

**SHERBURNE COUNTY
BOARD OF ADJUSTMENT
MINUTES
JULY 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:

Nancy Riddle – Planning & Zoning Administrator

Lynn Waytashek – Assistant Planning & Zoning Administrator

Mitch Glines – Zoning Specialist

Tim Sime – Assistant County Attorney

Elizabeth Dakin – Zoning Specialist

Kelly Mittelstaedt – Secretary

Schlingmann made a motion to approve the minutes from the June 14, 2018 Board of Adjustment Meeting. Demeules seconded the motion. All in favor. Motion passed.

Demeules 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.

Schlingmann made a motion to remove the two requests for Ken Geroux Construction from the table. Nelson seconded the motion. All in favor. Motion passed.

6:02 P.M. 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 both variance requests.

Ken Geroux, Ken Geroux Construction, 19877 198th Ave, Big Lake, Mn was present.

Mr. Geroux said they would like to remove the existing structure that has been there since the 1950's. They will reuse the existing foundation and construct a new home on the foundation. They will remove a detached garage that is sitting in the right of way and add an attached garage to the house. The septic system will be upgraded.

Johnson said they did remove the variance for impervious surface so they were able to get below the 25% impervious.

Glines agreed the applicant is now under the 25% impervious surface.

Johnson asked if anyone in the audience had any comments or questions. No one did. Johnson closed the public hearing and brought it back to the board for their recommendations.

Demeules motioned and Nelson seconded the motion to approve the 46' variance in setback 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. Applicant must apply for and obtain a Shoreland Alteration permit prior to the building permit being issued.
2. The applicant must obtain a building permit and pay the associated fees prior to starting work on this project.
3. Must install the new septic system prior to building permit being final.
4. 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.

5. A razing permit is required for the removal of the existing home and existing detached garage. All debris must be disposed of at MPCA licensed landfill. No materials may be burned or buried on site.
6. Applicant must follow Site/Landscape Plan as shown in Attachment C.
7. Applicant does not exceed 25% of impervious surface per survey received on 7/2/2018.
8. Pink area on Attachment C (Proposed Site/Landscape Plan) must be either garden or grass.
9. Applicant must remove concrete pavers and sidewalk and till up the ground to make it pervious before a building permit is issued. Vegetation or ground cover must 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 C)
10. No additional impervious surface will be allowed on the property in the future.
11. 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 going to stay as a dwelling.
2. Without the variance is the property owner deprived of a reasonable use of the property? Yes () No (X) There is an existing house they are just looking to upgrade it.
3. Is the practical difficulty due to circumstances unique to this property? Yes () No (X) They are small lake lots that they are having issues with the setbacks.
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No () It was platted as smaller lots and with the change in setbacks.
5. Will issuance of the variance maintain the essential character of the locality? Yes (X) No () It's typical for that neighborhood.
6. Does the practical difficulty involve more than economic considerations? Yes () No (X) They aren't doing it to save money.

Lawrence abstained from voting because he walked in at the middle of the motion and missed the discussion. All the rest of the board was in favor. Motion to approve passed.

Nelson motioned and Johnson seconded the motion to approve the 49' variance in setback from the OHWL of Ann Lake for construction of a new house with the following conditions and "Findings of Fact":

Conditions:

1. Applicant must apply for and obtain a Shoreland Alteration permit prior to the building permit being issued.
2. The applicant must obtain a building permit and pay the associated fees prior to starting work on this project.

3. Must install the new septic system prior to building permit being final.
4. 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.
5. A razing permit is required for the removal of the existing home and existing detached garage. All debris must be disposed of at MPCA licensed landfill. No materials may be burned or buried on site.
6. Applicant must follow Site/Landscape Plan as shown in Attachment C.
7. Applicant does not exceed 25% of impervious surface per survey received on 7/2/2018.
8. Pink area on Attachment C (Proposed Site/Landscape Plan) must be either garden or grass.
9. Applicant must remove concrete pavers and sidewalk and till up the ground to make it pervious before a building permit is issued. Vegetation or ground cover must 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 C)
10. No additional impervious surface will be allowed on the property in the future.
11. 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 residential area around the lake.
2. Without the variance is the property owner deprived of a reasonable use of the property?
Yes () No (X) He could live in the house if he had too.
3. Is the practical difficulty due to circumstances unique to this property? Yes (X) No ()
Small lake lots platted several years ago.
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No ()
Whoever platted it in the very beginning.
5. Will issuance of the variance maintain the essential character of the locality? Yes (X) No ()
It's a residential area around the lake.
6. Does the practical difficulty involve more than economic considerations? Yes (X) No ()
For all of the above reasons.

All in favor. Motion to approve passed.

6:10 P.M. RUDY WICKLANDER: (Property Owners: Erik Wicklander & Karissa Kirvida) Requesting a 65' variance from the right of way of Lake Lane for an addition to existing garage. Required setback from the right of way is 67'. Address: 14043 290th Ave NW, Zimmerman, Mn Legal: Elk Point – That Pt of Lot 38 W of the following line: Beg at the NW cor of Lot 38 . . . (full legal on file) Sec 30, Twp 35, Rge 26 Baldwin Township .35 Acres General Rural District and within the General Development Lakeshore District of Little Elk Lake.

Johnson read the variance request.

Judy Wicklander, 6587 145th Circle N, Hugo, Mn was present. She is Rudy's spouse.

Mrs. Wicklander explained they wanted to add a second story to the garage for more storage.

Schlingmann said if the second story is for storage why does it have a big picture window and other windows. He thought it looked like a bonus room and not a storage room.

Mrs. Wicklander said her husband designed the room so she really can't say.

Schlingmann said normally when you have an area for storage you don't want a lot of windows so people can see what you have. If you want a bonus room with a view of the lake you put windows in.

Lawrence said windows also let light in.

Schlingmann reminded Mrs. Wicklander they can't have any plumbing in the addition.

Mrs. Wicklander said her husband is a retired builder so he is aware and familiar with what is needed.

Johnson said it can't become a living area or a bunk house.

Nelson asked if there was a public access next to the property.

Lawrence said technically it is a public access at this point. It's not really accessible. The last time it was used was when the neighbors in the area got together and dredged out the lagoon. It says it's a township road but the township has never used it as such. The Wicklanders have maintained it since 1985. The Wicklander's did come to the township and tried to get them to discontinue use of the road but the current board choose not to approve the request.

Johnson asked if anyone in the audience had any comments or questions. No one did. Johnson closed the public hearing and brought it back to the board for their recommendations.

Schlingmann motioned and Lawrence seconded the motion to approve the 65' variance in setback from the right of way of Lake Lane for an addition to existing 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. No plumbing will be allowed in the garage.
3. The applicant must install gutters to control stormwater runoff to the lake and septic tank.
4. Applicant must sign a Zoning Agreement that will be recorded with the County verifying that there will be no living quarters in the detached garage.
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 predominantly lakeshore residential there's nothing in the ordinance to preclude them from adding a second story on a garage for storage.
2. Without the variance is the property owner deprived of a reasonable use of the property? Yes () No (X) There is an existing garage there. It's just more for their convenience.
3. Is the practical difficulty due to circumstances unique to this property? Yes (X) No () Because of the irregular shape of the lot and the presence of the township right of way. It makes it difficult to (almost impossible) site a structure there without needing a variance.
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No () The original developer that platted the lot.
5. Will issuance of the variance maintain the essential character of the locality? Yes (X) No () Still going to be basically a lakeshore residence with a garage and additional storage.
6. Does the practical difficulty involve more than economic considerations? Yes () No (X) Not doing it to save money.

All in favor. Motion to approve passed.

DAVID HIPSAG: Requesting a variance to Section 17, Subdivision 8.4 which states "The total area of detached accessory structures shall not exceed 3,000 sq ft per lot within the agricultural and general rural districts on platted lots of any size, and non-platted lots less than 5-acres in size". Applicant is requesting a detached accessory structure that is 3,240 sq ft. Address: 11410 293rd Ave NW, Princeton, Mn Legal: Schultz Addition Lot 5, Block 1 Sec 22, Twp 35, Rge 26 Baldwin Township 7 Acres General Rural District.

Johnson read the variance request.

David Hipsag, 11410 293rd Ave, Princeton, Mn was present.

Mr. Hipsag said he was just looking to build a structure that he needs to store large trailers and quite a bit of equipment. Right now everything is sitting outside. A building that is narrower would not be adequate for the storage he needs. He needs 16' tall side walls because he needs 14' doors to get the equipment inside.

Schlingmann asked the applicant if he does farming off site.

Mr. Hipsag says he farms south of Aitkin. He hauls the equipment back and forth from the place he lives to Aitkin. He has large flatbed trailers that he hauls hay with. At the Aitkin site he has a building that's 60'x120'. He moves equipment back and forth. He will be buying the hay here and moving it to the Aitkin property. He has 3 – 30' long trailers that he needs to store in the building he needs a variance for. One is a horse trailer with living quarters in it, one is a flatbed and one is a car trailer.

Schlingmann said the ordinance is pretty emphatic that 3,000 sq ft is the maximum within a platted lot in the rural residential district. There isn't a practical difficulty with the lot. They don't grant variances for convenience. The requirements for building size were adopted by the County Commissioners. That is their standard for platted lots. He's looking for a practical difficulty because that's what the board needs to determine.

Mr. Hipsag said typically platted lots are 5 acres or less but his lot is 7 acres.

Schlingmann sees the trailers as part of a farming operation which is a business. The applicant is asking to store equipment that is associated with the business in Aitkin.

Lawrence said about 3 or 4 months ago they had a similar variance. It was 20 acres on the end of a cul-de-sac and it was a platted property. This is a 7 acre lot and the back of the lot is not visible by anyone other than the neighbor to the left. The driveway comes out on a county road. It's for the betterment of the property and the area to have the stuff parked inside instead of out on his lot.

Sime said when the board makes its findings they have to keep in mind when the county board adopted this standard they didn't say for 5 acres they said for a platted lot of any size. When you consider practical difficulty the question is can the property owner comply with the ordinance or is there a practical difficulty in complying with the ordinance. If they can comply with the ordinance and there's a reasonable use of the property by law the board can't grant the variance. It's only when there is practical difficulty in complying with the ordinance.

Lawrence asked how many 3,000 sq ft buildings the applicant could have on his property.

Glines said 3,000 sq ft was the maximum.

Johnson asked what the requirement was for sidewall height. He thought 16' seemed to be a high building.

Glines said anything over 14' requires engineered plans.

Johnson asked if anyone in the audience had any comments or questions. No one did. Johnson closed the public hearing and brought it back to the board for their recommendations.

Schlingmann motioned and Demeules seconded to deny the variance to Section 17, Subdivision 8.4 which states "The total area of detached accessory structures shall not exceed 3,000 sq ft per lot within the agricultural and general rural districts on platted lots of any size, and non-platted lots less than 5-acres in size 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) It's in conflict with the zoning ordinance. The requested building exceeds the 3,000 sq ft that is outlined within the accessory building section of the general regulations.
2. Without the variance is the property owner deprived of a reasonable use of the property? Yes () No (X) There is nothing to preclude him from building a 3,000 sq ft building on the property. He has enough room to meet all the setback requirements.
3. Is the practical difficulty due to circumstances unique to this property? Yes () No (X) There is no practical difficulty it's a building of convenience.
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes () No (X) It's the intent of the landowner to exceed the maximum requirements of the ordinance as far as building square footage.
5. Will issuance of the variance maintain the essential character of the locality? Yes () No (X) The motion is to deny the variance. If the building of 3,000 sq ft is built it will maintain the essential character of the building as outlined in the ordinance.
6. Does the practical difficulty involve more than economic considerations? Yes () No (X) He wouldn't be saving money building the building. It's being done for personal considerations.

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

DENNIS & SHERRY BOOTH: (Property Owners: Dan & Jamie Booth) Requesting a 52' variance in setback from the right of way of 101st St NW for an expansion to existing house. Required setback from the right of way is 67'. Address: 25657 101st St NW, Zimmerman, Mn Legal: West Hunter Lake Addition Lots 16, 17, 18 & 19, Block 2 Sec 13, Twp 34, Rge 26 Livonia Township .54 Acres General Rural District and within the Natural Environment Lakeshore District of West Hunter Lake.

DENNIS & SHERRY BOOTH: (Property Owners: Dan & Jamie Booth) Requesting a 7' variance in setback from the right of way of 100th St NW for an expansion to existing house and a new deck. Required setback from the right of way is 67'. Address: 25657 101st St NW, Zimmerman, Mn Legal: West Hunter Lake Addition Lots 16, 17, 18 & 19, Block 2 Sec 13, Twp 34, Rge 26 Livonia Township .54 Acres General Rural District and within the Natural Environment Lakeshore District of West Hunter Lake.

Johnson read the variance requests.

Dennis Booth, 9993 213th Ave NW, Elk River, Mn was present.

Mr. Booth said they would like to expand the property so there is a second bedroom. Currently there is only one bedroom in the house. They will use the current bedroom to put a stairway up to the second floor and add a bath and 2 bedrooms on the second floor. The other variance is for a deck on the second story.

Johnson asked if anyone in the audience had any comments or questions. No one did. Johnson closed the public hearing and brought it back to the board for their recommendations.

Demeules motioned and Lawrence seconded the motion to approve the 52' variance in setback from the right of way of 101st St NW for an expansion to existing house with the following conditions and "Findings of Fact":

Conditions:

1. The applicant must obtain a building permit and pay the associated fees prior to starting work on this project.
2. The 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 doesn't change anything. It's still residential.

2. Without the variance is the property owner deprived of a reasonable use of the property? Yes () No (X) It's a usable residence right now. It's just his wish to expand and go up.
3. Is the practical difficulty due to circumstances unique to this property? Yes (X) No () Because of the irregular shape of the lot.
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes () No (X) His request for the variance.
5. Will issuance of the variance maintain the essential character of the locality? Yes (X) No () It will still be a typical house in the neighborhood.
6. Does the practical difficulty involve more than economic considerations? Yes () No (X) He's not doing it to save money.

All on favor. Motion to approve passed.

Lawrence motioned and Demeules seconded the motion to approve the 7' variance in setback from the right of way of 100th St NW for an expansion to existing house and a new deck 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 () It's not going to change the use. The use matches the comprehensive plan and the zoning districts.
2. Without the variance is the property owner deprived of a reasonable use of the property? Yes () No (X) He could continue to use it as a residence as he currently is.
3. Is the practical difficulty due to circumstances unique to this property? Yes (X) No () Due to the irregularity of the lot. Being bordered on two sides with roadways.
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No () The circumstances of the position of the home. Many of the lots in these lake areas have difficulty meeting the setbacks as well and this happens to be one of those type of lots. The irregular shape of the lot.
5. Will issuance of the variance maintain the essential character of the locality? Yes (X) No () It will continue to be used as a residence as it currently is and it will continue to match the other properties in the area's use.
6. Does the practical difficulty involve more than economic considerations? Yes (X) No () Based on all the previous discussion and things that have been discussed regarding the request.

All in favor. Motion to approve passed.

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

Submitted by: Kelly Mittelstaedt