – introduced himself as a resident of Silver Creek. Heard the term hardship used and does not feel this applicant has a hardship. Feels the business is busy without music. He drove by the other day and there were people in the open door, railing area, and the patio area was full. Parking is also a concern, with cars parking in the roadway, no parking areas, and private drives. The addition of music makes this matter worse by increasing the number of people in attendance.

F. Doherty stated that she is also a neighbor and lives on the same side of the street that is having some parking issues. One of the issues that is causing problems is that on Elliot Ave. there are several no

parking type signs but depending on which way a person is coming from it can be difficult to see the signs. If new signage could be placed in specific areas, that might be more visible, it could help with some of the parking issues. Regarding the fence, that was discussed a lot at the Township meeting. Musicians in attendance explained a fence could cause more noise. The acoustics can make the music louder, not quieter, and that is why the Township decided against the fence. The neighbor, Leslie, did want to be in attendance and provided a letter to the Board for review.

- G. Moores stated he is not looking at buying anymore property in Silver Creek.
- H. Doherty – know they are busy; they are not looking to expand the business. With being short staffed the kitchen can't handle more tables. They simply would like to be open and utilize everything thing they can. Moores – already paid for the street dance band and band stage for this year.
- I. Ogle – jurisdiction inside the county road right-of-way is the County Highway Department and they would be the ones to address parking signs.
- J. Neumann – sometimes being successful brings unwanted problems. The application is for live outdoor music with 4 hours on Thursday and 3 hours on Sunday. Familiar with the location and business. Feels that if there is no room to park people move on. Does not feel that live music will add or remove patrons. Seven hours of music a day is reasonable. Fencing could be helpful in keeping litter and patrons on the bar property.
- K. Mol – over the last few weeks he spoke with Staff on several items. Staff was questioned if the applicant was notified of the site inspection. Staff did confirm the site inspection notice would have been created right after the July 29th meeting and in the mail for Monday. The notice is sent to the applicant with the address provided on the application. The site inspection was done, even in the rain, and no applicant showed up to review and answer questions. Struggles that the applicant was not on site to answer questions he had and therefore had to make assumptions. When looking at approving a variance the Board has to consider certain criteria. The property is in shoreland, and that zoning does not allow for music. So, if the Board allows music in shoreland, for this request, it could open up similar requests to so many more lakes and areas in the County. The business is grandfathered in, won't argue that, but to add music he would disagree it should be allowed. There is a parking issue that this Board does not address. Planning & Zoning is very animate that parking must be off of any county road and there needs to be ample parking. The Board needs to look at the location, it is within 1,000 ft. of lakeshore and in a residential area. Live music, especially amplified, does get loud. The headlight concern for the property to the east, there is no wall there. If the Board does approve this request, there needs to be very strong conditions as to what can and cannot happen. This is a noncompliant piece of property that could have music added. This Board has many times brought up a hardship. Where is the hardship here? Statements have already been made that the business is successful, even without the music. The ordinance states that a variance can be established as long as specific guidelines are met, one of which is a hardship. Personally, does not see a hardship related to the request. Kryzer – believes member Mol is referring to practical difficulty versus hardship. Mol – confirmed.
- L. Vick – struggles with the request. Sees that the residents have issues and feels for them. Did stop at the bar for dinner and thought the indoor music was nice, and the food was great. When visiting the site with the Board it would have been nice for the applicant to be there. He had questions for the applicant and wanted to know how loud the music is and what style is played outdoors. Heard a

resident mention allowing music 14 or 16 days a year. He would like to see a condition limiting the number of events. Feels the food is great and would bring people to the bar.

- M. Jones – from Silver Creek and frequently goes to the bar with his wife and friends. Was involved with the Silver Creek Township Board when the kitchen and upstairs were approved. Confused when the owner mentioned that requiring of permits was not known as they were needed for that addition. He did attend the Township meeting and heard some people say it was not a problem while others stated a problem. Does not know that Thursday music makes a difference whatsoever. Has been to the bar on a Thursday and the business is packed. Does not like that the covered patio eating area was not permitted. At the Township meeting did not hear one way or another regarding the request. People got up and spoke that yes, they could hear it a little bit. Heard from the residents that they need to get up Friday morning and go to work, so maybe it would be a good idea to do away with Thursday and instead go with a Friday night. Was neutral because the Board has no control over the highway or police. Felt there was not a lot of complaining regarding noise from the people in the Townhall. Surprised noise would have been a big deal and it really wasn't.
- N. Aarestad – listening to the public it is obvious the music is a small part of the picture. This is a quality of life situation with issues that are indirectly related to the music. Feels there are 2 groups of people that visit the establishment; those that come for a burger and a drink with friends and another group that comes for music. The ones that come for the music stay longer and consume more alcohol and those are the ones that are creating issues. The owner does not have control over what people do when they leave his establishment, and they do the best they can. Concern with what he feels is a link with the music and issues with parking, motorcycles, and garbage. Would like little to no music, because of the lake. Would want to eliminate Thursday night as there is a real issue with people having school and working the next morning. Feels that allowing a monthly fundraiser with music, for the community, would be acceptable. If music is going to be allowed, he would want to be very restrictive as he is concerned with the byproducts to the neighborhood and surrounding community.
- O. Mol – all of the items being discussed are legitimate and strong concerns. The Board still needs to uphold the ordinance. This is in a nonconforming area, if allowed here where could it go from here. The practical difficulty has not been shown to the Board. Everyone here has agreed the business has grown and gotten bigger and better but there isn't a practical difficulty, and it is in a nonconforming area. The statement was made on another subject that the Board has to deal with the entire county. There are other Silver Creek type areas in the County; French Lake, which is a township village and Albion is a small little group of houses. The Board needs to stay within the guidelines of the ordinance. Everything being said is valid but is the Board going to give a variance for music in a nonconforming area without some of these criteria being met?
- P. Mol motioned to have Staff draft findings for denial. Seconded by Jones.

DISCUSSION: Aarestad questioned if consideration would be there for the opportunity to have a fundraiser for the community. Mol – feels that would fall under a street dance. If they want to have a street dance 2-3 times a year that would not be this Boards jurisdiction. Neumann – still thinks that when you have a bar you can almost expect there to be music. Understand the legal obligations but this Boards job is to make exceptions when can. Feels that 7 hours of music a week is reasonable. Vick – for a resident in the area, every Thursday and Sunday, can be annoying. Would be willing to allow a special occasion condition as it does give opportunity for jobs. Aarestad brought discussion back to a vote.

VOTE IN FAVOR: Mol, Jones, Aarestad

NAY: Neumann & Vick

VOTE: CARRIED

Q. Kryzer – the public hearing should be closed. The Findings for denial will be drafted by Staff for the Board to adopt at their next meeting (September 9th). Note record is closed to any further public comment, written or oral.

R. Mol motioned to close the public hearing and continue the item to the September 9, 2022, meeting to allow time for Staff to prepare Findings for denial. Seconded by Aarestad.

VOTE: CARRIED UNANIMOUSLY

Meeting adjourned at 10:05 a.m.

Respectfully submitted,

Aaron D. Ogle
Planning & Zoning Planner

AR:sld

Cc: Board of Adjustment
Applicants/Owners
Twp. Clerks