

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

Chairperson Lawrence called the meeting to order at 6:00 P.M.

Roll call was taken.

Members Present:

Bryan Lawrence – Vice-Chair

Jeff Schlingmann

Roger Nelson

Steve Demeules

Staff Present:

Nancy Riddle – Planning & Zoning Administrator

Lynn Waytashek – Assistant Planning & Zoning Administrator

Mitch Glines – Zoning Specialist

Kathleen Heaney – Sherburne County Attorney

Kelly Mittelstaedt – Secretary

Lawrence informed everyone the meeting would be audio-recorded.

Lawrence had a question about the minutes from February 8, 2018. On the 3<sup>rd</sup> page “Mr. Root said he did not agree with the finding of fact by staff that the applicant created the practical difficulty.”

Mittelstaedt said she would listen to the tape recording again.

Nelson made a motion to approve the minutes from the February 8, 2018 Board of Adjustment Meeting with staffs amendment. Schlingmann seconded the motion. All in favor. Motion passed.

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

**6:03 P.M. BRIAN & MICHELLE JENSEN:** Requesting a 9' variance to the north property line for an addition to existing detached garage. Required setback is 10'. Address: 25302 189<sup>th</sup> St NW, Big Lake, Mn Legal: Parcel 4 the W 675' of E 1135' of SW ¼ Lying S of N 2317.66' . . . (full legal on file) Sec 18, Twp 34, Rge 27 Orrock Township 5.02 Acres General Rural District and within the Natural Environment Lakeshore District of Unnamed Lake #71007000.

Lawrence read the variance request.

Glines said staff comments have been presented and he doesn't have anything additional.

Brian Jensen, 25302 189<sup>th</sup> St NW, Big Lake, Mn was present.

Mr. Jensen said the property line was misread 13 years ago. The neighbor told him it was surveyed years before and the tree line was the property line. The tree line was planted all in a row so it made sense at the time. If he had to build another building it would need another power supply and another heating supply. He didn't know he had an issue until he applied for a building permit. The trees have already been cleared for the addition. One part of the new addition will be 7' from the property line and the other end is 12' from the property line.

Schlingmann said the existing building is the part that's 1' from the property line.

Mr. Jensen said that was correct.

Heaney asked what the building was going to be used for.

Mr. Jensen said it was for storage, his shop, wrenching. He has trailers and a yard full of stuff he would like to keep inside.

Heaney asked if he has a conditional use permit on the property.

Mr. Jensen said no.

Heaney said the reason she asked was because according to the internet "Big Pine Printing" is located at the same street address.

Mr. Jensen said his wife was a broker. They broker printing as a sales rep. Everything she does is on the phone.

Heaney said she needed to be assured the building was not being built to facilitate a business.

He said he needed the 14' doors for his work truck and boom trucks he brings home from work. He does wrenching for the company he works for on the side. Sometimes he brings the work trucks home to change the oil. He also would like to store his camper inside.

Heaney felt they needed to specifically delineate that this is not being used for any type of commercial use what so ever. She suggested they check on anything else the printing operations may require with Ms. Waytashek.

Lawrence asked if anyone in the audience had any comments or questions. No one did.

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

Lawrence read the recommended conditions.

Schlingmann motioned and Nelson seconded the motion to approve the 9' variance to the north property line for an addition to existing detached garage with the following conditions and "Findings of Fact":

**Conditions:**

1. The applicant must obtain a building permit and pay the associated fees prior to starting work on this project.
2. Must install the new septic system prior to building permit being issued.
3. No business can be operated from the accessory structure.
4. No living quarters are permitted in the accessory structure.

**Findings of Fact:**

1. Is the variance in harmony with the intent of the comprehensive plan and zoning ordinance? Yes (X) No ( ) The area is zoned rural residential, it's a large lot, the square footage of the building meets all code requirements, it's basically correcting a boundary issue that happened a while ago where the original building was set at the wrong dimension.
2. Without the variance is the property owner deprived of a reasonable use of the property? Yes ( ) No (X) He has a large enough property that he could put a second building and meet the setback requirements.
3. Is the practical difficulty due to circumstances unique to this property? Yes (X) No ( ) It is unique in the aspect that there was a misunderstanding on the original boundary line and the adjoining property owner and the current property owner determined the line was at the point where the building is now.
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes ( ) No (X) It was created mutually between the landowner and the neighbor.
5. Will issuance of the variance maintain the essential character of the locality? Yes (X) No ( ) The area has large lots, they are 5 plus acres, the variance really is predicated on the proximity of the existing building to the lot line.
6. Does the practical difficulty involve more than economic considerations? Yes ( ) No (X) It's not a consideration. The addition of the building is more convenient in that the utilities are already in place.

All in favor. Motion to approve passed.

**WILLIAM BOETTNER:** Requesting a variance to Section 17, Subdivision 8.3 – which restricts the size of an outbuilding on properties less than 5 acres to a maximum size of 1800 sq ft. The applicants request is for a 3000 sq ft outbuilding on a 4.5 acre platted parcel. Legal: Roslyn Addition Lot 1, Block 1 Sec 4, Twp 33, Rge 27 Big Lake Township 4.5 Acres General Rural District.

Lawrence read the variance request.

Schlingmann said the request was for an outbuilding on a lot without a primary residence. He asked what the name of that type of building was.

Glines said it was a personal storage structure.

Schlingmann said a personal storage structure was granted by what and by whom.

Glines said it was granted by the Planning Commission as a conditional use permit.

Schlingmann said in the county ordinance under conditional use item H. Personal Storage Structures – will not be allowed in platted developments unless in the Shoreland District. This area is in the general rural district so you can't put a personal storage structure on a platted lot in the general rural district. The use is a prohibited use and as the Board of Adjustment they cannot grant variances on prohibited uses. He thinks the request should be set aside.

Glines said the applicant will not be able to construct the building without first pulling a building permit for the house also.

Schlingmann said he needs to construct a residence before it can be classified as an accessory use. Another issue is dimensions. As the Board of Adjustment they can grant variances based on dimensional regulations. Size is not a dimensional regulation. It's a product of dimensions – height, length and width. According to the ordinance the Board of Adjustment can't grant a variance on size.

Waytashek said according to building code you have 6 months to start a building once you receive a permit so she thought they could pull both the house permit and the out building permit at the same time.

Schlingmann said at this time there is not a residence there. He felt it was a non-issue for the Board of Adjustment. They should be going to the Planning Commission to request an amendment to the zoning ordinance.

Riddle said she didn't disagree with Schlingmann on the part that they are asking for a variance to something and it's not an accessory building until the house is built. People have pulled building permits for both and then the house doesn't get built.

Lawrence said he agrees with Schlingmann on just about everything he says but they aren't being asked to judge whether they build a building or not. They were being asked if they build a building will they grant a variance to a larger size. Whether they build the building or not isn't their judgement call. He agrees the house should be built first.

Waytashek said they could make the requirement that they pull the house permit and start the house before.

Lawrence asked Heaney if she had guidance for the board.

Heaney said they need to act on the facts before them at the time the request is made. She did not look at the ordinance before the meeting. If it doesn't fit within the ordinance it doesn't matter if they get the variance or not. If it's not allowed – it's not allowed.

Riddle said a personal storage structure is allowed on a lot that doesn't have a house with a limitation of 1800 sq ft unless it's less than 2 ½ acres – then it can go up to 1200 sq ft. It's not allowed in a platted development unless it's in the shoreland district. So a personal storage structure would not be allowed here.

Heaney said if they had a residence on the property already that would be treated differently. What has happened here is a matter of timing.

Schlingmann felt a dimension regulation was height, length, width but it isn't size of a building. He said the board can't act on size. He felt the applicant would need to go before the Planning Commission for an amendment to the ordinance.

Heaney explained to the applicants they may have the cart before the horse situation.

Mr. Boettner said they wanted to get the building up and then store some of the lumber in there and some of the stuff from the previous home.

Heaney said if you don't have the home you don't get the personal structure. It doesn't fit within the zone right now.

Mr. Boettner said the home would start within a few weeks of the storage building.

Heaney said the 2 choices the applicants have are to have the board go ahead and vote on the request or they could ask for the request to be tabled.

Riddle said they could also withdraw the request.

William and Deb Boettner, 14240 Shadow wood DR, Rogers, Mn were present.

Mrs. Boettner said they are allowed to have a total of 3,000 sq ft of buildings on the property but instead on having multiple structures they just wanted one building at the maximum of 3,000 sq ft. The bank said they could have a construction loan and they would be able to borrow them

money based on if the structure was on the lot first they would borrow them more money to be able to build the house. It would be more financially sound for them that way.

Schlingmann thought if they went for the amendment to the ordinance it would benefit others that have approximately the same size lot.

Lawrence said he would like to see further documentation that they can't rule on the applicants request given the fact that they can build 2 - 1,500 sq ft buildings and build them 6 inches apart and be ok. They would like to build one of those buildings and eliminate the wall between them. He would like something factual saying the board can't vote on dimensional because he doesn't think it's the first dimensional question they have had.

Heaney said the first question the board has is you have a building where there's no principle structure and is that an allowed use. What she heard from Ms. Riddle was that it's not an allowed use under the ordinance. Therefore, the home needs to be built first.

Heaney again went over the 3 choices the applicant's have before them.

Lawrence said let's assume they are going to build the home first and immediately after that they want to build the accessory structure – but they want to know will they be allowed to build a 3,000 sq ft building.

Heaney said the difficulty for the board is that they are doing this based on a future contingency and every time a future contingency is put in they subject themselves to problems. The board is designed to say is this an allowed use under the ordinance and have they met the conditions. They haven't because there's no principle residence.

Heaney said they are asking for a variance from something that they can't do.

Mrs. Boettner asked if they had to have the house completely finished before the building can be started or can they be built simultaneously.

Heaney said it requires that a primary residence be in place and that would require a certificate of occupancy be given.

Mr. Boettner asked if they could park a 5<sup>th</sup> wheel trailer on the property.

Heaney did not want to get involved with speculation. Those are good questions to ask of the zoning staff. The board can only act of what is in front of them.

Lawrence asked how long the applicants could table the request.

Riddle said there was no limit on when the variance needs to be decided if they sign the 60 day waiver.

Lawrence said if the variance was denied the applicants would need to wait a year before they could come back before the board.

Mrs. Boettner said they were planning on building this summer.

Schlingmann thought the ordinance amendment was the way to go.

Lawrence said they have ruled on size variances before so wondered why all of a sudden they can't.

Riddle said staff would research that issue.

Heaney said if the applicants choose not to have the board act on the request the zoning staff will continue to work with them on what the options are.

Mrs. Boettner said they have a house and pole building now and she doesn't know where they are going to put everything if they only have the new house.

Mr. Boettner asked if he could park semi-trailers on the property to put stuff in.

Heaney said that is something he could work with staff on.

Waytashek said tabling the request would give the applicants the most options.

Nelson motioned and Demeules seconded the motion to table the variance request with the signature of the applicant on the 60 day waiver.

All in favor. Motion passed.

**GEORGE KURTZ & NANCY LOIDOLT:** Requesting a 6.3' variance to the road right of way for a new attached garage and addition to existing house. Address: 3580 River Rd SE, Clear Lake, Mn Legal: Long Lake Park Lot 10 Sec 4, Twp 34, Rge 30 Clear Lake Township .73 Acres Agricultural District and within the Recreational Development Lakeshore District of Long Lake.

Lawrence read the variance request.

Glines said he didn't have anything further to add to the staff comments or recommended conditions.

Nancy Loidolt, 10901 127<sup>th</sup> St SE, Clear Lake, Mn, was present. This is her current address. They are moving to 3580 River Rd SE, Clear Lake, Mn.

Mrs. Loidolt said the existing garage is too close to the road already. They assumed they could take that garage down and build a 32' garage. They then found out they were 6.3' too close to the road. If they had to move the entire structure back it would change the plans for the house and she didn't want a bigger house. The neighbors have a huge shed that's right off the road. They have done a lot of landscaping to try to contain water from the road that goes into Long Lake.

Glines said the variance was needed because they are adding onto a legal non-conforming structure. The line-up rule does not apply on county state aide highways.

Lawrence asked if anyone in the audience had any comments or questions. No one did.

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

Lawrence read the recommended conditions.

Demeules motioned and Nelson seconded the motion to approve the 6.3' variance to the road right of way for a new attached garage and addition to existing house with the following conditions and "Findings of Fact":

**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 the perimeter of project to minimize construction run-off.
3. Applicant must apply for and obtain a Shoreland Alteration permit prior to construction.
4. Applicant must maintain less than the 25% impervious surface area on lot.

**Findings of Fact:**

1. Is the variance in harmony with the intent of the comprehensive plan and zoning ordinance? Yes (X) No ( ) It doesn't change the plans, use or zoning district.
2. Without the variance is the property owner deprived of a reasonable use of the property? Yes ( ) No (X) They already have an existing garage so this is just to add more space.
3. Is the practical difficulty due to circumstances unique to this property? Yes (X) No ( ) The existing structure is too close to the highway. This isn't getting any closer to the highway. It was constructed prior to the zoning ordinance.
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes ( ) No (X) The applicant wants the addition.
5. Will issuance of the variance maintain the essential character of the locality? Yes (X) No ( ) It's similar to other structures in the area.
6. Does the practical difficulty involve more than economic considerations? Yes (X) No ( ) They are not building to save money – it has nothing to do with saving money on this project.

All in favor. Motion to approve passed.

**6:55 P.M.** Nelson moved and Schlingmann seconded to adjourn. Motion carried. Meeting adjourned.

Submitted by: Kelly Mittelstaedt