

**SHERBURNE COUNTY
BOARD OF ADJUSTMENT
MINUTES
FEBRUARY 8, 2018**

Chairperson Lawrence called the meeting to order at 6:01 P.M.

Roll call was taken.

Members Present:

Bryan Lawrence – Vice-chair

Steve Demeules

Jeff Schlingmann

Roger Nelson

Staff Present:

Nancy Riddle – Planning & Zoning Administrator

Kathy Heaney – County Attorney

Mitch Glines – Zoning Specialist

Kelly Mittelstaedt – Secretary

Lawrence informed everyone the meeting would be audio-recorded.

Schlingmann made a motion to approve the minutes from the December 14, 2017 Board of Adjustment Meeting. Nelson seconded the motion. All in favor. Motion passed.

Nelson made a motion to approve the evening's agenda. Demeules seconded the motion. All in favor. Motion passed.

ELECTION OF OFFICERS FOR 2018:

Current officers are: Roger Johnson, Chairperson; Bryan Lawrence, Vice-chair; Kelly Mittelstaedt, Secretary; Judy Weber, Alternate Secretary.

Nelson moved that the current officers remain at their posts. Schlingmann seconded the motion. All in favor. Motion passed.

6:04 P.M. MATTHEW BURTON & DYLAN HOWARD: (Property Owners: Howard Root & Beth Heinemann) Requesting a 24' variance to the OHWL of Little Elk Lake for construction of a pool with auto cover. Address: 28428 Elk Lake Rd E, Zimmerman, Mn 55398 Legal: Parcel 1 Beginning at a point 200 feet South of the North line of said Lot 2 . . . (full legal on file) Sec 31, Twp 35, Rge 26 Baldwin Township 2.58 Acres General Rural District and within the General Development Lakeshore District of Little Elk Lake and the Natural Environment Lakeshore District of Goose Lake.

Lawrence read the variance request.

Glines said the staff comments include information on building the house but the variance is for the pool only.

Lawrence said staff comments were included in the board's packet and they have had time to review them.

Howard Root, 25 Fairhope Ave, Tonka Bay, Mn was present.

Mr. Root explained others that were with him were his wife, Beth Heinemann, his brother-in law Doug Heinemann, Contractor Dylan Howard from Princeton, Matt Burton from Shoreview Design and neighbor Mike Sandin.

Mr. Root explained the property had been in the family for over 75 years through 4 generations. The house was built in 1971. He and his wife purchased the property last year with intent of tearing down the original house and constructing a new house. They hired Dylan Howard for the building and house design. Dylan spoke with Planning & Zoning about the plans and originally they wanted a detached garage with a carriage house on top for extra room for guests. They were told they couldn't have two living structures on one parcel. So they decided to make the garage attached so it's all one structure. The pool is an infinity edge pool which has a water fall. Dylan talked with staff about where the pool could be positioned. The DNR has a 50' setback and there is a 75' setback for structures. The question became is a pool a structure? They were originally told that if the pool was an in-ground pool that had a cover and not a fence then it's not considered a structure and can be placed up to 50' from the OHWL. After that they finalized the plans and pulled the permit for the house and started building the house. By December they had substantially completed the garage portion with the carriage house on top of it and the foundation that attaches that to the main portion of the dwelling. At this point Matt, from Shoreview Design, found out from staff the interpretation of a pool not being a structure had changed. They were told any in-ground pool was considered a structure and needs to be 75' back from the OHWL. If they would have gotten that advice from the beginning it would not have been a problem because the lot is 600' long and there would have been plenty of room to move it back. Now the options are to either move the house back or he would have to tear down the completed garage and carriage house. They could try to put the pool on the side of the house but if they did that it wouldn't be able to be an infinity edge pool because it doesn't have that edge going down to the lake.

Schlingmann said the issue is that at the beginning staff said the pool was not a structure and after the applicant started construction they received a second definition from staff that it was a structure.

Mr. Root said that was correct.

Schlingmann asked staff how that happened.

Riddle said from what she was told originally someone from the DNR was consulted and they said a pool does not need to meet the setbacks. In the meantime he was given his permit. Then someone else from the DNR called and said the pool did need to meet the setbacks. Riddle did think a pool was a structure. At that point the only option was for the applicant to apply for a variance because he had already started the home.

Schlingmann asked if the pool met the county's definition of a structure.

Riddle said yes it does.

Nelson asked what the difference was whether it had a fence or a pool cover.

Riddle said she wasn't sure. If it doesn't have a cover it needs to have a fence. She wasn't sure what that had to do with setbacks though.

Schlingmann said the practical difficulty was not caused by the owners but was caused by the interpretation by staff.

Riddle said that would be a valid finding.

Mr. Root said he did not agree with the finding of fact by staff that the applicant created the practical difficulty.

Schlingmann said the findings of fact are done by the board. What was written in the staff comments is a suggestion by staff.

Demeules asked how far the pool would be from the OHWL.

Mr. Root said it would be 51'.

Riddle said the new house will be further back from the lake than the original house was.

Demeules asked how the infinite pool works as far as recycling the water.

Mr. Root said there is a basin the water runs into when it goes over the side of the pool. The edge of the basin is 51' from the OHWL.

Lawrence asked if anyone in the audience had any comments or questions.

Mike Sandin, 28338 Elk Lake Road East, Zimmerman, Mn explained he lives 2 houses to the south of the applicants property. He said what they are proposing will not impede any of the neighbors. He thought the improvements would be an upgrade. There are currently 2 other pools on Elk Lake that are within the 50' setback. He hopes the variance passes.

Schlingmann motioned to close the public hearing. Demeules seconded the motion. All in favor. Motion passed.

Schlingmann motioned and Nelson seconded the motion to approve the 24' variance to the OHWL of Little Elk Lake for construction of a pool with auto cover with the following conditions and "Findings of Fact":

Mr. Root asked if he could discuss some of the conditions.

Heaney said that would be up to the Chairperson but they are not bound by the Roberts Rule of Order.

Nelson asked if the applicant would need permission to remove dead trees.

Riddle said they are doing extensive landscaping on the property so they will need a shoreland permit showing all the things they are doing. They do need to show what trees are being removed and if they are dead or not.

Riddle thought condition #4 should be taken out. It goes along with the building permit and it's not really relevant to the variance.

Both Schlingmann and Nelson were ok with removing condition #4.

Mr. Root said he had a question about condition #5 which states "The retaining wall and pool face must be a natural color and the retaining wall must be treated to make it as unobtrusive as possible as viewed from public waters and adjacent shorelands". He said the principle color of the pool was blue. There will be some grey also in the brick wall.

Matt Burton, Southview Design, 2838 Pilot Knob Road, said they are trying to stick with a natural color of grey tones with the house. The water wall will be blue in color but the rest of the retaining wall will be covered with native plant material so it will have a natural look.

Riddle said that was fine.

Mr. Root said it calls for the "retaining wall to be treated to make it as unobtrusive as possible". The wall will not be made out of lumber. They will be planting shrubs in front of the wall on either side of the water fall edge. They will not be making an eye sore but don't want to have to plant shrubs all around the infinite edge pool.

Lawrence said he would take note of the comments and agree they have an understanding of what the intent is with the shrubs and with the natural colors that they are presenting. The applicant's intent has been understood.

Conditions:

1. The applicant must obtain a building permit and pay the associated fees prior to starting work on this project.
2. The applicant must install erosion control around perimeter of project to minimize construction run-off.
3. The applicant must obtain a Major Shoreland Alteration Permit prior to construction of the pool. Other proposed projects on the property, such as but not limited to: grading, shoreline restoration, vegetative plantings, replacement of the steps to the lake, installation of a fire pit, and the installation of a walkway must also be included on the Major Shoreland Alteration Permit application.
4. The retaining wall and pool face must be a natural color and the retaining wall must be treated to make it as unobtrusive as possible as viewed from public waters and adjacent shorelands.
5. No additional trees may be cut down or removed from the property without prior approval from the County.

Findings of Fact:

1. Is the variance in harmony with the intent of the comprehensive plan and zoning ordinance? Yes (X) No () The area shown was developed as a residential area around the lakeshore and the present zoning allows this type of use.
2. Without the variance is the property owner deprived of a reasonable use of the property? Yes () No (X) There isn't a pool there right now with the existing structure. The property is large enough that it could accommodate a residential dwelling. The pool is an add-on.
3. Is the practical difficulty due to circumstances unique to this property? Yes () No (X) There is a large enough lot that would have accommodated the structure and the pool on the lot.
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No () Misinformation supplied and relied upon by the applicant was given by county staff that created the practical difficulty.
5. Will issuance of the variance maintain the essential character of the locality? Yes (X) No () It's primarily residential. There are other pools in the area and it will not detract from the surrounding area.
6. Does the practical difficulty involve more than economic considerations? Yes (X) No () To enhance the livability of the structure.

All in favor. Motion to approve passed.

6:25 P.M. Nelson moved and Demeules seconded to adjourn. Motion carried. Meeting adjourned.

Submitted by: Kelly Mittelstaedt

