

**SHERBURNE COUNTY
BOARD OF ADJUSTMENT
MINUTES
JULY 8, 2021**

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

Roll call was taken.

Members Present:

Roger Johnson – Chairperson
Steve Demeules
Roger Nelson
Lynda Ponting
Bud Stimmler
David Anderson

Staff Present:

Nancy Riddle – Planning & Zoning Administrator
Lynn Waytashek – Assistant Planning & Zoning Administrator
Mitch Glines – County Planner
Kelly Mittelstaedt – Secretary

Demeules made a motion to approve the minutes from the June 10, 2021 Board of Adjustment Meeting. Ponting seconded the motion. All in favor. Motion passed.

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

Johnson informed everyone the meeting would be audio recorded for clarity of the minutes.

6:01 P.M. TERESA K. BARNES: (Property Owner: Dept of Veterans Affairs)
Requesting a 4' variance in setback from the side property line for a septic system upgrade. Required setback from the side property line is 10'. Address: 28641 143rd St NW, Zimmerman, Mn Legal: Elk Lake Estates Lots 11, 12 & 13, Block 7 Sec 30, Twp 35, Rge 26 Baldwin Township .46 Acres General Rural District and within the General Development Lakeshore District of Little Elk Lake.

Johnson read the variance request.

Teresa Barnes, 28641 143rd St NW, Zimmerman, Mn was present.

Ms. Barnes would like to make this her fulltime residence once she has made the repairs. The current well is inside the house. The house needs significant repairs. The previous homeowner was proposing to have holding tanks on the property and she would like a septic tank with a drainfield. The property will have a new deep well. The property has been surveyed. It will be a 2-bedroom house when completed.

Glines said staff has worked with the applicant and originally the variance request was to be closer to the existing house. Staff and the applicant felt it would be better to ask for a variance to the side property line.

Ms. Barnes said the existing septic will be removed and then the well company will come in and install the new well and then the new septic will be installed.

Ponting asked where the existing septic system is located.

Ms. Barnes said the existing septic system is located on the north side of the house.

Waytashek noticed on the drawings it said “deck footing” between the house and the lake. She wondered if there was going to be a deck on the house.

Ms. Barnes said there is not a deck right now but there was a deck in the past. She does plan to come back before the board in a couple months for a deck variance. The new deck would be about 10’x12’ and she would use some of the existing footings.

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

Ponting motioned and Nelson seconded the motion to approve the 4’ variance in setback from the side property line for a septic system upgrade with the following conditions and “Findings of Fact”:

Conditions:

1. Applicant must obtain a septic permit and pay the associated fees to Zoning prior to septic install.
2. The existing septic tank must be abandoned per Minnesota Pollution Control Agency (MPCA) regulations and the required septic abandonment form submitted to Zoning.
3. A new deep well must be installed prior to issuance of the septic permit.
4. The variance is only valid if septic permit has been obtained from the County, by the applicant within one (1) year of approval.

Findings of Fact:

1. Granting the variance will not be in conflict with the comprehensive plan. Yes (X) No ()
This is an existing house that has been there since the 1970's and upgrade of the septic is needed.
2. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same district, and result from lot size or shape, topography, or other circumstances over which the owners of property since enactment of the relevant Ordinance have had no control. Yes (X) No () She recently purchased the property and will be putting in a complying septic.
3. The literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance. Yes (X) No () Houses need a functioning and appropriate septic system.
4. The exceptional or extraordinary circumstances do not result from the actions of the current or previous owner(s) under the current Ordinance or State Law. Yes (X) No ()
This is an existing house that is older than when she purchased it.
5. The variance requested is the minimum variance which would alleviate the practical difficulty. Yes (X) No () Putting in a tank with drainfield is a lot better than a holding tank.
6. The variance, if granted, will not alter the essential character of the locality and there would be no significant effect on the surrounding properties. Yes (X) No () It will have no effect and the neighbors have already agreed with it.
7. Adequate sewage treatment systems can be provided if the variance is granted. Yes (X) No () It would be.
8. Granting the variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic of the streets because the driveway is inadequate length or width. Yes (X) No () This will not have an effect on parking.
9. If a shoreland variance, it will not be a greater height or lesser shoreline setback than what is typical for the area immediately surrounding the development site. Yes () No () N/A
10. The variance will not increase loss of sunlight, views or privacy of the neighboring properties of the residence were built according to the applicable regulation and height of structure. Yes () No () N/A
11. Economic considerations or circumstances shall not be considered so long as a reasonable use of the property exists under the terms of the Ordinance. Yes (X) No () This has an existing house that needs a septic.

All in favor. Motion to approve passed.

6:12 P.M. TORALV DAHLE: Requesting a 5' variance in setback from the side property line for a septic system upgrade. Required setback from the side property line is 10'. Address: 4640 115th Ave SE, Clear Lake, Mn Legal: Lake Julia Park Lot 10, Block A Sec 23, Twp 35, Rge 29 Palmer Township .23 Acres Agricultural District and within the Recreational Development Lakeshore District of Lake Julia.

Johnson read the variance request.

Bob Kissell, Son-in-law of the applicant, was at the meeting to present the variance request.

Mr. Kissell said the current septic tank is not compliant. He has given Zoning Staff a letter from the neighbor that supports the variance request.

Glines said they will abandon the current round septic tank on the property. Letter of support has been received by Zoning Staff. The new septic tank meets well setback requirements and meets the road right of way setback.

Johnson asked if the applicant would need a variance from the garage.

Glines said Doug Maschler, Sherburne County Building Official, worked with the septic designer on the location of the tank and how to protect the foundation of the detached garage.

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

Demeules motioned and Stimmler seconded the motion to approve the 5' variance in setback from the side property line for a septic system upgrade with the following conditions and "Findings of Fact":

Conditions:

1. Applicant must obtain a septic permit and pay the associated fees to Zoning prior to septic install.
2. The existing septic tank must be abandoned per Minnesota Pollution Control Agency (MPCA) regulations and the required septic abandonment form submitted to Zoning.
3. A pumpers agreement will be required prior to issuance of the septic permit.
4. There must be protection of the garage foundation from being undermined during the time of excavation.
5. The variance is only valid if septic permit has been obtained from the County, by the applicant within one (1) year of approval.

Findings of Fact:

1. Granting the variance will not be in conflict with the comprehensive plan. Yes (X) No () It will be for a septic upgrade.
2. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same district, and result from lot size or shape, topography, or other circumstances over which the owners of property since enactment of the relevant Ordinance have had no control. Yes (X) No () This is a non-compliant system that needs to be replaced.
3. The literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance. Yes (X) No () All residents need a proper operating septic system.

4. The exceptional or extraordinary circumstances do not result from the actions of the current or previous owner(s) under the current Ordinance or State Law. Yes (X) No () This is just a worn-out system.
5. The variance requested is the minimum variance which would alleviate the practical difficulty. Yes (X) No () They have done pretty well putting it in a small area.
6. The variance, if granted, will not alter the essential character of the locality and there would be no significant effect on the surrounding properties. Yes (X) No () There won't be any evidence of it.
7. Adequate sewage treatment systems can be provided if the variance is granted. Yes (X) No () I sure hope so.
8. Granting the variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic of the streets because the driveway is inadequate length or width. Yes (X) No () There will be no long-term issues with parking.
9. If a shoreland variance, it will not be a greater height or lesser shoreline setback than what is typical for the area immediately surrounding the development site. Yes (X) No () It's all underground.
10. The variance will not increase loss of sunlight, views or privacy of the neighboring properties of the residence were built according to the applicable regulation and height if structure. Yes () No () N/A
11. Economic considerations or circumstances shall not be considered so long as a reasonable use of the property exists under the terms of the Ordinance. Yes (X) No () This is a failed system that needs to be replaced. The owner has no choice.

All in favor. Motion to approve passed.

6:19 P.M. DANIEL ROBBINS: Requesting a 77' variance in setback from the OHWL of East Hunter Lake for a septic system upgrade. Required setback from a Natural Environment Lake is 150'. Address: 25580 98th St NW, Zimmerman, Mn Legal: Hunter Lakes Addition Lot 12, 13 & 14, Block 1 Sec 13, Twp 34, Rge 26 Livonia Township .63 Acres General Rural District and within the Natural Environment Lakeshore District of East Hunter Lake.

Johnson read the variance request.

Courtney Mickelson, daughter of the applicant, was at the meeting to present the variance request.

Ms. Mickelson said they are trying to sell the home and the septic system is failing.

Glines said the lot was challenging. They thought there was room for the septic between the driveway and the road. That turned out to be not an option with the well location and the contours of the lot. The existing tank and drainfield will be abandon.

Johnson asked why the existing drainfield couldn't be used.

Glines said the existing drainfield failed too. The existing drainfield isn't sized properly either.

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

Stimmler motioned and Ponting seconded the motion to approve the 77' variance in setback from the OHWL of East Hunter Lake for a septic system upgrade with the following conditions and "Findings of Fact":

Conditions:

1. Applicant must obtain a septic permit and pay the associated fees to Zoning prior to septic install.
2. The existing septic tank must be abandoned per Minnesota Pollution Control Agency (MPCA) regulations and the required septic abandonment form submitted to Zoning.
3. Applicant must install erosion control between lake and drainfield prior to install.
4. The variance is only valid if septic permit has been obtained from the County, by the applicant within one (1) year of approval.

Findings of Fact:

1. Granting the variance will not be in conflict with the comprehensive plan. Yes (X) No () It will not be in conflict. It's a residential area and they are improving the septic.
2. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same district, and result from lot size or shape, topography, or other circumstances over which the owners of property since enactment of the relevant Ordinance have had no control. Yes (X) No () The property owners have no control over circumstances. The lot is confining, and they are just improving the lot.
3. The literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance. Yes (X) No () The owners are improving the situation by putting a new septic in.
4. The exceptional or extraordinary circumstances do not result from the actions of the current or previous owner(s) under the current Ordinance or State Law. Yes (X) No () There's nothing extraordinary about this other than lack of size in the lot.
5. The variance requested is the minimum variance which would alleviate the practical difficulty. Yes (X) No () It's the minimum variance needed for this.
6. The variance, if granted, will not alter the essential character of the locality and there would be no significant effect on the surrounding properties. Yes (X) No () They are just upgrading the septic. It won't change the character of the locality.
7. Adequate sewage treatment systems can be provided if the variance is granted. Yes (X) No () That's the purpose of the variance. To upgrade it.
8. Granting the variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic of the streets because the driveway is inadequate length or width. Yes (X) No () The variance will not result in any parking or interference with 98th Street.

9. If a shoreland variance, it will not be a greater height or lesser shoreline setback than what is typical for the area immediately surrounding the development site. Yes (X) No () It will not be a greater height or lesser shoreline with the variance.
10. The variance will not increase loss of sunlight, views or privacy of the neighboring properties of the residence were built according to the applicable regulation and height of structure. Yes (X) No () It will not affect sunlight, views or privacy.
11. Economic considerations or circumstances shall not be considered so long as a reasonable use of the property exists under the terms of the Ordinance. Yes (X) No () Circumstances shall not be considered it's just an upgrade to the septic.

All in favor. Motion to approve passed.

6:26 P.M. ANTHONY GRANT: Requesting a 10' variance in setback from the OHWL of Little Elk Lake for a deck. Required setback from a General Development Lake is 75'. Address: 14244 287th Ave NW, Zimmerman, Mn Legal: S 140 Ft of Lot 2 Ex W 673 Ft Sec 30, Twp 35, Rge 26 Baldwin Township .9 Acres General Rural District and within the General Development Lakeshore District of Little Elk Lake.

Johnson read the variance request.

Tony Grant, 14244 287th Ave NW, Zimmerman, Mn was present.

Mr. Grant explained he needed to get 10' closer to the lake on the northeast corner of the house for the deck.

Waytashek read an emailed comment she received from David Jackson in support of the variance request.

Waytashek explained the recommended condition that deals with the elevation of the deck and floodplain regulations.

Ponting asked if the proposed deck was on the original house plans.

Mr. Grant said the property was almost impossible to build on because it was basically used as a highway. It was tricky to get a septic system on the property too. The dirt on the north side of the house had been pushed into the lake. The builder that built other houses in the area did this. He removed the deck from the original house plans, so he did not need to go through the variance process at that time.

Waytashek said Zach, Planning & Zoning Staff, was involved in wetland and shoreland issues in that area. That is the access point to a cluster plat that's located to the west.

Ponting thought the house could have been pushed back 10' originally.

Mr. Grant said that could not have happened. He said the way the garage is now he can hardly get his car in there now. If he would have moved the house 10' he would not have been able to have a garage. The shoreline and the house are not parallel to each other.

Waytashek said the drainfield is as far to the west property line as it can go.

Johnson thought the drainfield could have had another run in it to make it shorter.

Mr. Grant said his septic designer Ashley Krause met with Doug Maschler, Sherburne County Building Official, to design the septic. He has no spot for an alternate septic location on the site. Because of the traffic on the lot the soil was very compacted.

Waytashek said when zoning staff goes out with a designer on site, they are just checking to the highest know water table. That's required under state rules. Staff does not determine where it should be placed on a property.

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

Nelson motioned and Demeules seconded the motion to approve the 10' variance in setback from the OHWL of Little Elk Lake for a deck with the following conditions and "Findings of Fact":

Conditions:

1. Applicant must obtain a building permit and pay the associated fees to Zoning prior to construction.
2. According to Bogart-Pederson survey the proposed elevation at the northeast corner of the deck will be 955.8 (NAVD88) so 1.7 feet above the Regulatory Flood Protection Elevation (RFPE) (2.7 ft above the Base Flood Elevation). Due to proximity to lake/floodplain property owner will need to ensure deck posts at ground level are above the RFPE of 954.1.
3. The variance is only valid if septic permit has been obtained from the County, by the applicant within one (1) year of approval

Findings of Fact:

1. Granting the variance will not be in conflict with the comprehensive plan. Yes (X) No () Elk Lake is a residential area. There is a lot of houses with decks on them.
2. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same district, and result from lot size or shape, topography, or other circumstances over which the owners of property since enactment of the relevant Ordinance have had no control. Yes (X) No () Because of the location of his driveway the house had to be placed where it is.
3. The literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance. Yes (X) No () The house was designed for a deck. It has the header board already in place.

4. The exceptional or extraordinary circumstances do not result from the actions of the current or previous owner(s) under the current Ordinance or State Law. Yes (X) No () Due to the nature of the layout of the land and contours on the land the house had to be placed there.
5. The variance requested is the minimum variance which would alleviate the practical difficulty. Yes (X) No () Because the angle of the lakeshore.
6. The variance, if granted, will not alter the essential character of the locality and there would be no significant effect on the surrounding properties. Yes (X) No () There's only one close neighbor and he's in favor of the variance.
7. Adequate sewage treatment systems can be provided if the variance is granted. Yes (X) No () It's a new system.
8. Granting the variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic of the streets because the driveway is inadequate length or width. Yes (X) No () It's on a dead-end road so there's very little traffic.
9. If a shoreland variance, it will not be a greater height or lesser shoreline setback than what is typical for the area immediately surrounding the development site. Yes (X) No () It will be lower than the house roof line.
10. The variance will not increase loss of sunlight, views or privacy of the neighboring properties of the residence were built according to the applicable regulation and height of structure. Yes (X) No () There's only one neighbor and it's on the far side of his property.
11. Economic considerations or circumstances shall not be considered so long as a reasonable use of the property exists under the terms of the Ordinance. Yes (X) No () It's a reasonable use to have a deck on a lake shore property.

Stimmler, Nelson, Johnson, Anderson & Demeules were in favor of the motion to approve. Ponting was against the motion to approve. Motion passed on a 5-1 vote.

6:42 P.M. CHAD & TOSHA BARTHEL: Requesting a 39' variance in setback from the centerline of CSAH #3 for a garage with attached breezeway. Required setback from the centerline is 130'. Address: 31640 164th St NW, Princeton, Mn Legal: N ½ of NW ¼ of NE ¼ Sec 10, Twp 35, Rge 27 Blue Hill Township 20 Acres General Rural District.

Johnson read the variance request.

Chad & Tosha Barthel, 31640 164th St NW, Princeton, Mn were present.

Ms. Barthel said the current house was built around 1940 and is currently 91' from the centerline of the road. They currently have a building permit for a detached garage. They are seeking a variance of 39' so they can attach the new garage to the existing house. The well is pre-code and in the crawl space of the house.

Johnson said since the footings are already in place should the board be dealing with an after-the-fact variance.

Ms. Barthel said when the inspector came out, they were told they were at a risk and if the variance was not approved, they would fill it in, and it would become a patio area. The excavation could not have taken place after the garage was built anyway. One of the main reasons they started the garage was because they were being told they would need to wait until October to get materials if they didn't get them ordered. It was a risk they took to get it built before winter.

Johnson said the garage is not built yet. Only the footings for the garage are in.

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

Nelson motioned and Stimmler seconded the motion to approve the 39' variance in setback from the centerline of CSAH #3 for a garage and attached breezeway with the following conditions and "Findings of Fact":

Conditions:

1. Must obtain building permit for the proposed breezeway.
2. The variance is only valid if building permit has been obtained from the County, by the applicant within one (1) year of approval.

Findings of Fact:

1. Granting the variance will not be in conflict with the comprehensive plan. Yes (X) No ()
Garages are an allowed use in the general rural district.
2. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same district, and result from lot size or shape, topography, or other circumstances over which the owners of property since enactment of the relevant Ordinance have had no control. Yes (X) No () The house was built in the 40's before the previous zoning.
3. The literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance. Yes (X) No () Garages are an allowed use in general rural.
4. The exceptional or extraordinary circumstances do not result from the actions of the current or previous owner(s) under the current Ordinance or State Law. Yes (X) No () The house is too close to the road and was placed there before the current zoning.
5. The variance requested is the minimum variance which would alleviate the practical difficulty. Yes (X) No () The house is already in place.
6. The variance, if granted, will not alter the essential character of the locality and there would be no significant effect on the surrounding properties. Yes (X) No () It's a very rural area with very few houses.

7. Adequate sewage treatment systems can be provided if the variance is granted. Yes (X) No () Their septic passed inspection.
8. Granting the variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic of the streets because the driveway is inadequate length or width. Yes (X) No () They have 20 acres to park on.
9. If a shoreland variance, it will not be a greater height or lesser shoreline setback than what is typical for the area immediately surrounding the development site. Yes () No () N/A
10. The variance will not increase loss of sunlight, views or privacy of the neighboring properties of the residence were built according to the applicable regulation and height of structure. Yes (X) No () There are no close neighbors.
11. Economic considerations or circumstances shall not be considered so long as a reasonable use of the property exists under the terms of the Ordinance. Yes (X) No () Garages and breezeways are an accepted use.

All in favor. Motion to approve passed.

Johnson asked how the new ordinance for the Board of Adjustment was coming.

Riddle said it will be going to the County Board next and she hasn't heard anything else about it.

Riddle announced she will be retiring, and this will be her last Board of Adjustment Meeting.

6:52 P.M. Nelson motioned and Ponting seconded the motion to adjourn. Motion carried. Meeting adjourned.

Submitted by:
Kelly Mittelstaedt