

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

**RESOLUTION NO 2019-071**

*A RESOLUTION APPROVING VARIANCES TO ALLOW A NEW HOME TO BE CONSTRUCTED ON AN EXISTING LOT THAT NEEDS CITY APPROVAL OF VARIANCES FOR MINIMUM STRUCTURE SETBACK FROM THE OHWL, MINIMUM STRUCTURE SETBACK FROM THE TOP OF BLUFF, MAXIMUM IMPERVIOUS SURFACE, MINIMUM SEPTIC AREA, AND MINIMUM LOT SIZE FOR THE PROPERTY LOCATED AT 8126 HILL TRAIL N.*

**WHEREAS**, Tim and Lacey Mercil (the “Applicant”) has submitted an application to the City of Lake Elmo (the “City”) for a variance(s) to allow the construction of a new home needing a variance for minimum structure setback from the OHWL, Minimum structure setback from the Top of Bluff, Maximum Impervious Surface, Minimum Septic Area, and Minimum Lot Size for the property located at 8126 Hill Trail N, Lake Elmo MN 55042 (09.029.21.22.0008) (the “Property”); and

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

**WHEREAS**, the Lake Elmo Planning Commission held a public hearing on said variances on September 9<sup>th</sup>, 2019; and

**WHEREAS**, the Lake Elmo Planning Commission has submitted its report and recommendations with respect to the requested variances to the City Council as part of the City Staff Memorandum dated October 1<sup>st</sup>, 2019; and

**WHEREAS**, the City Council considered the variances at its October 1<sup>st</sup>, 2019 meeting; and

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

**FINDINGS**

- 1) That the procedures for obtaining a variance are found in the Section 154.109 of the Lake Elmo Zoning Code.
- 2) That all submission requirements of Section 154.109 of the Lake Elmo Zoning Code have been met by the Applicants.
- 3) That the proposed variances include the following components:
  - a) Minimum Structure Setback Requirement from the OHWL – Averaging allows a 2.5 ft. variance
  - b) Minimum Structure Setback from the Top of Bluff – Allowing a 6ft. Variance
  - c) Maximum Impervious Surface – 4.5% Variance

- d) Minimum Septic Area – 17,000 sq ft. Variance (A mound system does not require as much land area)
- e) Minimum Lot Size - 1.01 and .43 Acre Variance

4) **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;

- *With respect to the proposed variance for setback from the OHWL, strict enforcement of the City's zoning regulations will cause practical difficulties and the applicant is proposing to use the property in a reasonable manner. The property was platted and established prior to current development standards and has a short depth, and so half the lot is within the required setback for a structure from the Ordinary High Water Level. Therefore, a structure and its utilities could not be constructed on the subject lot without a variance due to geographic constraints, neighboring wells, and the required site for a septic. The Applicant is proposing to construct a single family detached dwelling on the property, which is a permitted use within the Rural Single Family Zoning District and is not uncommon in the area.*
- *With respect to the proposed variance for the setback from the top of bluff, strict enforcement of the City's zoning regulations will cause practical difficulties and the applicant is proposing to use the property in a reasonable manner. The property was platted and established prior to current standards and because the existing code was not in place the lot has a short depth, and so adequate spacing was not provided during the subdivision process. Geographical features were not taken into account and so the top of bluff is now posing as an issue. The proposed home will still have a 24 ft. buffer from the top of bluff. The situation of the home does seem reasonable when factoring in all other conditions on site.*
- *With respect to the proposed variance for the requested increase in impervious surface, strict enforcement of the City's zoning regulations will cause practical difficulties and the applicant is proposing to use the property in a reasonable manner. The applicant does not appear to have intentionally gone over the allotted impervious surface allocation. Regardless of intent the proposal still does exceed the allowed percentage of 15%. However, repositioning the home would cause setback issues with the septic system. There can be conditions applied to the approval that would help mitigate the impervious surface on the lot. The request is reasonable.*
- *With respect to the proposed variance for the reduction in septic area, strict enforcement of the City's zoning regulations will cause practical difficulties and the applicant is proposing to use the property in a reasonable manner. The required 20,000 square feet of septic is larger than the lot itself. The Applicant is proposing to construct a mound system, which will not require as large of a drainfield area as would a Type I System. Provided the Applicant obtains the required septic permits from Washington County, the proposed septic area will suffice for a mound system to support a single family home, which is a permitted use in the Rural Single Family Zoning District. The request for a decrease in*

*needed septic area is reasonable and is supported by the fact that the system can support the home.*

- *With respect to the proposed variance for a reduction in lot size, strict enforcement of the City's zoning regulations will cause practical difficulties and the applicant is proposing to use the property in a reasonable manner. Again the property was platted and purchased by the Applicant's family prior to the current development standards. Because of this, there was no influence over the size of the lot. Furthermore, the thought of 100 ft. setbacks from the lake, impact zones, septic size requirements did not seem to be present when the lake shore lots were created, making compliance difficult for today and the future. The Applicant is proposing to construct a single family detached dwelling on the property, which is a permitted use within the Rural Single Family Zoning District.*

5) **Unique Circumstances** the plight of the landowner is due to circumstances unique to the property not created by the landowner;

- *With respect to the proposed variance for setback from the OHWL of the structure, the plight of the Applicant is unique and has not been caused by the applicant. The property was platted and purchased by the Applicant's family prior to current standards. As with many lake lots they are typically smaller in size and did not leave enough space to meet the required 100 ft. setback. To reasonably place and design the home around this standard would have created a burden in itself. Furthermore, septic systems are required to maintain a 75ft. setback from the OHWL.*
- *With respect to the proposed variance for the setback from the top of bluff, the plight of the Applicant is unique and has not been caused by the applicant. The property was platted and purchased by the Applicant's family prior to current development and setback standards. Again, because of the topography, limited size, and septic requirements the development elsewhere on the parcel becomes difficult.*
- *With respect to the proposed variance for the requested increase in impervious surface, the plight of the Applicant is unique and has not been caused by the applicant. Because the area has developed in an organic manner the wells for the surrounding properties were justifiably placed in a location that was advantageous for them. With that said septic systems must be at least 50 ft. away from a well. Because of the wells to the north and south the septic is required to be pushed to the west side of the lot. This then leaves a limited area for the home which must also be 20 ft. from that system. Because the septic system must be located on the western side of the lot a longer driveway is required which helps push the property over the allowed 15%.*
- *With respect to the proposed variance for the reduction in septic area, the plight of the Applicant is unique and has not been caused by the applicant. The expectation for this standard is impossible to meet as the required size is more than the property itself. To that, the City does not permit or perform compliant inspections. If the permitting authority has granted approval through their process, the*

*expectation to maintain 20,000 sqft. of area for the septic system appears unnecessary.*

- With respect to the proposed variance for a reduction in lot size, the plight of the Applicant is unique and has not been caused by the applicant. The property is below the 60% threshold for being considered as a buildable lot (without additional approvals). However, the lots that were created with the original development were very small and over the years, though very minimally, have become more conforming from their original state. Concerns can be generated from not meeting setback requirements but the home does not conflict with the RS district setbacks and septic system has been permitted and is issued as being safe. Although the lot is small the home can be safely built.*

6) **Character of Locality** the proposed variance will not alter the essential character of the locality in which the property in question is located;

- With respect to the proposed variance for setback from the OHWL of the structure, the proposed variance will not alter the essential character of the locality. Some homes in the area meet the setback from the HOWL but many neighboring homes do not meet the required setback. Using averaging the home is only 2.5 ft. closer to the OHWL than what is allowed. It seems unreasonable to think a difference of 2.5 ft. could be sensibly noticed. For better or worse the setback is not unusual to the area.*
- With respect to the proposed variance for the setback from the top of bluff, the proposed variance will not alter the essential character of the locality. The neighboring homes will have a geographically different situation on their lot but again, setback averaging would have been an option for the property and the home in its proposed location would not appear to be substantially different than if the setback could be met.*
- With respect to the proposed variance for the increase in impervious surface, the proposed variance will not alter the essential character of the locality. The requested increase in impervious surface is also not unique to the area. Again, due to the sizes of the lots and shoreland requirements many developed properties exceed the impervious requirements.*
- With respect to the proposed variance for the reduction in septic area, the proposed variance will not alter the essential character of the locality. The size of the septic area will not visually alter the essential character of the locality.*
- With respect to the proposed variance for the reduction in lot size, Very few lots affiliated with the Lanes Demontreville Country Club are capable of meeting the sizing requirement. Although not ideal to the code, lots that are smaller in size are more likely to fit in with the character.*

7) **Adjacent Properties and Traffic** the proposed variance will not impair an adequate supply of light and air to properties 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;

- *With respect to the proposed variance for the setback from the OHWL, the proposed variance will not impair an adequate supply of light and air to the adjacent property or substantially increase the congestion of the public streets or substantially diminish property values. The proposed location of the home will not impair an adequate supply of light or inhibit lake views of adjacent properties. The proposed home is a two bedroom home and therefore will not significantly increase congestion. The proposed home will not substantially diminish or impair property values within the neighborhood.*
- *With respect to the proposed variance for the setback from the top of bluff, the proposed variance will not impair an adequate supply of light and air to the adjacent property or substantially increase the congestion of the public streets or substantially diminish property values. The location of the home on the bluff will not impair an adequate supply of light or inhibit lake views of adjacent properties. The proposed home is a two bedroom home and therefore will not significantly increase congestion. The proposed home will not substantially diminish or impair property values within the neighborhood.*
- *With respect to the proposed variance for the increase in impervious surface, the proposed variance will not impair an adequate supply of light and air to the adjacent property or substantially increase the congestion of the public streets or substantially diminish property values. A correlation between light and wind and impervious surface has not been established. Furthermore the requested amount of impervious surface would not seem to decrease neighboring properties.*
- *With respect to the proposed variance for the reduction in septic area, the proposed variance will not impair an adequate supply of light and air to the adjacent property or substantially increase the congestion of the public streets or substantially diminish property values. The size of the septic area will have no effect on the supply of light and air to adjacent properties, increase congestion, or diminish or impair property values within the neighborhood.*
- *With respect to the proposed variance for the reduction in lot size, the proposed variance will not impair an adequate supply of light and air to the adjacent property or substantially increase the congestion of the public streets or substantially diminish property values. The size of a lot would not seem to have a direct impact on the supply of light or wind that a neighboring property would obtain. It is unknown how the size of the lot would have a financially negative impact on neighboring properties.*

## CONCLUSIONS AND DECISION

- 1) Based on the above findings, the City Council approves the requested variances associated with the construction of the new home at 8126 Hill Trail N. The City Council hereby approves the requested variances for the new home subject to the conditions of approval outlined below:
1. That the Applicant obtain all applicable permits including but not limited to a City building permit including a grading, erosion control, and storm water management plan approved by the City Engineer.
  2. The Applicant must reach out to the Valley Branch Watershed District regarding the project prior to grading or construction to confirm that a permit is not required for their requirements.
  3. That the Applicant obtain a Washington County Subsurface Sewage Treatment System (SSTS) permit prior to issuance of a building permit. (Already Satisfied)
  4. The homes gutters shall direct run off away from the lake or into a rain garden.
  5. The shoreline shall remain in a natural state and that no future development is allowed in the Shore Impact Zone on this property (no patio, water-oriented accessory structure, beach, fire pit, stairs, etc within 50 ft. from the OHWL).
  6. The applicant must redesign the drainfields so that a 50 ft. setback from neighboring wells can be maintained for both the primary and secondary drainfields.
  7. City Approval of the variances will expire on October 1<sup>st</sup>, 2020.

Passed and duly adopted this 1<sup>st</sup> day of October, 2019 by the City Council of the City of Lake Elmo, Minnesota.

  
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Mayor Mike Pearson

ATTEST:

  
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Julie Johnson, City Clerk