

MINUTES

EMILY PLANNING COMMISSION/BOARD OF ADJUSTMENT REGULAR MEETING

September 6, 2022

1. CALL TO ORDER

The meeting was called to order by Commissioner Koch at 6 pm.
Pledge of allegiance was recited.

2. ROLL CALL

PRESENT: Greg Koch (Chairperson), Donna Jones, Bill Spiess, David Johnson, Denise Vukelich and Teresa Fiedler

Council: Gary Hanson (Liaison)

Staff: Brittney Cotner, Zoning Administrator (Sourcewell) and Sue Fahrendorff, Planning & Zoning Clerk

Attendance: Tracy Jones (Mayor), Mike Helberg, Stephanie Helberg, Chad Genz, Tawnya Bonsante, Brittany Brawn, Dustin Brawn, Lynn Glenn, Kristian Gullikson, Rod Glenn

3. ADDITIONS OR DELETIONS

The Planning Commission requested a change to the agenda order to address Public Hearing Variance Application V-22-06 first and Variance Application V-22-05 as second.

MOTION MADE BY COMMISSIONER SPIESS TO APPROVE THE AGENDA WITH CHANGES TO THE PUBLIC HEARING VARIANCE APPLICATION ORDER ALLOWING V-22-06 TO BE HEARD FIRST; FOLLOWED BY V-22-05. SECONDED BY COMMISSIONER JONES. ALL VOTED IN FAVOR-MOTION CARRIED 5-0.

4. OPEN FORUM

None

5. PUBLIC HEARINGS

- a. Variance application V-22-06 to allow for the construction of a 40'X28' dwelling with an attached 28'X26' garage 50' from the Ordinary High Water (OHW) where 100' is required. Owner/Applicant: Tawnya Bonsante.

Cotner gave background information: The applicant is requesting a variance to construct a 40' X 28' dwelling structure with a 28' X 26' attached garage within the OHW setback 50 feet from the OHW where 100 feet is required. The subject property PID 21330566 is located on Trout Lake. The request is due to a large wetland located on the property. There is a building envelope on the property located on the roadside. The applicant has considered building within that building envelope; however, the subsurface septic system would need to be placed in this location leaving little area for the dwelling structure. The subject property is to be served by a private well and SSTS. Cotner stated there is currently a violation on the property regarding a camper/RV that is placed without a permit and no SSTS permit on file. Per our ordinance, the Planning Commission cannot approve a variance with an active violation on a property.

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During the hearing open forum, Tawnya Bonsante addressed the Planning Commission regarding the Camper/RV that is currently on her property. Bonsante stated that she owns a RV that has been driven on and off the property during the summer. Cotner reminded her that the ordinance states that a camper/RV can not be on a site for longer than 14 days within a 60 day period. Cotner recommended, if the Planning Commission is comfortable with moving forward with the variance, the camper/RV must be removed from the property or she applies for a camper permit, which must meet all the setback requirements. The Planning Commission decided to move forward with the variance request provided that all property zoning violation be addressed regardless of the outcome of the hearing.

Kristian Gullikson addressed the Planning Commission and stated there is a slight variation to the proposal and provided a handout to the Planning Commissioners. The new proposal stated the house(with no garage) would be built 75' from the OHW and the detached garage will be built on the site closer to the road and septic system. Gullikson stated that the property has several unique land features (wetland, shape & size). Gullikson stated there are 2 features that make this property unique. 1. Very high berm by the lake that would prevent any runoff going into the lake. 2. The property has been in the same family since 1964, and at the time of purchase there were not the same restrictions as are currently in place. Gullikson stated that given the particulars of the lot and other neighbors being granted variances, he feels there is room for an exception for this variance request. Gullikson asks the Planning Commission if a variance request could be granted for one of the proposals that have been submitted. The 2nd proposal would only be 25' on the OHW instead of 50', which he feels is a better option, given the situation of the lot.

Commission Koch asked Cotner if they need to submit a new variance request or could the Planning Commission accept this 2nd proposal option. Cotner stated the Planning Commission can modify the application since it's more in line with the ordinances and move forward with a decision. Commissioner Spiess stated the open violation regarding the camper/RV will need to be addressed prior to any decision. Bonsante and Gullikson stated the camper/RV will be removed from the property the following week.

Lynn Glenn addressed the Planning Commission stating that her father purchased the property in 1964 and it's been in her family ever since. It is her wish to have the property remain in the family so they can use and enjoy the property going forward.

Tracy Jones (City Mayor) addressed the Planning Commission stating there are always exceptions to the rules and if it came before the City Council, he would vote for this exception to the ordinance and grant the variance.

Closed Public Hearing Forum

Commissioner Koch stated he made a site visit to the property and noted the property presents several building challenges. The Planning Commission stated the 2nd proposal is more favorable than the original option due to 25' less building within the OHW setback. They also noted the family's ownership history of the property plays into their decision of this variance. Cotner stated the findings of facts.

Findings of Fact:

1. The subject property is located at TBD Dahler Ave (PID 21330566).
2. The subject property is zoned, "Shoreline Residential" and is located within the shoreland overlay zone on an RD lake.
3. The applicant is requesting a variance to construct 38' X 28' dwelling 75 feet from the Ordinary Highwater Mark where 100 feet is required.

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4. The applicant establishes that there are practical difficulties, as defined in this chapter, in complying with the official control;
 - a. How? Due to the large wetland area located on the property there are limited building options for both the dwelling as well as the septic system that is required.
5. The plight of the landowner is due to circumstances unique to the property not created by the landowner;
 - a. How? There is a large wetland on the property impeding upon the property owner to meet the required setbacks.
6. The variance will not alter the essential character of the locality;
 - a. How? There are a large number of structures, including dwellings, that have been constructed and or granted variances on the neighboring properties keeping with the character of the locality.
7. The strict interpretation of this chapter would be impractical because of circumstances relating the very large wetland area located on the property not created by the landowner.
8. The deviation from this chapter with any attached conditions will still be in keeping with the spirit and intent of this chapter and the Comprehensive Plan.
9. The variance will not create a land use not permitted in the zone. Single family dwellings are a permitted use in the "Shoreline Residential" Zone.
10. The variance is not for economic reasons alone, but reasonable use of the property does not exist under this chapter.

MOTION BY COMMISSIONER SPIESS TO GRANT V-22-06 2ND OPTION WITH DWELLING 75' BY OHW AND DETACHED GARAGE AT A LATER DATE AND SEPTIC SYSTEM LOCATION NOTED ON 2ND OPTION. SECONDED BY COMMISSIONER JONES. ALL VOTED IN FAVOR-MOTION CARRIED 5-0

- b. Variance Application V-22-05 to allow for the construction of a 30'X32' accessory structure 15' from the property line where 20' is required.
 Owner/Applicant: David Johnson. Commissioner Johnson recused himself from the Planning Commission since this is his own personal property.
 Cotner provided background information:
 The applicant is requesting a variance to construct a 32' X 30' (960 sf.) accessory structure 15 feet from the road right-of-way where 20 feet is required. The subject property 44733 Old Highway 6 (PID 21030596) is located on Roosevelt Lake. The request is due to an existing well and hydrant located on the property. The subject property is served by a private well and SSTS. The proposed impervious surface coverage ~14% (20% allowed).

During hearing open forum, Johnson stated the reason for the variance is that the garage is larger and at a different angle than the footprint of the existing garage and will be over the ROW by 5'. Due to other features on his lot (e.g., well, hydrant, septic, & propane tank,) he is limited to where he can place this garage. Commissioner Spiess requested the 3 lots be consolidated into one parcel as a condition of variance approval.

Closed Public Hearing Forum. Cotner stated the findings of facts.

Findings of Fact:

1. The subject property is located at 44733 Old Highway 6 PID 21030596.
2. The subject property is zoned, "Shoreline Residential" and is located within the shoreland overlay zone.
3. The applicant is requesting a variance to construct a 32'X30' (960 sf.) accessory structure 15 feet from the right-of-way where 20 feet is required. The proposed impervious surface coverage is ~14% (20% allowed).
4. The applicant establishes that there are practical difficulties, as defined in this chapter, in complying with the official control;
 - a. How? There are limited building area options due to the lot being shallow with a propane tank, hydrant, and drainfield impeding upon meeting the ordinance requirements.
5. The plight of the landowner is due to circumstances unique to the property not created by the landowner;
 - a. How? There are limited building area options due to the lot being shallow with a propane tank, hydrant, and drainfield impeding upon meeting the ordinance requirements.
6. The variance will not alter the essential character of the locality;
 - a. How? There was an existing garage in this area that was slightly smaller in footprint. The new garage although larger will not impede into the right-of-way setback any further than the previous garage keeping the essential character closely in line with the existing layout of the property.
7. The strict interpretation of this chapter would be impractical because of circumstances relating to lot size, shape, topographic or other characteristics of the property not created by the landowner.
8. The deviation from this chapter with any attached conditions will still be in keeping with the spirit and intent of this chapter and the Comprehensive Plan.
9. The variance will not create a land use not permitted in the zone. Single family dwellings are a permitted use in the "Shoreline Residential" Zone.
10. The variance is not for economic reasons alone, but reasonable use of the property does not exist under this chapter.

MOTION BY COMMISSIONER SPIESS TO APPROVE V-22-05 WITH THE TEN FINDINGS OF FACTS ALONG WITH THE CONDITION TO CONSOLIDATE THE TWO LOTS INTO ONE LOT. SECONDED BY COMMISSIONER JONES, ALL VOTED IN FAVOR- MOTION CARRIED 4-0.

6. APPROVAL OF MINUTES

- a. August 2, 2022, regular meeting

MOTION BY COMMISSIONER SPIESS TO APPROVE MINUTES AS PRESENTED, SECONDED BY COMMISSIONER JONES TO APPROVE AUGUST 2, 2022, MEETING MINUTES. ALL VOTED IN FAVOR-MOTION CARRIED 5-0.

7. NEW BUSINESS-NONE

8. OLD BUSINESS

- a. Fay Hughes Expired Permit- Cotner did a site visit prior to the Planning Commission meeting and all exterior work has been completed. Planning Commission will not take any further action regarding the matter.

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- b. Michael Helberg Violation- Michael Helberg came before the Planning Commission to address the violation regarding the placement of his garage/shed within the road Right-of-Way (ROW).

Helberg stated that Commissioner Spiess and Burslie(former zoning administrator) did a site visit to his property regarding a compliant they had received. Helberg stated that from the time the permit was issued on 3-16-2021, no one from the city ever came out to verify or measure that the garage was in the correct place. Cotner stated there is a condition on the permit application that all Right-Of-Way setback conditions be met and it's the property owners responsibility to ensure the setbacks are correct. Helberg stated he wasn't informed what the ROW or setback definition were pertaining to the placement of the shed. He thought the ROW started from the edge of the road and asked what the ROW is used for. Cotner explained the ROW is for snow removal and utility infrastructure.

Cotner stated she spoke at length to Justin Burslie regarding this issue and was told that Mr. Helberg had already purchased the shed, it was on its way, and he needed a permit approved right away. Burslie couldn't do a site visit prior to permit approval, however he explained the ROW and setback requirements to Helberg and conditioned the permit to be 20 feet or more away from the public road right-of-way. Helberg stated he was never told that information from Burslie. Cotner acknowledged the conversations are he said/she said situation, and she was only relaying the information she received from Burslie. Cotner stated to Helberg that Zoning Administrators are not surveyors, and it's still the responsibility of the property owner to made sure structures are placed within the ordinance setback requirements. Cotner explained the options available to resolve the violation - apply for an after-the-fact variance, move the shed to a location 20+feet away from the ROW, or remove the shed from the property.

Commissioner Koch stated the Planning Commission does not have the wherewithal to put a building within the right-of-way or not meet the setbacks, which is why we have permits to make sure these setbacks are met. Variances are requested when properties are not able to meet the setback requirements and the process of a public hearing takes place. Commissioner Koch stated this situation did not go through a public hearing process, but instead was a permit to do something if the building was within the right-of-way and setback. In this case, those requirements were not met, which is in violation of the permit. Commissioner Koch asked what the challenge is of moving the structure and how far is it encroaching into the ROW. Cotner stated the structure is 9 feet into the road ROW and there is no available room to slide the structure out of the right-of way and setback; the structure will need to be moved to another site on the property.

Cotner suggested the site plan could be updated once Helberg decides on the new shed location; which would eliminate the need for a new permit process. The current permit expires 3-16-2023; a six month permit extension can be requested in writing from Helberg, if needed.

- c. Northern Lights Violation Update

Cotner stated she has been in contact with the owner of Northern Lights development regarding the violations (e.g., parking on Roosevelt Lake access lot, motor vehicles on pedestrian trails and docking being stored over the winter). She also contacted MnDOT to let them know the Planning Commission was going to be addressing the parking issue-no comments were submitted by MnDOT. Cotner

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stated the current owner was aware of these issues that the previous development owner didn't address. He said he will be addressing these issues during the next Homeowners Association (HOA) meeting. Per the conversation Cotner had with the current owner, he understands the seriousness of these violations and will make it a priority to communicate to the HOA. Cotner recommended the Planning Commission wait and see if these issues resolve themselves or if further action is needed. She also suggested it might be beneficial to have a sit down meeting with the owner if these issues are not resolved within a year. Commissioner Koch requested Cotner send him letters and other correspondence regarding this violation so he can review for later action if needed.

9. P & Z ADMINISTRATOR'S REPORT

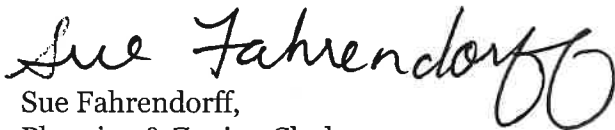
Cotner stated there has been a slight decrease in the number of permit applications over the past two weeks. Since the last meeting, there have been 16 new Land Use and 1 SSTS permit. There are a few violations that she is watching closing with one regarding an unpermitted septic system.

10. ADJOURN

MOTION BY COMMISSIONER JOHNSON, SECONDED BY COMMISSIONER VUKELICH TO ADJOURN THE MEETING. ALL VOTED IN FAVOR-MOTION CARRIED 5-0.

Meeting adjourned at 7:36 pm.

Respectfully submitted,



Sue Fahrendorff,
Planning & Zoning Clerk