

**SHERBURNE COUNTY
BOARD OF ADJUSTMENT
MINUTES
MAY 10, 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

Elizabeth Dakin – Zoning Specialist

Kelly Mittelstaedt – Secretary

Schlingmann made a motion to approve the minutes from the April 12, 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. RYAN NEBY: Requesting a 25' variance to the centerline of 187th Ave NW for an addition to the existing house. Required setback from the centerline is 100'. Address: 20791 187th Ave NW, Big Lake, Mn Legal: That part of SW ¼ of SW ¼ Desc as follows . . . (full legal on file) Sec 26, Twp 33, Rge 28 Big Lake Township 1.44 Acres Agricultural District.

Johnson read the variance request.

Ryan Neby, 20791 187th Ave NW, Big Lake, Mn was present.

Mr. Neby explained he needed the 25' variance for an addition to his house. The addition would not be any closer to the road and would be basically where the existing deck is now and then extending out 20'. The proposed addition will be another bedroom, a living room and a bathroom.

Schlingmann asked if the existing house was back 75' from the road now.

Mr. Neby said it was.

Johnson asked if the septic was big enough to handle the addition of another bedroom.

Mr. Neby said he had the septic checked and it was not big enough and the drainfield did not comply. He already has a permit for a new septic system for a four bedroom house.

Lawrence asked if the applicant would need to upgrade the septic before he starts construction of the addition.

Glines said that was one of the recommended conditions.

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

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

Glines read the recommended conditions.

Lawrence motioned and Nelson seconded the motion to approve the 25' variance to the centerline of 187th Ave NW for an addition to the 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. Must install the new septic system prior to building permit being issued.
3. The variance is only valid if acted upon by the applicant within one year of approval.

Findings of Fact:

1. Is the variance in harmony with the intent of the comprehensive plan and zoning ordinance? Yes (X) No () This is zoned as a residential area and home, he is not changing the use or the intended purpose of the property at all. It fits in with the comprehensive land use map and plan.
2. Without the variance is the property owner deprived of a reasonable use of the property? Yes () No (X) He can continue to use the house as is. It will cause him to put in a new septic system which needs to be updated anyway.
3. Is the practical difficulty due to circumstances unique to this property? Yes (X) No () The existing house was built 75' from the middle of the road right of way. He's not asking to go any closer at this point and time just wants to expand and put an addition on which is causing a need for a variance in this circumstance.
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No () The establishment of where the existing house is being placed too close to the roadway or if the setback came in after the fact – whichever it was.
5. Will issuance of the variance maintain the essential character of the locality? Yes (X) No () It's not going to change at all. It's going to be a residential home in a residential area.
6. Does the practical difficulty involve more than economic considerations? Yes (X) No () With all of the above answers that were given. The request isn't coming in because this is the cheapest way to go. They have taken in everything in addition to economic considerations.

All in favor. Motion to approve passed.

6:08 P.M. ROBERT CEDERBERG: Requesting a 68' variance from the side property line (that abuts the US Fish & Wildlife Service) to rebuild a detached garage. Required setback from the side property line is 100'. Address: 30441 152nd St NW, Princeton, Mn Legal: N ½ of NE ¼ of NE ¼ of SE ¼ Sec 14, Twp 35, Rge 27 Blue Hill Township 5 Acres General Rural District.

Johnson read the variance request.

Robert Cederberg, 30441 152nd St NW, Princeton, Mn was present.

Mr. Cederberg said he needed the variance to replace his garage after it burnt down. He would like to go 16' bigger to the west which will still comply with the 100' setback from the refuge. On the north side it won't be any closer than it was before.

Schlingmann asked if there was any other place the garage could go since the applicant has 5 acres.

Mr. Cederberg said the other place the garage could be placed was right in front of the house. The garage will be used as a functioning garage not just a place for storage. It will have a poured slab and heat. If he was to put it in anyplace near the driveway it would need to be right in front of the house which if you looked out any window on the front of the house that's all you would see.

Schlingmann said with 5 acres it could go to the south towards the woods.

Mr. Cederberg said his septic was in that area.

Nelson said the garage was built in 1978 before the current zoning ordinances. All the houses along the refuge have long driveways. There was no ordinance for the Wildlife Refuge. The only place for the garage that really makes sense in where it was before.

Demeules said if approved it would be a non-conforming building.

Schlingmann said it will be a larger building than what was originally there. The ordinance says you can't increase a non-conformity.

Nelson said last week at the Planning Commission they talked about all the ordinances that keep coming before the Board of Adjustment that need to be changed. Blue Hill Township made a comment they think the setback along the refuge needs to be changed. He said the refuge didn't care about the building location.

Schlingmann said they need to look at the ordinance that's in place currently. He felt with 5 acres there must be another place on the lot the building could meet all setbacks. The board needs to look at practical difficulty and not convenience. The original building was non-conforming and now he wants to make the new building even more non-conforming by building a larger building.

Nelson said he did a site visit and the land falls off and the building would be in a hole if it went further to the south plus trees would need to be removed and it would be too close to the septic.

Heaney said the rationale behind the 100' setback was to promote safety when hunters are in the refuge.

Lawrence asked if the applicant would need a variance if he were to build on the exact same footprint.

Mr. Cederberg said he would still need a variance because he did not rebuild the structure within 180 days of when it burnt down. He did not have his insurance check within the 180 day period. The fire was April 21, 2017. If he would have known about the 180 day restriction he would have gotten the permit earlier.

Glines said he needed a variance because he was past the 180 day grace period and because he was making the building larger.

Waytashek explained the 180 day time period to rebuild a structure is a state statute.

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

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

Glines read recommended conditions.

Johnson asked if the garage was properly disposed of.

Nelson explained he been to the site many times.

Glines said he met Nelson at the site and the applicant was in compliance with the disposal of the burn debris.

Schlingmann asked if there was a provision in the zoning ordinance that would preclude the garage from being built in the front yard setback.

Glines said not as long as they meet the road and side setbacks.

Schlingmann said in some ordinances you can't build an accessory building within the front yard setback. He wondered where the hardship was since the building could be built in the front yard without a variance.

Lawrence said he thought that would affect property values and aesthetics of the neighborhood.

Nelson motioned and Lawrence seconded the motion to approve the 68' variance from the side property line (that abuts the US Fish & Wildlife Service) to rebuild a 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. The variance is only valid if acted upon by the applicant within one (1) year of approval.

Findings of Fact:

1. Is the variance in harmony with the intent of the comprehensive plan and zoning ordinance? Yes (X) No () There is a whole row of houses in the same area along the refuge.
2. Without the variance is the property owner deprived of a reasonable use of the property? Yes () No (X) He could use it as he is.
3. Is the practical difficulty due to circumstances unique to this property? Yes (X) No () Because it was put there in 1978 prior to the current zoning and the structure was destroyed by fire.
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No () Built in 1978 prior to current zoning.
5. Will issuance of the variance maintain the essential character of the locality? Yes (X) No () There are several houses identical along the refuge.
6. Does the practical difficulty involve more than economic considerations? Yes (X) No () For all of the above reasons.

Lawrence, Nelson & Johnson voted in favor of the motion. Schlingmann and Demeules voted against the motion. Motion to approve passed on a 3-2 vote.

6:26 P.M. JEFF KNOLL: (Property Owner: Marybeth Knoll) Requesting a 101' variance in lot width for the construction of a new house. Required lot width on a recreational development lake is 150'. Address: 16465 253 ½ Ave NW, Big Lake, Mn Legal: Ann Lake Beach Lot 9, Block 1 Sec 15, Twp 34, Rge 27 Orrock Township .21 Acres General Rural District and within the Recreational Development Lakeshore District of Ann Lake.

JEFF KNOLL: (Property Owner: Marybeth Knoll) Requesting a 29' variance from the right of way of 253 ½ Ave NW for the construction of a new house. Required setback from the right of way is 67'. Address: 16465 253 ½ Ave NW, Big Lake, Mn Legal: Ann Lake Beach Lot 9, Block 1 Sec 15, Twp 34, Rge 27 Orrock Township .21 Acres General Rural District and within the Recreational Development Lakeshore District of Ann Lake.

JEFF KNOLL: (Property Owner: Marybeth Knoll) Requesting a 40' variance from the OHWL of Ann Lake for construction of a new house. Required setback from a recreational development lake is 100'. Address: 16465 253 ½ Ave NW, Big Lake, Mn Legal: Ann Lake Beach Lot 9, Block 1 Sec 15, Twp 34, Rge 27 Orrock Township .21 Acres General Rural District and within the Recreational Development Lakeshore District of Ann Lake.

Johnson read all of the variance requests.

Jeff & Jeorgette Knoll, 3301 157th Ave, Andover, Mn were present.

Mr. Knoll stated they purchased the property 15 years ago as a weekend lake cabin. Now they are retired and looking to sell their property in Andover and make this their permanent home.

Nelson asked if the current house was livable.

Mr. Knoll said it's not livable. It needs a lot of work. The roofs go in different directions. It would cost almost as much to fix it as it would be to rebuild.

Schlingmann asked if they would be building on the same footprint.

Glines said they would be further away from the lake.

Demeules asked how much bigger the new house would be.

Mr. Knoll said it would be the same size but they are looking at putting in a basement.

Schlingmann said the existing house is 28'x28' and the new one would be 28'x30'.

Glines said they are proposing to remove the existing pavers and replace with a simple patio along the new structure.

Waytashek said they did have the property surveyed but the house is not staked on the survey. A staked survey will be required with the building permit and if the dimensions and measurements are not correct it could cause issues with the variance amount that was requested.

Heaney asked what the impervious surface was on the lot.

Glines said they are at 24.72%.

Heaney said that means they will not be able to have a garage.

Mrs. Knoll said that's fine because they have a garage across the street.

Waytashek said they are putting the septic system across the street and wondered if the septic system could be tied to the house so that the septic could never become dislocated from the house if one was sold separately from the other.

Heaney asked if they have combined the property under one tax statement.

Waytashek said they could not do that because there is a road in between.

Heaney said the problem that happens is the mortgage is taken out on the house and not the entirety of the legal description.

Johnson asked if anyone in the audience had any comments or questions on the 3 variances. No one did.

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

Glines read recommended conditions.

Lawrence motioned and Schlingmann seconded the motion to approve the 101' variance in lot width for the construction of a new 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 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. The Shoreland Alteration permit must include the rain garden in location shown in Attachment D.
4. Applicant must obtain a razing permit and pay the associated fees prior to demolition of the existing house.
5. Applicant must maintain less than the 25% impervious surface area on lot.
6. Applicant must remove the concrete pavers and deck and till up the ground to make it pervious before a building permit is issued. Vegetation or ground cover will need to be placed on the tilled up area immediately to reduce erosion. Only impervious surface allowed on lot is shown on landscape plan. (Attachment D)

7. The variance is only valid if acted upon by the applicant within (1) year of approval.

Findings of Fact:

1. Is the variance in harmony with the intent of the comprehensive plan and zoning ordinance? Yes (X) No () It will not change the identified use or plan of the lot. The area is residential.
2. Without the variance is the property owner deprived of a reasonable use of the property? Yes () No (X) Does have an existing cabin so his request is causing it.
3. Is the practical difficulty due to circumstances unique to this property? Yes (X) No () The majority of the lots around the lakes (including this one) are too narrow and do not meet the current lot width.
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No () The lot width is the major issue with this variance and the majority of the lots around the lake are too narrow and do not meet the current standards.
5. Will issuance of the variance maintain the essential character of the locality? Yes (X) No () It will continue to be a home or a cabin as it is now.
6. Does the practical difficulty involve more than economic considerations? Yes (X) No () If you take into consideration all of the above factors that were discussed.

All in favor. Motion to approve passed.

Demeules motioned and Schlingmann seconded the motion to approve the 29' variance from the right of way of 253 ½ Ave NW for construction of a new 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 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. The Shoreland Alteration permit must include the rain garden in location shown in Attachment D.
4. Applicant must obtain a razing permit and pay the associated fees prior to demolition of the existing house.
5. Applicant must maintain less than the 25% impervious surface area on lot.
6. Applicant must remove the concrete pavers and deck and till up the ground to make it pervious before a building permit is issued. Vegetation or ground cover will need to be

placed on the tilled up area immediately to reduce erosion. Only impervious surface allowed on lot is what is shown on landscape plan. (Attachment D)

7. The variance is only valid if acted upon by the applicant within one (1) year of approval.

Findings of Fact:

1. Is the variance in harmony with the intent of the comprehensive plan and zoning ordinance? Yes (X) No () Still going to be a residential dwelling.
2. Without the variance is the property owner deprived of a reasonable use of the property? Yes () No (X) There is an existing home on the property right now.
3. Is the practical difficulty due to circumstances unique to this property? Yes () No (X) Most of the lake lots are having issues with setbacks.
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes () No (X) The landowner is requesting the variance.
5. Will issuance of the variance maintain the essential character of the locality? Yes (X) No () It's a typical lake lot and residential home on the lake.
6. Does the practical difficulty involve more than economic considerations? Yes () No (X) He's not doing it to save money.

All in favor. Motion to approve passed.

Schlingmann motioned and Lawrence seconded the motion to approve the 40' variance from the OHWL of Ann Lake for construction of a new 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 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. The Shoreland Alteration permit must include the rain garden in location shown in Attachment D.
4. Applicant must obtain a razing permit and pay the associated fees prior to demolition of the existing house.
5. Applicant must maintain less than the 25% impervious surface area on lot.
6. Applicant must remove the concrete pavers and deck and till up the ground to make it pervious before a building permit is issued. Vegetation or ground cover will need to be placed on the tilled up area immediately to reduce erosion. Only impervious surface allowed on lot is what is shown on landscape plan. (Attachment D)

7. The variance is only valid if acted upon by the applicant within one (1) year of approval.

Findings of Fact:

1. Is the variance in harmony with the intent of the comprehensive plan and zoning ordinance? Yes (X) No () It's a general lake development area and most of the structures that are existing are non-conforming as far as setback requirements.
2. Without the variance is the property owner deprived of a reasonable use of the property? Yes () No (X) They can still use the existing cabin.
3. Is the practical difficulty due to circumstances unique to this property? Yes (X) No () It's due to the way the property was laid out in the plat.
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No () It was created by the original developer.
5. Will issuance of the variance maintain the essential character of the locality? Yes (X) No () It will enhance it because the new structure will be farther away from the lake than the current structure is now.
6. Does the practical difficulty involve more than economic considerations? Yes () No (X) He's not doing it to save money.

All in favor. Motion to approve passed.

6:45 P.M. CHARLES MILAM & DEBORAH DAGLE: Requesting a 67' variance from the OHWL of West Hunter Lake for a septic system upgrade. Required setback from a natural environment lake is 150'. Address: 25535 101st St NW, Zimmerman, Mn Legal: West Hunter Lake Addition Lots 19, 20 & 21, Block 1 Sec 13, Twp 34, Rge 26 Livonia Township .82 Acres General Rural District and within the Natural Environment Lakeshore District of West Hunter Lake.

Johnson read the variance request.

Charles Milam & Deborah Dagle, 25535 101st St NW, Zimmerman, Mn were present.

Mrs. Dagle explained they are putting in a new septic system. The current system was put in before the rules that are in place today. They bought the lot to the north of them in anticipation of having to put in a new septic system at some point. The only possible place for a septic is in the proposed location.

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

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

Glines read recommended conditions.

Lawrence asked about condition #4 which reads “No more than three (3) trees can be removed for the installation of the septic system”. He was concerned the construction guy might be in the middle of the project and realize one more tree needs to be removed.

Glines stated that is the number of trees the applicant said they were going to remove.

Johnson asked what the definition of a tree was and what the diameter would be to be considered a tree.

Waytashek said it was anything over 4” in diameter at breast height is the definition of a tree in the Shoreland District.

Johnson felt like they would be removing more than 3 trees.

Mr. Milam said he did not know what the definition of a tree was. When they said they would not remove more than 3 trees they were assuming more like 12” in diameter. Now that he knows the definition of a tree they will be removing more than 3 trees.

Johnson suggested condition #4 be changed to read “Trees be allowed to be removed in the footprint of the septic system in which to install it”.

Waytashek pointed out the applicants will probably be coming forward with another variance for the deck. They had an existing deck that was removed late last summer. Since it’s been more than 180 days since the deck was removed and it does not meet the setback from the lake they will need a variance to rebuild the deck.

Nelson motioned and Lawrence seconded the motion to approve the 67’ variance from the OHWL of West Hunter Lake for a septic system upgrade with the following conditions and “Findings of Fact”:

Conditions:

1. The applicant must obtain a septic system permit and pay the associated fees prior to starting work on this project.
2. The applicant must install erosion control down gradient of disturbed soils prior to any construction activity to minimize construction run-off. Erosion control must remain in place until vegetation is re-established.
3. MPCA Septic System abandonment form must be filled out and submitted prior to septic system permit being issued by zoning.

4. Trees be allowed to be removed in the footprint of the septic system in which to install it.
5. The variance is only valid if acted upon by the applicant within one (1) year of approval.

Findings of Fact:

1. Is the variance in harmony with the intent of the comprehensive plan and zoning ordinance? Yes (X) No () It's a lakeshore development.
2. Without the variance is the property owner deprived of a reasonable use of the property? Yes (X) No () Needs to have a new septic for health and safety reasons.
3. Is the practical difficulty due to circumstances unique to this property? Yes (X) No () The septic is non-compliant.
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No () The natural age of the existing system.
5. Will issuance of the variance maintain the essential character of the locality? Yes (X) No () Because it's residential.
6. Does the practical difficulty involve more than economic considerations? Yes (X) No () The health and safety of the residents.

All in favor. Motion to approve passed.

6:57 P.M. Lawrence moved and Demeules seconded to adjourn. Motion carried. Meeting adjourned.

Submitted by: Kelly Mittelstaedt