



MAYOR AND COUNCIL COMMUNICATION

DATE: 10/15/2013

REGULAR

ITEM #: 12

AGENDA ITEM: Dean and Gayle Dworak Variance – 09.029.21.22.0025 (Hill Trail North)

SUBMITTED BY: Nick Johnson, City Planner

THROUGH: Dean Zuleger, City Administrator

REVIEWED BY: Planning Commission
 Kyle Klatt, Planning Director
 Pete Ganzel, Washington County

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item.....Staff
- Report/Presentation.....Staff
- Questions from Council to Staff.....Mayor Facilitates
- Public Input, if Appropriate.....Mayor Facilitates
- Call for Motion.....Mayor & City Council
- Discussion.....Mayor & City Council
- Action on Motion.....Mayor Facilitates

SUMMARY AND ACTION REQUESTED:

The City Council is asked to consider a Variance submitted by Dean and Gayle Dworak at 09.029.21.22.0025 (Hill Trail North) to allow for the construction of a single family home on a lot that is not considered a buildable lot of record under the Lake Elmo Zoning Ordinance. In addition, the variance request includes an allowance to install a subsurface sewage treatment system on a lot that does not meet the area requirements for septic systems per the Zoning Ordinance. The Planning Commission held a Public Hearing on August 26, 2013, which was continued at meetings on 9/9/13 and 9/23/13. The Planning Commission recommended denial of the variance request based upon failure to meet three findings necessary to grant a variance. The City Council considered the variance request at its meeting on 10/1/2013 and postponed the item for further consideration at its next meeting.

The Planning Commission recommends the City Council deny the Variance by taking the following action:

“Move to approve Resolution 2013-082, denying the variance requested at 09.029.21.22.0025 (Hill Trail North) to allow for the construction of a single family home on a lot that is not considered a buildable lot of record, based upon failure to meet all required findings necessary to grant the variance.”

BACKGROUND AND STAFF REPORT:

The City of Lake Elmo received an application for a variance from Dean and Gayle Dworak to build a single family home on a lot that is not considered a buildable lot of record under the Zoning Ordinance. The City Council reviewed the request at the meeting on 10/1/13 and postponed the item for further

consideration at a future meeting. To access all of the application materials, staff reports, and other documents included in the variance review, please reference the City Council agenda packet from the 10/1/13 meeting.

In order to approve a variance under the City Code, the applicant must demonstrate compliance with 4 required findings. The findings and their definitions per City Code (§154.109) are the following:

1. *Practical Difficulties.* A variance to the provision of this chapter may be granted by the Board of Adjustment upon the application by the owner of the affected property where the strict enforcement of this chapter would cause practical difficulties because of circumstances unique to the individual property under consideration and then only when it is demonstrated that such actions will be in keeping with the spirit and intent of this chapter.
 - a. *Definition of Practical Difficulties.* “Practical difficulties,” as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control.
2. *Unique Circumstances.* The problem for the landowner/applicant which the proposed variance is intended to correct must be due to circumstances that are unique to the property in question and that were not created by the land owner/applicant.
3. *Character of Locality.* The proposed variance will not alter the essential character of the locality in which the property in question is located.
 - a. *Definition of Locality.* For purposes of this subsection, “locality” shall be defined as all that property within 350 feet of the property proposed for the variance; however, in all events, it shall include all parcels abutting the affected parcel, including those immediately across a public street, alley or other public property.
4. *Adjacent Properties and Traffic.* The proposed variance will not impair an adequate supply of light and air to property adjacent to the property in question or substantially increase the congestion of the public streets or substantially diminish or impair property values within the neighborhood.

Based upon these application submitted and the required findings, staff recommended the variance application for approval. Staff determined that the variance application met the four findings as required by the City Code. Further detail about the content of the staff recommendation can be found in the Staff Report dated 8/26/13, also found in the 10/1/13 City Council agenda packet.

During the review of the application at the Public Hearing, the Planning Commission spent a significant amount of time over the course of several meetings reviewing the applicant’s request and considering testimony from the applicants and neighboring property owners. All of the reports, submitted comments, and record of the public hearing can be found in the City Council agenda packet for the 10/1/2013 meeting.

Following up from the last City Council meeting (10/1/13), the applicants, Dean and Gayle Dworak, have submitted a letter to the City Council. In the letter, they submit that four other properties have received lot size variances to construct single family homes after the 1979 zoning regulations were adopted. Based upon staff research, three of these properties received variances to build on substandard lots, while the fourth property was a tear down and rebuild. However, it must be noted that each variance application must be reviewed independently based on its own merit, unique characteristics and in light of prevailing City Code requirements at the time.

PLANNING COMMISSION REPORT:

The Planning Commission recommended denial of the variance request based upon the failure of the applicants to meet three required findings for granting a variance. The Planning Commission's findings included the following: 1) that the variance was inconsistent with the Comprehensive Plan, 2) that there are no unique circumstances associated with the request, and 3) that the variance would lead to a degradation of water quality of the Tri-Lakes area and would alter the essential character of the locality. For further detail related to the Planning Commission's discussion and findings, please reference the content found in the City Council agenda packet dated 10/1/2013.

RECOMMENDATION:

The Planning Commission recommends the City Council deny the Variance by taking the following action:

“Move to approve Resolution 2013-082, denying the variance requested at 09.029.21.22.0025 (Hill Trail North) to allow for the construction of a single family home on a lot that is not considered a buildable lot of record, based upon failure to meet all required findings necessary to grant the variance.”

ATTACHMENT(S):

1. Resolution 2013-082
2. Letter from Dean and Gayle Dworak dated 10/10/2013