



MAYOR & COUNCIL COMMUNICATION

DATE: 6/01/10
REGULAR
ITEM #: 8
MOTION
Resolution 2010 – 026

AGENDA ITEM: Consideration of an Application for a Variance from the 150 foot OHWL Setback in the Shoreland District to Allow the Construction of an Attached Garage with Living Space above at 11950 21st Street North.

SUBMITTED BY: Richard and Elizabeth Heath
Lake Elmo Planning Commission
Kelli Matzek, City Planner

THROUGH: Bruce Messelt, City Administrator

REVIEWED BY: Kyle Klatt

SUMMARY AND ACTION REQUESTED: The City Council is asked to consider a variance request from Mr. and Mrs. Heath to tear down an existing garage and to build a new attached garage with living space above it at 11950 21st Street North. The proposed building will be attached to the existing home and is intended to replace an existing attached garage on the site for which a variance was granted in 1981.

The new building would be located 35 feet from the OHW of Downs Lake where a 150 foot structure setback is required. In reviewing the request against the three criteria listed below, both the Planning Commission and Staff determined all criteria were met (the basis for this finding is included in the attached report). As such, the recommended motion to act on this is as follows:

SUGGESTED MOTION: *“Move to approve the 35 foot variance request for 11950 21st St. N.”*

BACKGROUND INFORMATION: The applicants are seeking to vacate a portion of an existing drainage and utility easement where the existing driveway and proposed structure will be located (the existing structure and part of the driveway currently infringes on this same easement) and to expand the drainage and utility easement to cover the remainder of the 100 Year Flood Elevation.

For variance applications, the burden is on the applicant to demonstrate why this situation is unique and necessitates flexibility to code requirements. To make this case, a variance can only be granted by the city when strict enforcement of the code would cause undue hardship on a property owner.

“Hardship” is broken down into the following three components:

- a. *The proposed use of the property and associated structures in question cannot be established under the conditions allowed by the city's zoning regulations and no other reasonable alternative use exists;*
- b. *The plight of the landowner is due to the physical conditions unique to the land, structure, or building involved and are not applicable to other lands, structures, or buildings in the same zoning district; the unique conditions of the site were not caused or accepted by the landowner after the effective date of the city's zoning regulations; and*
- c. *The variance, if granted, will not change the essential character of the neighborhood.*

PLANNING COMMISSION REPORT: The Planning Commission held a public hearing for this application at their May 24th meeting at which time no one spoke for or against the application. The Planning Commission unanimously (5 to 0) recommended approval of the application.

Of note: The original public hearing notification included a variance from the floodplain. Upon further investigation and through discussions with the DNR, it was determined a variance was not needed, as the elevation was raised at some point in the past and the structure is proposed to be at the appropriate elevation. The property received a 65 foot variance to build the existing garage in 1981, above the 895 elevation.

STAFF REPORT: The attached Staff report includes a detailed review of the application along with a Staff recommendation with conditions of approval.

RECOMMENDATION: Based upon the above background information and staff report, it is recommended that the City Council approve the variance application by undertaking the following action:

“Move to approve the 35 foot variance request for 11950 21st Street North.”

Alternatively, the City Council does have the authority to further discuss and deliberate this recommendation prior to taking action. The Council may table this item at its discretion, deny the recommendation with findings of fact (to be enunciated), or amend the recommended action. If the later is done so, the appropriate action of the Council following such discussion would be:

“Move to approve the variance request for 11950 21st St. N., [as amended at tonight’s meeting]”

ATTACHMENTS:

1. Staff Report
2. Resolution 2010 - 026
3. Location Map
4. VBWD Comments
5. Engineer's Comments
6. Applicant's Submittals

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item City Administrator
- Report/Presentation..... Planning Director
- 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