

**SHERBURNE COUNTY
BOARD OF ADJUSTMENT
MINUTES
JUNE 14, 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

Demeules made a motion to approve the minutes from the May 10, 2018 Board of Adjustment Meeting. Nelson 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.

Johnson informed everyone the meeting would be audio-recorded.

6:03 P.M. MYRON & KATHLEEN COOPER: Requesting a 50' variance in setback from the right of way of 290th Ave NW for an addition to existing detached garage. Required setback from the right of way is 67'. Address: 14011 290th Ave NW, Zimmerman, Mn Legal: Elk Point Lots 30 & 31, Block 2 Sec 30, Twp 35, Rge 26 Baldwin Township .47 Acres General Rural District and within the General Development Lakeshore District of Little Elk Lake.

Johnson read the variance request.

Myron & Kathy Cooper, 14011 290th Ave NW, Zimmerman, Mn were present.

Mr. Cooper explained they would like to put full storage above the garage. After that is completed they would like to take down the cabin and build a new one. The septic is non-complaint. The septic has been in place since 1952. They don't know exactly when the house portion of the project will be completed.

Nelson asked if the applicants just bought the property.

Mrs. Cooper said it was originally her uncles, then her Dads and now theirs. It's been in the family since 1952. They would like to make the property their home.

Mr. Cooper said they have submitted a septic design for approval.

Mrs. Cooper explained the garage was damaged by a tornado recently and that's why they decided to start with the garage roof. They received money from their insurance company for the roof.

Schlingmann asked how much additional square footage of storage they would get from the garage addition.

Mr. Cooper said it would be about half of what was there now and they will be adding stairs on the outside of the garage.

Schlingmann asked what was in the old green shed on the property.

Mr. Cooper said that was the old garage. He said once the garage was done they would probably get rid of the green shed.

Schlingmann asked if they could get rid of it right away.

Mr. Cooper said it had a fair amount of stuff in it.

Johnson reminded the applicants the garage addition could not become living quarters.

Heaney said since there would not be living quarters in the detached garage it would be a good idea to identify there would not be any plumbing in the garage. She doesn't want it to become a mother-in laws apartment or something like that.

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.

Glines explained that before a building permit can be issued they need to have a passing compliance inspection or a new septic system installed. A building permit can't be issued with a failing septic system.

Schlingmann said he still had a problem with the shed on the property. He thought if the variance was granted and the applicant completes the remodel of the garage it will give them additional storage space. Part of the shed is in the right of way currently. He doesn't see any reason that should continue until after a new house is built. This is an opportunity to clear up something that shouldn't be there. There is no timeline for the demolition of the existing house and construction of the new one. This is an opportunity to get rid of a non-conforming building.

Lawrence asked other than the shed being in the right of way what makes the shed non-conforming.

Schlingmann said the shed still needs to conform to the setback requirements of the ordinance.

Mr. Cooper asked what was the sense was of incurring more cost? The board said they could take the shed down and find another place to put all the stuff but they already have a shelter (the green shed) to store it why would they want to incur an extra cost. Everything that doesn't get disposed of from the cabin will end up in the garage. He might need to get a pod on the property to store things in.

Johnson asked what the requirements were for having a pod on the property.

Waytashek said it depends on how long they would want to leave it on the property. Pods aren't a structure. The problem with pods is that sometimes they seem to stay longer and then you end up with another structure in certain instances and then neighbors get upset about that. Marc Schneider, from Planning & Zoning, is working on ordinance language to address pods, trailers for storage and things like that because it is an issue that seems to keep reoccurring.

Mr. Cooper said the other issue that he's had is the actual septic. Every meeting he's been too he has explained he knows the septic needs to be upgraded. If they were building from the lake to the front the septic could go in, then the house and garage could get fixed. The septic sits on one side of the garage and part of the back of the garage. It becomes a safety issue if the tanks are

put in the ground prior to building the cabin and the garage. There are several big trucks that come on the property and you only need one person to pull a stake and back over the tank and there would be issues.

Heaney said that's really not a choice the board can make because a passing septic is required by the ordinance. There is no variance to that.

Lawrence said they have no authority to act on the septic issue.

Lawrence motioned and Nelson seconded the motion to approve the 50' variance in setback from the right of way of 290th Ave NW for an addition on 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. The existing green shed (20'x10') must be removed from the property prior to the certificate of occupancy being issued for the home.
4. No living quarters will be allowed in detached garage. No plumbing for living quarters. Plumbing could be used for heating purposes only.
5. 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's still going to be a residential lake lot which is allowed by the ordinance.
2. Without the variance is the property owner deprived of a reasonable use of the property? Yes () No (X) The property is still usable as a cabin or weekend getaway or living quarters. However, it is important to update and that's the long term goal. The septic system is outdated and will be improved at this point and time.
3. Is the practical difficulty due to circumstances unique to this property? Yes (X) No () The building was built too close to the right of way and at this point is non-conforming. Anything they do to it they would have to come in to get it to conform.
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 location the building was put at that time whenever it was established. Whether the ordinance was in affect or not it was too close to the road. It does appear to line up with the neighboring properties as well – as a garage.

5. Will issuance of the variance maintain the essential character of the locality? Yes (X) No () It will remain as a residential location just like the other lots in the area.
6. Does the practical difficulty involve more than economic considerations? Yes (X) No ()
Based on all the previous discussed questions. Just to note - taking into consideration upgrading the septic system.

All in favor. Motion to approve passed.

6:25 P.M. JIM THOMPSON: Requesting a variance to the Shoreland Ordinance Section 14, Subdivision 5:5B1 – which states “Impervious surface coverage of lots must not exceed 25 percent of the lot (for example: driveways, structures, sidewalks and patios) area. Address: 28299 144th St NW, Zimmerman, Mn Legal: The cove Lot 11 Sec 36, Twp 35, Rge 27 Blue Hill Township .63 Acres General Rural District and within the General Development Lakeshore District of Little Elk Lake.

Johnson read the variance request.

Todd Olin, from Bogart, Pederson & Associates, was present on behalf of Jim Thompson.

Mr. Olin explained the applicant bought the property within the last year. In around 2011 the house on the property burnt down. There is a window of time where the house could have been rebuilt but that window has come and went. They did a survey to show what was currently on the property and a boundary survey. They have tried to reduce the impervious surface by eliminating hard scape. The house the applicant plans to build is smaller than the original one. They are replacing concrete walk with pervious pavers. They will also have french drains and rain gardens to manage the water and keep it out of the lake. They started with an impervious surface of about 47% and it has been reduced to about 31 %. Any additional removals would sacrifice the stability of the property. Currently there is an in-ground pool with a patio around it. There is a storage structure by the pool that has retaining walls around it. If retaining walls were removed it could cause problems for the storage structure not knowing how the surface below it is compacted. There is well established vegetation on the property going to the lake. They put together a removals plan to outline the limits of removal. They also put together a site plan to show where the house is proposed to sit within the building envelope of the old house. This property would be very similar to other properties on the lake. This would be the applicant’s permanent residence.

Schlingmann asked if there were any records of permits granted allowing the construction of all the additional impervious surface to where it got to the point of 47%. He asked if it was done prior to the adoption of the county zoning ordinance.

Nelson said the recorder's office gave the township all its tax records back so he found old records. The swimming pool was first assessed in 1980 so he can assume the pool was built in 1979.

Waytashek said the ordinance went into effect around 1971 for shoreland. However, staff didn't have the mapping they do now or the technology to watch things as they can now.

Johnson asked if the variance does get approved how do we make sure they stay at the impervious percentage when they build the house.

Glines said staff would make sure they get things removed and get the impervious surface number down before a building permit will be issued.

Lawrence asked about the use of pervious pavers.

Glines said there is a lot of upkeep with the pervious pavers. For the purpose of calculating they are considered impervious because they could end up that way in the future.

Nelson said when the applicant came before the Blue Hill Town Board all the other members were ok with the variance request even though he struggled with it. They thought other lots in the area were similar to this one.

Johnson asked what the square footage was of the house they are proposing to build.

Glines said the proposed house is 2,451 sq ft and the original house was 3,300 sq ft.

Nelson said he did encourage the applicant to redesign the house.

Mr. Olin said Mr. Thompson bought the property with the intent to enjoy it as his permanent home. He planned to utilize all the amenities that are currently there now. He paid the price for the improvements that are already there. If the existing house was still there and didn't burn down this would be a legal non-conforming use. It would be allowed to continue as it was as long as there were no changes.

Schlingmann said one thing about being on the Board of Adjustment is that it's an opportunity to address issues that are non-conforming. They have an environmental responsibility to maintaining a certain level of openness on the lots that won't impact the lake. If over the course of time they can ensure that the impervious surface on other lots are met it will have a more positive impact on the lake. If they continue to grant exceptions to standards that have been established by the Board of Commissioners what happens to the next lot that wants to go over the 25%. He said he can't support the request.

Heaney said she understands the economic argument and what the applicant paid for the lot but that is specifically what the board cannot legally consider. That argument should not be considered in any way shape or form. It would be inappropriate for the board to take that into consideration.

Nelson said he can remember when all the septic's from the whole lake ran into the lake. These lots have been improved by having building permits.

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

Ted Bell, 28311 144th St NW, Zimmerman, Mn said he owns the house to the north. The previous owner liked to do things on the property and then get permission later. He did not get a permit to install the big rocks in front of the house. Mr. Bell moved to his property in 1985 and all the amenities were in place at that time. He feels they do need a house on the property because it has turned into a party area since the house burned down. There has been trailers parked there with people camping. He agreed they do need to be concerned about the run-off. He is also concerned about how they will drain the pool. The water goes right into the lake when they drain the pool. He supports the building of a new house.

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

Jim Thompson, 28299 144th St NW, Zimmerman, Mn said it was a salt water pool. They only drain the pool down 4" every year.

Johnson said at some point if you need to repair the pool you would need to drain between 20,000 and 30,000 gallons of water.

Mr. Thompson said he bought the property in August/September of last year so he's not real clear on how the pool works. He has been shocked by this process because the realtors sold it to him by saying "come build your dream home here". There has been nothing but parties at the property.

Johnson asked staff if there was a way to control the pool discharge.

Waytashek said she didn't think so. They have a fact sheet from the DNR on Best Management Practices.

Glines read the recommended conditions.

Nelson motioned and Lawrence seconded the motion to approve the Impervious Surface Variance, Shoreland Ordinance Section 14, Subdivision 5:5B1, with the following “Findings of Fact”:

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 residential area around the lake.
2. Without the variance is the property owner deprived of a reasonable use of the property? Yes (X) No () He needs a house to live in.
3. Is the practical difficulty due to circumstances unique to this property? Yes (X) No () The house that was there burnt down several years ago.
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No () The original owner that put in the pool and all the amenities probably without a permit.
5. Will issuance of the variance maintain the essential character of the locality? Yes (X) No () Several houses in the area that are the same size and the same type of lots.
6. Does the practical difficulty involve more than economic considerations? Yes (X) No () Because on all of the above reasons.

Lawrence & Nelson voted in favor of the motion. Johnson, Demeules & Schlingmann voted against the motion. The motion has been denied.

Schlingmann motioned and Demeules seconded the motion to deny the Impervious Surface Variance, Shoreland Ordinance Section 14, Subdivision 5:5B1, with the following “Findings of Fact”:

Findings of Fact:

1. Is the variance in harmony with the intent of the comprehensive plan and zoning ordinance? Yes () No (X) The impervious surface is exceeded by the current amenities on the lot. The request for a variance does not bring it down to compliance with the ordinance.
2. Without the variance is the property owner deprived of a reasonable use of the property? Yes () No (X) The property owner can decrease the amount of impervious surface or redesign the house to meet the 25% lot coverage.
3. Is the practical difficulty due to circumstances unique to this property? Yes () No (X) It’s a standard lot in the area that’s been over developed in the past.
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No () The previous owner put in the excess impervious surface with the indication that most of it was unpermitted.
5. Will issuance of the variance maintain the essential character of the locality? Yes () No (X) We have no indication that the surrounding areas are not compliant with the 25% impervious surface requirement.

6. Does the practical difficulty involve more than economic considerations? Yes (X) No () It involves economic considerations due to the cost of complying with the 25%.

Lawrence & Nelson voted against the motion. Johnson, Demeules & Schlingmann voted in favor of the motion. The motion to deny the variance request has passed.

6:58 P.M. KEN GEROUX CONSTRUCTION: (Property Owner: Thomas L Warnke) Requesting a variance to the Shoreland Ordinance Section 14, Subdivision 5:5B1 – which states “Impervious surface coverage of lots must not exceed 25 percent of the lot (for example: driveways, structures, sidewalks and patios) area. Address: 16453 253 ½ Ave NW, Big Lake, Mn Legal: Ann Lake Beach W ½ of Lot 5 & All Lot 6, Blk 1 Sec 15, Twp 34, Rge 27 Orrock Township .29 Acres General Rural District and within the Recreational Development Lakeshore District of Ann Lake.

KEN GEROUX CONSTRUCTION: (Property Owner: Thomas L Warnke) Requesting a 46’ variance in setback from the right of way of 253 ½ Ave NW for construction of a new house. Required setback from the right of way is 67’. Address: 16453 253 ½ Ave NW, Big Lake, Mn Legal: Ann Lake Beach W ½ of Lot 5 & All Lot 6, Blk 1 Sec 15, Twp 34, Rge 27 Orrock Township .29 Acres General Rural District and within the Recreational Development Lakeshore District of Ann Lake.

KEN GEROUX CONSTRUCTION: (Property Owner: Thomas L. Warnke) Requesting a 49’ variance in setback from the OHWL of Ann Lake for construction of a new house. Required setback from a Recreational Development Lake is 100’. Address; 16453 253 ½ Ave NW, Big Lake, Mn Legal: Ann Lake Beach W ½ of Lot 5 & All Lot 6, Blk 1 Sec 15, Twp 34, Rge 27 Orrock Township .29 Acres General Rural District and within the Recreational Development Lakeshore District of Ann Lake.

Johnson read the variance request.

Ken Geroux, Ken Geroux Construction, was present to speak on behalf of Tom & Heidi Warnke who were also present.

Mr. Geroux stated they have what has become a common situation around the lakes with a small lot and the existing structures have all lived their life and can no longer be repaired or maintained for livability. The project has been in the works for a couple years and they have looked at all types of options. They are proposing to remove the existing home off the foundation. The foundation was put in at a much later date than the existing structure and it is in good condition. They would like to reconstruct the home on the existing foundation. There is a detached garage

they will be removing from the property and building an attached garage. The current septic has been in place since the early 1970's and they have submitted a new septic design.

Schlingmann said he will be looking for a closer compliance to the 25% impervious surface rule. There is a lot of concrete patio and walk way that is existing. He thought some of that could be eliminated.

Mr. Geroux said anything can be eliminated. This plan was developed with what they would like to see as the end product. They decided to leave the concrete patio because it had been there for 20 years.

Johnson asked if the garage could be placed across the road to reduce the impervious surface.

Mr. Geroux said that was where the septic was going. Relocating the septic might be a challenge. He felt they could probably get down to the 25 – 26% impervious surface without moving the garage across the road.

Johnson said there was a pipe on the south side of the existing garage that looks like it might be a well.

Mr. Geroux said there is no well other than the existing deep well. There was a decorative gas pump there – not hooked up to anything.

Johnson said about 5' to the west of that is another pipe coming out of the ground and that cover looks like a filler tank for a fuel tank on the ground.

Mr. Geroux said he won't know if there is a tank in the ground until he excavates it.

Johnson said if there is a fuel tank in the ground there is the potential for contaminated soil around that tank.

Waytashek said they would need to work with the solid waste staff and they may need to excavate the area and dispose of it properly.

Heaney said they may need to work with the MPCA on a remediation plan also.

Glines said if the garage were to go across the street it would require a conditional use permit for a personal storage structure.

Johnson asked if Orrock prohibited people from parking in the right of way in the winter months.

Mr. Geroux said the Orrock Town Board did not voice any of those concerns at the board meeting. He said they understand they are asking for 3 variances on the property. They are improving the property. They are improving the setbacks from the right of way with the structures, they are improving the septic system and improving the impervious surface. They won't be any closer to the lake. The owners have done shoreland restoration through the SWCD.

Johnson said they have done an excellent job with the shoreline and plantings.

Demeules was happy to see the septic system going across the road. He agreed the applicants would need to get very close to 25% impervious surface to get his vote.

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.

Waytashek reminded everyone if the board were to vote to deny the impervious surface variance the applicant couldn't come back before the board for a year. She wondered if the applicant's might want to look things over and see if there is something they could do with the impervious surface numbers.

Mr. Geroux said currently the impervious surface is at 35% and they have gotten it down to 32.3% at this time.

Glines said if they removed the patio they would get down to around 26% impervious surface.

Waytashek thought they would need to remove approximately 734 sq ft to get down to 25% impervious surface.

Mr. Geroux said he would like to ask the board to table all of the variance requests.

Schlingmann said if the applicants could get the impervious surface down to 25% then they would only need 2 variances.

Mr. Geroux asked the board if they had any other issues with the other 2 variances since they have a short building season.

Heaney said the only other question she heard was does Orrock Township have a requirement that you can't park in the road.

Johnson was thinking about if there was a snow storm and the township came along to plow and part of a vehicle was hanging out in the right of way. He would recommend 25' from the right of way line so you have a buffer behind the vehicle.

Mr. Geroux said when he designed the house he did try to maximize as much parking space as he could.

Lawrence made a motion to table all 3 variance requests. Demeules seconded the motion. All in favor. Motion passed.

7:15 P.M. Lawrence moved and Demeules seconded to adjourn. Motion carried. Meeting adjourned.

Submitted by: Kelly Mittelstaedt