

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

**RESOLUTION NO 2020-007**

*A RESOLUTION APPROVING VARIANCES WITH RESPECT TO MINIMUM LOT SIZE  
AND MINIMUM SEPTIC DRAINFIELD SIZE FOR THE PROPERTY LOCATED AT 8340  
STILLWATER BOULEVARD*

**WHEREAS**, Patrick Kinney (the “Applicant”) is the owner of two parcels that have tax identification numbers of: 16.029.21.34.0008 and 16.029.21.34.0015 with an address of 8340 Stillwater Boulevard, Lake Elmo MN 55042 (the “Property”); and

**WHEREAS**, the Property does not meet the minimum lot size requirements of the City’s Rural Single-Family Zoning District; and

**WHEREAS**, the Property also does not meet the City’s 20,000 square foot size requirement for septic drain fields; and

**WHEREAS**, on December 2, 2019, the Applicant submitted an application to the City for variances with respect to the minimum lot size requirement and the minimum septic drain field size requirement with respect to the Property; and

**WHEREAS**, notice of the public hearing on the requested variances was published, mailed, and posted pursuant to the Lake Elmo Zoning Code, Section 154.109; and

**WHEREAS**, the Planning Commission held a public hearing on said variances on January 13<sup>th</sup>, 2020; 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 January 21, 2020; and

**WHEREAS**, the City Council considered the variances at its January 21, 2020 meeting; and

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

**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 Applicant.
- 3) That the proposed variances include the following components:
  - a) That the Property consists of lots identified as 16.029.21.34.0008 (Lot 7) (.41

acres) and 16.029.21.34.0008 (Outlot G)(.28 acres) and that this lot and outlot be combined for tax purposes so that they consist of a .69 acre lot.

- b) That Lot 7 and Outlot G as they are combined be considered as buildable for a single-family home. The home would be constructed on Lot 7 and the septic system would be located on Outlot G. No improvements other than the septic system would be allowed on Outlot G.
  - c) That the City would allow the construction of a septic system on Outlot G to service Lot 7 with an area for the septic system that is 8,600 square feet instead of 20,000 square feet.
- 4) That the Applicant has established and demonstrated compliance with the variance criteria set forth in Lake Elmo Zoning Code Section 154.109. Pursuant to that section of the Code, a variance to a provision of the Zoning Code may be granted by the City upon the application by the owner of the affected property where the strict enforcement of Zoning Code 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 the Zoning Code. "Practical difficulties" when 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. 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 landowner/applicant. The proposed variance must not alter the essential character of the locality in which the property in question is located. Finally, the proposed variance must 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.
- a) With respect to the proposed variance for the size of the lot, strict enforcement of the City's zoning regulations will cause practical difficulties for the Applicant. The Applicant is requesting to use the Property in a reasonable manner (for a single-family home) as it was originally intended. The surrounding neighborhood consists of single-family homes. With that said, the Applicant's proposal to build a new home on the Property falls in line with the existing neighborhood but a hardship is now created simply because of a lapse in time, which is now only applicable to the Property. There is not a request to further reduce the size of the lots, instead the Property would become further conforming due to the two lots being combined into one lot for tax purposes. The Applicant did not create these lots, so the Applicant's plight was not caused by the Applicant. The Applicant was not involved with the development of the Property or determining the minimum lot size for the RS district. The issue only appears to exist because the Property failed to develop until many years after the development was approved which is not the fault of the Applicant. Therefore, the Applicant has established that there are practical difficulties.
  - b) With respect to the proposed variance for the septic area, strict enforcement of the City's zoning regulations will cause practical difficulties for the Applicant. The applicant is proposing to use the Property in a reasonable manner as the Applicant will be using it for a single-family home which is the use that the Property was intended for. Furthermore, it has been proven, by the construction of homes on the other lots in the development, that septic systems are capable of functioning on a

lot of this size. The requirement of the Property to achieve 20,000 square feet of septic area is an overly burdensome request when considering that the required septic area would take up 65.7 percent of the Property. If a septic system can be constructed that is acceptable to Washington County, which is the permitting authority for septic systems, then the 20,000 square foot requirement appears arbitrary. The Applicant did not create these lots, so the Applicant's plight was not caused by the Applicant. Therefore, the Applicant has established that there are practical difficulties.

- c) With respect to the proposed variance for the size of the lot, the proposed variance will not alter the essential character of the locality. The Applicant's request to build on the Property is not out of the ordinary for the neighborhood. The lot size will be no smaller or larger than it was in 1961 and 1994. The Applicant is also not seeking a variance relating to setbacks or impervious surface.
- d) With respect to the proposed variance for the area of the septic area, the proposed variance will not alter the essential character of the locality. There is no way to visually assess the Property and come to the conclusion that the septic field requirement has or has not been satisfied. The criteria has been met.
- e) With respect to the proposed variance for the size of the lot, the proposed variance will not impair an adequate supply of light and air to the adjacent properties or substantially increase the congestion of the public streets or substantially diminish property values. A single-family home will not add any significant traffic to the neighborhood. It will also not substantially diminish property values as the surrounding properties are also single-family homes. Since it is only a single-family home, there are height restrictions attributable to single-family homes so the new home should not block any light or air with respect to the adjacent properties.
- f) With respect to the proposed variance for the 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 for the reasons stated above. The required size of the septic area has no bearing on any of the required metrics that are required for evaluation.

#### **DECISION AND CONDITIONS OF APPROVAL**

- 1) The City Council hereby approves the requested variances with respect to minimum lot size and the minimum septic area for the Property. The conditions of approval for variance approval are set forth below:
  - 1. *The Applicant shall receive and provide to the City an approved septic permit from Washington County as well as the soil survey used to receive approval from the County.*
  - 2. *The site design for the Property shall comply with the applicable recommendations outlined in the Engineering Memo dated January 2, 2020.*
  - 3. *The Applicant shall combine Lot 7 of Beau-Haven and Outlot G of Eagle Point Creek Estates to achieve one property tax identification number prior to the City issuing a building permit.*
  - 4. *Unless future code amendments state otherwise, no improvements, with the exception of the septic system shall be constructed on Outlot G unless Outlot G and Lot 7 are replatted.*
  - 5. *Outlot G (16.029.21.34.0015) shall be rezoned from RE to RS.*

6. *The Applicant must submit to the City a building permit application for the new home to be constructed on the Property. The building permit application must include a revised grading plan/survey that meets the requirements of the City Code and these conditions of approval*
7. *If no action is taken by the Applicant, the variance approval shall expire on January 20, 2021.*

Passed and duly adopted this 21<sup>st</sup> day of January 2020 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