

**VILLAGE OF PLEASANT PRAIRIE  
BOARD OF APPEALS  
Tuesday, September 20, 2005  
5:00 PM**

Members Present: Christine Genthner, Chairperson; Bill Morris, Secretary; Mark Riley; Jennie Holman; Tom Glassman; Sheryl Berner; and David Hildreth.

Also Present: Peggy Herrick, Assistant Village Planner and Zoning Administrator; Tom Shircel, Assistant Village Planner and Zoning Administrator; and Elaine Eppers, Clerical Secretary.

1. **CALL TO ORDER**
2. **ROLL CALL.**
3. **CORRESPONDENCE.**
4. **CITIZEN COMMENTS.**

Christine Genthner:

I will tell you all that each of the two items that are on the agenda tonight will be open for a public hearing and you have a chance then to come forward. Is there anybody who would like to talk or address to the Board with anything other than the two items on the agenda? You may come forward at this time.

5. **CONSIDER THE MINUTES OF THE JULY 19, 2005 BOARD OF APPEALS MEETING.**

Christine Genthner:

Do I have a motion?

Mark Riley:

I'll make a motion that we approve those minutes as submitted.

David Hildreth:

And I will second that motion.

Christine Genthner:

We have a first and second to approve the minutes as prepared. All in favor say aye.

Voices:

Aye.

6. **NEW BUSINESS**

- A. PUBLIC HEARING AND CONSIDERATION OF A TEMPORARY USE PERMIT: for the request of Deborah Woytonik of Carol Beach Partners II, LLC, agent for John and Leah Schaut, owners of the property located at 3101 104<sup>th</sup> Street to construct a new single-family home on said property and continue to reside in the existing home on the property during the construction. Upon completion of the new house the existing house will be razed.**

**The property is known as Lots 12 through 23 of Electric Station Highlands Subdivision also the vacated 31<sup>st</sup> Avenue, located in a part of the Northwest One Quarter of U.S. Public Land Survey Section 25, Township 1 North, Range 22 East of the Fourth Principal Meridian, in the Village of Pleasant Prairie, County of Kenosha, State of Wisconsin and further identified as Tax Parcel Number 92-4-122-252-0013.**

Christine Genthner:

At this time would staff like to proceed with an application?

Peggy Herrick:

Yes.

Christine Genthner:

Do you swear to tell the truth, the whole truth and nothing but the truth?

Peggy Herrick:

I do. I just wanted to make one correction in what you read. The property is identified as lots 12 through 23 of Electric Station Highlands Subdivision also the vacated portion of 31<sup>st</sup> Avenue, not Street. I just wanted to make that correction.

1. The request of Deborah Woytonik of Carol Beach Partners II, LLC, agent for John and Leah Schaut, owners of the property located at 3101 104<sup>th</sup> Street are requesting a Temporary Use Permit to construct a new single-family home on said property and continue to reside in the existing home on the property during the construction. Upon completion of the new house the existing house will be razed.
2. The property is known as Lots 12 through 23 of Electric Station Highlands Subdivision also vacated 31<sup>st</sup> Avenue, located in a part of the Northwest One Quarter of U.S. Public Land Survey Section 25, Township 1 North, Range 22 East of the Fourth Principal Meridian, in the Village of Pleasant Prairie, Wisconsin and further identified further identified as Tax Parcel Number 92-4-122-252-0013-0.
3. A portion of the property is zoned R-4, Urban Single-Family Residential District and a portion of the property is zoned C-1, Lowland Resources Conservancy District. On June 16, 1993, a wetland staking was completed by the Wisconsin Department of Natural

Resources on a portion of the properties and the wetlands were rezoned by the Village Board into the C-1 District on September 27, 1993. That's shown as Exhibit 2. That's also shown on the overhead. The area that's cross-hatched is the area that was found to be wetlands in 1993 and rezoned into the C-1 classification.

4. The petitioner on behalf of the owner has requested that the northern boundary of the wetlands be re-verified since the staking had been done more than five years ago and the exact location of the wetlands needs to be verified prior to issuance of a building permit for any construction on this property. And that currently is being requested by the Regional Planning Commission and a date has not been scheduled.
5. As information, the property owner/applicant shall be aware that the Village has minimum zoning district requirements related to design standards for a single family house related to such things as height, square footage, length to width ratios, dwelling width, roof pitch, exterior building materials, etc. Setbacks and other uses that are allowed in the R-4 District as well are provided in the R-4 District regulation. In addition, there are specific requirements for wetlands pursuant to the C-1 District regulations. Both of those district regulations are attached as Exhibit 4. In particular the ordinance requires that a single family home be located a minimum of 25 feet from any field delineated wetlands. So that's why, again, it's important to know where those wetlands exactly are on the property before any additional building occurs.
6. Pursuant to Section 420-30 A of the Village Zoning Ordinance only one principal structure is allowed on a single family lot unless otherwise permitted.
7. The petitioner, therefore, is requesting a Temporary Use Permit to construct a new single-family home on the property and continue to reside in the existing home on the property during the construction. Again, upon completion of the new house the existing house will be razed. Therefore, for a short time frame there will be two permitted principal structures on the property.
8. The new dwelling is proposed to be located approximately 20 feet north of the existing house as shown on the drawing in Exhibit 1 and as noted on the site plan, and there is also an existing 451 square foot detached garage located south of the existing house which is also proposed to be removed.
9. Municipal sanitary sewer and municipal water are available to this site and the new single-family dwelling shall be connected to sanitary sewer and municipal water.
10. The Village has previously and recently granted similar Temporary Use Permits for similar requests including a permit approved:
  - a. April 15, 2003 for Ms. Katherine Fuller;
  - b. August 20, 2002 a similar request was granted to Mr. & Mrs. James Stollings;
  - c. February 5, 2002 a similar request was granted to for Jason & Sharron Hyatt;
  - d. November 21, 2000 similar permit was granted to Mr. Steven Carver; and
  - e. August 17, 1999 a permit similar to this was granted to a Mr. Alfred Lecy.

11. All of the abutting and adjacent property owners within 100 feet were notified via regular mail on September 1, 2005 as shown in Exhibit 8. The Board of Appeals agenda was published in the *Kenosha News* on September 9, 2005.

With that, this is a public hearing.

Christine Genthner:

Thank you. Any question by the Board before I ask anybody to come forward? Seeing none, is there anybody in the audience who would like to come forward and speak on this particular matter? Is the petitioner here? Would you like to come forward? And your name?

Deborah Woytonik:

Debbie Woytonik:

Christine Genthner:

Seeing that nobody, including the applicant, wants to come forward at this time, do we have a recommendation from staff?

Peggy Herrick:

Yes. It's the Village staff's recommendation to approve the temporary use permit to construct a new single family home on the property and allow the owners to continue to reside in the existing single-family dwelling on the property during the construction of a new home for the following reasons: The situation of having two dwelling units on one parcel is a temporary situation whereby the existing house and the older house will be razed within 60 days after receiving a verbal occupancy for the new house if this temporary use is approved; and only one single-family dwelling will be occupied at any one time on the property.

Furthermore, staff recommends that the temporary use permit be approved subject to the following conditions:

1. All required information shall be submitted for review for the issuance of a new single family home on the property.
2. Prior to submittal of the required permits for the construction of the new single family home on the property the wetland staking shall be completed and the survey approved in writing by the biologist. Also, I just want to make it clear that upon written approval of the wetland staking by the biologist the Village staff will initiate the process to correct the zoning map and rezone the field delineated wetlands into the C-1 District pursuant to the wetland application on file with the Village. And that would be done only if the wetlands have changed. If they have not changed, the wetland zoning classification does not need to be corrected.
3. Only one of the single-family dwellings shall be occupied at any given time.
4. The petitioner shall completely remove the old house within 60 days after receiving a

verbal occupancy for the new house and shall remove all debris from the property and restore and stabilize the area occupied by the old house. If the existing, older house is not removed within 60 days after receiving a verbal occupancy for the new house and all debris is not removed from the property and the area occupied by the old house is not restored and stabilized, then it will constitute a violation of the Temporary Use Permit and a violation of the Village Zoning Ordinance. And the Village staff could prosecute.

5. The new single-family dwelling shall be connected to municipal sanitary sewer and municipal water. There shall be no open cutting of the road pavement to make the sewer and water connections. Proper permits shall be obtained from the Village for this work.
6. The new single-family dwelling shall generally be located on the property as depicted in the application. In no case shall the new house be located closer than 10 feet to the existing house, and this includes all decks and porches.
7. If the existing driveway is proposed to be relocated approval and permits shall be obtained from the Wisconsin Department of Transportation. A copy of any of these permits and approvals shall be submitted to the Village.
8. The petitioner shall submit the required applications and documents required to raze the existing old house and existing detached garage that are proposed to be removed from the property. The project should be in full compliance with the Village razing procedures and razing permits.
9. The Temporary Use does not waive any other requirements which are imposed by the Village's Zoning or Land Division Ordinances, Building or Municipal Codes.
10. If the Temporary Use Permit is approved, the Village will prepare a Temporary Use Grant Document to be executed by the property owners and recorded at the Kenosha County Register of Deeds Office. The owner is responsible for the recording and filing fees, and the document shall be executed prior to the Village issuing any zoning or building or erosion control permits for a new single family home on the property.

The staff recommends approval subject to those ten conditions.

Christine Genthner:

Thank you. Do I have questions from staff on the recommendation before I close the public hearing?

David Hildreth:

Just as a point of clarity is there a basement that goes with the existing home currently? Is there a basement? And if you raze the house, what's the process? Do you just knock down the basement walls or backfill it to fill it in?

Christine Genthner:

Does anybody know? Does the petitioner?

Peggy Herrick:

They may be able to answer that question.

David Hildreth:

I'm just curious how that works.

Christine Genthner:

For the record state your name and give a business address please.

Deborah Woytonik:

Debbie Woytonik, and the address is 7513 7<sup>th</sup> Avenue in Kenosha, Wisconsin.

Christine Genthner:

Do you swear to tell the truth, the whole truth and nothing but the truth?

Deborah Woytonik:

I sure do.

Christine Genthner:

If you heard the question.

Deborah Woytonik:

Yes, there is an existing basement under a portion of this existing home, and when it comes down the basement walls and the slab will all be taken down and filled back and graded to what the new grade will be for drainage.

David Hildreth:

Very good, thank you.

Christine Genthner:

Thank you. Any other questions?

Mark Riley:

I have a question of the staff. Is there a limited amount of time from the time they take a building permit out until the time they have to get an occupancy.

Peggy Herrick:

Two years.

Mark Riley:

So that is limited. Then I just have a comment. Why would you use a verbal commitment rather than some kind of written commitment on the occupancy? Just to prevent any further arguments in the future?

Peggy Herrick:

We do not want to issue a written occupancy when the site has not been completely stabilized and everything is done. If we issue a written occupancy that says their good to go. We want to hold that up until they have the house removed.

Mark Riley:

Can't you issue a temporary occupancy?

Peggy Herrick:

That's what a verbal occupancy is. They verbally have been granted approval to move into the new home.

Mark Riley:

I guess you'd have to deal with it, but if it's not written then there can always be an area of argument.

Peggy Herrick:

It's written in the fact that the building inspectors have a form that they write verbal to occupy so it is in writing and they can get a copy of that. We don't issue a written certificate of compliance which says on this date everything passed and you no longer have any violations and everything is good to go. So verbal there is something in writing if they would like it.

Mark Riley:

Okay, I'm good.

Christine Genthner:

Any other questions? Seeing none I will close the public hearing on this agenda item. Do I have a motion?

Mark Riley:

I make a motion that we give this variance according to the way the staff has outlined the ten

points.

Christine Genthner:

I have a motion by Mr. Riley.

Peggy Herrick:

This is a temporary use permit. It's not a variance. You said granting a variance.

Mark Riley:

Okay, grant the temporary use permit.

Christine Genthner:

Subject to that clarification we have a motion by Mr. Riley. Do I have a second?

David Hildreth:

I'll second the motion.

Christine Genthner:

I have a second on the motion. Do we take a roll call then? Aye.

Bill Morris:

Aye.

Mark Riley:

Aye.

Jennie Holman:

Aye, approve.

Tom Glassman:

Aye.

Christine Genthner:

So the motion carries. The temporary use permit subject to those conditions has been approved.

**B. PUBLIC HEARING AND CONSIDERATION OF TWO (2) VARIANCES: for the request of James & Deborah Woytonik of Carol Beach Partners II, LLC, property owners, for two (2) variances from: 1) Chapter 420-110 G. (2), and 2) Chapter 420-**



**139 B. (2) (d) of the Village Zoning Ordinance. Both variance requests pertain to a reduction of the required shore setback for a proposed principal structure for a property located in the R-5 (LUSA), Urban Single Family Residential District with a Limited Urban Service Area Overlay District.**

**The property is known as Lot 9, Block 13 of Carol Beach Subdivision Unit 2 and is located in a part of the Southwest One Quarter of U.S. Public Land Survey Section 29, Township 1 North, Range 23 East of the Fourth Principal Meridian in the Village of Pleasant Prairie, County of Kenosha, State of Wisconsin and further identified as Tax Parcel Number 93-4-123-293-0245.**

Christine Genthner:

Do we have an application by staff?

Tom Shircel:

Yes.

Christine Genthner:

Do you swear to tell the truth, the whole truth and nothing but the truth?

Tom Shircel:

I do.

Christine Genthner:

Please proceed.

Bill Morris:

For the Chair just as a point of order, due to my personal previous knowledge of this particular proposal or request I would have to recuse myself from any involvement or action on this particular project.

Tom Shircel:

So noted. These are the findings of fact on this case.

1. The request of James & Deborah Woytonik of Carol Beach Partners II, LLC, property owner, for two variances pertaining to a vacant property located in a part of the Southwest One Quarter of U.S. Public Land Survey Section 29, Township 1 North, Range 23 East of the Fourth Principal Meridian in the Village of Pleasant Prairie, County of Kenosha, State of Wisconsin and further identified as Tax Parcel Number 93-4-123-293-0245 which is Lot 9, Block 13, Carol Beach Estates Subdivision Unit #2.

2. Specifically, the petitioner is requesting the following two variances:
  - A. VARIANCE "A" - A variance from Chapter 420-139 B. (2) (d) of the Village Zoning Ordinance. Specifically, they're requesting an 18.25 foot variance from the averaged 68.25 shore setback to the Ordinary High Water Mark of a navigable waterway, this being Lake Michigan, to accommodate a proposed new single-family dwelling to be constructed with a Lake Michigan shore setback of the minimum 50 feet.
  - B. VARIANCE "B" - A variance from Chapter 420-110 G. (2) of the Village Zoning Ordinance. Specifically, the variance is a 25 foot variance from the 75 shore setback to the Ordinary High Water Mark of a navigable waterway. This time it's a tributary to Lake Michigan to accommodate a proposed new single-family dwelling to be constructed with a shore setback of the minimum 50 feet.
3. The application indicates that a two-story home with a first floor square footage of 903 square feet with an additional second floor and also with a 431 square foot, one-story, two-car attached garage would be proposed on this lot. You can see Exhibits 4 and 5 in your packets.
4. The property is zoned R-5 (LUSA), Urban Single Family Residential District with a Limited Urban Service Area Overlay District. Please refer to Exhibit 6.
5. The R-5 District allows for a single family home to be constructed provided it meets minimum design standards and the minimum setback requirements. The pertinent setback requirement as it relates to these variance requests is the shore setback. Pursuant to Chapter 420-110 G. (2) of the Village Zoning Ordinance, the shore setback is a minimum of 75 feet, except as provided for in Chapter 420-139 B. (2) (d).
6. According to the current interpolated wetland maps as prepared by the Southeastern Wisconsin Regional Plan Commission, also known as SEWRPC, as revised in 1995, there are no wetlands on the subject property.
7. The subject property is located within 1,000 feet of Lake Michigan and 300 feet from an unnamed, navigable tributary to Lake Michigan located on the property just north of this subject property, thus the property is located within the limits of two Shoreland Jurisdictional Boundaries and thus the request for two variances.
8. If the variances are granted by the Zoning Board of Appeals, proper shore protection adjacent to Lake Michigan would be required to be installed to protect the lakeshore property prior to issuance of any zoning or building permits. A Stipulated Shoreland Permit is required to be applied for and obtained from the Village for any shore protection work. Shore protection shall be designed by a licensed engineer and proper permits are required from the Department of Natural Resources and Army Corps of Engineers as well as the Village.
9. A portion of the subject property may be located within the limits of the 100 year floodplain of Lake Michigan and/or the 100 year floodplain of the unnamed tributary to

Lake Michigan as indicated by floodplain sources that the Village has on hand. Please note that the Village Zoning Ordinance does not allow structures to be constructed or located within the 100-year floodplain.

10. At the request of Mr. George R. Healy, the Village prepared and sent a Parcel Review Letter dated September 20, 1991, which provided general information about the subject property. You can see that as Exhibit 7 in your packets. Parcel Review Letters typically provide the requestor with general information that is available to the Village about a certain property. These letters do not state whether or not a property is buildable or unbuildable, simply due to the fact that the Village does not have all the information and resources available to come to a "buildability" conclusion. In particular, it is important to note that in the 1991 Parcel Review Letter that the following was stated: "NOTE: This property abuts Lake Michigan and an unnamed creek, each which require a 75 foot shoreyard setback. It is questionable whether a residential dwelling can be adequately placed (on this lot) within the constraints of the zoning setback requirements."
11. Approximately 10 years later, at the request of Ms. Deborah Woytonik, who is the current owner of the property and also the petitioner for these variances this evening, the Village prepared and sent another Parcel Review Letter dated November 14, 2001, which provided general information about the subject property. You can refer to that letter as Exhibit 8 in your packets. Once again, this Parcel Review Letter supplied the requestor with general information about the property and did not state whether or not the property is buildable or unbuildable due to the same reasons as noted previously.
12. The property is located within the Carol Beach Estates Subdivision Unit # 2 which was platted in 1947. At the time the lot was platted this lot was 100 feet wide by about 320 feet deep or approximately 32,000 square feet in area, and you can refer to Exhibit 9A. The Village has no records that this Lake Michigan lakeshore property was ever protected with approved and permitted shore protection. Therefore, without any shore protection, this property has sustained significant erosion over the years, whereby the lot depth from the street property line to the OHWM of Lake Michigan is now only approximately 100 to 105 feet. You can refer to Exhibit 9B for that illustration.
13. In 1981 the Town of Pleasant Prairie and Kenosha County requested that the SEWRPC bring together the concerned public agencies, non-profit, private agencies and private interests in a planning effort directed at reaching a compromise of land use objectives, which focused both on the natural resource protection of the Chiwaukee Prairie and the private rights of individuals to develop their land. This planning effort was initiated in March 1982 under the guidance of a SEWRPC Technical Advisory Commission created for this process.

In 1985 the Town Board signed a joint Policy Resolution #10 supporting the Community Assistance Planning Report No. 88 entitled A Land Use Management Plan for the Chiwaukee Prairie-Carol Beach Area of the Town of Pleasant Prairie. I'll refer to that as the plan hereinafter. That was prepared by the SEWRPC under the direction of the Technical and Citizen Advisory Committee. The Plan set forth development areas within the existing platted areas of Carol Beach and Chiwaukee Subdivisions and had designated non-development areas as preservation areas. The Plan set forth that the lots

designated within the preservation areas located north of 116<sup>th</sup> Street, as is the case here, would be acquired by the DNR when a willing seller wanted to sell their land to the DNR, a willing buyer. Similarly, the Plan set forth that the lots designated within the Preservation Areas located south of 116<sup>th</sup> Street would be acquired by The Nature Conservancy of Wisconsin, again, when a willing seller wanted to sell their land to The Nature Conservancy, that being a willing buyer.

The subject property is identified in the Plan as being located within the limits of a non-development area. The Plan is intended to guide Pleasant Prairie, State and Federal agencies in exercising their respective land use regulatory responsibilities; to guide the concerned Pleasant Prairie in the provision of basic urban services; to guide public agencies and private interests in the acquisition of environmentally significant open space land; and to provide a framework within which private interest can formulate plans for additional development within the area. The Plan attempts to accommodate significant urban development within the area, while also preserving its most significant environmental features.

The Village is only one governmental body and agency involved in the implementation of the Plan, and the Village by itself cannot ensure that all other agencies, that being the DNR and The Nature Conservancy, will follow the Plan. However, the Village cannot prevent a property owner from developing the property in a preservation area or a non-development area unless the DNR, in this case, purchases the property for preservation.

The Village has and will continue to follow the Land Use Management Plan, insofar as the Village is only one participant in the Plan's implementation. As stated in the Plan, the land to be purchased for preservation shall be purchased by a willing buyer through a willing seller.

14. On August 5, 2005, Tom Shircel, had a conversation with Marty Johnson of the DNR, whereby Mr. Johnson informed me that the DNR is not interested in purchasing Lake Michigan shore properties due to the high cost of such lots. The DNR will continue to pursue the purchase of lots pursuant to the Plan, albeit, as he said, at a reasonable price.
15. Subsequently, the Village received a letter dated September 19, 2005 from Mr. Johnson of the DNR stating the following, and that's Exhibit 9C in your packets. I'll read that letter into the record. Again, it's dated September 19, 2005.

"Dear Mr. Shircel: This letter is in response to the Village's inquiry, if the Department had any interest in purchasing the lot owned by the Woytonik Trust. While the DNR is still pursuing lots within the Chiwaukee Prairie project boundary in the Carol Beach Subdivision, we are no longer pursuing the lots along the lakeshore. The Department has decided not to pursue lakeshore lots due to the high value potential. A great deal of the lakeshore has been developed north of 116<sup>th</sup> Street, decreasing habitat value and making land management difficult along the lakeshore. Thank you for the opportunity to comment. If you have any further questions please contact me." And it's signed by Marty Johnson, Wildlife Biologist, Chiwaukee Prairie Property Manager.

16. The Village has not received any comments from the Army Corps of Engineers regarding

this issue.

17. According to Village assessing records, this property is currently assessed at \$59,400, which would indicate that the assessing department considers it an unbuildable lot at that low value.
18. In a Village Hall conversation with the petitioner pertaining to a future variance application which took place prior to the petitioner's recent purchase of this property, I informed the petitioner that any purchase of this property with the intent to construct a new single-family dwelling on the property would be very risky due to variances being needed in order to construct new dwelling on the property.
19. The applicant purchased this property in July of this year, 2005, for \$80,000.
20. According to the Village Assessing Department, the average assessment for a buildable lot on Lake Michigan is approximately \$300,000 - \$350,000. Also, the average value of a buildable lot abutting Lake Michigan is approximately \$400,000 - \$425,000.
21. Pursuant to an August 24, 2005 telephone conversation between the petitioner, Ms. Woytonik, and myself, Ms. Woytonik stated that she has entered into a Contract to Purchase the vacant property to the immediate north of the subject property, Tax Parcel Number 93-4-123-293-0250, which is also known as Lot 10, Block 13, Carol Beach Estates Subdivision Unit #2. If this property acquisition is completed and the requested variances are granted, Ms. Woytonik plans to legally combine Lots 9 and 10 and install shore protection on both lots, which would include shore protection for the creek that flows through Lot 10.
22. VARIANCE "A"
  - a. Chapter 420-139 B. (2) (d) of the Village Zoning Ordinance allows an averaging principal, whereby the required shore setback for a principal structure located within a single-family residential district, as we have here, or in a licensed park may be decreased in any shoreland jurisdictional area to the average of the existing shore setback distance of the abutting principal structures on each side, but in no case shall the setback distance be reduced to less than 50 feet from the ordinary high-water elevation of any navigable water. If one of the abutting lots to be used in averaging the setback is vacant, then to calculate the average shore setback, the shore setback on the vacant lot shall be 75 feet.
  - b. Therefore, using the shore setback averaging principal as noted above, the required Lake Michigan shore yard setback for this property can be reduced to 68.25 feet. This average shore setback is calculated by using the shore setback of the existing house to the immediate south located at 11405 Lakeshore Drive of 61.5 feet and then adding the 75 feet for the vacant lot to the immediate north of which the total comes to 136.5 feet. You divide that by two for the average and you come to that 68.25 foot average shore setback.
  - c. Variance "A", therefore, requests an 18.25 foot variance from the averaged

68.25 shore setback to the Ordinary High Water Mark of Lake Michigan to accommodate a proposed new single-family dwelling to be constructed with the minimum allowed 50 foot setback.

23. VARIANCE "B"

- d. Chapter 420-110 G. (2) of the Village Zoning Ordinance requires a minimum shore setback of 75 feet. The averaging principal, as used for Variance "A", in this case cannot be used for this shore setback variance request due to the tributary's east-west orientation.
- e. Therefore, Variance "B", requests a 25 foot variance from the 75 foot shore setback to the Ordinary High Water Mark of the navigable tributary to Lake Michigan, which is labeled as a Drainage Ditch on Exhibit 3, to accommodate a proposed new single-family dwelling to be constructed with a shore setback to that unnamed tributary of 50 feet.

24. According to the variance application, the petitioner generally states the following special site conditions and unnecessary hardships or practical difficulties that pertain to this property. I'll read these and give a staff comment after each one.

- a. The homes in Carol Beach Estates Unit #2 have shore setbacks that range from 41.3 feet to 61.25 feet. Thus, granting an 18.25 foot variance to reduce the shore setback to 50 feet will not be out of character with the neighborhood.

The staff's response is given the varying Lake Michigan shoreline from property to property, mainly due to shore protection practices, or lack thereof, and the associated varying dwelling shore setbacks from property to property, the Village agrees that a 50 foot shore setback would not be out of character with the Carol Beach Unit #2 neighborhood. However, variances are considered on a case-by-case basis for the property in question, not by the circumstances that exist on surrounding properties.

- b. The second point the petitioner makes is Lots 18, 19 and 20, directly across Lakeshore Drive from this property are undeveloped, thus concern of a new home obstructing views of Lake Michigan is a non-issue.

Again, the Village staff's response to that point is not only are Lots 18, 19 and 20 vacant, but Lots 16 and 17 across Lakeshore Drive are also vacant as are Lots 10 and 11 to the immediate north of the subject property. Moreover, Lots 16, 17, 18 and 19 are owned by the DNR, which were purchase pursuant to the Plan. Lots 10, 11 and 20 are privately owned; however, the presence of the navigable tributary to Lake Michigan essentially makes these lots unbuildable without shore setback variances which may or may not be granted by the Board of Appeals. The house on Lot 8, the Fletcher residence, is currently for sale, and that's the house to the immediate south of the subject property. The Village agrees that if variances were granted to allow a new dwelling to be constructed on this lot that the dwelling would most likely not obstruct the views of any of

the properties in the immediate area.

- c. The third point the applicant makes is the applicant has “no reasonable use” of the property in the absence of the variances.

Staff’s response is although the applicant’s “no reasonable” use statement may be true, the “no reasonable use” of the property standard as applied to variance requests no longer applies. Instead, in March 19, 2004, a Wisconsin Supreme Court decision reinstated the 1976 test for variances whereby the applicant must prove a particular hardship or practical difficulty for a variance. So that “no reasonable use” clause that they used for a couple years no longer applies.

- d. The fourth point the petitioner makes is with the average shore setback of 68.25 feet, this lot is not buildable without seeking other variances.

The Village staff responds that the Village agrees that without the requested variances, the Village cannot issue Zoning and Building Permits for a new single-family dwelling on this property.

- e. And, finally, the last point the applicant or petitioner makes is the requested 25 foot variance to allow a 50 foot shore setback to the navigable waterway to the north on Lot 10, which is that unnamed tributary, would accommodate an attached garage for the proposed single-family dwelling.

And the staff responds that when the “no reasonable use” of the property variance standard was in effect, the argument that a garage may not be necessary if a property was improved with a dwelling would have had some teeth. However, as noted above, the “no reasonable use” of the property variance standard is no longer applicable.

- 25. The 75-foot shore setback requirement is intended to protect navigable waterways from construction-related harm or damage, to protect fish and wildlife habitats, to protect water quality and to protect aesthetics and scenic views of the waterways. The purpose of the shore setback requirement can be achieved through vigilant management and control of the construction process, even if the requested variances from that requirement are granted.
- 26. The Village believes that the only way to ensure the preservation of this property is via the purchase of the property by DNR or some other public or private agency pursuant to the Plan.
- 27. It is important to note to the property owner, and as information to any future owner of this property, that this area of the Chiwaukee Prairie is maintained through controlled burns by the DNR, which may at times produce significant amounts of smoke.
- 28. It is important to note to the property owner, and as information to any future owner of this property, that this property may be adversely affected by a high water table and standing water and associated unsuitable soils for construction, which is prevalent

through much of Unit 2 of Carol Beach Estates.

29. Under State of Wisconsin Supreme Court case law pertaining to granting of variances, a variance may be granted only if the applicant can show that the standards set forth in the Statutes and interpretive case law for granting variances will be met. The Statutes provide that a variance may be allowed when it will not be contrary to the public interest; where owing to special conditions a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice done.
30. All of the abutting and adjacent property owners within 100 feet of the subject property were notified via regular U.S. Mail on September 6, 2005. You can see that letter as Exhibit 10. The BOA agenda was published in the *Kenosha News* on September 9, 2005.
31. On September 12, 2005, the Village received a letter dated September 9, 2005 from Leslie Fletcher. Again, she's one of the property owners of the house to the immediate south, and that can be seen as Exhibit 11. In summary, Ms Fletcher is in opposition to the variance request. And I'll now read that letter into the record. That's, again, Exhibit 11 in your packets.

It's addressed to Ms. Werbie who is the Community Development Director. "Dear Ms. Werbie: As owner of the property immediately to the south of the Parcel, I am writing to object to the requested variance. When we applied for a setback variance the Village provided us with a list of guidelines that are applied to variance requests. The key is, of course, unnecessary hardship, with which you are very familiar. The guideline I would like to emphasize in this situation is the one providing that 'self-imposed hardship is not grounds for a variance.'"

"This principle comes from the decision in *Snyder v. Waukesha County Zoning Bd. of Adjustment* . . . where it is stated that the hardship may not be self-created or merely a matter of personal convenience. This principle from *Snyder* is cited in the Wisconsin Court of Appeals decision in *Spinner v. Kenosha County Board of Adjustment*. In addition, the definition of 'unnecessary hardship' in the ordinance begins as follows: 'The circumstances where special conditions, which were not self-created, affect a particular property...' (emphasis added)."

"In the situation at hand the lot is vacant, has never had a structure on it and is not buildable under the current setback ordinances. The purchasers were fully aware of these circumstances when they purchased the Parcel. They knowingly put themselves in a situation of unnecessary hardship and the granting of the variance would merely be for their personal convenience."

"Moreover, it seems that a grant of the variance under these circumstances would make a mockery of the ordinance. If granted, it would set the precedent that anyone could knowingly buy a nonconforming lot and then get relief by claiming unnecessary hardship. This result would render the setback requirements meaningless if they could be circumvented in this manner. Sincerely, Leslie D. Fletcher."



32. On September 19, 2005, the Village received a letter via email dated September 19, 2005 from Michael Luba of the Wisconsin Department of Natural Resources Sturtevant Office stating the Department's opposition to the variance requests. This is Exhibit 12 in your packets. Again, I'll read that letter as well into the record.

"Dear Board Members: Please read this correspondence into the official hearing record for the James & Deborah Woytonik of Carol Beach Partners II variance application. The State Legislature has given the Department of Natural Resources the responsibility to assist local units of government by commenting on shoreland zoning variance requests. James & Deborah Woytonik of Carol Beach Partners is applying for two variances to construct a new residence on lot 9, Block 13 of Carol Beach Estates Unite #2 in the SE 1/4, S 28, T 1N, R 23 E, Village of Pleasant Prairie. The applicant has requested a reduced setback of 50 feet from (sic) the ordinary high water mark of Lake Michigan and 50 feet from a navigable tributary to Lake Michigan to construct approximately a 60x25 foot new home. It does not appear that the statutory variance standards can be met for this project and the DNR therefore recommends denial of the variance."

"As the Board of Appeals reviews this variance application, the Board members should keep in mind that the applicants have the burden of proving that their application meets all of the statutory requirements for the granting of a variance. That is, the applicants must prove that they will suffer unnecessary hardship if the provisions in the Village's shoreland zoning ordinance are literally enforced in this case. A variance request based on an alleged 'unnecessary hardship' in this case should not be considered based on the recent purchase of the property by the applicants. In this case the hardship is self-imposed and the expectation that a variance be granted to shoreland setback requirements is unwarranted."

"The proposed single family residence is located in the R-5 (LUSA), Urban Single Family Residential District with a Limited Urban Service Area Overlay District. Significant flooding issues related to poor drainage, high Lake Michigan water levels and seasonally high groundwater in the area led to these zoning restrictions by the Village of Pleasant Prairie."

"Since the late 1980's, the Village of Pleasant Prairie Community Development Office has consistently enforced shoreland zoning setbacks in the Carol Beach Area, protecting these proposed developments and the existing residences from flood damage. The Village of Pleasant Prairie's Shoreland Zoning Ordinances also serve the important purposes of protecting fish and wildlife habitat, water quality and natural scenic beauty on Lake Michigan. The construction of a new home within 50 feet of Lake Michigan and a navigable stream's ordinary high-water mark will negatively impact water quality during construction, increase the area of impervious surfaces on the property which will likely increase the storm water runoff to the creek after construction, and adversely impact the shoreland buffer area that is so critical for wildlife and fish habitat and scenic beauty. Repeated variances for the construction or expansion of buildings within the shoreland buffer area would have a significant cumulative, adverse impact on water quality to Lake Michigan, fish and wildlife habitat, preservation of natural scenic beauty and would be contrary to the public interest."

“For these reasons, the Department believes that the James & Deborah Woytonik variance application should be denied.”

“Thank you for your consideration. Sincerely, Michael Luba, Natural Resources Basin Supervisor, Root-Pike Watershed, Southeast Region.”

33. Under State of Wisconsin Supreme Court case law pertaining to granting of variances, a variance may be granted only if the applicant can show that the standards set forth in the Statutes and interpretive case law for granting variances will be met. The Statutes provide that a variance may be allowed when it will not be contrary to the public interest; where owing to special conditions a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice done.

With that, I'll turn it back over to the Board Chairperson, and the applicant is in the audience.

Christine Genthner:

Thank you. Are there any questions by Board members? Seeing none, at this time if there's anybody from the audience who would like to come forward to speak please do so. Sir, I'd like you to give your name and your address. Mr. Pollocoff, do you swear to tell the truth, the whole truth and nothing but the truth?

Mike Pollocoff:

I do. My name is Michael Pollocoff. I'm the Village Administrator for the Village of Pleasant Prairie, 9915 39<sup>th</sup> Avenue. I'm speaking against this variance for a number of reasons. This parcel of land is in an area known as Unit 2 in Carol Beach. The Village has had close to 20 years of difficulty in managing storm water in this area as part of the Chiwaukee Prairie Comprehensive Land Use Plan for this area as that rolled out in '84. This area here was identified as an area that could be developed within the confines of the plan. It called for a skeletal storm sewer system to be installed to manage storm water.

The odd thing about this development area here, the wetlands in this area were deemed not to be as deemed as significant as the wetlands that were close to the tracks. Those wetlands are actually higher than where the homes are. The tributary which runs through here drains an area not only in Carol Beach Unit 2, but it drains an area in Unit 1 in Carol Beach. It comes across Sheridan Road, goes back to approximately 22<sup>nd</sup> Avenue on the south side of Tobin Road. It's a fairly large drainage area. As the flow picks up, some of that flow will go into this tributary, a lot will find it's way north to Tobin Creek.

The Village has had significant problems in maintaining this waterway for a number of reasons. One is we can't dredge it. We can't clean it. We can't clear it. The outfall at Lake Michigan there's no storm water protection there. It's private property, so any kind of storm whether it's out of the Northeast or Southeast will block that channel. Typically when that happens that whole area where the crossing is will flood. And depending on the severity of the storm that's

blocking the outfall from the lake and how much rainfall is coming, that area will back up with water.

The DNR tends to regulate us, and I wish it was more consistent, but sometimes we're only allowed to take out about one dump truck load of sand. We can't completely clear the outlet, and sometimes we're able to completely clear it out. So what happens when this outlet fills, there's no sanitary sewers in this area. There are some holding tanks, but those people who have conventional septic systems, and there's a number of them from older homes, become inundated and the water is sitting over those septic systems. It's sitting over the homes that have wells. They all have wells. To the extent that water rises, the chance for well contamination is significant.

If the property identified is filled and built on and that variance is granted for the setback, the public safety in this area and our ability to in a storm even go out there and clean it up is going to be compromised. What happens is the property owner who had it previously doesn't clean it; the property owner to the north doesn't clean it; it's the Village that's called out on an emergency basis to go out there with equipment and clean that waterway as best we can.

There's been a number of storm water projects that have been proposed for this area, far more than I care to recall or describe how much we spent on them, and the drainageway that this identifies here is so flat and so choked by wetlands, and because it's navigable and we can't clean, there's nothing more that we can do with this. This waterway does nothing but get worse.

I take issue with the fact that the DNR has decided that they've declined on purchasing the property. I think that's a breach of the Plan. The Village of Pleasant Prairie has lived up to every aspect of this Plan as possible to regulate those lands that can be built on. The ones that can't be built on sometimes those are difficult decisions. They're almost always not popular because on some side of an issue somebody wants to build and somebody wants to stop somebody else to build, and the Village Plan Commission and the Board has lived with that. But the Plan really relies on all the parties involved fulfilling their obligations. And in those parcels where it was deemed that it had to become public ownership, in this case the DNR, they need to follow through with it. The mere fact that property values have increased since 1984 is something that every single property owner in this Village lives with. If the land costs more, it costs more. If it's worth regulating and maintaining it's worth buying. I think that's something that the Village is either going to have to initiate a legal action or some kind of claim against the State to either get them to live up to their part of the Plan or the Plan needs to be dissolved, and we need to come back and find something that everybody is willing to work with.

Those are the legal aspects. But just functionally from a public matter from a public works standpoint, this area doesn't drain and permitting any building by the reduction of variances, the reduction of setbacks, is going to compromise the public health and safety there. We've been really lucky for the last ten years we've been in a real dry cycle at Lake Michigan. That's not going to last forever. And as that lake comes back, whenever that happens, it's going to get a lot more problematic as to being able to maintain that drainageway. When we were in 1987 when we were at historic highs, there was about six inches of difference between the edge of First Avenue and the water at this opening. So any storm that came in, that water was moving right back up the waterway. I can't tell you it's going to happen in two years and I can't say it's going to happen in six years, but my request of the Board is that you take a long view on this and take

seriously the ramifications that reducing the variance would cause.

I guess as a final note, I've had some comments on this and I find them professionally disturbing in the sense that, as I said before, the Village's staff has really strived to make sure that we enforce this Plan equally. Sometimes it's popular and sometimes it's not popular, but at this case the developer in particular as indicated to people that at some point or somehow they have control of the Village staff, the operation or the Board in their decision on how this is going to be made. I take great exception to that professionally. I know the staff does and I would anticipate that you do as well.

There's been times when variances have been granted because you felt it was warranted and I think the staff supported those. There's been times when variances haven't been granted, again, because the staff felt they weren't or maybe you didn't agree with us and you felt they were warranted, but it wasn't because anybody had any undue influence or was swayed. I know that's not the case in this situation, and it hasn't been the case to my knowledge. If somebody feels that's the case they should go visit the DA and bring in any information they have to visit with him.

Again, in wearing my hat as a Public Administrator and dealing with our public works problems, I'd really strongly urge the Board not to approve the variances.

Christine Genthner:

Thank you. Anybody else from the audience who would like to come forward? Sir? Please raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth?

Bob Babcock:

This is my left hand. I gottcha. My name is Bob Babcock, 11336 Lakeshore Drive and I do intend to tell the truth, the whole truth and nothing but the truth, so help me God.

Christine Genthner:

Thank you. You can put your hand down.

Bob Babcock:

Thank you. Most of my comments have already been well taken care of. Mr. Pollocoff gave a pretty good idea of what the problem is down in that area. It floods over that unnamed tributary. It's flooded to the point where it came over Lakeshore Drive. The particular lot we have here in question has been under water. Two or three lots south of there have been under water. It affected their septic systems and everything else.

At one time we had to set up an emergency meeting with the DNR, and the Village officials, Mr. Pollocoff and Ms. Werbie were at that meeting, and it was explained to the DNR what the problem was and that the Village didn't have the authority to clean out the creek. Mr. Luba in a matter of minutes gave the Village permission and we got the situation taken care of. And I feel that in the future the same cooperation between the two agencies would exist.

The DNR has set up a 75 foot setback allowance from navigable streams and lakes and such, which is very reasonable. And also to take into consideration some of the existing people that were there, existing lots were there, they went into an averaging variance to allow some of these other places not to have an undue hardship. And in this particular case it's already been given somewhat of an allowance there for a variance. The petitioner is now requesting more from Lake Michigan and more from the unnamed tributary which is reducing the DNR's 75 feet by a third. We don't think that is a very appropriate thing to do.

If I had bought this lot I think everybody in here would have called me stupid and I probably would have deserved it. If I didn't know this lot was going to be buildable, I certainly wouldn't have invested in it. And the people that have invested in it this might be an opportunity for them to donate it to the DNR or donate it to The Nature Conservancy and take a good tax write off. The other two letters that Mr. Shircel read from the lady that lives directly to the south and also the letter from Mike Luba pretty well state what most all of us in the neighborhood feel also.

And one last thing I think Mr. Shircel should get a standing ovation for being able to read all that stuff without passing out, and I know Ms. Werbie knows exactly what he's gone through. Thank you.

Christine Genthner:

It was very lengthy. Thank you. Anybody else in the audience who would like to come forward?

Judy Juliana:

My name is Judy Juliana, and I reside at 8743 Lakeshore Drive, Carol Beach.

Christine Genthner:

Do you swear to tell the truth, the whole truth and nothing but the truth?

Judy Juliana:

You bet. I have a lot of concerns with this request for a variance. The appeals have requested variances before in the past. I take exception that now we're talking shore protection. We're going to be changing the direction of the lake again. When the DNR sets up a standard of 75 feet I think we are obliged as a governing body to really look at that and why they set the 75 foot. Lake Michigan has receded quite a bit. It's not up to the high water mark as it has been since 1898 or 1848. And when you start reducing that variance you are not only impacting on the lake, you're impacting on the environment. It's next to Chiwaukee Prairie. What are these animals going to do? What are the aquatic animals going to do? We're impacting too much. You're also affecting the water table. We're having problems with the water table in that area of Carol Beach so close to the Chiwaukee Prairie. If that's the only lot, these two lots are asking a variance, and for years it's been unbuildable as it currently stands, and the Village has been trying to abide by the DNR and their rule. So if the land is getting expensive and they don't want to buy it, it shouldn't be our responsibility to make it buildable, because that's exactly what they want to do. They want to make it buildable. And when you have to make something buildable

you are going against what people have experience in the area and in the environment and in the land and the water table.

So when you start granting these types of variances to build large houses that close to the land, and that close to a tributary, what is going to happen when a water mark starts raising again? Lake Michigan will come back and reclaim that property. What is going to happen with all of the other properties along Lake Michigan? We have to stop granting these setbacks and putting in that type of shore protection. It does not just affect those two lots. It affects all lots north and south. And as caretakers of our community it behooves us to look at the ramifications when you start granting variances and setbacks. I am completely opposed to this.

Christine Genthner:

Thank you. Is there anybody else in the audience who would like to come forward? Raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth?

William Jewell:

Yes, I do.

Christine Genthner:

Please state your name and your address.

William Jewell:

William Jewell, 11370 Lakeshore Drive, Pleasant Prairie. One of the things I've got going here is the petitions that we started to circulate. Since I've never been doing any politics and all that, I didn't know how complicated this was. Sunday we spent five hours and we got four pages of signatures here which was just the south end of Lakeshore Drive area there. All the people on here request that this petition be denied because of flooding. It's all been stated here already that everybody depends on this creek.

One of the things that isn't on the agenda here now and just been brought up they bought the other side of the creek. This is going to hurt the people of Pleasant Prairie on Lakeshore Drive. These people have control of the creek where the water goes into the lake. How is the Village going to get in there? Other than a 45 minute spiel we had from Mr. Pollocoff a couple weeks ago to condemn that property and the Village to take it over. So these people are kind of dumb this way if that's what's going to happen.

Christine Genthner:

Let's not call names, okay, but I understand your concern.

William Jewell:

It's something that everybody down there is suffering.

Christine Genthner:

Do you want to give that to staff? Just for the record, you handed the petitions to the staff, correct?

William Jewell:

Yes, I did. Then also on the bottom of this Village ordinance, 42-139 B. (2) (d), it says that the variance should not be granted if areas which contain special flood hazards are potential. I think that has been brought forward to the Zoning Board also. It's whatever we can do to keep that open. On one answer go ahead and grant them their petition if they put in all the drainage that's necessary for the people down in Carol Beach. If they want to do that and they get that all done, all the storm sewers and everything, God give them the zoning for that piece of property.

But until they can guarantee or somebody can guarantee to us down there that are paying their taxes, everybody is griping that you people, the Village Board do not represent us. The truth that comes out is if you want a variance on your building the only people that can build it are these people. They'll get the variance. And I think that isn't a good indication of the Zoning Board. This is something that's serious. I know it's not true, you're laughing about it, but you've got to take issue with it. Look at the people on the Village Board. We've got two new people on there. The reason? Because nobody is listening to people on Carol Beach. At last you're not giving them that indication. You're listening to everybody else but the homeowners. I don't know if you've got a good old boys' group here or not. I'm not from this area.

We just moved in here in the last couple years. We've held that property for 14. But in other areas that I'm from and I work in and I do construction work as an electrical contractor and an alarm contractor, there is a good old boys' association. If you're in on the clique you get things done sometimes. I don't see that here with you guys. I just hope it isn't. But the people we talk to they feel kind of that way. I think we need to stop it.

Christine Genthner:

Thank you. Is there anybody else in the audience who would like to come forward? Do you swear to tell the truth, the whole truth and nothing but the truth?

Pauline Chlebek:

I do.

Christine Genthner:

Please state your name and your address for the record.

Pauline Chlebek:

Pauline Chlebek, C-H-L-E-B-E-K, 11360 Lakeshore Drive. I don't know if any of you have been down our end of the street but we're all older homes, at least 30, 40 or 50 years old. Mostly they're all ranch homes which is ground level. If that creek and the lake goes we're done for. Carol Beach Unit 2 north side has the water problem. We don't want to have that kind of a water problem. The problem we do have we kind of sort of rely on the creek to keep us dry. So if that

gets disturbed, and that little postage stamp lot you think is big enough to build a home in, come on down to the neighborhood, take a look at that lot, and then make your decision. But, like Mr. Pollocoff said, we've had problems down there, major problems, and we're going to have more problems if that goes through. So please deny this variance. Thank you.

Christine Genthner:

Thank you. Is there anybody else in the audience who would like to come forward at this time? Do you swear to tell the truth, the whole truth and nothing but the whole truth?

Gustav Hauser:

I do.

Christine Genthner:

Please state your name for the record and provide your address.

Gustav Hauser:

My name is Gustav Hauser. I live at 143 113<sup>th</sup> Street. I've lived in that area for approximately 30 years. I've been through wet years. I've been through dry years. Right now we are in a very dry cycle, but once the water comes back up that area of Carol Beach Unit 2 is flooded. Originally the whole area along the unnamed tributary was identified by SEWRPC in the Plan #88 as to be purchased by Pleasant Prairie. Most people don't realize it, but originally the whole area along the tributary was proposed to be purchased by Pleasant Prairie.

The reason for it is very clear. Like Mr. Pollocoff stated before, it's not only Carol Beach Unit 2 that gets drained to that unnamed tributary, it's the area all the way up--it's not only 22<sup>nd</sup> Avenue, it's actually farther that drains that creek into that area. I know that area very well. If you go along the railroad track, the whole area is inundated in spring, and that's the only area where it can drain down. Pleasant Prairie needs that area, those two lots, to be able to go in and open up the creek. The creek is not only--right now it veers more to the north, but it can go just as well to the south. That creek does not really have a fixed outlet.

It's foolish of the petitioner to think he can build on a property like this. Not only that, but that area actually lays in the floodplain. I don't think that variance should be granted at all. The petitioner just purchased the property recently so there's no hardship at all. I really would appreciate it if you would deny the petition of the applicant. Thank you.

Christine Genthner:

Thank you. Anybody else from the audience who would like to come forward? Do you swear to tell the truth, the whole truth and nothing but the truth?

Alex Tiahnybok:

I do.



Christine Genthner:

Please state your name for the record and your address.

Alex Tiahnybok:

Alex Tiahnybok, 8757 Lakeshore Drive. I just want to thank the citizens that commented tonight. I am one of those new Trustees, and directly to Mr. Jewell we are listening and we want to make sure things are done properly.

Most of the items that I took notes on have been covered. I think I'm in somewhat of a unique spot. I built a house in Carol Beach at 8757. Prior to that I owned a different property that by most peoples' accounts was not buildable without a variance. Went through the process back in '98. The issue was tabled because it was January and, frankly, I don't recall if any of you were on the Board, but the issue was tabled because there was snow on the beach and it was hard to determine where the high water mark was.

At that point in time what I was requesting was an average of the two adjacent properties. Even that was slightly contentious. But it was tabled and in the meantime I made some changes to my plan, acquired a different property and that's where I live today.

I also happen to be President of the Carol Beach Property Owner's Association. A lot of the people that spoke this afternoon are active members and residents of that area. So from a perspective of representation of the people of Carol Beach and also of the people of Pleasant Prairie I think some very strong arguments were made tonight contrary to the variance being approved. Frankly, I haven't heard one that's been positive in terms of the variance being approved. So on that basis I urge you to vote against it. Thanks very much.

Christine Genthner:

Thank you. Is there anybody else in the audience who would like to come forward at this time? The applicant is not required to, but this will be the only opportunity for anybody from the audience to speak. Seeing none, at this point, do I have a recommendation of staff?

Tom Shircel:

Yes. Based on the Finding of Facts and the variance application filed, the Village staff finds that the application does not meet the requirements for the granting of the requested variances.

Pursuant to Chapter 18-43, entitled Standards and Guidelines, the Village Ordinance states that "In determining whether a variance is to be granted, the following standards and guidelines shall be met. In making its decision, these standards and guidelines shall be addressed by the Zoning Board of Appeals." In this case, Standard and Guideline #3 has not been met by the petitioner. Specifically, Chapter 18-43 A. (3) states: "That these hardships or difficulties are the result of the aforementioned special conditions existing on the land and are not self inflicted."

Additionally, Chapter 18-43 C. of the Village Ordinance states in part that "in no event may a

variance be granted where the primary reason for obtaining a variance is to obtain a more profitable use of the property, personal inconvenience, construction errors, economic reasons, self-created hardships, or where the property is presently a nonconforming use.”

The Village staff agrees with Mr. Luba of the DNR that the petitioner created a self-inflicted/self-imposed hardship by purchasing the subject property outright, prior to applying for the required variances needed to construct a new single-family dwelling on this property. The petitioners were well aware that this property was unbuildable as it exists in that the shore setbacks for the construction of a new dwelling cannot be complied with without the Zoning Board of Appeals granting variances. In purchasing this property prior to applying for variances, the petitioners made an assumption that these requested variances would be granted. The petitioners would have been wise to conditionally purchase this property subject to acquiring all necessary Village permits and approvals. Instead, the petitioners purchased this property outright, thereby taking a self-imposed risk that the variances would be granted to make this property buildable.

Additionally, the previous owners of the subject property made the decision to not install shore protection along Lake Michigan to help prevent the years of Lake Michigan erosion of this lot. Without engineered shore protection in place, the previous property owners let this lot erode to a point where there is not enough land remaining to construct a new dwelling. The decision to not install shore protection is also a self-inflicted/self-imposed hardship by the previous property owners.

In the staff's opinion, the circumstances which are presented in this case as noted do not warrant the granting of the variances from Chapter 420-139 B. (2) (d), which is Variance A, and from Chapter 420-110 G. (2), which is Variance B, of the Village Zoning Ordinance related to the required shore setbacks of a principal structure to respective Ordinary High Water Marks.

In conclusion, the Village staff recommends that both Variance A and Variance B be denied as requested as they pertain to Tax Parcel Number 93-4-123-293-0245. Specifically, staff recommends to following:

- A. Deny the requested Variance “A” to allow an 18.25 foot variance from the averaged 68.25 shore setback to the Ordinary High Water Mark of a navigable waterway, that being Lake Michigan, to accommodate a proposed new single-family dwelling to be constructed with a Lake Michigan shore setback of the minimum 50 feet.
- B. Deny the requested Variance “B” to allow a 25 foot variance from the 75 shore setback to the Ordinary High Water Mark of a navigable waterway, that being the unnamed tributary to Lake Michigan, that is located on the parcel to the immediate north to accommodate a proposed new single-family dwelling to be constructed with a shore setback of 50 feet.

Staff believes that the granting of these variances would be contrary to the public interest; where owing to special conditions a literal enforcement of the provisions of the ordinance will not result in practical difficulty or unnecessary hardship. The Village staff and the DNR believe that the practical difficulties and unnecessary hardships as presented by the petitioners are not valid and that the hardship was self-imposed/self-created. Thus, the spirit of the ordinance will not be

observed and substantial justice will not be done.

If the Board of Appeals determines that based on the facts and information presented at the Public Hearing tonight that the petitioner has proven the need for the variances then the Board, may approve the variance requests, in whole or in part. If the Board chooses to approve the variances or a portion thereof, then the BOA shall clearly and specifically state for the record the reasons for the approval and shall note any applicable conditions.

Christine Genthner:

Thank you. Any questions of the Board to staff based upon the recommendations?

Tom Glassman:

I have a question for Mr. Pollocoff. When we send somebody out there to clean up these lots that the owners will not clean up, who pays for that?

Mike Pollocoff:

One, we don't clean the lots up. We dredge the opening to the drainageway. To the extent that there's any buildup on the lot, we take care of that, too, from debris coming down the creek and washing out that way or whatever might wash up from the lake. But that's on the taxpayers' nickle.

Tom Glassman:

Thank you.

Christine Genthner:

Any other questions. Seeing none I will close the public hearing. Do I have a motion?

Mark Riley:

I'll make a motion. But before I do I'd just like to make a comment that I am not influenced by any public officials or anybody on our decisions. I'm only influenced by the information that's brought to us during these meetings and based on that information is how we make our decision. I'm going to make a motion that we deny this variance solely on the fact that I feel the petitioner did create their own hardship and, therefore, would vote to deny it.

Christine Genthner:

We have a motion to deny by Mr. Riley. Do I have a second? Mr. Hildreth?

David Hildreth:

I would fully uphold to second that motion.

Christine Genthner:

Any discussion? Mr. Shircel?

Tom Shircel:

That's to deny both variances, correct?

Mark Riley:

Correct, both, and we can add as recommended by the staff to cover all the other.

Christine Genthner:

Is there any discussion on the motion? I would just like to say in addition, as the Chairperson and somebody who has been on this Board for several years that I also take offense that it was the applicant who would have some influence on our decision. I feel myself and the Board as I've worked with them make decisions based on the record that's before us, and they'll be doing the same tonight. With that, do we want to take a roll call on the motion?

--:

Just one for both or two separate?

Christine Genthner:

Two separate ones. So we have a motion to deny the request for Variance A. Is that the first one?

Mark Riley:

I made it as A and B.

Christine Genthner:

There's been a request, though, to separately move and take a vote.

Elaine Eppers:

Variance A. Ms. Christine Genthner?

Christine Genthner:

I support the denial.

Elaine Eppers:

Mr. Bill Morris is excused from voting on this issue. Mr. Mark Riley?

Mark Riley:

Denial.

Jennie Holman:

Variance A denied.

Tom Glassman:

Vote to deny.

Sheryl Berner:

Deny.

Christine Genthner:

Variance A then is denied. Now we have a motion to deny Variance B.

Elaine Eppers:

Mr. Bill Morris is excused from voting. Mr. Mark Riley?

Mark Riley:

Deny.

Jennie Holman:

Variance B denied.

Tom Glassman:

Vote to deny.

Sheryl Berner:

Deny.

Christine Genthner:

The request for the variance is denied.

**7. SUCH OTHER MATTERS AS AUTHORIZED BY LAW.**

**8. ADJOURNMENT.**

Tom Glassman:

I would vote to adjourn.

Christine Genthner:

Mr. Glassman moves to adjourn. Do I have a second?

Bill Morris:

I will second.

Christine Genthner:

Mr. Morris second. With that, all in favor say aye. We are adjourned.