

**SHERBURNE COUNTY
BOARD OF ADJUSTMENT
MINUTES
APRIL 12, 2018**

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

Roll call was taken.

Members Present:

Roger Johnson – Chairperson

Bryan Lawrence

Jeff Schlingmann

Roger Nelson

Steve Demeules

Staff Present:

Lynn Waytashek – Assistant Planning & Zoning Administrator

Mitch Glines – Zoning Specialist

Kathy Heaney – Sherburne County Attorney

Kelly Mittelstaedt – Secretary

Schlingmann made a motion to approve the minutes from the March 8, 2018 Board of Adjustment Meeting. Demeules seconded the motion. All in favor. Motion passed.

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

Johnson informed everyone the meeting would be audio-recorded.

6:02 P.M. CUSTOM POOLS, INC (JAN BLOUNT): (Property Owners:John & Tamara Koski) Requesting a 45' variance to the OHWL of Lake ID #71001800 which is a Natural Environment Lake for construction of a pool. Required setback from the OHWL is 150'. Address: 14578 268th Ave NW, Zimmerman, Mn Legal: The Woodlands of Livonia Lot 11, Block 2 Sec 6, Twp 34, Rge 26 Livonia Township 2.62 Acres General Rural District and within the Natural Environment Lakeshore District of Lake ID #71001800.

Jan Blount, 8960 Excelsior Blvd, Hopkins, Mn was present. She is from Custom Pools, Inc.

Ms. Blount explained the homeowners installed a ditch plug to move the OHWL back but that a variance is still needed for the pool. The pool is going as close to the house as possible.

Nelson was surprised it was considered a lake because it's full of cattails. It's more of a cattail swamp in his opinion.

Ms. Blount said the DNR considers it a lake. She said the homeowner was surprised it was a lake too.

Johnson asked if the pool would be drained in the fall to allow for the expansion of the ice.

Ms. Blount said with the kind of cover they have they won't need to completely drain the pool. They will need to drain it about 6 -8".

Johnson asked if it would be a salt water pool or chlorine pool.

Ms. Blount said she thought they were doing salt water.

Johnson asked where the water would go when it's pumped out.

Ms. Blount said normally people take the back wash hose to the front of the yard down the driveway. They could put a cartridge filter on if that's what was requested.

Waytashek asked what a cartridge filter was.

Ms. Blount said it filters the water but you don't back wash during the season.

Waytashek asked what back washing was.

Ms. Blount said that just means cleaning the filter during the season.

Johnson said when you back charge it's cleaning out what is being syphoned and suctioned through and filtering everything out of the pool itself going into the sand. Periodically you back flush that with the same water from the pool. It will come out as a cloudy water mixture to start with and as it regenerates itself it will go back to as close to clear as it can.

Ms. Blount thought part of the reason for the ditch plug was so the pool water wouldn't run right into the pond.

Glines said the ditch plug was installed because when the house was being built they dug a man-made pond so that inadvertently caused the OHWL of the natural environment lake to get closer to the house. The owners worked with the DNR and Planning & Zoning to reestablish the historical OHWL. The ditch plug actually raised the elevation to the correct OHWL.

Lawrence asked where the ditch plug was located.

Glines said it was about 105' from where the proposed pool is going to be installed.

Lawrence asked what was used to plug the ditch.

Glines said it was filled with dirt and the DNR gave them specific instructions on how it needed to be done. It was then covered with a fiber blanket for erosion control.

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

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

Glines read the recommended conditions.

Lawrence motioned and Schlingmann seconded the motion to approve the 45' variance to the OHWL of Lake ID #71001800 which is a Natural Environment Lake for construction of a pool 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 perimeter of project prior to any construction activity to minimize construction run-off. Erosion control must remain in place until vegetation is re-established.
3. Applicant must maintain less than the 25% impervious surface area on lot.
4. Applicant must abide by MPCA's "Swimming Pool and Hot Tub Water Discharges Best Management Practices" for seasonal draining of the pool. (See attachment E)

Findings of Fact:

1. Is the variance in harmony with the intent of the comprehensive plan and zoning ordinance? Yes (X) No () This will continue to be a residential area (a home) with the typical amenities that a home has on 2.62 acres.
2. Without the variance is the property owner deprived of a reasonable use of the property? Yes () No (X) The property would still be able to be used as a residence – they would just not have the amenity of a pool.
3. Is the practical difficulty due to circumstances unique to this property? Yes (X) No () The previous owner dug a pond without a permit and the current owner filled it in to try to be more in conformance with the DNR.
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No () Because the original high water line is so close to the house that there is no place to put the pool. By placing the pool they are going inside the original high water line creating the need for a variance.

Lawrence said the circumstances causing the practical difficulty were created by the previous owner.

Heaney said the difficulty isn't caused by the prior landowner – that's not consistent with the evidence. The reason they are asking for the variance is because they want to put in the pool. So that is what's creating the practical difficulty is because of their placement of the pool. It's a 2.5 acre parcel.

Nelson asked about the lake that's not really a lake.

Heaney said legally from her stand point there really is no practical difficulty. This individual is creating the practical difficulty because of their request to put in a pool that's so close the re-established OHWL. She would have a tough time arguing that legally in her opinion.

Lawrence asked where they could put the pool that wouldn't need a variance.

Heaney said they could put it in front of the house, they could put it to the side of the house because they have 2.62 acres.

Ms. Blount said the pool needs to be usable. They have a high water table on the property and the location of the pool is very important in this situation. If it goes on the side of the house they wouldn't be able to access the pool. Nobody really wants a pool in the front yard.

Heaney said it's not where they want it located – it's whether they can locate it and those are 2 different things. The board does not deal with aesthetics.

Lawrence said the way the questions are worded they don't fit every scenario. Everyone comes in because they want to request something whether it's pool, a deck or an extra room. It's something they are creating to begin with because it's a request of a home they purchased in our county and they want to live there and make it their home. There are challenges to this request that they are coming to the board with. So if the term "practical difficulty" is going to be used – there were some practical difficulties that were caused by the previous owners. He does feel they should be able to have a pool in Sherburne County with 2.50 acres. The board has the ability to reasonably look at that and the board can work with the applicant to make that happen. They are requesting something that will increase the value of the property, increase the aesthetics of the area and will probably be used by other neighbors. He feels there are practical difficulties given the factors of the lot, the home and what was done in the past. The lake barely has any water in it at times.

Heaney said everything Lawrence talked about are interesting factors but she doesn't know if they legally respond to the question that is being asked. She is respectful of his opinion but her job is to tell the board whether or not they are operating in their legal parameters.

Waytashek asked if the pool could go on the side of the house.

Glines had previously asked the applicant that question and was told there was a drain swale in that area that would be altered if the pool was placed on the side of the house. The natural flow of water would be significantly altered.

5. Will issuance of the variance maintain the essential character of the locality? Yes (X) No () It is a residential area and there are other pools in the area as well.
6. Does the practical difficulty involve more than economic considerations? Yes (X) No ()
Based on all the previous answers.

Lawrence, Demeules, Johnson and Nelson all voted in favor of the motion. Schlingmann voted against the motion. Motion to approve passed on a 4-1 vote.

Ms. Blount asked Heaney who she thought would come forward and not be ok with the variance.

Heaney said it could be the DNR, MPCA or an interested landowner.

Ms. Blount said the DNR was already out at the site and approved it and Livonia Township approved the request.

Ms. Blount said the applicants don't really have use of 2.50 acres of property because of the lake.

6:25 P.M. AARON HERMAN: Requesting a 13' variance to the OHWL of Little Elk Lake for addition and covered porch to existing structure. The required setback to the OHWL of Little Elk Lake is 75'. Address: 28193 144th St NW, Zimmerman, Mn Legal: The Cove Lot 2 Sec 36, Twp 35, Rge 27 Blue Hill Township .74 Acres General Rural District and within the General Development Lakeshore District of Little Elk Lake.

Aaron Herman, 28193 144th St NW, Zimmerman, Mn was present.

Mr. Herman said they are looking at doing an addition that will connect the house and the garage. They will also have a 7' covered front porch. All of the additions will be going toward the road side and not going closer to the lake.

Johnson said if the garage is a slab on grade he didn't think they could attach it to the house.

Glines said he talked with Steve Aleshire, Sherburne County Building Official, and they can connect it. Aleshire will work with the applicant when building plans are submitted. One of the things that was talked about with the floating slab was keeping it climate controlled in the winter to keep the slab from heaving.

Schlingmann asked how many bedrooms the current house has.

Mr. Herman said it was a 3 bedroom house.

Schlingmann said the septic system is good for a 3 bedroom house.

Mr. Herman said the current 3rd bedroom is being removed and becoming a dining area. The original dining area is becoming a bigger kitchen. They are removing an existing bedroom and adding a master bedroom so they will still end up with 3 bedrooms.

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

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

Glines read recommended conditions.

Schlingmann motioned and Nelson seconded the motion to approve the 13' variance to the OHWL of Little Elk Lake for addition and covered porch to existing structure 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 perimeter of project prior to any construction activity to minimize construction run-off. Erosion control must remain in place until vegetation is re-established.
3. Applicant must install gutters to control stormwater runoff.
4. Applicant must apply for and obtain a Shoreland Alteration permit prior to building permit being issued.
5. Applicant must remove 923 sq ft of existing driveway and till up the ground to make it pervious before a building permit is issued.
6. Applicant must follow the landscape plan provided. (See attachment D)
7. 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 () The area is presently primarily residential. Although it's a non-conforming building because of the current setback it's still a residential area.
2. Without the variance is the property owner deprived of a reasonable use of the property? Yes () No (X) It's an existing 3 bedroom house. This is an enlargement to make it more livable.
3. Is the practical difficulty due to circumstances unique to this property? Yes (X) No () Because when the house was constructed it was before the zoning regulations stipulated the setback requirements thus creating its non-conformity. The proposed construction does not bring it any closer to the shoreline.
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes () No (X) It's the applicants desire to increase the size of the home.
5. Will issuance of the variance maintain the essential character of the locality? Yes (X) No () It's primarily a residential area along the lake and even with the new construction it meets the impervious surface requirements that are outlined in the ordinance.
6. Does the practical difficulty involve more than economic considerations? Yes () No (X) It's just being done at the convenience of the owner.

All in favor. Motion to approve passed.

6:35 P.M. DEREK & AMY WELLBERG: Requesting a 30' variance from the OHWL of Strand Lake for an inground swimming pool. Required setback from the OHWL is 150'. Address: 21562 203rd St NW, Big Lake, Mn Legal: Wild Run Second Addition Lot 10, Block 2 Sec 11, Twp 33, Rge 28 Big Lake Township 9.05 Acres General Rural District and within the Natural Environment Lakeshore District of Strand Lake & Hidden Lake.

Derek & Amy Wellberg, 21562 203rd St NW, Big Lake, Mn were present.

Mrs. Wellberg explained they came before the board a year ago and got denied. They came back with a plan and talked with Marc Schneider from the county who said it looked great. They went ahead with the plan and built a detached garage. In February they sent an email to Mr. Schneider and said they would like to move forward with the plan. He notified them something had changed so they moved the pool to a different spot.

Heaney explained 2 months ago the board heard from another individual who had done investments to their property and came in to get the building permit and because of the change in staff at the DNR they had a different interpretation.

Schlingmann asked if the existing drainfield was still in the same place.

Mrs. Wellberg said it was and it's still working. They will still have a second site for the septic system if they need it in the future.

Johnson asked where the run-off water would be going when they drain the pool.

Mrs. Wellberg said they would be using a cartridge filter so at the end of the season they don't need to drain it down. They just need to blow out the line and then put antifreeze in and seal them up.

Johnson asked where 30,000 gallons of water would go if the pool needed repair.

Mrs. Wellberg said you can rent big storage water tanks and take it away or reuse it.

Mr. Wellberg said in the event the liner would need to be changed he has access to water tanks. They would not be dumping water in the backyard.

Waytashek said the pool is quite a ways away from the existing house and asked if they would be adding any additional hard surface to the property. She wondered if they would be able to stay under the 25% impervious surface requirement.

Mrs. Wellberg said they are at 16% impervious surface right now and they don't plan on adding anything between the house and pool area – it will be grass. Maybe some stepping stones. No cement will be poured.

Johnson asked if they would have a fence around the pool.

Mr. Wellberg said they will have an automatic safety cover so they won't need a fence.

Lawrence asked Johnson what his concern was with the water coming from the pool. He wanted to know how different chorine pool water was from the chloride used on roads. He said both were water based products that filter through the grass or soil.

Johnson said his biggest concern was taking 30,000 gallons and putting it on the ground and he thought you needed to dissipate the chorine or salt before it gets to another body of water.

Mr. Wellberg said they do care about the environment and want to keep the area as beautiful as it is because they live there.

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

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

Glines read recommended conditions.

Waytashek wanted to make sure the applicants didn't put any additional water near the septic system since it is so close to the pool.

Mr. Wellberg said with pools now there is very little discharge.

Demeules motioned and Nelson seconded to approve the 30' variance from the OHWL of Strand Lake for an inground swimming pool 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 prior to any construction activity to minimize construction run-off. Erosion control must remain in place until vegetation is re-established.
3. Applicant must apply for and obtain a Shoreland Alteration permit prior to the building permit being issued.
4. Applicant must maintain less than the 25% impervious surface area on lot.
5. Applicant must abide by MPCA's "Swimming Pool and Hot Tub Water Discharge Best Management Practices" for seasonal draining of the pool. (See attachment E)

Findings of Fact:

1. Is the variance in harmony with the intent of the comprehensive plan and zoning ordinance? Yes (X) No () It's not changing the use of the land.
2. Without the variance is the property owner deprived of a reasonable use of the property? Yes () No (X) They can still maintain their residence without the pool.
3. Is the practical difficulty due to circumstances unique to this property? Yes () No (X) This was brought on with the owners requesting a pool – needing a variance for that.
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No () There was some misinformation as far as the location of the pool adjacent to the lake. Change in the interpretation of rules by the DNR. These individuals relied of the previous advice.
5. Will issuance of the variance maintain the essential character of the locality? Yes (X) No () Not changing anything drastically in the neighborhood and there are other pools in the neighborhood.
6. Does the practical difficulty involve more than economic considerations? Yes () No (X) They are not doing it to save money.

All in favor. Motion to approve passed.

6:50 P.M. Lawrence moved and Nelson seconded to adjourn. Motion carried. Meeting adjourned.

Submitted by: Kelly Mittelstaedt