

MEMBERS PRESENT: Buzz Dahlin, Sharon Lee, Joe Paiement, Chris White

STAFF PRESENT: Jim Gillis, Chris Wallberg

OTHERS PRESENT: David Brandt, Sandy Brandt, Todd Brandt, Mark Hauri (landscaper), Brad Johnson, Jody Radtke, Keith Radtke, Steve Schwieters (Wooddale Builders), Brian Zeller

1. **CALL TO ORDER** by Chair Lee at 7:01 p.m.
2. **PLEDGE OF ALLEGIANCE** was said.
3. **MEETING MINUTES** – Review and approval of May 3, 2005 PC meeting minutes. **M/S/P (Dahlin/Paiement) to approve the minutes of the May 3, 2005 PC meeting. Motion passed.**
4. **VARIANCE APPLICATION BY KEITH & JODY RADTKE**
 - A. **PUBLIC HEARING ON AN APPLICATION BY KEITH & JODY RADTKE FOR A VARIANCE TO CONSTRUCT A NEW HOME AT 1341 OLD TOLL BRIDGE ROAD**
 1. **CALL TO ORDER** by Chair Lee at 7:05 p.m.
 2. **INTRODUCTION OF APPLICATION** – Wallberg summarized application for series of variances -
 - (1) 2.5 acre minimum lot size requirement to 2.23 acres;
 - (2) 160' lot width requirement at lot frontage to 132.56';
 - (3) 150' lot width requirement at building setback lot to 136.3';
 - (4) 40' bluffline setback requirement to greatest extent possible;
 - (5) 40' bluffline setback controlled vegetative cutting area to remove trees impacted by home construction;
 - (6) 150' lot width at water line to 136.3';
 - (7) placement of structure or grading done on slopes greater than 12%.Steve Schwieters, Wooddale Builders, commented on variances required, adding variance (4) based on DNR requirements / Shodeen stated it exactly where existing house is, so they are at this point on bluff line / open discussion due to fact they might be dealing with few existing bushes on River bluff and removing three trees considered in 40' bluffline easement / three trees taking down within 40' from existing house; (6) they are what they are on lot width, nothing they can do (hardship); (7) referring to north side of property / will show in slides they are hoping to cut by one foot.
(Slides of proposal shown/plans on file at City Hall)
 1. **PUBLIC COMMENTS** –

Sandy Brandt, 1287 Rivercrest Road North. Asked Schwieters to illuminate cutting on slope. Schwieters stated by cutting northeast corner, they are cutting down on slope's angle, proposing gentler slope will decrease speed of water runoff with potential to decrease erosion.

Todd Brandt, 1319 Rivercrest Road North. Wanted comments regarding benefits or disadvantages of setting house back 10'; seems it takes house from current line of houses. Schwieters stated one main benefit, they leave all existing grades as is without interrupting bluffline; by retaining existing wall held by existing foundation, they were able to minimize grading. Brandt has 3-season porch on corner toward River; seems site lines will be along view; from privacy standpoint, would be nice if house were along current line or old proposal so windows look beyond his 3-season porch. Dahlin asked if correct the second plan intrudes less on Brandt's view than the first. Brandt thinks first plan intrudes less; not involved with any discussions so doesn't know what landscaping; seems to him initial proposal along line of current houses, so if setting house back, suddenly from viewing standpoint they will see more of his home; going along lines of current house seems to make more sense.

Keith Radtke, Applicant. Open to moving back toward earlier proposal; thinks that was way for them to be flexible but wasn't critical to their redesign.
 2. **WRITTEN COMMENTS** – (letters read by Wallberg / on file at City Hall)

Harry Martin and Cecilia Martin, 1411 Old Toll Bridge Road (dated 6/07/05)

Mark J. and Cindy Schilling, 1381 Old Toll Bridge Road (dated 6/07/05)

David H. Brandt and Sandy Brandt, 1287 Rivercrest Road North (dated 6/07/05)

Todd D. Brandt, 1319 Rivercrest Road North (dated 1/25/05)

Jeff Perkins and Diane Perkins, 1363 Old Toll Bridge Road (dated 1/25/05)

E-Mails from Molly Shodeen, DNR (dated 6/02/04)

E-Mail from Dave Simons, City Engineer (dated 5/16/05)
 5. **HEARING CLOSED** at 7:42 p.m.

B. DISCUSSION & RECOMMENDATION

In answer to Lee's question, Schwieters said existing house has 3 bedrooms, 2 bathrooms; new structure would have 5 bedrooms, 4 baths for family of five; regarding drainage swell on south property line, there is actually swell there now / could regrade and make deeper without any tree removal / no plans at this time to remove those trees; street side elevation / west side would shed water to street and bluff side, really doesn't shed much water both north and south / side elevation - on north side, roof sheds water from street side to bluffline / on south side, because of gable roof, water shed from street side back to bluff / no water being shed toward south end. Due to Lee's concern what happens to water as far as neighbors on either side of bluff, Schwieters explained water runoff from each direction. Schwieters said existing house also has gable roof, so hasn't changed water flow other than there is more roof; direction of water staying same. White asked, looking at proposed house, the current house line on south side.

Brian Zeller, 16616 11th Street. Thinks question White asking based on increase in size, but engineer reviewed runoff and erosion plans so suggested asking engineer for more specific comments. [Simons stated in 5/16/05 email Radtke site plan acceptable from a grading, drainage, and erosion control standpoint.]

Bowers referred to extensive landscaping around home and asked if that attempt to address additional water; looks like more rock/mulch where roof runoff comes onto ground. Schwieters said there is 27' additional with retaining walls; landscaping will slow everything down so gradual; bluff should be able to maintain water. Wallberg stated plans that Radtke's presenting have been worked on by City Engineer so he is very familiar; by response, all taken into consideration. Bowers confirmed City Engineer satisfied that runoff concerns adequately addressed. Dahlin quoted engineer's statement; doesn't see need for further discussion. Bowers seeing number of improvements related to specific issues brought up before; one continuing question not seeing difference on is fact that from backside, it is taking what was a 2-story and turning it into a 3-story; couple of slides indicated even at existing deck level, there is direct site line down to River; seems to clearly show another story of house visible from River. Schwieters said from original proposal, height elevation with roofline changes not changed; additional story added to existing structure; meets 35' height requirement. Bowers stated significant discussion regarding two issues - one, bluff setback; seeing some attempt to address and decrease level of damage done to bluffline but didn't see much change in other element of aesthetics which was visibility of structure from River. Schwieters said looking at other options, (1) if they went to rambler sizing to family needs, obviously first floor footprint would get bigger; would have to have more walkout meaning more grading; from when they started process, they are keeping in mind 35' height requirement that is considerable job in itself architectural-wise to make all rooms fit.

Keith Radtke, Applicant. In combination with landscaping without bluffline being pushed out, shrinks it; planting a couple of trees helps shield home as well.

Bowers asked if Radtke looked at possibility small trees might provide some visual fencing from River. Schwieters thought owners open to planting certain types of trees to potentially screen, but wall of trees exists on north lot line screening everything to north view. Dahlin complimented Radtke and his people for doing good job taking information they received and trying to accommodate indications for change suggested; seems to have pulled structure back to old property line; note from Shodeen indicated, minor point, that buyer self inflicted hardship; lot preexisting, and they have instances before; in his opinion, buyer buys substandard lot and it is not self inflicted hardship; there are trees in 40' setback that will grow; critical to some photos they were taken in late winter or early spring before foliage; looking at present house from Hudson, you would see backdrop of trees the design would nestle into rather than protrude out of in his opinion; on runoff, he is guessing there sand that is highly permeable; he could probably dump several thousand gallons off corner of house, and it wouldn't go farther than 5-10'; have had a couple of areas with runoff that eroded that downspouts/gutters have taken care of; as far as 2-story, many years ago when first came on PC, they were discussing someone who wanted to put a porch on their house with 5 different designs for porch, and they got into discussion which design looked best; now all of a sudden they are reprimanded for saying they can't dictate aesthetics of someone's building; to him they are right on edge of dictating aesthetics when getting into alteration of localities essential character; as far as aesthetics, if you go down River in a boat between Beer Can Island and the other shore, doesn't believe you can see house because of contour of bluff; if in Hudson harbor, you can probably see house, but you can also see everything else over in Hudson; thinks aesthetically this would improve look of Minnesota; should be apparent he very much in favor of proposal. White also complimented on changes made; when reading letter from their attorney, she would say he is incorrect in couple things stated; even though variances Radtkes are asking for - she agrees because of lot size, when attorney refers to 'reasonable that property owners be allowed to adjust to changing family dynamics' and fact regarding size of home you can build, that is where she has hard time; when looking at home currently on lot, she totally agrees it too small; what he is proposing is so much bigger than what there; that not hardship, does not meet reasonable use of land; going beyond reasonable use, and they are required to stay within Ordinances and guidelines; from Hudson, it really will stand out, but will be beautiful standout; agrees with Molly Shodeen that some tree planting between bluff and structure would help; size they are trying to build, not necessary height but increasing actual land, she doesn't see fits; meets setback, but they really didn't change size at all. In response, Schwieters suggested if they designed a 2-story home within same footprint based on trees, what's there and what they are planting really isn't going to change view from River; with 40' evergreen, the 20' they extended quite honestly will be somewhat visible if somebody sat down on the River and made point of looking around trees; not really looking for variance on square footage requirement or setbacks, as they are meeting setbacks from side lot lines at that point in time; hardships are showing them both front and rear lot

line really aren't affecting house size; been building for 31 years and built homes along River in Lakeland Shores, and has had many discussions regarding grading; sensitive of grading and height along River and screening, but as you go to the future, the idea is to buy and improve these properties; doesn't think they have just gone out and built this humungous thing that's wall to wall; in today's standards, it is relatively small 2-story; as you go to the future, there will be more 2-stories; everything they have built on bluff in Lakeland Shores today are 2-stories; just unfortunate this particular lot someone cut out walkout; with this, they run into difficulty of dealing with that which leads to two variances as far as overall size or odd variance for bluff height; that is really only difference; if you go up and down the River, all of these 2-stories are built, no walkouts, and all meet 35' height requirement as well. White thanked Schwieters, but variances requested because of rule changes regarding building a home on that lot size; yes, you can build a home on that lot – there's a home there, but proposed home 50% bigger as far as land usage than current home which goes beyond reasonableness. Schwieters said keeping in mind home probably built in 1950's and now there are many very small homes and cottages built on bigger lots; thinks again in this situation they have to be on reality of what real estate is doing along River; knows that no one necessarily that sensitive to prices, but values and necessities for families dealing with unusual lots he thinks in this particular case they have done as good a job as anyone can do.

Brian Zeller, 16616 11th Street. Asked if it meets 20% impervious surface requirement, answered in affirmative; size or height of home not in question; this non conforming lot, so whether building 104 or 10,000 sq. ft. house, variances requesting to reconstruct home on non conforming lot, nothing to do with size or height; point of order for them.

Paiement commented on concern raised in Molly Shodeen's email, and believes Wallberg getting at, is they are put in position having to fit a really compelling plan into a law that doesn't work very well for what they are trying to do; what they are suppose to do is give them a variance if they can show hardship they didn't accept or create; problem is Radtke's purchased home knowing variances they needed, and City needs to communicate that really isn't what accept means; they provided best case because everyone realizes they are better off looking at that home than the old rambler not as aesthetically nice as this home; puts City in difficult position; fact of matter they knew size of lot but wanted bigger home; tough situation to vote in favor of because of constraints they are under; doesn't know what else they could have done short of renovating existing structure, building back, and not asking for variance at all; not particularly attractive solution to problem; they have done very good job presenting plan and addressing needs. Schwieters disagreed there not hardship; hardship realistically what existed; existing was a grade cut out, which now changes setback from bluff; in remedying scenario and minimizing grades, thinks they have done excellent job based on not changing anything; hardship there because it preexisting grade. Paiement responded City made it consciously difficult for people to move requirement; apparently someone decided that was something they wanted to do, and put City in situation having to make these decisions; doesn't know how he could have met requirement or how Radtke's could say they didn't accept condition when they bought property, because how could you not accept it.

Keith Radtke, Applicant. One observation about accepting property - seems to him if Ordinances in place in 1980 and that were really requirement, anyone who bought property after 1980 could never receive a variance; something to think about to reasonableness; as far as meeting hardship standard, he thinks what they need to demonstrate, and they have done their best, is what they are proposing is reasonable given property, what they would like to do, given their family, etc.; has worked really hard to come up with reasonable balance of footprint, height, keeping bedrooms in upper floor and main bedroom on main floor. Lee asked plans should they not obtain variances. Radtke didn't know; thinks what they have done so far would satisfy City and also be something they would be excited about; worked really hard to strike balance. Lee said looking at whole package, when they get to question of hardship, she has sense this owner driven. Schwieter said first of all, there are and have been variances given on non-conforming pieces of property along River; obviously any client not knowing all scenarios or status will not know that; obviously a big enough piece of property it should be able to deal with a certain amount of house; real hardship is 40' setback from bluff which they require now being rear of house; hardship is property was already cut out and there is nothing they can do about that; if they brought big machines in and filled back in, realistically they could build same exact house; problem they would have then is enormous amount of erosion; trying to pinpoint what issue is. Lee said ruling as far as height limits and various Ordinances protect scenic River; they are seeing changes happening along bluff with houses getting bigger - they are beautiful - but idea not to make beautiful homes lining top of bluff but to keep River scenic. Schwieters clarified again if the lot was normal and someone hadn't cut it out, they wouldn't be trying to conform to what lot is giving them. White said going back to what Paiement said, they are requesting variances to build a home; however, reasonableness based on law states they are allowed to build another home where original existed; not that this larger home wouldn't be beautiful but they are required to stay within law and it doesn't meet reasonableness. Schwieters wanted White to explain what variances actually talking about. Paiement countered they have to find hardship to provide any variance; thinks they need to be prepared to treat all applicants same. In answer to Schwieter's repeated requests for what variance they reluctant to allow, Wallberg said idea of hardship, and owner doing something to cause it, is really hard for everyone; her response to his question is 'could something be built on this property that would be reasonable use, but would not require any variances beyond lot size'; there are regulations that come down to the City from DNR, but they have also adopted them; language they use, while not too concrete, discusses essential character of neighborhood; by that standard, essential character, this has additional story that changes character of neighborhood; gets very difficult because two options appear to be - is it okay because it meets setbacks and 35' height or another part of Ordinance, does it change essential character of neighborhood; gets very complicated; thinks they are talking about having structure on 12% slope. Schwieter said in

commenting on characteristics, if he understands variance request and specifically 40' setback from bluff, due to fact bluff is now where existing house is because it is now part of bluff; if it were not, then there wouldn't be a variance; is that debatable, he doesn't know; that is hardship they can't control; other variance comes into play regarding characteristics of neighborhood; doesn't believe characteristics change due to fact setback line changed; then it affects two story level and that is clarifying where difference is; really believes there extreme hardship due to lot cut out this way; to remedy taking that exact house and moving 40' towards street, then they are saying it meets variance requirements; realistically, even though it might meet all setbacks, it doesn't meet any characteristics of neighborhood having houses set that close to street. Wallberg said it wouldn't change fact this building still by DNR standards, and way they interpret and approach, the existing house would still alter neighborhood. Schwieters addressed within that variance difficulty, are they then talking about height change because it is not conforming to characteristics of neighborhood. Bauer stated good point to him about hardship actually is still on the board, that being alteration by previous owners of what was actual bluffline; ignoring that aberration is proposal traditionally allowed to replace an existing rambler structure in other locations along River while maintaining existing house setback from bluffline. Dahlin commented on couple of points, Shodeen's comment says specifically that the 2-story structure in a predominantly rambler/rambler walkout may be interpreted; doesn't say it specifically alteration of locality's essential character; if they want to get into discussion of locality, are they speaking of four houses on Toll Bridge Road or entire bluffline. Motion made by Dahlin, seconded by Paiement, to recommend to the City Council approving application for variances based on fact height restriction does not apply to any of the variances and letter from Magnuson Law Firm addresses most other questions involved. Bowers commented this home does change essential character of neighborhood with five ramblers in immediate area, and with vocal objections from neighbors, he would have more difficulty adding second story; not hearing that; coming to agreement they stayed within 35' height structure requirements and attempted to stay no closer to encroaching River bluffline than they had been; having done that, lot geometrics giving them widths they specified is a given; adding area they are including, instead of 2nd story, would add runoff; came to conclusion what they have done not making bluffline setback worse, trying to keep grading in bluffline area; having adequately addressed issues to satisfaction of City Engineer, he is inclined to agree this an approvable request at this point. Lee doesn't think hardship established and doesn't find structure staying in conformity to area. Paiement thought they met all requirements in terms of not changing locality of neighborhood; use reasonable, but difficulty is constraints of law what constitutes hardship; land owner can't cause or accept condition; if part of slope hadn't eroded causing structure to be too close to bluffline, that would be situation not caused by landowner or accepted; problem when you purchase a property knowing that; almost prepared to say they shouldn't have worded Ordinance that way because obviously not what they meant. Radtke thought any variance granted after land transferred since 1980 in error if that really standard, because any owner who buys a property that would require a variance could get one. Paiement interjected were they to move to their property, live there five years, and because of torrential rains half of bluffline eroded away so front of home did not meet setback requirement any longer because bluffline actually moved closer to structure, that condition caused by something other than property owner and he didn't accept; that unfortunately not way Ordinance worded when passed; almost to point in his mind it unreasonable because Radtke right, there are very unusual situations that would ever meet that requirement. Radtke understands Paiement's scenario, but seems to him any non conforming or substandard lot, or any lot less than 2.5 acres, can never be transferred and then able to obtain a variance because whoever bought it didn't make it smaller/narrower; Lee basically saying any lot smaller than requirements in Ordinance could not be transferred and receive a variance. Paiement said that wouldn't preclude someone like himself coming in and renovating home there. Radtke said it seems to him there are many lots in area less than 2.5 acres; basically taking position none of the lots can be transferred and receive a variance in future; doesn't know history but suspects that is not how it has been treated historically. Lee said there are differences; for her it was meeting so many variances to get to final project. Schwieters said at some point they need to clarify; there are six different variances and he thinks keeping in mind requirements made of lots back in 1980 specifically are there for new lots coming on board, any new lots developed on River; obviously they understand there are going to be non conforming lots throughout neighborhood –reason they allow variances based on hardship; this lot close to conforming both width on front and back, and if he isn't mistaken, asked if that was issue here or were they dealing specifically with variance on setback bluffline. Wallberg said when it states 'test of hardship' what they mean or didn't mean at time not really relevant to fact that is the law they have to uphold or make variance to; appeal process is by its nature very subjective and doesn't mean no variances on a substandard lot would be allowed but depends on what requested be allowed; possibly argued their lot could have a reasonable new home and need no variances whatsoever, so that to her is one question of hardship; yes, no one is questioning this a unique lot and drawbacks to it, but are there options available which would not require variances except to existing sides of lot. Schwieters said first of all, to come in without any variances would be impossible on this lot. Wallberg said they don't know that because they haven't explored that, so maybe it is and maybe it isn't; to put this house on that lot would not be possible; variance to lot size and those measurements in and of themselves would probably not be something most PC members would have issue with, depending on what proposed; this is making it more non conforming by DNR standards because home is bigger. Schwieters asked for more clarification for many reasons; if they are coming back with new proposal, he unclear now what they agreeing to and what they aren't agreeing to; is it front width setback; there is hardship there regardless of house size that isn't going to change; they can't meet width of front lot. Wallberg clarified size of lot is a given, but to ask for a variance to lot size is different from setbacks; they meet setbacks and height requirements but do not meet DNR standard about making this bigger in such a way that it doesn't

meet by their interpretation of the character of the home. Bowers added some variance items are givens; there is nothing that can be changed about them on the lot, so he sees that as an existing condition; two other items, 40' bluffline setbacks and grading done on slopes greater than 12%, one option would be to move house significantly forward on the lot. Dahlin interjected point of order; starting to design things; motion on floor already violated by having floor discussion and debate while motion on table; floor closed when motion on table; called the question. Wallberg, so they can anticipate DNR certification, suggested wording in motion regarding additional plantings between house and bluffline; Shodeen would work with Radtke's to at least make determination or recommendation whether there should or should not be some additional plantings there. Dahlin suggested it important to remember this multi-step process; should they receive approval, it goes to City Council; if approved at City Council level, forwarded to DNR; if they don't get approved at City level, they could wait a period of time and revisit; irony is if you look at DNR regulations, they do not agree with City's regulations; a lot conforms to DNR regulations, it does not conform to R1 City regulations. Lee asked Wallberg to read back motion on table. Wallberg suggesting they make amendment to include contingency that DNR and Radtke's, between now and City Council meeting, would get together to determine what additional plantings may be required. Dahlin revised his motion and Paiement seconded.

M/S/P (Dahlin/Paiement) to recommend the City Council approve the application by Keith and Jody Radtke for variances to construct a new home at 1341 Old Toll Bridge Road based on fact the height restriction does not apply to any of the variances, and the letter from Magnuson Law Firm addresses most other questions involved; further, while not mandatory, suggestion of discussion by DNR and Radtke's prior to City Council meeting to determine what additional plantings between the bluff and structure may be required. Bowers, Dahlin, and Paiement voted aye. White and Lee nay. Motion passed.

5. MEMBER REPORTS

Dahlin commented he is going through number of medical tests; recommended he not be asked to chair next month's meeting; talked with Mayor Craggs about possibility of rotating chairs through panel rather than putting burden on any one individual; Lee vice chairman and certainly more than qualified to continue, but if they want to do rotation, they should discuss. Lee happy to rotate; could be dealt with prior to next meeting. Bowers worried with his still developing interpretation of Robert's Rules of Order; if they rotate, he would like something to insure they knew when things closed for discussion. White asked date of next meeting; consensus to move date to Tuesday, July 12.

M/S/P (Bowers/Paiement) to reschedule the July PC meeting to Tuesday, July 12, at 7:00 p.m. Motion passed. Wallberg informed they could anticipate full schedule; has about four applications.

6. **ADJOURN- M/S/P (Dahlin/Paiement) to adjourn meeting at 9:00 p.m. Motion passed.**

Sharon Lee, Acting Chair

Kate Piscitello, Recording Secretary