

**SHERBURNE COUNTY
BOARD OF ADJUSTMENT
MINUTES
SEPTEMBER 14, 2023**

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

Roll call was taken.

Members Present:

Roger Johnson - Chairperson
David Anderson
Kodey Shaw
Steve Demeules
Bud Stimmler
Bryan Adams
Michelle MacMillan

Staff Present:

Zach Guttormson – Assistant Planning & Zoning Administrator
Addison Otto – County Planner
Kelly Mittelstaedt – Secretary

Demeules made a motion to approve the minutes from the August 10, 2023 Board of Adjustment Meeting. Anderson seconded the motion. All in favor. Motion passed.

Adams made a motion to approve the evening’s agenda. Shaw seconded the motion. All in favor. Motion passed.

Johnson informed everyone the meeting would be audio-recorded.

6:01 P.M. JIM THOMPSON: (Property Owner: Kitty Corner Properties, LLC)
Requesting a 10’ variance in setback from the right of way of CSAH #1 for a septic system upgrade. Required setback from the right of way of CSAH #1 is 10’. Address: 14429 283rd Ave NW, Zimmerman, Mn Legal: Second Elk Lake Estates Lots 1 & 2, Block 2 Sec 36, Twp 35, Rge 27 .20 Acres Blue Hill Township General Rural District and within the General Development Lakeshore District of Little Elk Lake.

Johnson read the variance request.

James Thompson, 28299 144th St NW, Zimmerman, Mn was present.

Otto explained there is no permit history on file for the septic system at this location. The applicant did not have a compliance inspection done on the septic system. They did have a septic design done and found out there is a gas line running through where the drainfield was supposed to go.

Adams asked if the septic design had been approved.

Otto said county building inspectors have approved the septic design.

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

Demeules motioned and Adams seconded the motion to approve the 10' variance in setback from the right of way of CSAH #1 for a septic system upgrade with the following conditions and "Findings of Fact"

Conditions:

1. Prior to installation, a septic permit must be obtained from the County.
2. If any portion of the proposed septic upgrade is to be located within the CSAH #1 right-of-way, the applicant must enter into an encroachment agreement with the Sherburne County Public Works Department.
3. The existing septic system must be abandoned per Minnesota Pollution Control Agency (MPCA) regulations.
4. The variance is only valid if acted upon 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 () There's no changes in the land use.
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 lot is fairly close to CSAH #1. Plus it has a gas line going through an available area on 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 () They need a working 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 ()
The setbacks from CSAH #1 make the variance needed.
5. The variance requested is the minimum variance which would alleviate the practical difficulty. Yes (X) No () With the pipeline going through this would be the minimum.
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 will be no changes in what it does.
7. Adequate sewage treatment systems can be provided if the variance is granted. Yes (X) No () It will.
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 appears there's enough parking for construction vehicles.
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 alter that.
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 all be underground.
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 () The septic system is needed to have a reasonable use of the property.

All in favor. Motion to approve passed.

6:07 P.M. GERALD KELLY: 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: 22188 156th St NW, Elk River, Mn Legal: Tract 15 – Com at SE Cor of Lot 9 . . . (full legal on file) Sec 2, Twp 33, Rge 27 .17 Acres Big Lake Township General Rural District and within the Recreational Development Lakeshore District of Birch Lake.

GERALD KELLY: 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: 22188 156th St NW, Elk River, Mn Legal: Tract 15 – Com at SE Cor of Lot 9 . . . (full legal on file) Sec 2, Twp 33, Rge 27 .17 Acres Big Lake Township General Rural District and within the Recreational Development Lakeshore District of Birch Lake.

GERALD KELLY: Requesting a 5' variance in setback from the south side property line to lift existing house, repair foundation and add additions. Required setback from the side property line is 10'. Address: 22188 156th St NW, Elk River, Mn Legal: Tract 15 – Com at SE Cor of Lot 9 . . . (full legal on file) Sec 2, Twp 33, Rge 27 .17 Acres Big Lake Township General Rural District and within the Recreational Development Lakeshore District of Birch Lake.

GERALD KELLY: Requesting a 3' variance in setback from the north side property line to lift existing house, repair foundation and add additions. Required setback from the side property line is 10'. Address: 22188 156th St NW, Elk River, Mn Legal: Tract 15 – Com at SE Cor of Lot 9 . . . (full legal on file) Sec 2, Twp 33, Rge 27 .17 Acres Big Lake Township General Rural District and within the Recreational Development Lakeshore District of Birch Lake.

GERALD KELLY: Requesting a 70' variance in setback from the OHWL of Birch Lake to lift existing house, repair foundation and add additions. Required setback on a Recreational Development Lake is 100'. Address: 22188 156th St NW, Elk River, Mn Legal: Tract 15 – Com at SE Cor of Lot 9 . . . (full legal on file) Sec 2, Twp 33, Rge 27 .17 Acres Big Lake Township General Rural District and within the Recreational Development Lakeshore District of Birch Lake.

GERALD KELLY: Requesting a 35' variance in setback from the centerline of 156th St NW to lift existing house, repair foundation and add additions. Required setback from the centerline is 100'. Address: 22188 156th St NW, Elk River, Mn Legal: Tract 15 – Com at SE Cor of Lot 9 . . . (full legal on file) Sec 2, Twp 33, Rge 27 .17 Acres Big Lake Township General Rural District and within the Recreational Development Lakeshore District of Birch Lake.

Johnson read the variance requests.

Otto said the existing cabin is on Birch Lake. The cabin is 759 sq. ft. with a 264 sq. ft. tuck-under garage/boathouse that's on the lakeside. There is a 147 sq. ft. deck on the lakeside. According to Assessor records the cabin was built in 1965. The applicant is proposing to lift the cabin and construct a new 1st floor and then a 686 sq. ft. house/attached garage, 219 sq. ft. two-story deck, and a 56 sq. ft. front porch. Impervious surface currently is 15.1 %. With proposed additions and a driveway the impervious surface will be 33.9%. The applicant has worked with SWCD to come up with a vegetated swale along the south property line. The well on the property has been sealed and the septic system has been decommissioned. Staff did list concerns they have with the property and the variance proposals. Impervious surface is something that staff takes seriously. The proposed deck is larger than what is currently on the property and the

existing structure and proposed deck will be within the shore impact zone. The existing tuck-under garage/boathouse is not meeting elevation requirements. Should FEMA ever identify a floodplain for Birch Lake, the entire structure, including the proposed addition, would be within the mapped floodplain, and subject to floodplain rules and regulations. Increased impervious surface can lead to pollution runoff and sedimentation into waterbodies.

Demeules asked what the square footage would be if the impervious got down to 25%.

Gerald Kelly, 3841 Maple Shores Dr, Excelsior, Mn was present.

Guttormson said that 1743 sq. ft. would be 25% impervious surface.

Mr. Kelly said he did have a permit from the DNR to put a well in.

Otto said the applicant received a variance from the Department of Health because the well will be on the lakeside of the cabin.

Johnson asked how the applicant was even going to get a well truck in place to drill the well.

Mr. Kelly said the truck would be coming in from the neighboring property to the north. That would be done in the winter when the ground is hard.

Mr. Kelly said if he takes the south slope of the garage addition and the entry way addition and run that out by the driveway that he would bring the impervious down to less than 20%. The SWCD told him every square foot he mitigates you take it off the lot.

Stimmler said that staff is still saying the impervious surface is still at 33%.

Otto said the 33.9% impervious surface calculation was taken directly from the survey.

Demeules asked if staff takes the same formula as the SWCD does for impervious surface.

Guttormson said no. The impervious surface numbers are what is stated on the survey.

Mr. Kelly said the hard surface coverage isn't going to change but he is going to mitigate a large percentage.

Demeules said 6 variances stands out as too much on one lot.

Mr. Kelly said the majority of the variances are for the existing structure. The existing house is in violation of the current standards.

Otto pointed out if the applicant were to remove the existing structure and start over they would gain a variance to the lot width standards.

Mr. Kelly said he intends to use the whole structure.

Johnson asked how much of the foundation would be used.

Mr. Kelly said he had an engineering study done and they were given 2 options. One is to core fill and rebar the existing to make it stronger. The contractor that is lifting the house liked that idea. The north side wall caved in so that will need to be repaired. The footings are all good and they will stay.

Otto said the structural evaluation was in the boards packet.

Adams said by asking for 6 variances it tells him the structure is too big for the lot. He said years ago if it was a non-conforming lot they would only be able to modify the structure on the existing footprint.

Otto said if he wasn't adding the addition toward the road he would still need side setback and lake setback variances because the existing house wasn't meeting those setbacks.

Otto explained the DNR stated they don't need to meet the 3' elevation requirements on the existing structure but anything newly created does need to meet elevation requirements.

Johnson asked if there was a slab in the tuck under garage.

Mr. Kelly said there isn't now but he intends to put one in. That will be storage for yard equipment and toys.

Otto said the OHWL is 943 and the low floor elevation of the tuck under is 944.35. For a new build it's required to be 3' above either the OHWL or highest known water level.

Johnson said he considers this a new build and thinks the basement should be 3' above the OHWL.

Mr. Kelly said everything is above that except for the tuck under garage.

Johnson said personally he would take everything down to the footings and then even take the footings out and turn the building so it was parallel to the lot. Start over from the bottom and go up.

Stimmler said reading the existing foundation structural evaluation report it says “replace 8”x16” masonry block as needed”. After visiting the site he thinks every block needs to be removed and replaced.

Mr. Kelly said if that’s what would get the variances approved he would do that.

Anderson thought it was too much building on that size lot.

Stimmler said he has a problem with the 33% impervious surface.

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

Demeules motioned and Stimmler seconded the motion to deny the variance to the Shoreland Ordinance Section 14, Subdivision 5.5B1 “Impervious Surface” with the following “Findings of Fact”:

Findings of Fact:

1. Granting the variance will not be in conflict with the comprehensive plan. Yes () No (X) It will be in conflict. The comprehensive plan states 25% and also states water quality as an issue.
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 () No (X) This is the property owner wanting to have more than 25% impervious on the property.
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 () No (X) There is currently a house on the property.
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 () No (X) Again, this is the property owner wanting to go over the 25%.
5. The variance requested is the minimum variance which would alleviate the practical difficulty. Yes () No (X) The applicant could reduce sizes in order to get down to the 25%.

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 () I'm sure it's typical of what's around.
7. Adequate sewage treatment systems can be provided if the variance is granted. Yes (X) No () There is a variance for the septic 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 () There appears to be enough room.
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 under the height restrictions.
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's below the recommended height.
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 () No (X) I believe the applicant is over building on the lot.

All in favor. Motion passed to deny the variance request.

Johnson asked the applicant if he wanted to table the rest of the variances to go back and possibly do a redesign.

Mr. Kelly said that was probably his only option.

Demeules motioned and Stimmler seconded the motion to table the other 5 variances with the approval of the applicant.

All in favor. Motion to table the remaining 5 variances passes. Those are:

- 5' variance in setback from side property line for a septic system upgrade
- 5' variance in setback from south side property line to lift existing house, repair foundation and add additions.
- 3' variance in setback from the north property line to lift existing house, repair foundation and add additions.
- 70' variance from the OHWL of Birch Lake to lift existing house, repair foundation and add additions.
- 35' variance in setback from the centerline of 156th St NW to lift existing house, repair foundation and add additions.

6:31 P.M. BRAD MORROW: Requesting a 7' variance in setback from the right of way of 241st Ave NW for an expansion on existing house. Required setback from the right of way is 67'. Address: 18112 241st Ave NW, Big Lake, Mn Legal: Wooded Meadows Lot 9, Block 1 Sec 29, Twp 34, Rge 27 3.22 Acres Orrock Township General Rural District and within the Lakeshore District of Unnamed Lake #71-183P.

Johnson read the variance request.

Brad Morrow, 24137 183rd St NW, Big Lake, Mn was present.

Guttormson said Orrock Township recommended approval of the variance request. The house was constructed in 1950. They will square up the screen porch to match the house. The proposed porch will be 280 sq. ft. The septic system is compliant.

Mr. Morrow said his plan was to extend the porch to match the edges of the home. They will remove the roof and put new trusses over the porch from the back of the house to extend the porch into actual living space.

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

Anderson motioned and Shaw seconded the motion to approve the 7' variance in setback from the right of way of 241st Ave NW for an expansion on existing house with the following conditions and "Findings of Fact":

Conditions:

1. Prior to construction, a building permit must be obtained from the County.
2. The variance is only valid if acted upon 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 ()
Granting this variance will not be in conflict with the comprehensive plan.
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 house has been there since 1950 before there were any setbacks.
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 () What he is asking to do is pretty reasonable and is typical of other houses in the area.

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 () As stated before the house has been there since 1950 before there were any setbacks.
5. The variance requested is the minimum variance which would alleviate the practical difficulty. Yes (X) No () It is the minimum variance and it's not getting any closer to the road.
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 () This house, after the changes are made, are going to be real typical of the houses in the area.
7. Adequate sewage treatment systems can be provided if the variance is granted. Yes (X) No () The septic system was just upgraded this year.
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 current driveway won't be affected by any of these changes.
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 () The existing elevation of the house will not be changed.
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 () Economic considerations weren't considered.

All in favor. Motion to approve passed.

6:39 P.M. KRISTINE HARRINGTON: (Property Owner: Richard R. & Karen M. Aydtt Rev Trust) 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: 22148 156th St NW, Elk River, Mn Legal: Tract 12 – Com at the SE Cor of Govt Lot 9 . . . (full legal on file) Sec 2, Twp 33, Rge 27 .25 Acres Big Lake Township General Rural District and within the Recreational Development Lakeshore District of Birch Lake.

KRISTINE HARRINGTON: (Property Owner: Richard R. & Karen M. Ayd Rev Trust) Requesting a variance to Section 17.5 (Subsurface Sewage Treatment System Program) Subdivision 5.2 (D) which states “A holding tank will not be allowed for a new house, nor may an existing residence with a holding tank be expanded to include additional sleeping areas”. Address: 22148 156th St NW, Elk River, Mn Legal: Tract 12 – Com at the SE Cor of Govt Lot 9 . . . (full legal on file) Sec 2, Twp 33, Rge 27 .25 Acres Big Lake Township General Rural District and within the Recreational Development Lakeshore District of Birch Lake.

KRISTINE HARRINGTON: (Property Owner: Richard R. & Karen M. Ayd Rev Trust) Requesting a 32’ variance in setback from the OHWL of Birch Lake for a new home with patio. Required setback from the OHWL of a Recreational Development Lake is 100’. Address: 22148 156th St NW, Elk River, Mn Legal: Tract 12 – Com at the SE Cor of Govt Lot 9 . . . (full legal on file) Sec 2, Twp 33, Rge 27 .25 Acres Big Lake Township General Rural District and within the Recreational Development Lakeshore District of Birch Lake.

KRISTINE HARRINGTON: (Property Owner: Richard R. & Karen M. Ayd Rev Trust) Requesting a 61’ variance in setback from the centerline of 156th St NW for a new home. Required setback from the centerline is 100’. Address: 22148 156th St NW, Elk River, Mn Legal: Tract 12 – Com at the SE Cor of Govt Lot 9 . . . (full legal on file) Sec 2, Twp 33, Rge 27 .25 Acres Big Lake Township General Rural District and within the Recreational Development Lakeshore District of Birch Lake.

Johnson read the variance requests.

Kristine Harrington, 7650 O’day Lane NE, Otsego, Mn was present. She is at the meeting on behalf of her parents who own the property at 22148 156th St NW, Elk River, Mn.

Guttormson said the applicant is proposing to tear down the existing structure and rebuild. Currently on the property there is an 889 sq. ft. cabin, a 321 sq. ft. detached garage, a 177 sq. ft. boathouse and a couple decks. The new house will be 2,117 sq. ft. with an attached garage. The existing cabin deck is located 50’ from the OHWL of Birch Lake. The house will be 68.39’ from Birch Lake. Side setbacks will be met. The current impervious surface is 28% and the proposed will be 26%. The applicant has worked with the SWCD and they are proposing a vegetated buffer along the shoreline. Staff received that email update 9-14-23. Staff does have a concern about the amount of impervious surface on the lot. If the applicants proposed a smaller house both a tank and drainfield could potentially fit on the lot. Currently they are proposing a holding tank.

Ms. Harrington said they have done the best they could to move the house away from the lake. They will likely go back to the township so they can put vegetation along the easement on the side of the property. The septic contractor said with the way the lot is there is no way to have a drainfield.

Johnson asked if the applicant has submitted anything from the septic contractor that states a drainfield can't be placed on the property.

Ms. Harrington said that she has.

Guttormson read the letter to the board from R & R Septic that stated a holding tank was the best option for the lot.

Anderson said they could apply for a variance for a tank and drainfield.

Guttormson said staff would like to see a tank and drainfield for the quality of the lake but it might not be possible on this lot.

Adams asked if there was a drainfield now.

Ms. Harrington said there is just a tank currently.

Guttormson said there is a lot that goes into a septic design. Like type of soils and this area has a high water table. All the systems in the area have mounds that require a very expansive area.

Demeules asked the applicant what she is willing to do to get to 25% impervious surface.

Ms. Harrington said they could remove the patio in the back.

Demeules said that would be in their best interest.

Otto said the patio is 130 sq. ft. which would meet the 25% impervious surface on the lot .

Adams asked if the house was going to be closer to the lake than adjacent properties.

Otto explained the adjacent property to the south has a house but there is no house on the other side.

Guttormson explained the proposed house is actually further from the lake than the existing house and by moving it closer to the road reduces impervious because it will require a shorter driveway.

Johnson asked if there would be gutters on the house.

Ms. Harrington said there would be gutters.

Otto showed an aerial photo of the existing house and the house to the south.

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

Ms. Harrington said she did have a survey without the patio in the back of the property.

Guttormson suggested the applicant get further documentation from the septic designer explaining more of why a septic drainfield wouldn't fit on the property.

Adams motioned and Shaw seconded the motion to table all 4 variances with the applicant's approval.

All in favor. Motion to table all 4 variances passes. Those are:

- Shoreland Ordinance Section 14, Subdivision 5.5B1 – Impervious Surface
- Section 17.5 Subsurface Sewage Treatment System Program
- 32' variance from OHWL of Birch Lake for new home with patio
- 61' variance from centerline of 156th St NW for a new home

6:58 P.M. MATTHEW NELSON: Requesting a 12' variance in setback from the right of way of 187th St NW for a detached garage. Required setback from the right of way is 50'. Address: 23816 186th St NW, Big Lake, Mn Legal: Shores of Eagle Lake Second Addition Lot 1, Block 2 Sec 30, Twp 34, Rge 27 .55 Acres Orrock Township General Rural District and within the General Development Lakeshore District of Eagle Lake.

Johnson read the variance request.

Matthew Nelson, 23816 186th St NW, Big Lake, Mn was present.

Guttormson explained the applicant was proposing to build a 12'x20' detached accessory structure to be located 38' from the township road right of way. The setback for this road is 50' from the right of way. The applicant has gotten approval from the Shores of Eagle Lake Homeowners Association. The current impervious surface is at 15% and with the accessory building it will be at 22%. The property has a community septic system and well. Staff does note the need for the variance may be due to economic considerations, as placing the structure where it meets the 50' setback to the township road right-of-way would require additional fill to be excavated or brought onto the property.

Mr. Nelson said there is no other lot in the development that has the road setback issues that he does. The back yard is significantly sloped and has a low area.

Adams said the applicant could fill the area in the back.

Mr. Nelson said not according to the HOA. The surface in which it was landscaped needs to stay the same according to the covenants for the property.

Johnson asked if the covenants were part of the record.

Guttormson said they were a recorded document. He went and printed a copy of the covenants to read for the board.

Mr. Nelson said if he were to place the garage in the back yard there is a neighbor to the north and that would block his site of the lake. In the proposed location that neighbor would see right over the building.

Guttormson read from 7.7 of the declaration for the Shores of Eagle Lake document #621275. In the section titled "Grading, Tree Removal, Landscaping & Irrigation" it states "the design review committee shall not approve any change in the final grade and drainage of a lot unless the change in grade and drainage is approved by a responsible government body".

Mr. Nelson said the HOA could still deny his request to excavate.

Adams thought it would be the engineer for the HOA that would need to approve the changes in grading. The governing body in this case is the HOA.

Demeules said the HOA is not a governing body.

Johnson suggested tabling the request so the applicant can get a definitive answer from his HOA if they would allow the detached garage in a different spot on the lot.

Demeules asked what the shed was for.

Mr. Nelson said he was going to put his lawn mower and other stuff in the shed.

Demeules said if it was his shed he would want it right off the concrete pad instead of using up grass someplace. He is not a fan of setbacks on township roads because he thinks they are excessive.

Adams said the township didn't have a problem with the variance but the question is could it be placed someplace else.

Johnson said he is hearing the board suggesting to table the request or possibly approve the request. If the board makes a motion the applicant runs the risk of the request getting denied and then he wouldn't be able to come back for a variance for a year.

Guttormson reminded the board if the variance were denied it would be the Zoning Administrators determination on what a substantial change in what the variance request is.

Johnson asked the applicant if he wanted to table the request or take a chance on the board making a decision now.

Mr. Nelson said he would like a decision now if possible.

Stimmler motioned and Adams seconded the motion to approve the 12' variance in setback from the right of way of 187th St NW for a detached garage with the following conditions and "Findings of Fact":

Conditions:

1. Prior to construction, a building permit must be obtained from the County.
2. The variance is only valid if acted upon 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 with the comprehensive plan.
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 () No exceptional or extraordinary circumstances apply except that it's too close and need a variance to the township road.

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 () It would deprive the applicant of rights commonly enjoyed.
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 () Exceptional circumstances do not result from the actions of the current owner.
5. The variance requested is the minimum variance which would alleviate the practical difficulty. Yes (X) No () This is the minimum variance needed.
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 not alter the character and it's a nice looking structure being built.
7. Adequate sewage treatment systems can be provided if the variance is granted. Yes (X) No () Adequate sewage treatment is there.
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 () Granting the variance will not affect 187th 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 setback than what is typical.
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 () The variance will not increase loss of 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 () If the variance is granted we are not considering economic considerations.

Shaw, Demeules, Johnson, Adams, Stimmler and MacMillan voted in favor of the motion to approve. Anderson voted against. The motion passed on a 6-1 vote.

7:19 P.M. Demeules motioned and Shaw seconded the motion to adjourn. Motion carried. Meeting adjourned.

Submitted by:
Kelly Mittelstaedt

