

**BOARD OF APPEALS  
VILLAGE OF TWIN LAKES  
ELLIS, John and Karen Continuance  
November 21, 2007 - 6:30 P.M. – 8:15 P.M.**

\*tape available indefinitely\*  
\*\*minutes transcribed from tape by Cynthia Skrypt\*\*

Meeting called to order by Chairman Tom Porps. Roll call: Boone, Myers, Nathan, Porps. There were only four members present. Alternate Bob Jooss was present but he had not sat in at the first hearing nor had he viewed the property so did not feel he was qualified to sit at this hearing. Porps agreed. The Ellises believed they needed five members so the vote was not deadlocked at two to two. The Clerk made a phone call to Kuhlmeier and the meeting resumed again at 6:45 p.m. Roll call: Boone, Kuhlmeier, Myers, Nathan, Porps. Porps announced that the purpose of the meeting was to hear the continuance variance request of John and Karen Ellis, 14288 W. Braemore Close, Green Oaks, IL 60048 and 1723 E. Lake Shore Drive, Twin Lakes, WI 53181. Porps gave the following instructions: This board meeting and public hearing to be considered today are open to the public. Anyone wishing to speak may do so providing they stand up, identify themselves and be sworn in. A tape recording is being made of these proceedings, therefore it is important that you state your name and address before addressing the Board. The purpose of this public hearing is to take evidence in this case. This Board is interested in hearing all of the evidence and will make a decision based on the evidence. Variances are not granted routinely. The applicant for a variance must clearly show the Board that the three statutory standards that govern granting a variance will be met. The three standards are unnecessary hardship, unique property limitation, and protection of the public interest. Unnecessary hardship - for a dimensional variance, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Whether this standard is met depends upon a consideration of the purpose of the zoning restrictions in question, its effect on the property, and the effect of a variance on the neighborhood and the larger public interest. For a use variance, unnecessary hardship exists only if there is no reasonable use of the property without the variance. Unique property limitation - unique physical characteristics of the property must prevent the applicant from developing in compliance with the Zoning Ordinance. Protection of the public interest – granting of a variance must neither harm the public interest nor undermine the purpose of the Ordinance. The public interest includes the interest of the public at large not just that of the nearby property owners. Conditions may be attached to a variance to protect adjoining properties and to preserve the essential character of the neighborhood. A variance should include only the minimal relief necessary to allow reasonable use of the property. In granting a variance, this Board has the power to and will impose special conditions to insure that the public welfare will not be damaged.

JOHN AND KAREN ELLIS CONTINUANCE VARIANCE REQUEST – 1723 EAST LAKE SHORE DRIVE – PARCEL # 86-4-119-281-3060  
Board of Appeals Clerk advised the news media, general public, applicant and property owners had been notified of this public hearing. Board members stated they reviewed the variance request and inspected the property in person. On site inspections were in accordance with the Wisconsin Open Meeting Law. During the inspection process, no additional evidence was uncovered.

John and Karen Ellis, 14288 W. Braemore Close, Green Oaks, IL 60048 and 1723 E. Lake Shore Drive appeared for the variance and were sworn in.

Porps read into the record the Ellis' request for a variance: "You are requesting multiple variances to allow for alterations to your existing non-conforming structure containing a non-conforming use. Variance #1 – a side yard setback of 0.2 feet in place of the required 15 feet. Variance #2 - a shore yard setback of 12.06 feet in place of the required 15 feet. Variance #3 – the height of your structure to be 18 feet eight and one quarter inches in place of the 12 foot maximum. Height from the proposed southwest elevation 10/03/07. An additional condition would be complete removal of the non-conforming use. Porps asked if that was accurate. John Ellis stated that was accurate.

John Ellis thanked the Board for letting him be here on Thanksgiving Eve. At the June 12<sup>th</sup> hearing there was some confusion as to what they were strictly wanting to find out here and do. He put forth this packet which includes a copy of the letter. Based on his notes and his recollection, he was asked to readdress four main issues: the size of the proposed structure; the height of the proposed structure; exact architectural drawings; and vegetation buffer. The next three pages of this packet are to issue clarification and he hoped he has done a satisfactory job of addressing each issue as he sees it. He took it from a layman's standpoint addressing each of them individually and contacting the appropriate people and coming up with what he thinks is a sequence of issue clarification along with the illustrations that will help prove his point. He can go over each one individually if we want to take them one point at a time or if there are other questions that we want to start the discussion with. The bottom line is the proposed structure has been reduced. As it states here on the second page under issue clarification, the structure is being reduced by 275 square feet down from the 863 square feet, which puts them at 588 square feet. This reduction will allow for compliance within the Ordinance 17.38.070. Basement lake level with concrete footings will remain the same as is and as earlier stated he is requesting that a portion of that 588 feet downstairs that they can dig out. It's illustrated in B. It's just full of dirt and he would like to request to dig it out. He is not going to remove any walls. He just wants to dig that section out so he can put that door there and have more storage space. The roof height of current structure from top of grade to the top of roof is 16 feet four and a half inches. He was asked by several board members to investigate what he could do to reduce the overall height of the roof to comply with the ordinance. He recalls during a discussion at the last hearing it was discussed by the Board that it may be unreasonable to expect full compliance with current ordinance of 12 feet due to the severity of the roof pitch but they would like to see if we can still reduce it as much as possible while keeping the structure safe. He believed he heard and he wrote this down as someone saying see what your architect can do

within reason and if you take a look at Illustration B and C, the dotted lines on B the overall peak height is being reduced by one foot eight inches. In addition you will also notice on the overlay the line depicts structural roof pitch versus the proposed new roof basically is obviously a much smaller overall footprint of the roof. Illustration C depicts just how small they are going on the overall structure. Part 3 we will get to the drawing that shows that they are removing every piece of living space on there and decreasing that roof down to 14 feet from the top of the grade. It does not make the 12 feet but it can stay with a pitch and it can stay safe and that is what has been proposed in this particular plan. Moving on to Part 3 – Illustrations A, B, C, D, E, and F are complete drawings that clearly show and depict exactly how this boathouse structure will look inside and out based on his discussion with Tim Popanda along with the direction from the Appeals Board, he believes he has succeeded in their request for clarity. It is important to note in this area that the entire first floor living quarters have been eliminated, including all inside walls, kitchen and bathroom. See Illustration D. The entire first floor will only have electrical outlets, a ceiling fan and full three foot by five foot screen windows and also included will be a small balcony with French doors. There is absolutely no additional living space, no heating and no air conditioning. The downstairs portion will be framed, dry walled, tiled and used for storage. Replacing first level sub floor and basement, floor joists and beams and the reason I am seeking that is because it has spent the last 30 or 40 years absolutely in just basic wet damp conditions. It is molding and it is musty and there is no sub flooring under there to protect it. It is just basically below the wooden floor in the whole house is the basement. US Waterproofing will be seeking a permit to kind of tile it in there and remove the dampness so they can put some framing up and drywall and use it for nothing but storage. The garage door will be retained as required by Tim Popanda. All he is asking is for some kind of an accessible water line connection, a spicket, so they can clean off the decks and whatever they need down there. Last by not least the vegetation buffer. The Board addressed concern over proper adherence to the Shoreland Protection Ordinance enacted in 2005. Of particular concern was the potential of runoff that is caused by the recently completed landscape and hardscape projects on the front portion of the property. In conjunction with the Shoreland Protection Ordinance, he was asked to address what plan he has to ensure no runoff will occur. He was also asked what his plan to change the current patio landscape area to accommodate the required 15 foot vegetation buffer. His runoff response is --attached to Illustration G is a letter from his Wisconsin licensed landscape architect highlighting the many preventive measures. These are proven effective methods that stop potential runoff now and in the future. These plans were developed in conjunction with recommendations from the Wisconsin Department of Natural Resources and other government agencies that he retained on line through his research on vegetation and conservation area. Proper slush and vegetation such as rooted plants, flowers, and shrubs was given priority in order to stabilize soil. Those are noted on the landscape page and sloped area. In addition, proper permits were obtained from both the WDNR and Twin Lakes Building Inspector. All work was completed appropriately and in accordance with the WDNR and Village of Twin Lakes. The change in patio landscape – his total lakefront property per plat survey measures 94 feet. He was granted permission to build the approved bolder rip rap wall that also has a WDNR acceptable and approved erosion control soil separator. Even though a patio was put over that, the 54 feet of that cement wall existed prior to his ownership. He believes this leaves a total of only 40 feet of lakefront that requires the response. He could be wrong but that was his rationale. Within those 40 feet, the patio was extended another 37 feet. Within the 37 feet, he has allowed a two to four foot depth of vegetation buffer measuring 23 feet in length between the lake and the patio. In other words, there is kind of a patio that swerves and there is two to four feet in depth for vegetation that is within the WDNR acceptable plantings. This buffer now has perennial plantings with the same type of root system as stated above. All new grades were within WDNR specifications and satisfaction as stated in the permit. That is where we are today, similar to where we were but he wanted to clarify some things and give you direction – I'm just wanting to take a fortress looking building, making it better, getting a permit so that I can be permit ready for my primary residence. I have plans for the primary residence. I haven't submitted them but as Mr. Popanda said, there will be no permit issued until we take care of the boathouse. The only thing I mention now it was brought out at the last meeting to – if we had any thoughts of filling it in what they have now – the cement foundation and moving it in. That is one of the things they are here for tonight. He wants to keep the cement structure and he does not want to move it in from where it is. It would virtually defeat the whole idea of making aesthetically pleasing. It would start to take out my trees and all these other things. That is what I am asking for.

Porps asked the board members if they had any questions. Boone asked if the current height was 16 feet four and a half inches using the average grade. Ellis stated that was correct. Boone asked if the new boat house is 18 feet eight and one quarter inches using the average grade. Ellis stated he saw where he was seeing that. When he talked to his architect, he said if he was standing on the main grade – in Illustration C – she mentioned the roof height of the current structure from top of grade to top of roof is 16 feet four and a half inches. He said with the new roof, how much lower it will be from that same grade. His architect stated it would be one top peak of the house would 1 foot eight inches lower than it is now. Boone stated as he understood it, they take the heights from the corners. Porps stated the first pages were not the average grade. They were taken from the grade at the back end of the building. Where the new measurements were taken, the average grade is how you measure it. Boone asked if the new one was taken from the corner of the building and that is eight and one quarter inches. Porps stated the new one is taken from the average grade not where the building meets the ground on the resident side. Boone stated the comparable figure for the existing one is 16 feet four and a half inches. Nathan stated if you take where the average grade and where he shows the finished grade is going to be really ends up like about 14 feet. Porps stated the original number was taken on the existing grade not the average grade. Nathan stated if you look at C, it shows the existing grade, the finished grade and your average grade. Porps stated the average grade on the original plans was 20.37 feet. Boone stated he understood that. The current plans are 18 feet eight and one quarter inches. Porps stated when you are talking about grade; a quarter inch is splitting hairs. Boone stated that was for the proposed. Porps stated that was correct. Boone thought he heard him say that the comparable figure for the existing boathouse is 16 feet. Porps believed he was wrong. Boone believed he should know whether he is right or wrong. Porps asked when he quoted

16 feet that was from the existing grade not the average grade. Ellis did not know what it was from. He just asked her from the current grade so that would be the existing grade. Illustration F shows the top peak of the roof is 14 feet six inches – so that is where she got the 14.6 feet and from that same grade she said it was 16 feet four and a half inches. He assumed she took the same grades. At that current rate at 16.4 feet and with the new renderings and the new roof, it will be reduced down to 14.5 feet. He was not exactly sure what grade she took the measurements from. Boone did not believe it was going to be 14.5 feet. Ellis stated it was from the standard grade. Boone stated the Board did not have any drawings of the existing boathouse. Ellis said the only thing he could show the Board was the dotted lines on Illustration B and C have dotted lines to show not only what the current roof is and what the new roof line is proposed to be. The dotted lines on Illustration B and C are existing structural lines. That gives an accurate depiction of exactly the roof reduction. Boone stated in Illustration C it shows the boathouse as being moved forward – not moved forward so much – but the back part is chopped off. Ellis stated that was correct. It was about a 30 foot by 30 foot piece that will be coming down to 20 feet by 20 feet for basically the sake of argument on that size. Porps agreed with the numbers that the roof is being lowered from the original proposals than when he looked through these. He believes the confusion comes from the fact that in some places they are talking about the existing grade and some places they are talking about the average grade. The Code calls for the average grade. The bottom line is the proposed roof would be lower than the existing roof. Boone stated he could see that on the peaks. That was obvious from the diagram. You cannot tell that on the average grade. He did not know if he was making himself clear. Porps stated the average grade was specified on the bottom and that is where they are measuring from. Look on Illustration E. Boone stated there was a different kind of roof on that illustration. The existing roof is slanted four ways and the new one is slanted two ways. Ellis stated that was correct. Boone stated he wanted to make sure that the new roof the average is not higher than the old roof – using the average grade. Myers stated on Illustrations B and C, if you look at the dotted line on top it shows in both drawings show the new structure is one foot eight inches and one-eighth of an inch lower. Ellis stated the overall peak. Boone stated they were talking about the overall peak. Porps stated you are basically saying you are not sure the new structure will be lower than the existing structure. Boone stated that was correct. Porps asked if anyone else agreed with Boone on that issue or were not clear on that issue. Myers was unclear on why they had to use an average grade versus the existing grade. Porps stated it was because that is what the Code says. The whole idea is you use the existing grade because of an example like this. This is a two-story structure facing the lake but it is a single story structure from the residence side so you must use the average grade. Let's say the slope was even steeper, you could have a three story building instead of a height of less than 12 feet. So it is the average. You take the four corners and take the average and that is where you measure from. Myers stated it still appeared to him like it is being reduced. Nathan stated it was being reduced quite a bit from what the original proposal was. Porps agreed from the existing structure. Boone asked if you agreed it was being reduced from – Nathan stated yes because when you have a hip roof and when you take 10 feet off one side you are automatically bringing that total height down. Boone asked if that was the four way side. Nathan stated that was correct. That is what a hip roof is. It comes down on four sides and then they have a decorative gable on both sides to get a little more headroom and height for decoration and for the posts. Boone stated if you say it is going to be lower, then that is good enough for him. Kuhlmeier stated he was okay with that.

Porps asked who had the next question. Boone asked what the current assessed value of the boathouse. Ellis stated he got the figure from the Tax Department and it is \$82,600. Boone stated that is why he says you are knocking down 50% of the assessed value. He did not know how he comes to that or how he knows that. Boone stated he noticed that Ellis was planning on spending \$33,000 for renovations. Nathan stated as it stands now he has two living quarters on that lot, the main house and the boathouse. Boone stated this was just for the boathouse. Porps asked if Boone's question was how Popanda arrived at Ellis was taking more than 50% of its current value down or dismantling more than 50% of its current value. Porps stated Ellis was ultimately dismantling the entire structure with the exception of the foundation. Ellis stated that was correct. Porps stated to be very honest estimates sometimes are erroneous and the actual cost may exceed the estimate slightly and probably approach the 50% mark. He did not believe there was any question in anyone's mind that Ellis is dismantling 50% of the structure. Ellis stated that was correct. To build the boathouse the way he wanted it, he was pretty sure he would not be putting more than \$40,000 into it which is 50% of the current assessed value.

Boone asked if that was the floor right underneath this part here. Are these screens? Ellis stated yes, those were screens. Those will be three by five feet window screens. Boone stated so it was screened in, it is not going to have any walls. Ellis stated there would be posts and then screen windows and some plexi glass in the winter that they can put up in the winter to keep it from the elements. Nathan stated he was basically taking it back to a boathouse. Ellis stated that was correct. It is basically going to be nothing but a screened in square patio upstairs and he was hoping to get some electricity on each of the walls and a ceiling fan in there and that would be about it.

Boone asked as far at the footprint goes; he was coming way back on the footprint. Ellis stated he was to adhere to the first ordinance that it cannot exceed so many feet – it was almost 900 feet -- now it is going to be 588 feet. Boone did not have any other questions. Ellis stated that would also satisfy no secondary living quarters so then I will hopefully be able to get a permit for the primary residence. Boone thanked Ellis.

Myers stated Boone asked most of the questions he was going to ask. There are no toilet facilities planned for the bottom floor. Ellis stated there was a desire to have toilet facilities but no, there will be no toilets, mechanical room, air conditioning or heating. He would like to have a water spigot outside somehow somewhere. Yes, that is correct. There will be no plumbing downstairs. Also the only thing he is asking that U.S. Waterproofing will be seeking a permit to tile that area because it is so bad now that we

want to tile it and run it out onto the side. That is not part of this discussion here but that is how we are going to try and keep it dry. The garage door will remain and they will have a side loaded garage door. It is something new on the market. It is a sliding door that slides to the side.

Porps stated the Board has all read their proposal and the Ellises have addressed everything the Board asked for. When he was at the property earlier he noticed the Ellises were going back to a modernized version of the boathouse that is next door to them. Ellis stated he has only seen that from the water but he believes that is what they have. Porps stated some of his notes from the original meeting included plans, which have been addressed; reduced its size, which has been addressed; bring down the roof, which has been addressed; vegetative, which has been discussed a little bit – may get back to that a little bit, which is run off issues; originally they wanted to keep the toilet, which has been removed.

Porps asked if there was anyone in the audience wishing to speak in favor of granting this appeal. Mary Ellen Yunker, 1731 East Lake Shore Drive, stated she had absolutely no objection to this variance. Porps stated for the record you are the neighbor to the south. Yunker stated that was correct.

Porps asked if there were any letters to be read into the record in support of the variance. There were none.

Porps asked if there was anyone in the audience wishing to express an opposing view to this appeal. Robert Jooss, 1154 Lucille Avenue, stated he did not necessarily have an opposing view but he had a few questions to ask as an alternate on the Board of Appeals. Porps stated as a Board of Appeals member, he would not swear Jooss in. Jooss asked about the page the talks about the property value from the assessor, the improved assessments for all buildings is \$139,900 and that includes the house. If your assessor says that building is worth \$80,000 that would mean your house is worth \$40,000. Ellis shows the assessed value of the property with both residence and the property itself was \$774,300. Jooss stated that was land. Improvements were \$139,900. Ellis stated he did not dispute the fact that \$40,000 is about what the primary residence is worth. He believed it was probably worth less than that. Jooss commented that the boathouse is worth twice as much as the residence. A couple other questions he had – you are too close to the property on the north, you are too close to the lake and you are too high a building that could be built conforming without a variance being asked -- the books say if a building can be built without a variance, the variance should not be granted.

Porps asked if there were any letters of opposition. There were none. Lack of opposition is not a reason for granting a variance.

Porps asked if there were any more questions. Myers stated the survey did not depict the new changes like the side of the boathouse. He wondered if the survey needed to correctly reflect that. Porps stated he was sure Mr. Ellis would agree to an updated survey. The overall plans are to tear down the main structure. He will need a survey for the foundation anyway. The survey could be updated at that time. The plans show the reduction in size in Illustration D. Porps asked the board members if they would like to see an updated survey prior to the removal of the main dwelling. Nathan stated since the Ellises were making the boathouse smaller, he did not believe it was necessary. Board members did not feel it was necessary. Porps asked Ellis to supply a survey to the Board when he has the foundation set for the new structure of the primary structure. Ellis stated he would do that.

The Board's action cannot be based upon its attitude toward the applicant or the proposed use. The decision must be based upon the Zoning Ordinance and the facts presented at this hearing.

Porps stated there was a lot here. He would be the first one to say that. We can take them one at a time or we can lump them all together. He believed we had to look at it as an entire package because resolving one of the requests would suffice. If we are going to look at them individually, granting one or two of them would serve no purpose. If the building has to be moved, you will have to do the whole thing. Porps stated what the Board has asked for; the owner has tried to the best of his ability to comply with reducing the size of the structure, lowering the height, removal of all living conditions bringing it back to a conforming use even though the structure is non-conforming. The non-conforming use will disappear when everything is removed from the inside. Porps stated he wished there was not as much concrete and stuff along the shoreline. There is no place for water to be absorbed between the front of the building and the lake. The majority of it is certainly solid. Porps believes the applicant has attempted to conform with what the Board requested to the best of his ability. Boone asked Ellis why he did not build the boathouse back so it conforms to the Ordinance. Ellis stated his feeling was that the property is only 94 feet wide and it would reduce several of the large trees that are in the way if we planned on doing that. It would amount to filling in a big cement hole that is there – a basement basically – he did not believe it was a logical thing to do at this point. I'm not avoiding your question but I want to get to your concern first. Then I will get back to that. You said you wished there was not as much concrete between the house and the water. Ellis stated 54 feet of that concrete has always been there. He just kind of made it look nicer on top by putting the rip rap wall in. As far as moving it, he does not really want to move it because it would take away the beauty of the house they plan on building within 61 feet that they have to build a house. Those were the numbers he received from Popanda on how wide he could have his primary residence. Moving the boathouse has not even been thought about and hopefully they will not have to think about that.

Public Interest – Boone did not believe public interest was being upheld. He believed the Ordinance is designed for a specific purpose. He can still use his property if he does not have his boathouse where it is today. The idea is to protect the shoreline and to protect the lake. That is the purpose of the Ordinance so he did believe it was upholding the public interest. Myers stated although

Ellis has made an attempt to reduce the size of his structure, he agrees with Boone. It may not be the plan that you would like but you do have the room to move that boathouse back to bring it into compliance. Kuhlmeier stated although compliance was an issue, Ellis was removing the living conditions and making it recreational. It seems like a major issue to move the boathouse. Nathan stated he agreed. Ellis could leave it the way it is and take the living quarters out of it and remodel his house. Porps stated remove the non-conforming use, leave the structure as it and remodel the house as is in the existing footprint of the house. He said he could not answer for Popanda but he would agree with that. Nathan stated so you are not reducing the size of the boathouse at all. If he moved the living quarters and the washrooms, he thinks Popanda would grant him a permit for the house. Not to add onto the house without going before the Board of Appeals. Porps stated he agreed with that. The question is it is currently two dwellings on a single lot. By removing the living space there, he has removed the non-conforming use part of the non-conforming structure. The non-conforming structure can stay. Boone stated that was not why he did not grant the – Porps stated that was part of it. Boone asked where it said that. Porps stated it was Ordinance 17.38.080 (B), the last one. Nathan believed in a way public interest is being protected. Boone stated the last one 17.38.080 (B) – Porps stated when a non-conforming structure containing a non-conforming use – that is what he has, a non-conforming use. Boone stated but I thought you were saying he now has two living structures on one property. Nathan stated he does and it is not legal. Boone stated he did not see that anywhere in here – the reason why Popanda stated he could not do it. Ellis stated that was the reason Popanda quoted him as saying the pre-existing non-conforming illegal piece of property. Nathan stated it is agreed the boathouse is too close to the water and too close to the lot line but it is existing. If you remove all living quarters, that makes the house – Boone stated Popanda did not talk anything about that in his letter. Porps stated what we are talking about is the boathouse. The two dwellings on the same property have not come to light here because they are not talking about the main structure. We're not talking about the main house. They are strictly dealing with the problems with the boathouse. In the overall picture, he has two homes on one parcel. Boone agreed with that. Porps stated let's take it the other way. Let's say Ellis wanted to tear down the main house, he could make this boathouse into his primary residence. He could do that. The only two issues before the Board then would be the setback from the lake and the setback from the side yard. Boone stated and whether it is more than 50% of its current locally assessed value. Porps stated because it was a non-conforming structure. Boone stated if he is going to knock down more than 50% of it, then to do that – I'm trying to speak for Popanda here but I don't know he would say. Nathan stated he was not taking any foundation out. He is just taking the wood structure down. It goes back to the main residence. Wisconsin State law states as long as they build on the existing footprint, if he were to tear the main house down, he could keep that boathouse where it is at because of the main living quarters. Boone stated he did not disagree with that. Porps believes Ellis has upheld the public interest. He is saying that because Ellis is willing to make it smaller, remove its non-conforming use and bring it back to what it was originally designed for. If the previous owner had not made it into living quarters, there is a possibility that we would not be here because it would not be an issue. He is bringing it back to what its original intention and he believed that was upholding the public interest.

Unique Property Limitation – Porps stated just about every parcel around either lake due to the slope, the width of the parcels, current existing landscaping, trees, sewer lines, etc., etc., Twin Lakes has some unique features and the lakefront parcels are probably the most unique. He believed that was true in every case. Myers agreed there was unique property limitation with the steep slope that he has to contend with and where everything is already currently placed. Nathan agreed there is unique property limitation. Kuhlmeier stated all the other structures were built to the old codes and the new codes just kind of wipe them out and make them a problem. Boone believed it was a property limitation if he has a lot of big trees that he has to knock down. To him, that would be a unique property limitation.

Unnecessary Hardship – Porps stated this was always the most difficult question to answer. For a use variance and that is where we are talking about the removal of the bathroom and kitchen, etc, -- for a use variance, unnecessary hardship exists only if there is no reasonable use of the property without a variance. He has reasonable use. He does not think there is any question that the bathroom, kitchen and living space has to go. He has reasonable use of the property without that. For a dimensional variance which is the rest of it, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Whether the standard is met depends upon the purpose of the zoning restriction in question, its effect on the property and the effect of a variance on the neighborhood and the larger public interest. So does the owner have an unnecessary hardship when it comes to the boathouse? Boone stated he did not see how you can say that a use variance, an unnecessary hardship exists if he's going to have an unnecessary hardship because he is already using the property. Porps asked if he was talking about the dimensional variance. Boone stated he was talking about the use variance. Porps agreed with that. He is using the property. So he did not believe there was any question that the bathroom and the living space have to go. Boone stated that is not how he would read that – that the bathroom and the living space go – he reads it that if he is not given a variance, to me that means he has an unnecessary hardship if he is not given the variance. Porps asked if he was talking about the use variance. Boone stated he was talking about the use variance. Porps asked if he could use the property if there was no bathroom in the boathouse. Sure he can. So there is no reason that you could possibly justify that he needs the living space in that boathouse. Boone agreed with that. Porps stated that brings us back to one question, the dimensional variance, and the setback issues. Is it a hardship to make Ellis tear the boathouse down and move it? Are those restrictions unnecessarily burdensome? Are we forcing him to do something that is not necessary? Boone stated he was already tearing it down. Kuhlmeier stated somewhat, moving the boathouse is another issue. Porps agreed moving the foundation would be another issue. Kuhlmeier believed it was unnecessary hardship. Myers stated he knew there was room to move it but he believed it would be a hardship to move that foundation. Boone did not believe it was an unnecessary hardship. He

believed he could build it back further and be in compliance with the ordinance. Myers believed it would be an unnecessary hardship to remove the whole boathouse and move it. Porps stated he looked at the fact that there are many boathouses around the lake. Some are in better condition than others. He did not believe in their lifetime they would see all the boathouses disappear. The boathouses will remain there. He did not believe that all boathouses would be brought into conformity either. So the question is, the owner is currently trying to improve the situation, moving the boathouse back is not even the real issue because we are talking about 12 feet versus 15 feet. We are only talking about moving it back about three feet. The real issue is moving it to the left 15 feet and that would certainly affect his view from his proposed structure. If he tears the boathouse down and removes the foundation and has to move the building, it is only going to come back a few feet so it has not solved too much as far as its distance from the lake and moving it over 15 feet will affect his view from his proposed new house. The one neighbor here has not objected to it. The neighbor on the opposite side was notified and is certainly aware of where the structure is has not come into complain or wrote a letter. Porps asked Ellis if he has spoken to the other neighbor. Ellis stated he has not spoken to the owner because he has never really met him because there seems to be a lot of people living there. He has met some brothers and other folks who seem very nice but he does not know them very well. Porps stated they have certainly been given the opportunity to voice an opinion. Ellis stated he spoke to the brother of the gentleman who owns it and he explained what they intended on doing and he was really encouraged by that.

Bill Porps, 123 W. Park Drive, asked if Ellis had to tear the boathouse down because he already has a garage here, would he even get a permit to build a second secondary structure. Tom Porps stated that was discussed during the first meeting. The other garage is not included in this question, the other accessory structure. He thinks it will probably come to pass when he deals with the main house. Bill Porps stated there is a question here whether he would have to tear the building down and move it back to be conforming. If he did that, are you going into another situation where he would not be allowed to do that because he already has another accessory structure. Tom Porps stated he did not know. Bill Porps stated he was confused when the Board was talking about the height factor – the existing structure is 16.4 feet from grade. On these drawings here it shows a dotted line which says it is an existing grade – Exhibit F is showing 14.6 feet from grade but that appears to be from a proposed grade not the existing grade. The existing grade is two feet below that. Tom Porps stated the existing grade when this structure is finished – we are currently measuring from the average grade and that is where the 18 feet comes in. Bill Porps stated it was not the 16 feet – 16 feet of the existing building is measured from the existing grade. Tom Porps agreed with that. Bill Porps stated if you measured from the existing grade for the new building – it is not going to be the 14 feet. Tom Porps stated he wished they had not put that existing grade in there because it does not mean anything. Bill Porps stated it was a proposed grade. They are measuring from where they think it is going to be. It is very confusing because the building is not going to be 14 feet from the existing grade of where it is today. This is after it has been filled in. Tom Porps stated from what he understands from the plans, there will be nothing filled in. Bill Porps stated it shows on the drawing there the proposed grade, the compacted fill. Tom Porps stated what they are filling in there is just what is underneath the existing structure. About 10 feet off the back of the building is coming off so what is underneath there – maybe a crawl space – they are just going to make the ground level to what is there. Right now you walk up to the back of the building and it is grade, then remember you are going to go 10 feet farther forward – they are just going to extend that existing grade at that height. Bill Porps believed it was very confusing. Tom Porps asked Bill Porps to come up and he would explain it to him. (Further explanation followed.)

Variances are not precedent setting. Each case is judged on its own merit. Likewise, similar existing cases or past practice are not reasons for granting a variance. In granting a variance the Board of Appeals overrules one or more Village Ordinances. If a variance is granted today, any aggrieved party will have 30 days to appeal the decision to the circuit court.

In addition to meeting the statutory requirements, the following conditions are required. The motion to grant or deny the variance is based on the survey presented at this time, the plans presented and the actual statement of the variance requested. The survey from the June 13, 2007 public hearing is to be marked as Exhibit A. Illustrations A, B, C, D, E, and F as plans are to be marked as Exhibit B. John and Karen Ellis: “You are requesting multiple variances to allow for alterations to your existing non-conforming structure containing a non-conforming use. Variance #1. A side yard setback of 0.2 feet in place of the required 15 feet. Variance #2. A shore yard setback of 12.06 feet in place of the required 15 feet. Variance #3. The height of your structure to be 18 feet eight and one quarter inches in place of the 12 foot maximum (Illustration E). Height from the proposed southwest elevation 10/03/07. Additional condition is complete removal of the non-conforming use, that being the living space.” Ellis agreed with that and circled yes on the form.

After the motion to grant or deny the variance has been made, seconded, discussion held, if any, and voted upon, the matter is closed. If you are not satisfied with the results, and you can present substantial new evidence, you may reapply and pay the associated fees. You may also appeal the Boards’ decision to the circuit court. The variance is based on the survey as presented, and the actual placement must substantially conform to the survey as presented. This variance, if granted, is conditional upon the owner having the title amended to include the variance. (Variances “run with the land”, this will protect you or any future owner should any question ever arise over the encroachment in the setback area.) Any and all fees, legal, recording etc. are the applicant’s responsibility. The Building Inspector or the Board of Appeals will verify the amendment prior to issuing a building permit.

The contemplated completion date of the project is 11/20/08.

MOTION BY KUHLMEY, NATHAN, TO GRANT THE VARIANCE. ROLL CALL VOTE: BOONE-NO; KUHLMEY-YES; MYERS-NO; NATHAN-YES; PORPS-YES. MOTION CARRIED (3-2). VARIANCE GRANTED.

Motion by KuhlmeY, Boone, to adjourn at 8:15 p.m.

***Signed Copy Available at the Village Hall***

Cynthia Skrypt  
Board of Appeals Clerk

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