

GENERAL MINUTES  
 THE BOARD OF ZONING APPEALS  
 CITY HALL – ROOM 330  
 SAINT PAUL, MINNESOTA  
 AUGUST 8, 2022

BOARD MEMBERS PRESENT

Daniel Miller  
 Luis Rangel Morales  
 Danielle Swift  
 Diane Trout-Oertel  
 Marilyn Porter  
 Thomas Saylor

STAFF PRESENT

David Eide                      DSI  
 Yaya Diatta                      DSI  
 Kelly Koski                      DSI  
 Peter Warner                      City Attorney  
 Andrew Hogg                      DSI

ABSENT BOARD MEMBERS

Clarksen

APPROVAL OF MINUTES for JULY 25, 2022

Approved 4-0 / Moved By: Trout-Oertel / Second By: Swift

APPROVAL OF RESOLUTIONS - None

**Old Business:** None

**New Business**

FILE #	NAME	MOVED	SECONDED	VOTE	ACTION
22-075616	1965 Bayard Avenue- Scott Hanna & Candace Black	Saylor	Trout-Oertel	5-1	Approved with condition
22-076622	2121 Niles Avenue- Todd Thierer & Jean Becker-Thierer	Saylor	Porter	5-1	Approved with condition
22-072764	Friends of Pig's Eye Lake Park - Tom Dimond	Rangel Morales	Saylor	6-0	Laid over 2 weeks

Submitted by: Maxine Linston *Maxine Linston*  
Maxine Linston (Aug 25, 2022 10:08 CDT)

David Eide  
*David Eide*

Approved by:  
 Diane Trout-Oertel, Secretary  
*Diane Trout-Oertel*  
Diane Trout-Oertel (Aug 25, 2022 10:07 CDT)

## BOARD OF ZONING APPEALS HEARING MINUTES

THE BOARD OF ZONING APPEALS  
CITY HALL – ROOM 330  
SAINT PAUL, MINNESOTA  
AUGUST 8, 2022

**PRESENT:** Members of Board of Zoning Appeals: Mr. Miller, Mr. Rangel Morales, Mr. Saylor, Ms. Swift, Ms. Trout-Oertel, Ms. Porter

Department of Safety and Inspections: Mr. Eide, Mr. Diatta, Ms. Koski, Mr. Hogg

Legal: City Attorney Peter Warner

**ABSENT:** Mr. Clarksen

The meeting was chaired by Daniel Miller

Mr. Miller- Okay, good afternoon and welcome to the Board of Zoning Appeals. Our purpose is to review and decide upon requests for Zoning Code variances, administrative reviews, and requests to modify home occupation requirements for handicapped individuals. If you intend to testify today, we ask that you start by giving your name and address. Staff will first show slides of the site, a presentation of findings and discussion will follow. I will then call on the applicant, then those in favor, and then those opposed. At that point the Board may call back the applicant in case we have additional questions. I will then close the public portion of the hearing and the Board will vote to approve or deny the request. The Board's vote is final unless appealed to the City Council within 10 days. We will take the cases in the order they appear on the agenda. A few words on speaker time. The Board limits this to a total of 30 minutes for those speaking in favor and an equal 30 minutes for those speaking in opposition. Individual speakers are limited to three minutes each. Please be mindful of this. If you have submitted a letter or email; a reminder, that there is no need to read those documents as they are already part of the record. Please provide your key points without repeating ideas presented by previous speakers. Present today from the Department of Safety and inspections are David Eide, our secretary is Kelly Koski. Our legal counsel is Peter Warner. Andrew Hogg is the Water Resources Coordinator, and my name is Daniel Miller. I am the Chair of the Board. Before moving on to our first order of business, I will ask the secretary to call role of those board members in attendance for today's hearing.

**Board Attendance:** Ms. Koski- Saylor-present, Miller-present, Trout-Oertel-present, Swift-here (Rangel Morales and Porter arrived after rollcall.)

### **Approval of July 25, 2022 Minutes**

Mr. Miller- Our first order of business is the approval of the minutes from July 25<sup>th</sup>, 2022. Is there discussion or a motion regarding the minutes?

Ms. Trout-Oertel- I move to approve the minutes, as submitted.

Ms. Swift- Second.

Mr. Miller- Can we have a roll call for that please?

Ms. Koski- Swift- yes, Miller- yes, Saylor- yes, Trout-Oertel- yes.

**Move by: Trout-Oertel/Second by: Swift**

**Approved 4-0**

## **New Business:**

**1965 Bayard Avenue:** Mr. Miller- First order of new business is 1965 Bayard Avenue. The applicants are proposing to demolish an existing detached garage and construct a new taller detached garage in the rear yard. The Zoning code requires a setback of three feet from both the Western and Northern property line. The applicant is proposing a setback of 1.5 feet from the Western property line and a setback of 1.8 feet from the northern property line for a variance of 1.5 and 1.2 feet respectively.

Mr. Eide- Thank you, Chair Miller, Commissioners. 1965 Bayard Avenue, I have it up on my screen. This is a 50' x 125' lot on the north side of Bayard Avenue between Kenneth and Summer Street with no alley access. Off-street parking is currently provided in a detached garage in the northwestern corner of the property. Surrounding Land Use: This site is surrounded by single-family residential properties. And the code citation is 63.501 which states that you need a 3-foot setback from the interior property lines when a detached accessory structure is in the rear yard. So I can get into the findings here, finding number one, that the variance is in harmony with the general purposes and intent of the zoning code. The applicants are proposing to demolish the existing single-story one-car detached garage and construct a new single-story one-car detached garage. The zoning code requires a setback of 3' from both the western and northern property line; the applicants are proposing a setback of 1.5' from the western property line and 1.8' from the northern property line, for a variance of 1.5' and 1.2' respectively. The proposed garage would accommodate two vehicles using a lift system and storage, compared to the current garage that accommodates one vehicle. Provided the proposed garage is constructed with gutters and downspouts to direct stormwater runoff away from the adjacent properties, the requested variances align with Section 60.103 of the zoning code to: a) To promote and to protect the public health, safety, morals, aesthetics, economic viability and general welfare of the community. b) To provide parking in order to lessen congestion in the public streets. c) To conserve and improve property values. This finding is met. Finding two, the variance is consistent with the comprehensive plan. The requested variances will allow the applicants to replace their garage in the rear yard at the same western and northern setback as the existing garage. This request aligns with Policy LU-5 in the Comprehensive Plan which aims to encourage flexible building design to ensure ongoing functionality and viability, and to respond to new market opportunities. This request is also consistent with Policy H-1 to "Ensure upkeep and maintenance of the aging housing stock through enforcement of property maintenance codes". This finding is met. Finding three, this is just application that the applicant submitted and then a site plan where they overlay what's proposed on the survey. So you can see that they're proposing the you reuse the existing setbacks from the north and west side and then there's a little expansion to the East, and it's all still one story. They're going to comply with the height requirement. The applicant has established that there are practical difficulties in complying with the provision, that the property owner proposes to use the property in a reasonable manner not permitted by the provision. Economic considerations alone do not constitute practical difficulties. Although the size of this parcel is typical, at 50' x 125', the home has a front yard setback of 39.8' and a rear yard setback of roughly 27'. The district requirement is 25' for the front yard and 25' for the rear yard. The actual required front setback is determined by § 66.231, sub note f, meaning that the required front yard setback is the adjoining front yard setback closest to the district requirement. The placement of the home on the lot near the rear makes the garage placement difficult. A garage within 6' of the home would need to comply with the 25' rear yard setback, which would require a rear yard setback variance, were this to occur. Constructing the garage at the required setbacks would result in difficult maneuvering of vehicles for egress and ingress. Allowing the garage as proposed ensures that vehicles have more maneuvering room between the home and the garage. This also allows the driveway to better align with the garage. The practical difficulty is that the garage would be less usable if it were to be placed at the required setbacks. In addition, the proposed garage, although taller than the existing garage, would be placed at the same setbacks as the existing garage. Moving the garage southward and eastward would reduce rear yard space. The proposed garage is a reasonable proposal, given the current location of the home and the rear yard size, along with the existing driveway placement. This finding is met. Finding Four, the plight of the landowner is due to circumstances unique to the property not created by the landowner. The property owner did

not place this home at its current location on this parcel. The relatively short rear yard and maneuvering space are circumstances unique to the property not created by the property owner. This finding is met. Finding Five, the variance will not permit any use that is not allowed in the zoning district where the affected land is located. An accessory garage is permitted in the R3 zoning district. This will not permit a use that is not allowed. This finding is met. Finding 6, the variance will not alter the essential character of the surrounding area. The garage will comply with the height standards required of accessory structures with the same setback from the western and northern interior property lines as the existing detached garage. The proposed garage will not alter the essential character of the surrounding area. This finding is met.

**Correspondence:** Staff, did not receive a recommendation from District 15 - Highland District Council. Staff received one letter opposing the variance request from the property owner directly to the west at 1971 Bayard Avenue. And then based upon findings 1 through 6, staff recommend approval of the variance request, subject to the condition that the proposed garage is constructed with gutters and downspouts to direct stormwater runoff away from adjacent properties. And then they did submit plans that were in your packet; I can show them up on the screen, elevations of the proposed garage.

So, this is what it would look like from the front. And then you'll notice that there's a little storage addition so it's a slightly bigger than the current garage. But while it is taller for sure, and the footprint is a little bit bigger to the east with that storage area. And one benefit of this project is that there was an encroachment on the St. Kate's property and that will be removed to the north. And that's all I have. If you have any questions, I'm happy to answer them.

Mr. Miller- Questions for staff.

Mr. Saylor- So the lean-to was in the rear before?

Mr. Eide- Correct up on the Northern side. And then Yaya Diatta is attending remotely, the Zoning Administrator. So I'm just going to share the screen with him. He should be able to hear us.

Mr. Diatta- Yep, I hear you fine.

Mr. Miller- David, do you want to put the drawing on the screen?

Mr. Eide- Yes.

Mr. Miller- I see that they've got their midline roof measurement there. If that little lean-to were connected roof to roof with the midline, it would be lower even, is that how you would measure the midline?

Mr. Eide- C hair Miller, that is a good question. I took this as it was proposed and thought we'd use them at midpoint of the upper roof. If it was like a half-shed style type roof. I'm not sure to be honest. We'd probably still use the upper two for the midline. I thought the taller peak but that's a good question.

Mr. Miller- And then my only other interesting. I know that we've granted variances for height when vehicle lifts are proposed. The fact that they're not needed, perhaps this is something we can revisit if it comes up again. So the fact that they're able to do this without a height variance is worth noting. Any other questions for staff? Not seeing any. If the applicant is present, you can step forward and the two of you can just take seats in the chairs and then once you're sitting down, just state your name and address and then do sign into that red book at some point.

Candace Black- Candace Black, 1965 Bayard Avenue.

Scott Hanna- Scott Hanna, 1965 Bayard Avenue.

Tom Hanson- Tom Hanson. I'm their architect, 2800 Lyndale S, Minneapolis.

Mr. Miller- Okay, anything anybody would like to add to the staff report?

Scott Hanna- I think you covered it pretty well. Essentially, the setbacks at the North and Western sides actually aren't changing; they aren't getting closer to St. Kate's, or our neighbors to the west. The current garage is quite old. We're kind of concerned that it may fall over at some point so that was part of what spurred the interest in replacing it, but then, because of the size of the garage when we found out that we could actually get two cars in there with a lift. That's when we explored that option, just to be able to keep more cars, you know, away especially during the winter, when it's snowing.

Candace Black- In the back of the addition, on our house there is no way to do an actual two-car garage. So that's why.

Tom Hanson- All right, I guess I would add just a couple points that I believe are relevant. In the area, along this entire same block, there are several houses that do have two car garages with the current allowable height of 15 feet as measured in several places. And, so it's definitely a realistic use. We're just doing it in a lot less footprint but with the actual compliant height. When we put the application in, we actually had a question with David of which was the better provision to ask for because my understanding is that there's another provision if you're not changing the height that you can replace a non-compliant accessory structure in the exact same place with the same height and so really, we're only asking for, we're not asking for a garage that's taller than normal or taller than is allowable. We're only asking for a garage to be put back in the same place that's approximately three feet taller, by definition, than the previous one. And at the taller height, it still meets the required height, or allowable, I should say.

Mr. Miller- Thank you for those comments. Do we have any questions for the applicants? I don't think that we do. You guys can go ahead and take seats again. And if we have any extra questions, we may call you back up. Quick recap. We've got Staff recommendation of approval with the condition of gutters and downspouts, no recommendation from District Council. Do we have a discussion or a motion? Excuse me, I am sorry, is there anybody here to speak in favor of this variance request? Anyone from the public here to speak in favor? Anyone to speak in opposition? Anyone here from the Public to speak in opposition? If so, you may come forward and take a seat and then once again, state your names and sign into that book. State your name where you live, state your name and what address.

Timothy Dyrhaug- Timothy Dyrhaug, my address is 1971 Bayard Avenue.

Mary Lou Dyrhaug- Mary Lou Dyrhaug, my address is 1971 Bayard Avenue.

Dana Bruce- Dana Bruce, my address is 1961 Bayard Avenue.

Mr. Miller- Okay, and whoever would like to start with your comments, just go ahead.

Mary Lou Dyrhaug- Well, I oppose the variance being proposed by the residents of 1965 Bayard for a number of reasons. Number one, there are no two-story garages at any of the residential homes between Fairview and Cleveland; it would destroy the integrity of the architecture on our street. A two-story garage would impinge on the quality of peace and beauty we enjoy from our backyard at 1971 Bayard, it would block our view of the surrounding woods. The stream of customers going in and out of the home at 1965 Bayard is unpleasant when we are using our backyard already. It would get even more unpleasant if said proposed garage were used for the business. We oppose the construction of an addition on an existing garage, it does not meet the three-foot set back from our property at 1971 Bayard. Thank you.

Mr. Miller- Thank you.

Dana Bruce- I'm here, I'm at 1961 Bayard. My husband sent an email, he wasn't able to come to the meeting and is voicing his opposition as well. It's mostly in support of my neighbors and the fact that as you could see by that overview of our properties, you know, we have small properties on our block. And so, it is cumbersome like, the amount of green space that we have available on our lots is already limited and then to add height and dimension to a structure does impact our whole, you know community. And that's why we have zoning laws. And, you know, they already have an exception for running a business out of their home. And so we want to make sure that that business was not going to be grown you know, able to grow if they were, you know, we'd want to be assured that that is actually what they're going

to use the second floor of the structure for, is for parking and not for a business. So those are just kind of some of our concerns that we have as neighbors.

Mr. Miller- Thank you for those comments. Any questions?

Timothy Dyrhaug- Their present garage is 19 inches into that 38-inch spot. I took pictures, I've got a picture of the survey and the garage is 19 inches. Yeah, looks like it's planted at one point five feet which I guess would be real close to that about 18 inches.

Mr. Miller- Yes, it looks like it is platted at 1.5 feet. Do we have any questions for the speakers? I don't see any questions. Ms. Trout-Oertel.

Ms. Trout-Oertel- Maybe this has been said, if so I missed it. What is the business that you are afraid they may use the upper story of this garage for? What kind of business is it?

Dana Bruce- She has a salon. I was shocked that that could even occur on our street.

Ms. Trout-Oertel- Okay. So it's a beauty salon.

Dana Bruce- Yeah.

Ms. Trout-Oertel- So what you're saying is it primarily is that the biggest concern you have is that the upper story of this garage will be used for something other than a garage?

Mary Lou Dyrhaug- That, and the height of the structure, you know, takes away from the surrounding woods that we have behind our house.

Ms. Trout-Oertel- So it's the height then too.

Mary Lou Dyrhaug- We are not privy to what that structure was going to be used for.

Ms. Trout-Oertel- Okay.

Dana Bruce- Yeah and it's mostly just we've had limited space in our, you know, on our properties. So that's our concern is the size.

Mr. Miller- Just as a point of clarification Mr. Eide, correct me if I'm wrong, but I don't believe that they would be allowed to use an accessory structure for any business purposes. I think you can run a business out of your home but not out of your garage. Correct?

Mr. Eide- Correct Chair Miller. It's called the home occupation ordinance and it's not allowed in an accessory structure. I did pull up the floor plan and doesn't look like there's a second story in the structure, but correct.

Mr. Miller- It was just the vehicle lift.

Mr. Eide- Correct.

Mr. Miller- Okay. Just wanted to clarify that.

Dana Bruce- Yeah that's good.

Mr. Miller- I don't think we have any other questions. You guys can go ahead and take a seat we may you call you back. If the applicants would like, you would have a chance to come back up to speak to any of those things, if you'd like to.

Tom Hanson- Tom Hanson, architect who is working with Scott and Candace on this, on this project. The house at 1961 Bayard has a garage, which is probably very, very close to the exact same size and also the, I'm sorry, the exact same height as the allowable height. It's probably taller than the Black-Hanna existing garage, but all we would be doing would

be bringing the height of this garage up to the allowable height of the two-car garage. The owners of the garage at 1971 Bayard, also looks like it's our small two-car garage as well, and I'm also guessing that that is taller than the current garage at 1965. And so, all we're really asking for is to bring up to the height that would allow it to have a car lift inside. And I think it's an important clarification of point that you raised that it does not have a second story in it. We are just making use of the inside of the attic space in a conventional height garage for a two-car lift. This is something we did before. And it's actually how the owners found us. We did it for project on Minnehaha Creek in Minneapolis where there was only room for a one car garage but we were able to get two cars in and for all the reasons stated by staff, we feel that this is a very responsible way to get additional garage capacity without taking up additional footprint, as the two adjacent houses have in terms of reduction of green space.

And we're talking about 3 feet. So I think it, with a ridge line that runs north-south. So from the position of the two adjacent homes, looking along this ridgeline, the diminishment of looking at St. Kate's Woods would be quite minimal. Further, I'm not exactly sure, but there's at least one home on this block further to the West that does have a second story on its garage that's actually much taller than this one. So in terms of this home, in terms of what we're asking for, meeting the basic character, I think that we're definitely staying within the spirit of what other people on the neighborhood have the benefit, other people on this block on Bayard have the benefit of already. And they're just asking for it in a unique way, which actually, from a land use standpoint actually takes away less green space, and less square footprint of, you know, results in less square footage footprint of non-permeable concrete. I can't really speak to their business but I'm sure it's completely...

Candace Black- Yeah, I am a sole proprietor and I have my single chair hair salon that has been approved. You can look it up. It's been approved. Yeah, actually, I know Mr. Yaya Diatta. So it's been approved. I've been there for 14 years and no one else works there. Just me. And I'm not going to put my clients in the garage, so my car will be in the garage. So it's in the driveway all the time now, gets damaged by all the elements. We want to put my car in the garage, and then Scott's will be underneath. Right. And then he'll leave for work when he needs to, and my car will sit in the garage. Not going to put my clients up there, I haven't ever, I have, I'm single only, one chair in my salon.

Mr. Rangel Morales- So just to clarify, the reason for the variance request is to maximize green space?

Tom Hanson- It's one of the ancillary effects relative to building, even if it were possible on this site to building a two-car, typical garage where it's two side-by-side. The reason that we're asking for the variance is to be able to build to the normal garage height with the same setbacks that the current garage has, so that we can fit a lift inside by using a ridge beam, instead of trusses.

Mr. Rangel Morales- I understand, a lot of the concern is about the height, which is actually not even something that you guys are here for. But with regards to the variance request that 1.3 feet or whatever it is. I mean, is there something from the topography that would prevent you from moving it over and down?

Tom Hanson- In terms of moving it to the south towards the house there is; because it's at the current limit of 6 feet away from the existing house. So if we were to attach it to the house, then it would become impossible because then it would have to comply with the rear yard setback, which I believe is 25 feet. We felt that this is a very responsible small-scale way to do it. In terms of moving east, west there would be a possibility of moving the entire structure to the east by 1.5 feet. But because of the configuration and already tight space, it would be challenging to get the car in and out.

Mr. Rangel Morales- Is that an addition to the house where it says cantilever? And when was that addition added?

Candace Black- In 2002, before we purchased the house.

Mr. Miller- Mr. Saylor?

Mr. Saylor- Thank you, Chair Miller. Actually, Luis asked most of my questions, the only one, just because the subject of business use was brought up by one of our previous speakers. To clarify, so there's no plumbing or electric in the upstairs that would permit the moving of the salon business to the garage? Just to get that on the record.

Candace Black- No.

Mr. Saylor- Okay. Thank you.

Mr. Miller- Thank you. Any other questions for the applicant? Not seeing any, you can go ahead and take a seat. And I will close the public portion of the hearing. Is there discussion or a motion?

Ms. Porter- Just a point of clarification since we're kind of all over, it's regarding the setback.

Mr. Miller- Correct.

Ms. Porter- Yeah, just going to restate that.

Mr. Miller- Mr. Saylor.

Mr. Saylor- Chair Miller. After that discussion and the question/answer we had the opportunity to have, I think I'm going to move the staff recommendation based on findings one through six, which is approval, subject to the condition that it's constructed with gutters and downspouts to direct stormwater runoff away from adjacent properties.

Mr. Miller- Okay, is there a second to that?

Ms. Trout-Oertel- I'll second it.

Mr. Miller- Moved by Saylor, seconded by Trout-Oertel. Can we get a roll call please?

Ms. Koski-Trout-Oertel-yes, Saylor- yes, Swift-yes, Porter-yes, Rangel Morales-no, Miller-yes.

Mr. Miller-The motion that your variance request has been approved and that decision is final unless appealed to the City Council within 10 days. Good luck with your projects.

**Move by: Saylor/Second by: Trout-Oertel**

**Approved 5-1**

**2121 Niles Avenue:** Mr. Miller- The applicants are proposing to remove an existing deck attached to the side of the house and replace it with a sunroom addition. The R4 zoning district in which this property is located requires a side yard setback of four feet; a setback of 2.2 feet is proposed from the west property line, for a variance of 1.8 feet. Mr. Eide.

Mr. Eide- Thank you chair Miller & Commissioners. David Eide the Department of Safety & Inspections again, 2121 Niles Avenue. I have it up on the screen. This is a 45-foot wide by 125-foot, 0.12-acre lot on the northwest corner of Finn Street South and Niles Avenue with a detached garage in the rear yard and accessed from Finn Street South. It's primarily surrounded by single-family dwellings and the zoning code citation would be the 66.231, which is the dimensional standards table in the R4 zoning district. It states that we need the side yard setback of four feet and like the purpose mentioned, the applicant is proposing to add a sunroom on the side of the house. There's a little notched area, maybe the plan would show it better. So, this is the survey that they had submitted. It's in the area where the deck is. Here's the proposed site plan. Finding one, regarding the variance being in harmony with the general purposes and intent of the zoning code. The applicants are proposing to remove an existing deck attached to the side of the home and replace it with a sunroom addition. The R4 zoning district in which this property is located requires a side yard setback of 4 feet; 2.2 feet is proposed from the west property line for variance of 1.8 feet. The proposed sunroom addition would cover space is currently occupied by a deck. The new enclosed space will be constructed to meet the needs of the owners and is improvement to the property. Provided the gutters and downspouts are added to direct stormwater runoff away from adjacent property to the west, this request is in keeping with section 60.103 of the zoning code to promote and protect the public health and safety, the aesthetics and economic viability of the community and to

conserve and improve property values. That finding is met. Number two, regarding the comprehensive plan. The proposed sunroom addition is an improvement to the property that supports goal one of the housing chapter of the 2040 comp plan that encourages decent, safe, healthy housing for all Saint Paul residents. Finding three regarding practical difficulties. The home has a deck that is currently at the same location as the proposed sunroom addition. The home is 6.5 feet from the detached garage in the rear yard. Given the floor plan of the structure, reusing the existing location of the deck is the most reasonable place to construct the new sunroom. The alternative would be to extend the home 7.4 feet to the east. However, they currently have a jog in the facade where they exist deck is located on the west side.

The current layout of the home creates a practical difficulty in complying with the provision and was not created by the homeowner. That finding is met. Finding... Wait a second. I want to make sure I didn't skip anything. Finding four regarding the plight of the landowner being due to circumstances unique to the property, not created by the landowner. The existing layout of the home and placement of the deck are circumstances unique to the property, not created by the landowner. That finding is met. Finding five, regarding uses, a sunroom addition will not change the single-family dwelling use of the property. That finding is met. Finding six, regarding altering the essential character of the surrounding area. The single-story sunroom will occupy an area currently covered by a deck. The variance will not alter the essential character of the surrounding area. That finding is met.

**Correspondence:** As of as of the date of the report, staff did not receive recommendation from District 15 - Highland District Council. Staff received one letter supporting the variance request from the property owner directly to the west of the subject property, and that would be at 2125, so they would be the most impacted were this project to be moving forward. And then based upon findings one through six, staff recommends approval of the variance request subject to the condition that gutters and downspouts are installed to direct stormwater runoff away from the adjacent property to the west. And then I can pull up the plans to show. They submitted plans for the building permit, but it kind of shows what it's proposed to look like. The framing to support it from the bottom and then the floor plan. If you have any questions, I'm happy to answer them.

Ms. Trout-Oertel- Yeah, I'm having a little trouble with this because they could still have a sunroom without projecting outward from the house, I know it's there now, but is a whole different thing, you know, the whole story. So I just wanted to clarify that I am understanding the situation correct.

Mr. Eide- Correct. An open covered or open deck and then they want to add or have an enclosed sunroom. So it's subject to the side setbacks.

Ms. Trout-Oertel- Right, thank you.

Mr. Miller- And the existing deck is the same footprint. Is that what you're saying?

Mr. Eide- Correct. I think that the sunroom is a little bit smaller in this area. I think the deck came over here a little bit currently in the sunroom supposed to go straight out and not over. So yeah, the same footprint.

Mr. Miller- Was the deck low enough to the ground that it didn't need a variance previously?

Mr. Eide- I believe that I asked the applicant that, it was 30 inches tall. We don't have the prior deck as far as.... I did ask them and they said it was above 30 inches, so that means it would have been subject to setbacks and whatnot. I could not find records of it though, when I search the file.

Mr. Miller- So this is potentially non-conforming already.

Mr. Eide- Correct.

Mr. Miller- The other questions for staff. Not seeing any. If the applicant is present, you can step forward and take a seat and then state your name and address.

Thomas Paretta- Good afternoon, my name is Thomas Paretta and I'm with Patio Enclosures at 1636 Gervais Ave S Maplewood, Minnesota and I'm representing Todd & Jean Thierer at 2121 Niles.

Mr. Miller- And anything you'd like to add to the staff report, any clarifications?

Thomas Paretta- Not really, I think you covered everything. We're just going out a little bit further, is all we're doing. And it's more for light, honestly, so right now it would just be one wall if we didn't go out further. Now, going out further gives them the opportunity of light coming in from both sides and also the front.

Ms. Trout-Oertel- Did you consider the use of skylights to provide light? In other words, you still could have skylights.

Thomas Paretta- We could. And also, some extra room, of course.

Ms. Trout-Oertel- Yeah, I understand. Ten by ten is a little more generous than eight by ten. However, eight by ten is a feasible sunroom size.

Mr. Miller- Are you able to reuse the footings? Or are those new concrete piers?

Thomas Paretta- They will be new concrete piers.

Mr. Miller- Any other questions for the applicant?

Ms. Trout-Oertel- I would like to know exactly how far out are you going from the wall of the house?

Thomas Paretta- 42 inches.

Ms. Trout-Oertel- 42 inches.

Thomas Paretta- From the house wall.

Ms. Trout-Oertel- Right. Okay, so that bump out, let's call it, is 42 inches.

Thomas Paretta- Correct.

Ms. Trout-Oertel- Thank you. So you still could go out but not as far as... I mean you could go out and not need a variance, it's just that the bump out would be slightly less.

Thomas Paretta- Right. Does it show 42 on the...?

Mr. Eide- Yes, it's on there.

Mr. Miller- Other questions? I'm not seeing any other questions. Go ahead and take a seat. We may call you back if we need to. Is there anyone here from the public to speak in favor of this variance request? Anyone here to speak in favor? Is there anyone here from the public to speak in opposition to this variance request? Anyone to speak in opposition? Not seeing any. I'll close the public portion of the hearing and ask if there's a discussion or a motion. Mr. Saylor?

Mr. Saylor- Chair Miller, I move, I would move right, the geez, try again, I'd move the staff recommendation, which is for approval, based on findings one through six, subject to the condition that gutters and downspouts are installed to direct stormwater runoff away from the adjacent property to the west.

Mr. Miller- Is there a second?

Ms. Porter- I'll second.

Mr. Miller- Second by Porter, move by Saylor. I guess we're ready for roll call.

Ms. Koski- Swift-Yes. Rangel Morales-Yes. Saylor-Yes, Porter-Yes. Trout-Oertel-No. Miller-Yes.

Mr. Miller- That variance request has been approved and that decision is final unless appealed to the city council within 10 days. Good luck with that project.

**Move by: Saylor/Second by: Porter**

**Approved 5-1**

**Pig's Eye Lake:** Mr. Miller- Okay. Third order of business, Pig's Eye Lake. A complaint was filed stating that the city needs to issue a stop work order on the Pigs Eye Lake Island Building Project, a project regulated and permitted by the Department of Natural Resources. The zoning administrator determined that the city has no jurisdiction over this work as it is a DNR public water body and accordingly no action was taken against the project. The complainant is appealing this determination. Mr. Eide.

Mr. Eide- Thank you, chair Miller & Commissioners. I thought first, again this is David Eide with the Department of Safety Inspections - Zoning Division. I thought, first, I would kind of go over how this ended up in front of you. So, St. Paul Legislative Code Section 61.701 states that the Board of Zoning Appeals has the power to hear and decide appeals where it's alleged by the applicant or the appellant, where there's an error in any order, requirement, permit, decision, or refusal made by the zoning administrator in carrying out or enforcing any provision of the code, and that needs to be filed within 10 days of that decision. So, that's how that came to you today. A little timeline.

So, on June 10, 2022, I believe it's, it's behind the packet that you got about this appeal, we added it on as a supplement. We received a formal written complaint, and it's all here if you want to read it, alleging that basically, requesting St. Paul to stop work on a project that's going on. And then on June 30, 2022, Andrew Hogg, the Water Resources coordinator, who is here today, responded in a letter that is in that packet. And then we received an appeal application on July 8th and now we're here today at the Board of Zoning Appeals. So, a little bit about this. This is an US Army Corps of Engineers and Ramsey County project, they are building islands within Pig's Eye Lake that are below the ordinary high water level. And here's the permit and then the Department of Natural Resources placed the permit in their letter that they submitted for their comment on this case. They actually gave us a copy of the permit that starts on page 26, if you want to take a look at it, so it kind of goes over the project. They need a sponsor, so Ramsey County was the sponsor for this project. Alright, so here's Pig's Eye Lake, and then I have it up on the other map too, so it kind of hugs US 61, the northern part of the lake, sorry, not the lake. The land north of the lake for the ordinary high water level is owned by the City and then the County owns the land, south of it and kind of in it, but let's see here.

Mr. Saylor- Can you repeat what you just said there about the ownership?

Mr. Eide- Yeah, the question of who owns this area came up, and you'll notice in the letters that were submitted, it was made clear that. So there's the northern, the land to the north of the lake is part of this city park and then the land south of the lake is like is county jurisdiction. Hopefully that helps answer

Mr. Saylor- And just for clarification isn't it under County jurisdiction but within the City of St. Paul.

Mr. Eide- Correct. So yep, this land is within the City. Well, this is a lake but it's within the boundaries of the City of St. Paul.

Mr. Rangel Morales- All of it?

Mr. Eide- I believe, so the tip of Saint Paul comes down here. Yeah, so here's the west side and then you can see where the red and then this is Red Rock Road. So yep, that industrial land is two and then up McKnight so that's kind of where it's located and essentially, the DNR regulates this. So here's the proposed Island Building Project. The main purpose of it was for wildlife and to prevent... they've had some erosion going on with the winds blowing across the lake so it's to slow down the waves.

So to get into a little bit about the ordinary high water level, and why that is important for this. To the sum it up simply, the islands are proposed to be constructed below the ordinary high water level like a few inches. So it's not subject to

City, it's not like considered land that the city would regulate the development on. So that's why are we getting to this. And the Department Natural Resources did provide that actual number. And then we confirmed with them that all the islands are below that ordinary high water level. So, while the islands might be visible to the naked eye, and they're below the ordinary high water level because though that level fluctuates up and down, so I don't know if you need me to read this but it talks about what the ordinary high level is, so it fluctuates. And then the Department of Natural Resources got us the exact number. So you'll see in this email from Dan at the DNR, the Dan Scollan, the top of the proposed Islands at 692.6 feet is below the estimated ordinary high water level of 662.9 feet. And then, please note that the islands are being constructed for a specific purpose, fish and wildlife habitat improvements under the authorization by the DNR, by a DNR Public Waters work permit, which was provided to you by the Department of Natural Resources. So, we have a lot more details in the staff report about it. Essentially just summing it up, that the City does not have jurisdiction over this project, even the County noted that if the City did, they would have been applied for permits for it. So, staff recommend denying this appeal and upholding The Zoning Administrator's decision that we do not have authority to present a stop-work order to the Army Corps.

Mr. Miller- Any questions for staff?

Mr. Saylor- I have a question and I want, if I could just turn to Mr. Warner? Thank you, Mr. Eide. This is a complicated matter with different moving pieces. Legally, Mr. Warner, can you put these chess pieces on a board so a person can better understand; kind of what exactly the ownership is and who what we're being asked to decide today.

Mr. Warner- Sure, chair & Commissioners. The appellant originally asked the city to issue a stop work order... the felt, alleged that the work was work, that the city had some jurisdiction over because under the Mississippi River Critical Area Act, the city has some regulatory authority within the critical area. Staff looked at that as laid out by Mr. Eide and determined that all the work is being performed below the ordinary high water level. And the reason why that ordinary high water level is significant is that defines a jurisdictional boundary. So above the ordinary high water level on land that's above that level, the city would have some jurisdiction to consider what was being alleged by the appellant here. However below that ordinary water level, the jurisdiction belongs to the Department of Natural Resources. And so that's why when Ramsey County was undertaking this project or still, I guess is still in the course of undertaking the project, they got a DNR water permit because the DNR regulates things that take place in lake basins in lake basins, generally you can think of lake basins as being below the ordinary high water level. So that's why that appears to be a significant portion of the analysis. So, you've got a demarcation line that defines jurisdiction. So, jurisdictionally when their request came in to issue the stop-work order because the work is being taken, is taking place in the area that's below that jurisdiction line, the city just doesn't have any regulatory authority to tell the Ramsey County to stop their project. The agency that would have regulatory authority to do that would be the DNR because they're the ones that issued the permit. That's kind of the thumbnail sketch.

Mr. Saylor- So for, a layperson, just to follow-up because I asked the question. A layperson looking at the map might say, well, this is within the borders of the City of Saint Paul. It is, but with what I just heard you say, with this ordinary high water level description, that that modifies, or modifies, that, that initial description.

Mr. Warner- Sure. And I would just say anecdotally there are lakes all over the state that there are jurisdictional lines. And so, the DNR is given regulatory authority over public waters. And a city could absolutely surround a lake, but if it's a designated public waters lake, what goes on within the lake basin is the jurisdiction of the DNR, jurisdictionally speaking.

Mr. Saylor- Thank you.

Mr. Miller- Trout-Oertel.

Ms. Trout-Oertel- I'm just curious, this is a few inches we are talking about, right? So silt changes that in the future does it now become, you know, under the jurisdiction of the city of St. Paul, because, you know how nature is, move things around. Once its in place.

Mr. Warner- Perhaps, I don't know the answer to that because, A) factually that's not before us and, B) If it were, I think staff would do the same thing. I think they would go to the DNR and say "what are we supposed to do?" They're the experts in these matters.

Ms. Trout-Oertel- Yeah, it's probably going to just change anyway, it will be a moving target.

Mr. Warner- Everything is filling in. Everywhere.

Mr. Rangel Morales- So if this is regulated by not the city. Why is this city providing anything? If there's no, I mean, they're citing to all these different statutes about legal authority within, sounds like within the city. Why is the city providing anything too? Are they just rubber stamping it according to...

Mr. Warner- No. The simple answer is that somebody asked us to do something. And you have to have jurisdictional authority to do something. So we look to see where the jurisdiction lies, and so, all those things that you're talking about, the citations, explain why the City doesn't have jurisdiction.

Ms. Swift- So this is the county the one who is making the islands? And how does that affect the county? Why is the county? I don't know if I'm, if I'm getting too far into the weeds, I'm just lost at like what does the county get out of putting in the islands. How does it affect the county? Is it because their land is to the south of it, of this lake?

Mr. Warner- Chair & Commissioner Swift. I think if you look in the packet, there is a letter from the director of the Ramsey County parks department. On page 35, it is a little over two-page letter explaining basically what their project is, and why they did it. And why they support the decision of the Zoning Administrator.

Ms. Swift- Okay.

Mr. Miller- Any other questions for staff? I do not see any. Clearly, we have an appellant, and we also have another guest here. What was the intention for... Do you want him to make any statements now or after?

Mr. Hogg- I'm just here to provide answers to questions they may have.

Mr. Miller-Ok. How are they doing so far?

Mr. Hogg- They did a good job.

Mr. Miller- If the appellant is here, you can step forward and state your name and address for the record.

Tom Dimond- (Passing out documents.) This is just a packet of citations and these are individual information, individuals.

Mr. Miller- Just start with your name and address.

Tom Diamond- 2119 Skywrite Drive. This is a complicated issue and unfortunately with the timeline we can't tell you about the project. It's crazy, but I'll try and touch on a couple of main points. One is that we're really talking about here is that the appeal is about the failure to comply with St. Paul's required site plan review, and the Saint Paul requirements for development, permit, filling and grading, it hasn't happened, and it's required for this project. One of the things that was mentioned here and there's a number of consequences if it isn't done. But one of the things that was mentioned here is that the ordinary high water level is above the islands. Well, they wouldn't be islands if they were below water. The program, what it is, is to have islands that are up there and plant trees on them and all this, which doesn't follow with this. The ordinary high water level for a reservoir, this is it's behind the dam, so it's the pool level. The pool level is actually 687, 686.8 to be specific. So the 92.9 is just plain wrote factually wrong. And in that packet that I gave you shows you that single packet there's a map that shows that in that map is from the Corps of Engineers and there's also a pack of Corps of Engineers for this project is also explains that that's the pool level of us so, it is mistakenly setting the wrong level, but even if that were so, can you pick up pictures from here? Or you just have your... Or you just have a camera from above?

Mr. Eide- We do not, unfortunately.

Tom Dimond- I'll open this up later. I've got a picture to show you. They're already violating. They've got piles of material that are way up above the ordinary high-water line down there, the project. Because they're using equipment, bulldozers and those to pile this stuff and assemble it and the using pipe lines to pump this out. This is another thing that you'll find in the record that I presented. And these are from some of the rules of the Revisor, state law, but also our city law also requires. And it says that permits, that prohibited work, use of materials that are not clean and free of pollutants and nutrients. And now they say well, this stuff is a safe level, we can disagree with that, but that's not what the regulation, it free of pollutants and nutrients which nobody is claiming this is and that, per state law and it's also what is in our critical area and floodplain requirements. If you don't have any hearings, the public has no opportunity to speak about the impacts that this are involved in. And one of them is pollution. This pollution in here, there's multiple levels of pollution in here but one of them is what is called, PFAS PFOS and I'll just speak on that. And the PFAS PFOS levels here are way above (the lake itself is polluted now) but the lake has an average of 1.1 of these are parts per billion of PFOS with a maximum level of 1.7.

The PFOS where this material is coming from has a maximum of 8.2 with an average of 9.1 and it also has a max of 28.4 in another study. Just to give you an idea of the consequences of this. The US EPA recently did an advisory on June 15th of this year that lowered the standards for safe health standards for PFOS and it's now at .0007. Ironically, or not, the other day, August 4th, I got a letter from the MPCA. I live on the bluff, it's about 200 feet above the lake. MPCA telling me, they monitor the wells because of the PFOS and PFAS and the like. The level of ours in our well, is above .5. So they, as part of the 3M settlement are going to be installing carbon filters in our house, and then maintaining the operation of them for 30 years. These are huge tanks, you know, hooked up, plumbed, for it because people are in risk of this PFAS PFOS. So, we also have worked with the legislature and got 800,000 dollars to start the planning for the cleanup of the dump to get the PFAS PFOS out of it. So we're spending a large amount of money to try and protect people's health and safety with the 800-million-dollar settlement from 3M. We're working with the legislature to start the cleanup of the dump site, and then we would be going down to where the outfall is of the Chemolite plant, in the river there, in pulling this stuff out of the river there, is where this is coming from, that's many times higher level of pollutant, then dumping it into our lake into our park. That is what is the plan. But we can't have a meeting about this because we're told it's not in the jurisdiction of City. In fact it is within the jurisdiction because the ordinary high water level is 687. If the ordinary high level was what was suggested here, much of that area would be constantly under water because again, our reservoir is set at the summer level of what it's set at. And you could see it today that it is not that or this would be buried under the ground. Since we have such limited time. If we get more time, I'd be glad to speak further. You've got the record, but I would strongly encourage you to send this back so there actually can be a hearing and there actually can be application of the critical area standards, the floodplain standards that are in law, and there to protect us. At least give us a chance to advocate for their protection. Kiki, would you like to go next?

Kiki Sonnen- Yes, I would like to go next, if possible. I'm Kiki Sonnen. I live at 1758 Hewitt Avenue in the Midway in St. Paul, and Tom Diamond and I and many others have been fighting to save Pigs Eye since the 60s 70s. And I just want to go back in time here. Do you remember Wendell Anderson? When he was governor, he established the Critical Area along the Mississippi River corridor from the City of Ramsey down to Hastings, and each community along that that had river frontage had to put in their zoning code an overlay zoning district with certain restrictions and clarifications such as setbacks, building on hillsides, scenic views and they had a procedure for if you wanted to dredge or fill within that River corridor zone. You had to have a city permit, you had to be licensed to do it. There had to be a site plan review and there had to be public notice public hearings before the Planning Commission and committees and possibly the City Council.

And as we went through this project, when the Corps of Engineers and Ramsey County Parks Department became co-developers they did that mainly to get funding for this project and the Corps of Engineers' main problem, of course, has always been what to do with all the dredge spoil that they have. So, this was a convenient method and they clouded it under, it's a red herring, they clouded it under the fact that they're creating wildlife habitat, which is, we dispute.

Anyway, Tom would go to the DNR and say this can't work, you have to stop it. And finally, the DNR water guy, Dan Patrick at the DNR said, the DNR cannot enforce the city's zoning code. The city has to enforce its own code. So, there you go. Ramsey County doesn't have zoning authority. The DNR doesn't have zoning Authority. It's the locality the municipality that has this. Now, if this goes through, this is going to affect cities throughout the state. This is taking away your authority to determine what goes on in this community.

I have something from the Corps of Engineers here that shows that the islands, like Tom said, you can't be an island if you're underwater. Although there was a guy from the, do you want to put underwater restaurant or something? This is from their plan. That was from the Corps of Engineers' own plan showing the pylons, the height of the berm is over the ordinary high-water mark. The other thing is that, if you if you look determine that it's the DNR to gets to decide what happens on a lake. What happens to the Swan Boats at Como Park? What happens to the fishing piers at Lake Phalen? I mean, you've got to take a look at this, and make this is a complex issue like I say, so don't be forced to force to rush to judgment if you'd like to take more time to study it and review it. I mean the Corps of Engineers of Ramsey County, they knew from day one that we were insisted that the city has to have a say in what's going on here. And they refuse to acknowledge the authority of the City. And I think we need to take a step back here and just review that one issue.

Tom Dimond- Before we go further, just to and also dispel this myth that no other entity has authority over this, that only it's exclusively DNR authority. The Ramsey Washington Metro Watershed District required them to submit a plan and reviewed the plan. And they, then the contractor went back to them June 20th to get a permit from them. So obviously not all entities are excluded from requiring.

Kathy Sidles- My name is Kathy Sidles, I live at 1380 Winchell Street, that's six blocks east of Lake Phalen and I retired three years ago, so I get to go out and play every day so, my husband and I, and just myself, I have been going to exploring the parks along the Mississippi River and not just my local parks after work, and Kiki, a birdwatcher with Audubon like I am. And she said, have you been to Pigs Eye? Well, we had been to Pigs Eye Archery Park, just north of there, but not the big side. So she drove me down there. And I kept saying there's no signage, there's no entry sign, there's no parking lot, and there's no porta potty. And I kept saying, are we allowed to do this? And she said, this is public land, these are public roads. So they set up weekly walks and you all can come 9:30 Tuesday and Saturday. So I've been doing that for a year, every Tuesday at 9:30. We are going to Pig's Eye 2165 Pigs Eye Lake Road and turn left after the Green Building. Go through the privately run lot huge number of acres at pigs park, full of the regional trees for chipping full of a big pile of pallets that they do on this site and then go to the right through a gate and there's the huge pile of sludge from sewer reconstruction in this whole region. And the and not, then you see what's left of the park. The former dump covered with two feet of dirt and trying to restore itself without any other help from us. Even those 6 to 1, our sales tax dollars through Lessard-Sams go out state, we don't get it back, until now, we're getting it back to pay for these islands, so this former dump is still being dumped on, and I thought, islands, they say it reduces shoreline erosion, and it's good for wildlife. But after walking there, including along the shorelines, there is plenty of sedge. We didn't see erosion. You could, if there's patches do like that, like Lake Phalen works, put native plants. But what I have seen is that everybody is using it, and they come up with reasons that make sense to them. But not the wildlife and not to the local park users. This is part of Battle Creek Park Plan. It's like Lake Phalen Park and the Bruce Vento bike trail for me, six blocks east of Lake Phalen. And they aren't having any say in this. And if you look at the Battle Creek Park plan, that Pigs Eye is part of, until recently, I didn't have islands on it. It's the only plan that I see that St. Paul has for park fix up and they're all great ideas for the future years that has even has islands on it, but it's still a draft, and here they're building them already. And if you look at, there's one that is called the Saint Paul Water Plan. That's the summary for people like me of how we're going to keep the water clean flowing out of St. Paul. It doesn't have the sludge dump, it doesn't have the tree chipping place. It doesn't have the pools where they used to put the water treatment sludge into the pools, it doesn't have the islands, it just has trees and a lake. That's St. Paul, and that's our park. And if you look at the Great River Passage Plan, it's the same thing. It doesn't have any of these things that are being dumped there and to just keep going with these dredge spoils from Hastings because they need, it's a problem like the other stuff, that we're the easy place to dump to here on the East Side, if you ask me. They're not putting in the middle of Como or Lake Phalen. Then it

makes it really hard for people to know what's going on. For the people who actually look at the lake, everybody, like Tom, a bunch of them walk there, that we meet, even though you, and nobody else can find it or historically grew up there, with their parents fishing in the lake, it makes it just so easy for all kinds of stuff to end up there and to ignore the priorities of what really is degraded. It's not the wetland, it's Pigs Eye wetland. It's only this deep. It's not a lake. It looks fine. As far as I can tell, nobody's surveyed it. They say it's going to be for the birds, but who surveyed it? It's going to be for the shoreland. There's acres and acres of native sedge you don't see anywhere else, you know, it's got three sides. And so anyways so it just seems like it's, we keep signing off on some stuff to get to get dumped there and the PFAS. So and it all, we need to make it harder and not just dump it in the city here, regional stuff, and make it harder so we in the next generation, and do like my generation did when the Clean Water Act was passed and grapple with these real PFAS microplastic problems and not just say, well, we'll just dump it there. The sewer sludge is our poop, it should go back onto the farm fields. I'm from a farming background that would be free. It was food. We can't. It's got contaminants in it. How do you get rid of it? Let's figure it out. What about all these trees? We learn keep, mow high, less often. Keep leaves and sticks on your yard. Have a little messy part for the Wildlife. Save the rusty patch bumblebee and do we do that? No, we take all these big trees and dump them in our yard and same with the pallets. Third biggest wood product industry, something like that. What do we do with them? Some have chemical spills? Those are the ones they grind up and dye, and then if we're going to restore for your yard for pollinators, don't use those, because you have chemicals in them. And we've got big piles of pallets down there, and the same with the river dredge, how do we keep the water from flowing so fast that we have to dredge it out for the barges? And then come up with creative ways because everybody likes an island, you know. So anyway that's what it and there's a direct relationship to the next generation on the East Side. I volunteer with Urban Roots, get their CSA box. I say, "you should bring the young people down for their summer jobs. They can learn all about all these jobs down by the river, you know..." And do they have, a third of them are doing restoration jobs. They can't do that, it's polluted. They have to work up at the northern end that never was a dump. And with this new committee, eight hundred thousand dollars to get everybody together, we should be delaying big projects like this until the legislatively approved money, both sides of the aisle, a couple months ago, approved money to study this problem and these solutions could be applied statewide if not nationwide. And then we can use our Lessard-Sams money for something that we all talk about and can agree on. So thank you. That's more than three minutes.

Mr. Miller- Would anybody else like to say anything? Just maybe switch spots so we can hear you in the microphone and just start with your name and address also.

Karin Tomervik- My name is Karin Tomervik and I live at 2004 Oakridge Street. And like Tom, I'm up on the bluffline so I overlook Pigs Eye Lake, and it's a reason I moved there and it's a reason why I've stayed there for the past 30 years. So I've had a bird's-eye view of what's going on in the lake. And as Tom has shown via his photo, it isn't, the islands aren't underwater, they're on top of the water. Island number 7 is almost completely built from what I can see, there is mounding of sand there and whatever else is being pumped out of those pipes. And so I kind of dispute this idea that it's below the, the ordinary water level, ordinary high water level. But to kind of just go back a little bit, there's really never been any meaningful engagement with neighborhood groups and residents regarding the project. I've never received any correspondence regarding this project from the city or the county even though it involves many hundreds of acres of development. And to me, and I don't think you see it unless you, you know, are in position, like, Tom and I are or Kiki, or you are with running tours from the area. You don't have a sense about how immense the lake is, and how large this project is, and what it's going to do to the lake environment. This project I think is going to forever change the aesthetics of Saint Paul's largest lake and it's my understanding it's over 600 acres, the size of the lake. So it's, it's big and it's wonderful natural resource for us. The Project's objectives and did not impact water quality or recreation, they've stated this. A substantial, as you noted, a substantial part of the area surrounding the lake is marshland, already providing habitat for animals and fish and birds. There's plenty of it. I believe what the area needs are improvements to water quality, safe access to the lake for residents and visitors, remediation, and recreational amenities. And we've already heard that there aren't those at this time, and we've been waiting a long time for this. The grading and filling of the lake

is taking place above water also, that's obvious. It hardly seems fair that property owners in the River Corridor are held to construction standards while the island building project is not held to the same standards. And in summary, I just want to say that in the justification for this project, I've read a lot about turbulence, wind fetch and ordinary high water level but nothing about equitable use of the lake for its surrounding residents and that's clearly been absent from the absent from the planning and execution of this project.

Mr. Dimond- In conclusion for what it's worth, when this project was taken to the city council by the county, the city council refused to support the project and when the complete park plan, updated park plan, came up only a month or so ago, for final approval, the issue was brought up again and the City Council said, you've got to make clear that we are not signing off on that project and they agreed, they understood at the City Council was not supporting that project. So for what that's worth.

Mr. Miller- Thank you. Thank you for all that. Do we have any questions for the appellants?

Mr. Rangel Morales- So could you just point me into how you think the city has jurisdiction. In other words, they're, the city's telling you they don't have jurisdiction is below the OHWL. Each of you will and the city doesn't have jurisdiction over those items. This is handled by Ramsey County, and the County had an open permit application the 30-day review and comment period on June 22nd, 2020, in which the US Army Corps of Engineers the Board of Water and Soil resources the Ramsey County Conservation District, Ramsey-Washington Metro Watershed District and the city of St. Paul, to provide comments and concerns and based on those comments and concerns the DNR issued a permit with certain conditions. So my question is, is, the city has had an opportunity to provide input, you might disagree with that, but the city, the entity of the city appears, according to the letter from DNR, provided input or had the opportunity to within a public comment portion. And the DNR issued a permit, it is my understanding that the city hasn't issued a permit. The city hasn't taking any responsibility over the project. And so I'm just wondering what, what are you citing to say that the city does have jurisdiction? The specific provision that you say...

Mr. Dimond- It not only has authority, it has requirements.

Mr. Rangel Morales- But what law?

Mr. Dimond- In the zoning code and in the state statutes

Mr. Rangel Morales- The city is saying that the zoning code doesn't apply because it's below the OHWL.

Mr. Dimond- What I'm saying is it is not below the ordinary high water level; that is a fixed entity here, because this is a pool, it is pool two on the river, and reservoirs are a fixed level. They're not, I mean, there can be some fluctuation due to the high water levels, but the, the what is in the code, it's a specific provision. This is how you determine it, for sorry, for a reservoir. It's that summer stage level which is the 687 and that's in the documents. The Corps provides that information in their document and it's also on the map that the Corps provided in the center of the map. You'll see it 687 is the level.

Mr. Rangel Morales- The DNR's East Metro area hydrologist stated that the OHWL for the lake is 692.9 feet and that these constructed, whether you want to call them islands or not. But what they're putting in, is going to be 0.3 feet below that. So did you guys have your own independent expert that's going to say it is not going to be built to that?

Mr. Dimond- There's a 700-page EA (environmental assessment) done though the Corps and the county. In there, it goes into specifics, what these elevations are and what these are going to be when they're complete. The basis for funding the got from Lessard-Sams is that these are going to be providing habitat and explains what kind of trees and other vegetation that's going to be on them and how they're going to be. If these were below the water, they could not provide what is stated as a basis for the Lessard-Sams funding. What I'm saying is, if you know the record, what is in it print, not an opinion, these are all facts that are in state statutes in the EA documents in the maps that they have submitted. Not us, sure. Sorry

Mr. Rangel Morales- So are you saying that because of the certain vegetation that they're proposing will be growing here, that it's not possible that this would be submerged?

Mr. Dimond- Yes. I mean I'm not saying you know flood.

Mr. Rangel Morales- Right.

Mr. Dimond- Right. But yes, I'm saying exactly that. They will be...

Mr. Rangel Morales- But isn't the OHWL sort of an average, right? So that they're going to go up and down.

Mr. Dimond- No not in the case of reservoirs. Some of it does. And actually even in reservoirs, there can actually be some things, the OHWL can actually be below the water level, it's weird, but in this case, it's not that. That is incorrect. Unfortunately, I do not have advantage of have. I spoke to the DNR. They have not provided. That's the first I've heard of that. There's a note about talking to the DNR, but that's the first that document has been put out saying that the height from DNR and they did not share it with the public so.

Mr. Rangel Morales- Thank you.

Mr. Saylor- Andrew are you here from DNR?

Mr. Hogg- No, I'm not from the DNR. I'm from the City.

Mr. Saylor- Can you remind us what your purpose is here today?

Mr. Hogg- My purpose was I answered Mr. Dimond's complaint and wrote the response from the city. And talking to DNR and BOWR which is the Board of Water Resources, I do some WCA wetland administration, the watershed district, and then the county.

Mr. Saylor- Mr. Warner, would it be appropriate to invite Andrew since he's here today too? What would you like to add to this discussion? Because there's a lot of pieces to unpack.

Mr. Warner- If he does, he is going to need to be on a microphone.

Mr. Saylor- Yes, on the microphone. Andrew, from the city. What can you add to this discussion? To help us better understand all aspects of it.

Mr. Hogg- I'm going to bring attention to this from ordinary high water level. This is from their technical paper 11, the DNR puts this out to establish ordinary high-water levels. As you can see in the image here on the right-hand side, the average water level is, you know, basically an average. The ordinary high water level is established by the DNR, they establish that level, and they use this, how they establish that is, they look at the evidence left on the landscape of where the highest water level goes. So that necessarily does not mean it is the top of the pool at the water, it can be, depending on the evidence they see in the field, that water level could be a couple feet above the average pool depth, or it could be, you know, really close to the to where you might see an average line. Now it's not the average water level. It's not an extreme high-water level. It is a, they do a technical study to this establish this position and that is done by the DNR. So I reached out to the DNR, I reached out to the area hydrologist, he's the one who provided the letter from the DNR. And he gave me those numbers that show that the tops of the islands are slightly below his, the DNR's, established ordinary high-water level. And he makes reference to that, that this project, in the DNR's view, is below the ordinary high-water level. And that is in his letter.

Mr. Rangel Morales- I want to just talk about the difference between, he, the applicant, appears to be saying something about a reservoir, a distinction in the way that ordinary high water level is determined by the DNR.

Mr. Hogg- I'm going to...lets see...how do I zoom in?

Mr. Rangel Morales- Does this constitutes a reservoir, not a lake?

Mr. Hogg- That would be the determination of, you know, once again the DNR, they're the ones who established it. So, here's the statute as shown, so it can be one of these three things. 1) it can be delineating the highest water level that's been maintained for a sufficient period of time leaving evidence upon the landscape 2) for a watercourse, the OHWL is the elevation of the top of the bank of the channel or 3) the reservoir or the flowage is the ordinary high-water level. Now, I don't know what the DNR, what criteria they used for establishing their high-water level, ordinary high-water level. But I know that based on my conversation with the DNR hydrologist that the elevation provided is what they that they say the elevation is. So it could be one of these three, I don't know which one. He didn't... I was...

Mr. Rangel Morales- That would be important to know whether the city has jurisdiction, no?

Mr. Hogg- Well, anything below the, if the DNR says the ordinary high level, for example, is at 100, anything below that is their jurisdiction, regardless of what they, what it what it is. That number pins in the elevation and anything below that is out of jurisdiction of the city.

Ms. Swift- So, I'm not sure if you know the answer to this question, but do you know if this something that they routinely monitor or is it something that they go in and they determine the ordinary water level based upon like a request or a proposal for a project?

Mr. Hogg- That would be a question for the DNR.

Ms. Swift- okay.

Mr. Hogg- They set the boundary.

Mr. Rangel Morales- So, is this considered... What is the designation of this particular water? Lake, reservoir, flowage. What is it actually considered?

Mr. Hogg- They consider it a lake.

Mr. Rangel Morales- it's not considered flowage?

Mr. Hogg- Not to my knowledge. No, it's considered a lake on the map. It's considered a lake. And this map is published on the DNR's website. It is a public water basin and there are some wetlands in the area but they are also considered DNR wetlands. Now, the city administrates wetlands above the ordinary high-water level but there were no wetlands that were a part of this project that were need to be reviewed on the city's jurisdiction of wetlands. The jurisdiction of the floodplain is the watershed district, and that's why they reviewed it, because they have jurisdiction over floodplain in this area of the city, has granted them that, or they have it for the, for the for this area, this project, this basin.

Mr. Saylor- It seems to me that the distinction between 692.x feet and 687 feet is in this case, possibly substantial. I mean so and it's unclear to me, I'm a historian, not a science person, but it seems to me that there has to be. What is the determine? How is this determined? Why are there several numbers of what is the ordinary high water? Because that makes, five feet makes a huge difference, with what, I mean this one, as I'm listening and looking at, this could have an significant impact on what's built and what impact it has.

Mr. Hogg- Yeah, the, you know, once again, it is the city staff's opinion that it is, the numbers provided by the DNR are correct, the letters from the DNR that state that is below the ordinary high water level mark is correct. They are building these islands as described in the DNR's letter for, whether or not you disagree, habitat purposes and that they're not creating land for for, you know, the city to regulate land use over these islands.

Mr. Miller- Go ahead, Ms. Porter.

Ms. Porter- I would suspect that you're trying to establish a baseline, which is why we're kind of going back and forth to the number, because I would also suspect that seasons have an impact upon the elevation and the high-water mark, right?

Mr. Hogg- Yes, they would. So...

Ms. Porter- It's kind of hard to discern, you know, what, back to your point, you know what we're actually, what that baseline is that we're trying to determine and who has jurisdiction. So I'm not a scientist either but.

Mr. Saylor- I agree and seems to me that if it were 687 feet, these things would potentially be above the waterline and then the city would have jurisdiction. Is that correct? Have I understood it correctly?

Mr. Miller- If the ordinary high... Where's 687 coming from, sorry?

Mr. Saylor- This number that I've heard referenced, it was in the in the Corps of Engineer or the DNR report, I mean the...

Mr. Dimond- It is in the environmental...

Mr. Warner- Hold on. They're still discussing amongst. So if there is a question, it should go to...

Mr. Saylor- Yeah. No I'm just saying. But if. That was a possibly rhetorical but actually maybe it's not. The higher, the water higher the OHWL the less likely there is that the city would have any claim to call for responsibility for jurisdiction for what was created, because it would be under the water, right?

Mr. Hogg- Yeah, yes. Okay. But, I mean, the river flows downhill. I mean there... Your statement is correct but I mean the elevation that they're determining this project falls below, the elevation that they have said is the delineating mark. That's the mark. And it is below it, you know, we can hypothesize, what happens if it's higher or lower, but at this point, based on our conversation, we feel that the mark is that that elevation provided by the DNR and they feel the same as well as the county.

Mr. Saylor- Thank you.

Mr. Rangel Morales- I'm looking on page four everybody. I'm looking on page 4 of our own package of third paragraph analysis and findings. That's where I got the numbers of what the hydrologist determined to be the wage OHWL. Ordinary high-water level at the lake, which is 692.9. I don't know where the 687 comes from.

Mr. Saylor- Yeah, I want to know that.

Mr. Rangel Morales- But the proposed islands are supposed to be at 692.6, so about a third of a foot, four inches below. So, that's why I was looking to see if the applicant had any particular jurisdiction outside of what has already been provided by Statute or regulations or something that would point us into staying the city really does have jurisdiction on this. I don't, I don't, I don't think at least for me, the applicant has done that, but that doesn't mean that the city would not have jurisdiction if, in fact, it's not six hundred and ninety two point six feet. Which is why I asked the question about whether any independent report was done to contest either the hydrologist's finding or the final construction numbers, which, I mean, that seems like a really unfair burden to place on community members in terms of cost. But I don't see how else you would establish that the city has jurisdiction without showing that it really is above 692 and the argument about the plants and what's supposed to go in there. I think, even if we look at the picture that's being provided by the city, because it is just the ordinary high-water level, that doesn't mean that it's going to be submerged. We don't know how long that's going to be submerged for and plants, I mean, anybody who lives in Minnesota knows that vegetation can grow in the middle of a river without ever having to show land. And so, I just think we have, at least from my perspective, there's a lot of reasons that this this, you know, the least our staff report indicates one. Why the city doesn't believe they have jurisdiction. Why the Wetland Conservation act, which doesn't apply to public waters and wetlands as defined as noted in our page how the Ramsey-Washington Metro Watershed district is really a matter for

Ramsey County, not for us. So, I know what, I know what brought you guys out here in terms of. I think it's frustrating that it seems there hasn't really been the opportunity to provide public input on this, that whatever was provided as an opportunity doesn't really seem like it was really open to the public. It was, it sounds like it was more open to, you know, the city again city with a big C and, you know, our city council or mayor or somebody to voice that opposition, which I suppose it just trickles down to voting if you disagree with the way that it was handled. But unless I, you know, we have the staff recommendation and I believe Mr. Warner's really has had an opportunity to look at this in his office and I know staff is looked into it. I just it's really hard to go against this, so that's just my.

Mr. Miller- I guess, my comments then too, or if we're looking at that drawing there and we're talking about average water level versus ordinary high-water level. It's, on average, they will be islands and it doesn't tell us what the average water level is, but they will be above water most of the time but the determination of the ordinary high-water level is kind of what establishes the jurisdiction. Now, to me, does it seem incredibly intentional that they determined the ordinary high-water level, and then decided to go four inches below it with this project? Yes, it really does. I imagine if the ordinary high-water level were 692.0 feet, they would have gone four inches below that also. Does that sit well with me? No, absolutely, it does not. But I'm not sure how to get around that.

Mr. Miller- Are we finished with questions for our city staff?

Ms. Trout-Oertel- It seems like the DNR has established a lot of, most of the things, relative to this project. Who has jurisdiction over the DNR?

Ms. Swift- I was wondering the same.

Mr. Warner- I can answer that. The Commissioner of Natural Resources is the head of the DNR and he is an appointee of the governor.

Ms. Trout-Oertel- So, there's no one really looking over the DNR.

Mr. Warner- Well, I would say my friends at the DNR would say, there's all sorts of people overlooking their shoulders.

Ms. Trout-Oertel- They would say that, I'm sure.

Mr. Warner- But that's more of an offhand comment, than anything else. But procedurally, we still have an open public hearing so I just want to know where we are.

Mr. Miller- I want to make sure that we're done with questions for the city staff and then we can turn back to the appellant. If you'd like to comment on anything.

Mr. Dimond- I think I can answer the question, the graph on the right-hand side doesn't apply to this. It only applies to the other conditions. Because if you take a look at that gets slid over for item 3, for reservoirs and flowages, but for reservoirs, the ordinary high water level is the operating elevation of the normal summer pool. It has absolutely nothing to do with vegetation. It's where the dam sets of operating level is and in that packet of information I gave you, it shows what that operating level is for that pool, for pool 2, and that's where you get to the 687. So you have the document and that's what... The other isn't relevant for this kind of setting.

Mr. Rangel Morales- So just a question for Mr. Warner, based on that question, Mr. Warner, is there, and given sort of the non-committal about what. It seems we are going based on a label on a diagram on what the designation of this is. But is there any reason to continue this to make sure that this isn't a flowage? And actually label it as a flowage and have number three applied as opposed to number one?

Mr. Warner- Well let me let me see, the Water Resource coordinator says that the DNR says this is lake, so presumably, it's not a reservoir, if that's a fair assessment of what you've said.

Mr. Hogg- I believe. Yes.

Mr. Warner- I also recall, your testimony was, that once they establish a elevation, it really doesn't make any difference which of those three things. It is the elevation of whatever they decided to be.

Mr. Hogg- They have decided the elevation, yes.

Mr. Warner- Which appears to be a lake. So, the only reason why I could see you considering laying it over would be to go to the DNR to say, and get from the horse's mouth, is a lake? whatever the three criteria are, is it a lake,

Mr. Dimond- Reservoir.

Mr. Warner- Is it a watercourse, or is it a reservoir?

Mr. Rangel Morales- Is there no hesitation from you that we can make a decision?

Mr. Warner- Well, no, that's up to you to decide. So, if you think that that would be helpful, that then that would be a reason to lay it over. And the obvious person to ask would be the Water Resources coordinator to make that ask of the DNR. For the city's record. So that would certainly be something that you can consider.

Ms. Porter- Could that come in the form, and I'll use the word, executive summary? I mean, just so they could summarize what it is that because it just seems to be that that sort of confusion. That'll get everybody on the same page. If we had a document saying, this is what we're, this is what the elevation is, and this is what we're claiming this to be, a lake, whatever.

Mr. Warner- Well I think, I guess if I were to ask the DNR I would say mister missus DNR, under Minnesota Statute 116G Subdivision 14, of the three criteria that are listed, which of those criteria is Pigs Eye Lake. Is it a lake, is it a watercourse, or is it a reservoir? And of those three, which did you use, and where did the number come from? So that's, I mean, that's what the statute calls for. And I, you know, the executive... Yeah, I mean it's a two-sentence answer to me. I mean, the city staff position is that that's their water, so that certainly could be something for you to consider.

Mr. Miller- Okay. Any other questions for the appellants? Otherwise, I will close the public portion of the hearing. Okay, don't see any additional questions. Thank you all for your testimony, and I'll close the public portion of this hearing and open this up to discussion on the motion.

Ms. Trout-Oertel- I'm curious as to whether any of the other board members would like to hear from the DNR and have them answer questions. The questions that have been raised. Does anybody think that would be good idea? Besides me?

Ms. Porter- I think it would. It would close the loop, right? If they're the missing link.

Mr. Rangel Morales- I agree. I think it and more than anything we can provide a clarifying answer. Maybe not a satisfactory answer but a clarifying answer to the applicant about whether this is labeled as a reservoir, a watercourse, or a lake. And then there's the second component to that number three, which I think the applicant would probably be interested to know is whether the number that they reached is the same as the operating elevation of the normal summer pool, so that 692 number. Whether that's the same number as the elevation of the... Of course, they could always disagree that that number is accurate, but that's what the DNR is saying, and I think if we can facilitate providing them an answer to that, it would maybe, I know it's not going to be satisfactory, but if we can provide a, close the loop as Commissioner Porter said, I think would be beneficial.

Ms. Trout-Oertel- Or have them justify how they arrived at that number?

Mr. Miller- It would help my understanding, I think, also.

Mr. Saylor- Same.

Mr. Warner- So the question to the, that staff would ask the DNR is, how does a DNR classify Pigs Eye Lake?

Mr. Rangel Morales- Yes. And then...

Mr. Warner- How did you arrive at your...

Mr. Rangel Morales- Well, I think. I think if it's number, if it's a lake, right? They use the standard that we've been talking about, but the applicant has sort of noted to his number of 87 and figure 687. And he appears to say that that's the operating of elevation of the normal summer pool. So if it is, and that would be, if it is a reservoir, and the normal operating elevation of a summer pool is 687, and they're building to 690, then it would be within the city's jurisdiction. Not to you and say that the city wouldn't do anything on that. It's just a matter of question of jurisdiction to begin with. That doesn't overcome the obstacles of whether, you know, this falls within the Ramsey County Regional corridor or the waterline protections or it seems like there's hurdles to that in and of itself. But just whether or not there's the city even has jurisdiction over this.

Mr. Miller- So we make a motion?

Mr. Rangel Morales- I'll go ahead and make a motion to delay this for two weeks, to give to have the opportunity to reach out to the DNR and maybe provide us an answer of the classification of the, of this particular body of water as either a lake or watercourse or a reservoir. And if it is considered a reservoir, whether the OHWL is the same as the operating elevation of the normal summer pool.

Mr. Saylor- I'll second that.

Mr. Miller- Seconded by Saylor.

Mr. Saylor- I also like to know what I mean, lake or reservoir flowage, and just like and why? What is the, I mean, I know there's... I'm sure there's pages and pages of definitions, but just a brief, it's a lake because, or it's a flowage because.

Ms. Swift- I'm also curious about just looking at how they define what the high-water level is. It's pretty vague around sufficient period of time, I would just be curious around specifics with that as well.

Ms. Trout-Oertel- I would, as well. Yes.

Mr. Warner- So I'll ask them about their methodology.

Mr. Rangel Morales- And Peter, just to be clear, they provided, someone provided this Mississippi River Dam two operation, which I believe that's what the applicant was citing too, that states the river stage at Pigs Eye Lake is held constant at 686.8 feet.

Mr. Miller- And that's staying part of the public record, correct, since he provided those documents?

Mr. Warner- Yep.

Ms. Porter- It kind of speaks to what I was talking about, the seasonal changes, sounds like that statement's as it states.

Mr. Miller- Kelly, can we get a roll call, please, for that?

Ms. Koski- Saylor-Yes. Swift-Yes. Rangel Morales-Yes. Porter-Yes. Trout-Oertel-Yes. Miller-Yes.

Mr. Miller- So that would be delayed two weeks to get some more information and thank you.

**Move by: Rangel Morales/ Second by: Saylor**

**Layover for 2 weeks 6-0**

Mr. Miller- David, this was provided too, so I think that stays part.

Mr. Diatta- Thank you, everybody.

Ms. Swift- Are we adjourned, chair?

Mr. Miller- Yes, we are adjourned.

Submitted by: Maxine Linston

*Maxine Linston*  
Maxine Linston (Aug 25, 2022 10:08 CDT)

David Eide

*David Eide*

Approved by:

Diane Trout-Oertel, Secretary

*Diane Trout-Oertel*  
Diane Trout-Oertel (Aug 25, 2022 10:07 CDT)