

**SHERBURNE COUNTY
BOARD OF ADJUSTMENT
MINUTES
SEPTEMBER 13, 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

Kathy Heaney – County Attorney

Elizabeth Dakin – Zoning Specialist

Kelly Mittelstaedt – Secretary

Schlingmann made a motion to approve the minutes from the July 12, 2018 Board of Adjustment Meeting. Nelson seconded the motion. All in favor. Motion passed.

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

Johnson informed everyone the meeting would be audio-recorded.

6:02 P.M. JOHN JASZEWSKI: (Property Owner: Mary Kostik Jaszewski)
Requesting a 132' variance from Briggs Creek for a septic system upgrade. Required setback from Briggs Creek is 200'. Address: 11137 42nd St SE, Clear Lake, Mn Legal: Wildwood Addition E ½ of Lot 55 & All of 56, Blk 1 Sec 22, Twp 35, Rge 29 Palmer Township .26 Acres Agricultural District and within the Recreational Development Lakeshore District of Briggs Lake and the Forested River District of Briggs Creek.

Johnson read the variance request.

John Jaszewski and his brother Mark were present.

John Jaszewski explained they are trying to upgrade the septic holding tank. The cabin was built in 1954 and the original holding tank is still being used. The tank is within 20' of the lake right now. Their mother is 86 years old and they are trying to help her get the septic upgraded. They have hired someone to install the septic and someone to design the septic holding tank location.

Schlingmann said since it's a seasonal cabin now do they plan to turn it into a permanent home on the lot.

John Jaszewski said if it stays in their family it will remain a seasonal cabin. If they sell it they will sell it "as is". They did update the electrical already.

Waytashek said if the cabin were to be torn down the new structure (home) would be required to have a new full septic system whether it's a cabin or a year around home. A new home is not allowed to have a holding tank it would need a drainfield.

John Jaszewski said the cabin has not been used much in the last 10 years and the last 2 years not used at all.

Johnson thought there were too many bends in the septic line that runs from the house to the tank.

John Jaszewski asked staff if they thought a 1500 gallon holding tank was excessive.

Waytashek said you wouldn't want to go any smaller than that.

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

Schlingmann motioned and Lawrence seconded the motion to approve the 132' variance from Briggs Creek for a septic system upgrade with the following conditions and "Findings of Fact":

Conditions:

1. The applicant must obtain a septic permit and pay the associated fees prior to starting work on this project.
2. Applicant must submit a Monitoring Plan with Pumpers Agreement and pay associated fee.
3. The proposed holding tank will need to meet Minnesota Pollution Control Agency (MPCA) floodplain regulations.

4. The existing septic system must be abandoned per Minnesota Pollution Control Agency (MPCA) regulations and the required septic abandonment form submitted to Zoning.
5. The existing shallow well must be abandoned per Minnesota Pollution Control Agency (MPCA) regulations and records for well abandonment submitted to Planning and Zoning prior to septic permit being issued.
6. 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 is designed to provide a health and safety factor – correct an existing tank that’s out of compliance.
2. Without the variance is the property owner deprived of a reasonable use of the property? Yes (X) No () Because the existing system is inadequate and the new one will bring them into compliance with septic regulations.
3. Is the practical difficulty due to circumstances unique to this property? Yes () No (X) Because this is a characteristic small lake lot that was platted several years ago when everybody had seasonal cabins. So just by the small dimensions it makes it inadequate to be served by a regular drainfield and septic system.
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes (X) No () Created at the time the parcel was subdivided and with the new regulations the current system is inadequate.
5. Will issuance of the variance maintain the essential character of the locality? Yes (X) No () It will improve the area by bringing the current system/dwelling in compliance with current regulations.
6. Does the practical difficulty involve more than economic considerations? Yes () No (X) It involves health and safety considerations.

All in favor. Motion to approve passed.

6:14 P.M. PATRICIA HEITLAND: Requesting a 75’ variance from the right of way of Highway 10 to construct an accessory structure. Required setback from the right of way is 100’. Address: 14637 187th Circle NW, Elk River, Mn Legal: Twin Pines Addition Lot 7, Blk 1 Sec 36, Twp 33, Rge 27 Big Lake Township .57 Acres General Rural District.

Johnson read the variance request.

Patricia Heitland was present.

Ms. Heitland explained she would like to put up a pole shed/garage in the back of the house for personal items like cars and motor cycles. They didn’t know about the right of way when they

bought the property. The area they would like to put the building is already cleared of trees except for maybe 2 fruit trees. She feels that's the only location on the property that it will look good – street wise and from the neighbors. If they added onto the house where the carport is it would close off access for any work on the septic.

Lawrence questioned the right of way and the setback.

Waytashek said Planning & Zoning enforces the setback. She measured properties on either side of Hwy 10 linear about 1500' and they all met the setback or were missing it by a few feet. They want to keep the corridor clear in case there are any accidents on Hwy 10 or for future development down the road if Hwy 10 needed to be expanded. The setback has been 100' from the right of way since at least 1994.

Johnson said the previous owner of this property used to park cars in the right of way and sell them. He also noticed the neighbor to the west has golf carts sitting in the right of way. He thinks it is something the county should look at to get those things pushed further back off the right of way.

Heaney said the county has brought criminal enforcement actions against individuals that have continued to do that kind of thing.

Nelson asked how the plat got approved because there never should have been a lot there.

Riddle said the lot was development before the ordinance in 1994.

Ms. Heitland thought the house was built in 1973.

Schlingmann said the other thing that needs to be considered is that it's not the board's duty to argue whether the right of way should be 75' or 10'. The ordinance was established by the County Board. The Board of Adjustments job is to see if the request is in conformance with the intent of the board. If there is a particular hardship with the request then they can take a look at granting it. Accessory buildings are a privilege and not necessarily the fore going conclusion.

Ms. Heitland said with the garden shed and the carport and the septic there's no place else on the property for the new building.

Schlingmann said sometimes you have lots you can't put certain things on. The previous variance was a health and safety issue. This variance is a request for the applicant's convenience. It isn't something that is critical because the lot can be used the way it is. It sounds like the applicant has some toys they want to store. The board does not look at personal possessions as being particular

difficulty. His personal opinion would be to deny the request because it does not meet the critical things they need to look at to grant a variance.

Lawrence asked what the variance would be if they wanted to add onto the house. Take the carport off and add the garage.

Dakin said they would still need a variance and the house does not meet the current setback.

Riddle asked why the garage couldn't go to the right of the property behind the house.

Ms. Heitland said that would be the area the septic would need to go if an upgrade was ever needed. She wouldn't want to drive anything across the septic line to park it in the garage.

Riddle asked why the new garage couldn't be closer to the carport.

Ms. Heitland said there isn't much room between the shed or alongside it. You wouldn't be able to get a septic truck back to the septic if needed.

Johnson said the carport could be removed.

Ms. Heitland said they could but that would mean she would lose space that she already uses. She doesn't want to move the garden shed or the carport plus it matches the house.

Lawrence asked if the building permit would trigger a septic compliance.

Riddle said they purchased the property a couple years ago so they probably had a compliance done.

Ms. Heitland said they did turn in a septic compliance.

Waytashek said there was 48' between the edge of the house and the property line. The carport was put on sometime between 2008 and 2010. The carport did not have a building permit on file. The garden shed is 120 sq ft and does not require a building permit.

Heaney said she could bring an action to have the carport removed because it doesn't have a building permit.

Ms. Heitland said when they bought the property the carport was already there.

Heaney said that doesn't matter. If it doesn't have a building permit legally it doesn't need to be there.

Ms. Heitland said that doesn't really seem fair to a buyer.

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

Schlingmann motioned and Demeules seconded the motion to deny the 75' variance from the right of way of Highway 10 to construct an accessory structure 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 request for the structure is for an accessory use which is a privilege and not a mandated building. The area around there doesn't have any pole sheds within that 75' area.
2. Without the variance is the property owner deprived of a reasonable use of the property? Yes () No (X) The use of the property is residential. There's a house, garage, carport and sufficient room elsewhere on the lot that provides less of a variance needed to put up the pole shed.
3. Is the practical difficulty due to circumstances unique to this property? Yes () No (X) The surrounding houses – there's no other large structures within the rear yard setback that interfere with that 75' requirement.
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner? Yes () No (X) There is no practical difficulty that's the reason they are turning down the variance. It's a request of convenience and not difficulty.
5. Will issuance of the variance maintain the essential character of the locality? Yes (X) No () The motion is not to issue the variance to maintain the essential character of the area.
6. Does the practical difficulty involve more than economic considerations? Yes () No (X) It involves a request of convenience.

The motion to deny the variance request passed on a 4-1 vote. Schlingmann, Johnson, Demeules and Lawrence voted in favor of the motion to deny. Nelson voted against the motion.

6:36 P.M. Nelson moved and Lawrence seconded to adjourn. Motion carried. Meeting adjourned.

Submitted by: Kelly Mittelstaedt