



PLANNING COMMISSION
DATE: 3/24/14
AGENDA ITEM: 4B – PUBLIC HEARING
CASE # 2014-08

ITEM: Horning Lot Size Variance – Krause’s Addition, Lot 9
SUBMITTED BY: Kyle Klatt, Community Development Director
REVIEWED BY: Nick Johnson, City Planner

SUMMARY AND ACTION REQUESTED:

The Planning Commission is being asked to consider a request from Suzanne Horning (as Trustee of the Suzanne R.W. Horning Trust) for a variance that would classify Lot 9 of Krause’s Addition to Lake Elmo as a buildable lot. The lot currently does not meet the City’s minimum lot size for a lot of record in a RS – Rural Single Family Residential Zoning District. The applicant has also requested a variance from Section 154.017 of the Zoning Ordinance, which states that any variance granted by the City “shall expire if work does not commence within 12 months of the date of the granting of the variance. The applicant has asked that the 12-month time limit be waived for this request.

GENERAL INFORMATION

Applicant: Briggs and Morgan (Christine Cirilli), 2200 IDS Center, 80 South 8th Street, Minneapolis, MN acting on behalf of:
Suzanne Horning (Trustee), 8991 Jane Road North
Property Owners: Suzanne and Robert Horning Trust, 8991 Jane Road North
Location: Lot 9 of Krause’s Addition to Lake Elmo. PID Number 09.029.21.11.0015
Request: Variance – Lot Size and Time Limit for Completion
Existing Land Use: Vacant parcel, prior recreation use (tennis courts) accessory to 8991 Jane Road North
Existing Zoning: RS – Rural Single Family
Surrounding Land Use: Single family residential
Surrounding Zoning: RS – Rural Single Family
Comprehensive Plan: Rural Single Family
Proposed Zoning: No Change
History: Krause’s Addition was platted in 1963. The home at 8991 Jane Road North (across the street and also owned by the applicant) was constructed in 1979. The City granted a lot size variance for the subject property in 1985, but no home was ever

built on the site. A permit to install a tennis court on the subject property was approved later in 1985.

Deadline for Action: Application Complete – 2/3/14
 60 Day Deadline – 4/3/14
 Extension Letter Mailed – No
 120 Day Deadline – 6/3/14

Applicable Regulations: 154.450 – RS – Rural Single Family Residential Zoning District
 154.109 – Variances (Administration and Enforcement)
 150.250 – Shoreland Overlay District

REQUEST DETAILS

The City of Lake Elmo has received a request from Briggs and Morgan, PA acting on behalf of Suzanne Horning, for a variance from the minimum lot size requirements in the RS – Rural Single Family Residential zoning district. The application also includes a request for the City to waive the one-year deadline for completion of the work proposed under the variance. In this case, the applicant has requested that the variance be granted without a deadline so that a home could be built on the lot at an unspecified time in the future. The applicant is therefore not proposing to construct any buildings on the property, and is instead seeking a variance to classify the lot as a buildable parcel in advance of any specific building plans for the property.

The lot under consideration is 0.785 acres (34,195 square feet) in size and the minimum lot size within the RS – Rural Single Family Residential zoning district is 1.5 acres. As an existing lot of record, otherwise known as a lot that was platted prior to the City's zoning regulations becoming effective, this property would be considered buildable if it met 60% of the district's minimum lot size. The applicant would therefore need at least 0.9 acres (39,204 square feet) for this lot to be considered buildable under the current zoning regulations.

The site is currently occupied by a tennis court that was built in the mid-1980's, and has served as an accessory use to the home located at 8991 Jane Road North. Should the variance be approved, the applicant intends to convey the lot to her children as a buildable lot, although she has not provided any specific time frame for a home to be constructed. The application materials include a septic system analysis documenting that a system compliant with Washington County septic regulations may be constructed on the property. For the purposes of this report, the septic designer assumed that a new home would be built on the same area presently occupied by the tennis court.

In addition to the above-referenced septic report, the applicant has provided a detailed project narrative with an analysis of the required variance findings. The applicant has also provided a detailed survey of the lot showing the existing topography, drainage patterns, tree cover, and improvements that are currently situated on the property. There are no specific site development plans, and any future construction on this property will need to comply with the City's zoning and subdivision requirements (with the exception of minimum lot size should the variance be granted).

BACKGROUND

The lot that is the subject of the variance request is part of Krause's Addition to the City of Lake Elmo, which was platted in 1963 when this area was still part of East Oakdale Township. The attached copy of the plat shows that the lot is the same size as it was when originally subdivided. It

likely would have been considered buildable up to the incorporation of the area into the City of Lake Elmo and the adoption of City zoning regulations in the late 1970's. The home at 8991 Jane Road North was constructed in 1979, and it appears that this property (Lot 7) and the subject property (Lot 9) have been under common ownership since at least this time. In June of 1985, a previous owner applied for and was granted a variance by the City to grant Lot 9 status as a buildable lot. It appears that this action was taken in response to the City's adoption of the 1.5-acre minimum lot size for single-family residential lots in this neighborhood. No home was ever constructed after the granting of the variance, and a tennis court was installed on the property later in 1985.

As noted in the application materials, the present owner acquired the property sometime in 1985. It appears that the property transfer occurred after the construction of the tennis court. Additionally, the applicant has described that City assessed the subject property as a buildable lot in 1985 for a City project. Based on this information, it does appear that the City would have considered the lot to be a buildable lot at the time the property was purchased by the applicant. The applicant has also pointed out that the property has been assessed as a buildable lot the entire time that they have owned it.

When the City was planning for the reconstruction of Jane Road North in 2012, the Planning Department was asked to review the assessment rolls for the project and to identify vacant, buildable parcels that would need to pay an assessment. Lot 9 of Krause's Addition was not deemed buildable because it does not meet the 60% size requirement referenced above. Because the current Zoning Regulations include a one-year time limitation concerning the time frame for construction of projects subject to a variance, it is Staff's opinion that the 60% requirement does apply in this situation. The applicant has therefore submitted a variance request in order to re-classify this property as a buildable lot.

The applicant's parcel is situated at the intersection of Jamaca Avenue North and Jane Road North, and is approximately 230 feet north of Lake Jane. Other than a tennis court, there have been no other improvements constructed on the site. There is a fairly heavy amount of tree cover surrounding the tennis court around the periphery of the lot. All of the surrounding lots are occupied by single family residential homes. In general, the properties to the north and west are larger lots (1.5 acres), while the properties to the south and east are smaller lots (generally under 1 acre). In particular, there is a cluster of homes along the northern edge of Lake Jane that are very similar in size, and sometimes smaller, than the applicant's parcel.

PLANNING AND ZONING ISSUES

In reviewing the applicable codes that apply to the subject property, Staff would like the Planning Commission to consider the following as it reviews this request:

- **RS District Setbacks.** Any new construction on the lot will need to comply with all required setbacks for the RS District. The portion of the lot that abuts Jamaca Avenue North is considered the front property line, and is therefore subject to a slightly larger setback.
- **Driveway Access.** Although the City Code does not include any restrictions on the location of a driveway on the property, Staff is recommending that any future driveway access Jane Road North instead of Jamaca Avenue North, since the latter is the less traveled roadway in adjacent to the lot.

- **Impervious Coverage.** The RS District allows a maximum impervious coverage of 25% while the Shoreland Ordinance limits lot coverage to 15% or 6,000 square feet, whichever is greater. The tennis court currently occupies 7,395 square feet, which is 21.6% of the lot. At the time a new house is constructed on the property, the applicant will need to comply with the maximum impervious coverage allowed under the Shoreland Ordinance.
- **Shoreland Setbacks.** The lot is far enough away from Lake Jane that any new structure will be able to comply with structure and septic system setbacks.
- **Drainage Area.** There is an existing drainage area immediately to the west and to the northwest of the applicant's lot, and it appears that a portion of the drainage area is also located on this lot. While the adjacent Sprinborn's Green Acres plat includes a drainage easement over the adjacent lots, there is currently no such easement in place on the applicant's property. Staff is recommending that the applicant be required to provide a drainage easement over the portion of the lot that collects storm water runoff as a condition of approval and prior to the issuance of any building permits for the property.
- **Septic and Drainfield Areas.** The subject parcel is large enough to meet the City's minimum requirement of 20,000 square feet for a primary and secondary septic system site.
- **Surrounding Lots.** The neighboring lots within the public hearing notification area range in size from 11,424 square feet (0.26 acres) to 83,025 square feet (1.9 acres), and of these 13 lots, the average size is 41,592 square feet (0.95 acres).
- **Variance Expiration.** The City Code specifies that variances are valid one year from the date a variance is issued. If construction has not taken place within one year, the variance becomes void. While the applicant has requested a full waiver of this requirement, Staff is recommending that the City maintain a specific deadline for construction of a home on the parcel. Staff is suggesting five years as a reasonable expectation.

REVIEW AND ANALYSIS

An applicant must establish and demonstrate compliance with the variance criteria set forth in Lake Elmo City Code Section 154.017 before an exception or modification to city code requirements can be granted. These criteria are listed below, along with comments from Staff regarding applicability of these criteria to the applicant's request.

- 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. 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.

Under this standard, the City would need to find that the classification of the subject parcel as a buildable lot is a reasonable use of the property not otherwise permitted under the zoning ordinance. In this instance, the property was originally platted as a buildable lot and there is evidence in the

City's records that the current owner purchased the property with the understanding that it was a buildable lot. Additionally, the lot is consistent in size with other parcels platted at the same time and that have subsequently been built upon. The property has direct access to a platted and improved street, and a house can be placed on the property in manner consistent with the surrounding homes. Concerning the time extension associated with the variance request, Staff is recommending that a 5-year deadline is a reasonable expectation for construction of a new home. Proposed findings related to this criterion are as follows:

FINDINGS: *That the proposed use is reasonable because the lot was platted as a buildable parcel and all other parcels of similar size have had houses constructed on them since the subdivision was approved. The property is very close to meeting the required 0.9 acre minimum lot size requirement, and construction of a home on this lot will not be any more obstructive than structures built on lots meeting the 0.9 acre requirement. The applicant also purchased the lot at the time it was a buildable parcel, and the continued use of the property for a tennis court is not reasonable given the separation of this parcel by road right-of-way from any others under common ownership. The applicant has demonstrated the ability to install a compliant septic system on the property. A five year deadline for construction of a home on the property is a reasonable period of time for this work to be completed.*

- 2) **Unique Circumstances.** The plight of the landowner is due to circumstances unique to the property not created by the landowner.

In order to demonstrate compliance with this standard, the Planning Commission would need to identify those aspects of the applicant's property that would not pertain to other properties within the same zoning classification. In this case, the lot was platted as a buildable lot within an older subdivision. Other properties in the area were platted at a later date and under a different set of regulations. The property owner also purchased the lot as a buildable lot, and the site has been assessed as such for the past 25 years. Again, Staff is suggesting some findings that could be considered by the Planning Commission as follows:

FINDINGS: *That the applicant's property is unique due to former platting of this property as a buildable lot and continued classification of the property as buildable since the lot was subdivided. The applicant purchased the property with the understanding that a house could someday be built on the property, and City records indicate that the lot was indeed buildable at the time of purchase. Other homes on neighboring smaller lots were constructed prior to the adoption of the City's zoning regulations.*

- 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 formal set of findings related to this standard is suggested as follows:

FINDINGS: *The applicant's lot is larger than many of the lots in the surrounding neighborhood and is close to the minimum size needed to be considered buildable. The lot is of sufficient size to allow the installation of a compliant septic system and to allow the placement of a home on the parcel consistent with neighboring structures.*

- 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.

Propose findings for this criterion are as follows:

FINDINGS. *No impacts above and beyond those considered normal for any other single-family lot in the surrounding neighborhood would be expected should the variance be granted.*

Please note that the applicant has also provided a set of findings as part of the attached narrative and supporting documentation included with the application.

Considering the potential findings of fact as suggested in the preceding section, Staff is recommending approval of the variance request based on the findings noted in items 1-4 above and with conditions of approval related to the drainage area on the site, the location of the driveway access, and the time limit for the expiration of the variance.

DRAFT FINDINGS

Please refer to the comments in the previous section. Staff will be reviewing these findings with the Commission at its meeting.

RECCOMENDATION:

Staff recommends that the Planning Commission recommend approval of the request from Briggs and Morgan, PA acting on behalf of Suzanne Horning, for a variance from the minimum lot size requirements in the RS – Rural Single Family Residential zoning district and from the maximum time of one year for which a variance is valid. This recommendation includes the following conditions of approval:

- 1) The driveway for the future home of the lot shall access Jane Road North. Driveway access to Jamaca Avenue North shall be prohibited.
- 2) The applicant shall provide a drainage easement for the portion of the lot that collects storm water runoff from the subject property and adjacent parcels prior to the issuance of a building permit for the site. The specific location of the drainage easement shall be approved by the City Engineer.
- 3) The variance shall be valid for a period of five years, but may be renewed upon review and approval by the Board of Adjustment.
- 4) A grading, erosion control, and storm water management plan shall be submitted in conjunction with a building permit for the property.
- 5) The applicant shall secure any required permits from the Valley Branch Watershed District prior to commencing any grading or construction activity on the site.

The suggestion motion for taking action on the Staff recommendation is as follows:

“Move to recommend approval of the request for a variance from the minimum lot size requirements in the RS – Rural Single Family Residential zoning district and from the maximum time of one year for which a variance is valid, subject to the conditions of approval as recommended by Staff”

ATTACHMENTS:

1. Application Form
2. Application and Project Narrative

Larson asked if people from the greater Lake Elmo community can sign up for programming. Johnson again deferred to the applicants.

Brian Larson, representing Family Means, addressed the Planning Commission regarding the discrepancy of parking. He noted that when using the City's new required dimension of 9x18, they were able to site 108 parking stalls.

Tom Yuska, the Family Means program director, talked about how most of the participants traveled to the site. He noted that Lake Elmo Elementary does route a bus in front of the existing clubhouse. Yuska also shared that other participants are welcome beyond the Cimarron Park population, but that the program is focused on this population.

Larson asked if the center planned on providing before school care. Yuska noted that they do not have the capacity to provide before-school care.

Dodson asked how many students could be served by the facility. The program director noted that they likely serve 50-70 kids per day. Dodson asked what would happen to the building if the

Public Hearing opened at 7:26pm.

No one spoke.

The City received no written comments.

Public Hearing closed at 7:27pm

Williams stated he supports the request.

M/S/P: Larson/Kreimer, move to recommend approval of the Conditional Use Permit Amendment submitted by Family Means to allow for the construction of a 4,000 square-foot youth center based upon the request meeting the City's 12 required findings for a CUP, **Vote: 5-0, motion carried unanimously.**

2014-08

Public Hearing: *Variance - 09.029.21.11.0015 (Lot 9, Krause's Addition at Jamaca and Jane Road)*

Klatt started his presentation by explaining the request for a lot size variance. The code requires the lot size to be 0.9 acres and the subject property is 0.785 acres, 0.12 acres short of the minimum. The applicant has also requested a variance from the 12-month time limit for the commencement of work associated with the lot size variance. The applicant does not plan to build on the lot within a one-year period of time.

Klatt continued by providing background information about the parcel, starting with the location. The parcel is on the northwest corner of the intersection of Jane Road North and Jamaca Avenue North. The parcel is just north of Lake Jane. He moved on to present the site plan, describing the topography of the lot. Klatt noted that the northwest portion of the lot collects drainage, and that if the Variance were granted, the City should require that a drainage easement be provided where the water collects.

Klatt then described the general area, specifically noting the parcel sizes of the surrounding properties. He noted that the properties that are located close to Lake Jane are all smaller or similar in size as the subject property. The properties to the north of the subject parcel were platted at a later date.

In terms of history, he noted that the subject property was granted a variance in 1985. The applicants purchased the property at this time, when the lot was likely considered buildable. However, variances are typically valid for a one year period of time. It should be noted that according to current zoning rules, the lot is not considered buildable. In terms of additional info, Klatt described two road reconstruction projects, one in the 80s and one in 2012. In the 80s, the lot was assessed as buildable. In 2012, staff determined that the lot was not buildable.

Klatt discussed the required findings related to a variance. He noted that Staff has provided draft findings in the Staff Report. Klatt noted that the lot is able to site a septic system that will meet Washington County approval.

To wrap up, Klatt noted that Staff is recommending approval of the variance with 5 conditions of approval:

1. Staff is recommending that the driveway for the future home be located on Jane Rd. N.
2. The applicant must provide drainage easements on the site.
3. Staff is recommending that the Variance be valid for 5 years, as opposed to the indefinite approval that the applicant is requesting.
4. The variance is conditioned upon the approval of a future building plans.
5. The future building plans must meet the approval of Valley Branch Watershed District.

Haggard asked why there is a one year valid time period for variances. She also asked if the site will be able to be built upon with the condition that the driveway must be on Jane Rd. Klatt noted that the one year time period is standard because if the variance were open ended, there could be a lot of changes of City policy in the long interim period between when the variance is granted. Also, the site can change over the years.

Regarding the second questions, Klatt noted that the septic design that was submitted to the City included a septic system on the eastern side of the site. Staff is confident that a home can be built with the driveway access condition.

Dodson asked what the risks might be related to the Valley Branch Watershed District approval. Klatt noted that the risks are not great, that meeting VBWD standards are a common part of the process. Staff is recommending the condition so that the applicants are aware that a VBWD permit is likely.

Dodson asked about the northwest corner of the lot, where water pools at this time. Klatt noted that the City does not have topographic information of the surrounding properties. However, when the building permit is submitted, staff would work to ensure that the existing drainage condition is not exacerbated by the construction of the home.

Kreimer asked if the property was assessed in 2012. Klatt noted that it was not.

Williams asked if the septic system has been approved by Washington County. Klatt noted that the system has yet to be approved. Staff did send the variance and proposed system to Washington County for review. The County did not respond, which they typically would if they had concerns.

Following up on Kreimer's earlier question, Klatt noted that if the variance were granted, the City may wish to revisit the 2012 assessment. Haggard noted that the assessment should be triggered as soon as the variance would be granted.

Larson asked about the impacts to adjacent properties. He asked if constructing the home would be an improvement to the drainage situation. Klatt stated that without a plan to review, it is difficult to be sure. However, there will be an overall decrease in impervious surface.

Christine Cirilli, representing the Horning Family, provided some background information on the request. She noted that the applicants have been paying taxes and assessments for the lot from 1985 to 2012 as a buildable lot. The status change to non-buildable in 2012 was a surprise to the applicants. The representative of the family noted that the applicants understand that they have to comply with all of the other zoning and building requirements. They intend to build a home that is consistent with the character of the neighborhood.

Public Hearing opened at 8:06pm.

Greg Zeipelt, 4940 Jamaca Ave. N., noted that his property is directly north of the subject property. He noted that he was not aware of the plans to possibly build a home on the property. He shared that he is lived in the neighborhood for 16 years. When his

family purchased their home, their realtor researched the subject property and determined that the subject property was not a buildable lot. He continued by talking about the drainage issue. He noted that since the road project in 2012, the drainage has gotten worse in the northwest corner of the site.

Bill and Valerie Brass, 8930 Jane Road North, stated that they live to the immediate west of the subject property. She noted that she is concerned about the precedent of allowing variances for additional homes in the neighborhood. She also noted that all of the smaller parcels in the area are on the lake, not to the north of Jane Road. She finished up by stating her concern about the drainage issue. Bill added that they built their house in 1980, and the subject parcel was always the low spot in the area. He agreed that the drainage issue has gotten worse since the road project in 2012. Williams asked a question...the applicants answered

Jason Brash, 9030 Jane Road North, noted that he just moved to Lake Elmo. He noted that they moved here for the open space and large lots. He suggested that it stay that way.

Public Hearing closed at 8:18pm.

Williams asked if staff were aware of the drainage issues. Klatt noted that the City Engineer was aware that PW staff had visited the site. However, the Engineer did not note that any future action was pending.

Dodson noted that he is concerned about the drainage. However, he noted that the property owner does need to be considered. He feels that the property owner has a right to sell their property. It is clear that they have been paying taxes on the property as a buildable lot. Dodson noted that he is in favor of the variance and the 5-year timeframe.

Larson noted that due to the drainage problem, it is not yet determined if a home can be built on that site. It should be the responsibility of the City to ensure that the land can drain properly to serve all of the properties. Williams asked if condition #2 in the staff report would address his concern.

Kreimer noted that he does have some concerns related to the lack of a building plan.

Haggard wanted to clarify that this requested action is not a lot split. Klatt confirmed this fact.

Haggard also noted that she is concerned with the drainage. She would like the ultimate drainage situation to be improved. In addition, she does have concern about runoff to the lake. Also, she added that she would not like to see additional variances in

the future. Klatt noted that any future variance would have to go through the Planning Commission and Council, and staff is not anticipating any future requested variances.

Williams noted that in general he supports granting the variance. However, he would like to offer additional or different findings. Williams noted two proposed changes to the findings. He also recommended two additional conditions:

Condition #6: The applicant will submit a letter from Washington County that an approved septic system can be located on the site at the time of building permit.

Condition #7: The owner shall pay an assessment comparable to other properties in the area related to the Jane Road reconstruction project.

Williams asked if everyone was agreeable to these changes. Everyone agreed.

Larson asked if some additional information should be added to better address the drainage concern. Klatt suggested that some additional language could be added to state that the post home construction conditions not be worse than the existing condition related to the drainage area on the northwest corner of the site. Williams stated that the overall impervious coverage will be reduced. Klatt noted that is correct, but it is hard to note what the future condition will be without a plan. Williams asked if it would be helpful to add to condition #2. Klatt suggested adding language to condition #4 to state that the post-construction condition will not exacerbate the existing drainage situation.

Haggard asked if everyone was agreeable to the five year timeframe. Everyone agreed that the five-year timeframe is reasonable.

Larson asked about the ability to request an extension. Larson wanted it noted in the minutes that the request to extend the time period beyond 5 years should be legitimate and warranted.

M/S/P: Dodson/Williams, move to approve the variance from the minimum lot area requirements for 5 years for 09.029.21.11.0015 based upon the findings of fact as amended by the Planning Commission with the conditions as amended by the Planning Commission, ***Vote: 5-0, motion carried unanimously.***

Haggard asked if the City is setting any precedent with the five-year timeframe. Klatt noted that each variance must be considered by its own merit.

Public Hearing: *Zoning Map Amendment and PUD Concept Plan – Launch Properties (PID: 09.029.21.11.0015 - Lake Elmo Avenue and Hudson Boulevard)*



MAYOR & COUNCIL COMMUNICATION

DATE: 4/1/14
REGULAR
ITEM #6
RESOLUTION NO. 2014-021

AGENDA ITEM: Horning Lot Size Variance – Lot 9 of Krause’s Addition

SUBMITTED BY: Kyle Klatt, Community Development Director

THROUGH: Dean Zuleger, City Administrator

REVIEWED BY: Planning Commission
Nick Johnson, City Planner

SUGGESTED ORDER OF BUSINESS:

- Introduction of ItemCommunity Development Director
- Report/Presentation.....Community Development Director
- Questions from Council to Staff Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion Mayor & City Council
- Action on Motion Mayor Facilitates

POLICY RECCOMENDER: The Planning Commission considered an application for a lot size variance at its March 24, 2014 meeting. The Commission is recommending approval with the draft findings and conditions of approval as specified in Resolution 2014-021.

FISCAL IMPACT: N/A – if the parcel were considered a buildable lot, the City would have collected an assessment for the subject lot as part of a recent road project. The Planning Commission is recommending that the applicant pay a fee in lieu of this dedication at the time a building permit is issued for the site.

SUMMARY AND ACTION REQUESTED: The City Council is being asked to consider a request from Suzanne Horning (as Trustee of the Suzanne R.W. Horning Trust) for a variance that would classify Lot 9 of Krause’s Addition to Lake Elmo as a buildable lot. The lot currently does not meet the City’s minimum lot size for a lot of record in a RS – Rural Single Family Residential Zoning District. The applicant has also requested a variance from Section 154.017 of the Zoning

Ordinance, which states that any variance granted by the City “shall expire if work does not commence within 12 months of the date of the granting of the variance. The applicant has asked that the 12-month time limit be waived for this request.

The suggested motions to adopt the Planning Commission recommendation is as follows:

“Move to adopt Resolution No. 2014-21 approving a Variance from the minimum lot size requirements in a RS District and the maximum time for which a variance is valid.”

LEGISLATIVE HISTORY/PLANNING COMMISSION REPORT: The attached staff report to the Planning Commission provides an overview of the request and the draft findings that have since been slightly modified by the Planning Commission. The Commission conducted a public hearing concerning the variance at its March 24, 2014 meeting and received the following comments from neighboring property owners:

- Christine Cirilly, representing the applicant, stated that the applicant has been paying property taxes on the property as a building lot since 1985. She noted that the applicant intends to build a home that is consistent with the character of the neighborhood.
- Greg Zeipelt, 4940 Jamaca Avenue North, stated that, prior to purchasing his house immediately to the north of the applicants lot, he had been informed this lot was not buildable. He discussed the existing drainage in the neighborhood, and pointed out that drainage has gotten worse since the 2012 road project.
- Bill and Valerie Brass, 8930 Jane Road North, expressed concern about setting a precedence for allowing building on other substandard lots in the neighborhood. They also expressed concern about drainage in the area, and noted that the eastern portion of their lot collects water that drains from the subject property.
- Jason Brash, 9030 Jane Road North, explained that he recently moved to Lake Elmo and chose it for the open space and large lots. He encouraged the Planning Commission to keep it this way.

The Planning Commission generally discussed the drainage around the site; Staff responded that the City Engineer has been out to look at this area, but ultimately found that the water is draining to a low area in the neighborhood that has been previously designated as a ponding area. The Commission recommended the addition of two conditions of approval and asked that an existing condition be modified to require that any future construction on the site not exacerbate the existing drainage situation in the neighborhood.

The Planning Commission adopted a motion to recommend approval of the variance request with the findings and conditions as noted in the attached Resolution 2014-021. This resolution includes the conditions as revised and recommended by the Planning Commission. The motion passed unanimously.

BACKGROUND INFORMATION (SWOT):

- | | |
|----------------------|--|
| Strengths | <ul style="list-style-type: none">• The Planning Commission found that the applicant met the City's four variance criteria.• The variance will allow the applicant to build on a lot that has previously been considered buildable by the City. |
| Weaknesses | <ul style="list-style-type: none">• The City will need to track this variance to ensure the five-year deadline is met. |
| Opportunities | <ul style="list-style-type: none">• The variance will allow the current and past tax assessment for the property to match the classification as a buildable lot. |
| Threats | <ul style="list-style-type: none">• The neighbors in attendance at the public hearing expressed concern over the existing drainage situation on the lot and the loss of open space in the neighborhood. |

RECOMMENDATION: The Planning Commission is recommending that the City Council approve the request from Suzanne Horning (as Trustee of the Suzanne R.W. Horning Trust) for a variance that would classify Lot 9 of Krause's Addition to Lake Elmo as a buildable lot and to allow the variance to remain valid for longer than one year subject to conditions. The suggested motion to adopt the Planning Commission recommendation is as follows:

"Move to adopt Resolution No. 2014-21 approving a Variance from the minimum lot size requirements in a RS District and the maximum time for which a variance is valid."

ATTACHMENTS:

1. Resolution No. 2014-021
2. Planning Commission Staff Report – 3/24/14
3. Application and Project Narrative
4. Existing Site Conditions/Survey
5. Location Map
6. Krause's Addition Plat
7. Septic System Report – Tom Trooien

LAKE ELMO CITY COUNCIL MINUTES

APRIL 1, 2014

2. Approve Payment of Disbursements and Payroll
3. ~~2014 Seal Coat Project – Approve Plans and Specifications and Authorize Ad for Bids; **RES. NO. 2014-20**~~
4. ~~Family Means CUP; **RES. NO. 2014-21**~~
5. Site Plan Review Ordinance; **ORD. 08-105**

Council Member Smith pulled Item 3 for discussion. Council Member Bloyer pulled Item 4 for discussion.

MOTION: Council Member Reeves moved **TO APPROVE THE CONSENT AGENDA AS AMENDED.** Council Member Nelson seconded the motion. **MOTION PASSED 5-0.**

ITEM 3: 2014 SEAL COAT PROJECT – APPROVE PLANS AND SPECIFICATIONS AND AUTHORIZE AD FOR BIDS

Council Member Smith asked how the Seal Coat Project is going to be paid for. It was only budgeted for \$160,000. Where does the additional \$53,000 come from? Mayor Pearson noted that the Council agreed to spend more on roads. City Administrator Zuleger stated that due to the harsh winter conditions and further re-inspection of the road conditions, additional funds are needed. Council consensus is that if there is an item that is over what was budgeted, it should be noted so that Council is aware.

City Administrator Zuleger suggested that the item go back to the Finance Committee and be brought back to Council on 4/15/14. Ms. Smith thanked the Finance Director and finance committee for catching these items. Mr. Zuleger noted that the staff policy is that if department is over annual budget, the item must be brought to the Finance Committee.

MOTION: Council Member Nelson moved **TO POSTPONE ITEM UNTIL APRIL 15 SO THE FINANCE COMMITTEE CAN REVIEW.** Council Member Smith seconded the motion. **MOTION PASSED 5-0.**

ITEM 4: FAMILY MEANS CUP

City Administrator Zuleger and Community Development Director Klatt explained the CUP application. Family Means has outgrown its current space. The proposal would allow an additional 4,000 sq. ft. addition to its current space. Parking will continue to be adequate. Planning Commission unanimously recommended approval.

MOTION: Council Member Bloyer moved **TO ADOPT RESOLUTION NO. 2014-21, APPROVING THE CONDITIONAL USE PERMIT AMENDMENT REQUEST BY FAMILY MEANS TO ALLOW FOR THE CONSTRUCTION OF A COMMUNITY CENTER IN THE CIMARRON MANUFACTURED HOME PARK.** Council Member Smith seconded the motion.

The Council was very supportive of Family Means and its work in the community.

MOTION PASSED 5-0.

REGULAR AGENDA

ITEM 6: HORNING LOT SIZE VARIANCE; RES. NO. 2014-22

Council Member Bloyer recused himself from discussing this item. **Council Member Bloyer left the room at 7:40PM. Council Member Bloyer returned at 7:47PM.**

Community Development Director Klatt provided an overview of the variance application. Reported concerns regarding drainage were noted. Staff recommends that easements for the drainage and ponding areas be reserved for the City. It was pointed out that in 1985 a previous variance was granted but has since expired. Staff believes that the application meets the City's variance criteria. The Planning Commission recommends approval with 7 conditions as identified in the resolution.

LAKE ELMO CITY COUNCIL MINUTES

APRIL 1, 2014

Council Member Smith asked what the amount was for the recent road assessment. Mr. Klatt said that the engineer said it was \$2,900. Funds would go into the road fund. Ms. Smith asked how property taxes have been assessed as a buildable lot but the City does not consider it buildable. Mr. Klatt explained that the county's tax determination is different than the City zoning determination of what is buildable. It was explained that the assessment fee is to be paid at time of building permit.

Council Member Reeves asked about whether the grading should be required to "be improved" instead of "not exacerbate." Mr. Klatt stated that any reviewed building will in fact be an improvement. Ms. Smith noted that the footprint of the tennis court looks larger than many of the surrounding homes.

Christine Cirilli, attorney for applicant, spoke on behalf of Suzanne Horning. She reiterated that when the owner purchased the lot, it was buildable, but that she recently learned in 2012 that the variance had expired. Applicant has thought that it was a buildable lot the entire time. Ms. Smith asked if there was a plan to sell or build within the year. Ms. Cirilli stated that the owner would like her estate to have flexibility in time to build or sell.

Mayor Pearson asked that the record reflect that it is not the Cities responsibility to track the variance. Council Member Nelson asked if the conditions could terminate the variance if the property is transferred. Mr. Klatt reiterated that the applicant may want to sell the lot to another party who wants to build. Mr. Reeves asked what happens when it expires. Mr. Klatt stated that the applicant can re-apply at that time for an extension or another variance.

Mayor Pearson noted that some of the conditions seem superfluous and redundant. It was agreed that several conditions would have to be met anyhow. Mayor Pearson asked about the driveway. Mr. Klatt stated that it is to keep the access on the road with less traffic. It was explained that that the property would have only been assessed on the road section that the driveway would have been on despite it being a corner lot.

MOTION: Council Member Smith moved TO ADOPT RESOLUTION NO. 2014-22, APPROVING A VARIANCE FROM THE MINIMUM LOT SIZE REQUIREMENTS IN A RS DISTRICT AND THE MAXIMUM TIME FOR WHICH A VARIANCE IS VALID. Council Member Reeves seconded the motion.

Council Member Nelson thinks it appropriate that the road fee be paid back to the other residents. Additionally, the fee should be paid up front, not at the time of building permit. Finance Director Bendel stated that if the fee is assessed, it can be assessed to the property taxes. Also, the refunds could be credited to the other properties as an assessment payment.

Council Member Reeves asked about if permit expires, how would the assessment be addressed? Mr. Reeves is concerned about assessing now if something changes. The possibility of status changes to assessed properties was discussed.

MOTION: Council Member Nelson moved TO AMEND THE MOTION THAT IF FOUND TO BE PERMISSIBLE, THE ROAD ASSESSMENT FEE BE RETURNED TO OTHER RESIDENTS OTHERWISE TO THE CITY, AND THE FEE IS ASSESSED IMMEDIATELY. Council Member Smith seconded the motion.

When the fee should be assessed was further discussed.

MOTION PASSED 3-1-1 (Reeves – Nay, Bloyer abstaining).

ORIGINAL MOTION PASSED 4-0-1 (Bloyer abstaining).

ITEM 7: LAUNCH PROPERTIES CUP CONCEPT PLAN AND ZONING MAP AMENDMENT; RES. NO. 2014-23, ORD. 08-106

**CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA**

RESOLUTION 2014-022

*A RESOLUTION APPROVING A VARIANCE FROM THE MINIMUM LOT SIZE
REQUIREMENT IN A RS DISTRICT AND FROM THE MAXIMUM TIME FOR WHICH A
VARIANCE IS VALID*

WHEREAS, the City of Lake Elmo is a municipal corporation organized and existing under the laws of the State of Minnesota; and

WHEREAS, Suzanne Horning (as Trustee), 8991 Jane Road North, (the "Applicant") has submitted an application to the City of Lake Elmo (the "City") for a variance from the minimum lot size requirements in the RS – Rural Single Family Residential zoning district and to waive the one-year deadline for completion of the work proposed under the variance; and

WHEREAS, notice has been published, mailed and posted pursuant to the Lake Elmo Zoning Ordinance, Section 154.109; and

WHEREAS, the Lake Elmo Planning Commission held a public hearing on said matter on March 24, 2014; and

WHEREAS, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated April 1, 2014; and

WHEREAS, the City Council considered said matter at its April 1, 2014 meeting.

NOW, THEREFORE, based on the testimony elicited and information received, the City Council makes the following:

FINDINGS

- 1) That the procedures for obtaining said Variance are found in the Lake Elmo Zoning Ordinance, Section 154.109.
- 2) That all the submission requirements of said Section 154.109 have been met by the Applicant.
- 3) That the proposed variance includes the following components:

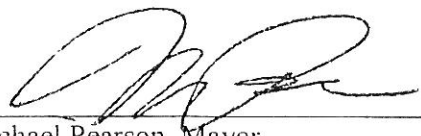
- a) A variance from the minimum lot size requirements in the RS – Rural Single Family Residential zoning district. The subject lot is 0.785 acres in size and the minimum required size to be buildable is 0.9 acres.
 - b) A variance to waive the one-year deadline for completion of the work proposed under the variance.
- 4) That the Variance will be located on property legally described as follows: Lot 9 of Krause's Addition to the City of Lake Elmo, Washington County, Minnesota. PID 09.029.21.11.0015.
 - 5) That the strict enforcement of Zoning Ordinance would cause practical difficulties and that the property owner proposes to use the property in a reasonable manner not permitted by an official control. *Specific findings: That the proposed use is reasonable because the lot was platted as a buildable parcel and all other parcels of similar size have had houses constructed on them since the subdivision was approved. The property is very close to meeting the required 0.9 acre minimum lot size requirement, and construction of a home on this lot will not be any more obstructive than structures built on lots meeting the 0.9 acre requirement. The applicant also purchased the lot at the time it was a buildable parcel. The applicant has demonstrated the ability to install a complaint septic system on the property. A five year deadline for construction of a home on the property is a reasonable period of time for this work to be completed.*
 - 6) That the plight of the landowner is due to circumstances unique to the property not created by the landowner. *Specific findings: That the applicant's property is unique due to former platting of this property as a buildable lot and continued classification of the property as buildable since the lot was subdivided. The applicant purchased the property with the understanding that a house could someday be built on the property, and City records indicate that the lot was indeed buildable at the time of purchase. Other homes on neighboring smaller lots were constructed prior to the adoption of the City's zoning regulations.*
 - 7) That the proposed variance will not alter the essential character of the locality in which the property in question is located. *Specific findings: The applicant's lot is larger than several of the lots in the surrounding neighborhood and is close to the minimum size needed to be considered buildable. The lot is of sufficient size to allow the installation of a compliant septic system and to allow the placement of a home on the parcel consistent with neighboring structures.*
 - 8) That 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. *Specific findings: No impacts above and beyond those considered normal for any other single-family lot in the surrounding neighborhood would be expected should the variance be granted.*

CONCLUSIONS AND DECISION

Based on the foregoing, the Applicant's application for a Variance is granted, subject to the following conditions:

- 1) The driveway for the future home of the lot shall access Jane Road North. Driveway access to Jamaca Avenue North shall be prohibited.
- 2) The applicant shall provide a drainage easement for the portion of the lot that collects storm water runoff from the subject property and adjacent parcels prior to the issuance of a building permit for the site. The specific location of the drainage easement shall be approved by the City Engineer.
- 3) The variance shall be valid for a period of five years, but may be renewed upon review and approval by the Board of Adjustment.
- 4) A grading, erosion control, and storm water management plan shall be submitted in conjunction with a building permit for the property. This plan shall not exacerbate any existing drainage issues and must be designed to mitigate any additional runoff from any future construction on the site.
- 5) The applicant shall secure any required permits from the Valley Branch Watershed District prior to commencing any grading or construction activity on the site.
- 6) The applicant shall submit a letter from Washington County that an approved septic system can be located on the site prior to the issuance of a building permit for the site.
- 7) The owner shall pay a fee comparable to the assessments levied against other homes in the neighborhood for the 2012 Jane Road North road project. The City will investigate options for reimbursing other property owners that were assessed for the 2012 project to account for the additional buildable lot.

Passed and duly adopted this 1st day of April 2014 by the City Council of the City of Lake Elmo, Minnesota.


Michael Pearson, Mayor

ATTEST:

Adam Bell, City Clerk