

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

RESOLUTION NO. 2010-026

*A RESOLUTION APPROVING A VARIANCE FROM THE REQUIRED SETBACK FROM THE
ORDINARY HIGH WATER LINE OF DOWN'S LAKE AT 11905 21ST STREET NORTH*

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

WHEREAS, Richard Heath, 11905 21st Street North (the "Applicant") has submitted an application to the City of Lake Elmo (the "City") for a variance to allow the construction of an addition to an existing residence that would be set back 115 feet from the Ordinance High Water Elevation of Down's Lake, a copy of which is on file with the City; and

WHEREAS, notice has been published, mailed and posted pursuant to the Lake Elmo Zoning Ordinance, Section 154.017; and

WHEREAS, the Lake Elmo Planning Commission held a public hearing on said matter on May 24, 2010; and

WHEREAS, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated June 1, 2010; and

WHEREAS, the City Council considered said matter at its June 1, 2010 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 154.017.

- 2) That all the submission requirements of said 154.017 have been met by the Applicant.
- 3) That the proposed variance is to allow the construction of an addition to the existing residence at 11905 21st Street North that would be set back 115 feet from the Ordinance High Water Elevation of Down's Lake, which is 35 feet closer than the required setback of 150 feet from a Natural Environment Lake under the Lake Elmo Shoreland Ordinance.
- 4) That the Variance will be located on property legally described as Lot 1, Block 1, of Eden Park Second Addition, Washington Co., Minnesota.
- 5) The proposed addition cannot be established under the conditions allowed by the city's zoning regulations and no other reasonable alternative use exists. *The home was built in 1979 and is located entirely within the 150 foot structure setback. To construct an attached garage would require a variance to some degree from the OHW setback. Additionally, the existing septic system is located on the west side of the house, which removes that side of the property as an option. Due to the constraints of the floodplain on the east side of the property, there is little room to work with to build in a conforming location.*
- 6) The plight of the landowner is due to the physical conditions unique to the land and are not applicable to other lands, structures, or buildings in the same zoning district. *The lakeshore property is unique in that there is a pond directly to the east, a 30-foot drainage and utility easement along the eastern edge of the property, a floodplain along the eastern edge of the property, the vast majority of the existing home is located within the setback, and the property is substandard in size.*

This property is one of fifteen residential homes that have lots adjacent to Downs Lake. Downs Lake is classified by the DNR and city code as a Natural Environment lake, which has the most restrictive setbacks in the city – 150 feet for both structures and sewage treatment systems.

The existing home was built in 1979 and the vast majority of the structure was built within the 150 foot setback. The city approved a variance allowing construction of the existing garage on the site in 1981.

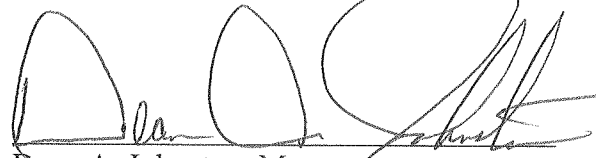
- 7) The unique conditions of the site were not caused or accepted by the landowner after the effective date of the city's zoning regulations. *The essential character of the neighborhood would not be affected by the construction of the proposed garage and living space above. The existing home is two stories and the proposed construction would not exceed the current height of the home. Should this project be approved, the applicant would be increasing the existing setback from Down's Lake, providing additional spacing between the structures on the lot and the lake. There are existing trees and vegetation between the structure and the lake that will not be impacted by the garage addition.*

CONCLUSIONS AND DECISION

Based on the foregoing, the Applicants' application for a Variance is granted with the following conditions:

1. During the demolition and construction activity related to the new garage addition, the applicants shall address the comments provided by the Valley Branch Watershed District in a letter to the City dated May 19, 2010.
2. Storm Water and Erosion and Sediment Control must be provided during construction consistent with the Storm Water and Erosion and Sediment Control Ordinance.
3. No grading, filling, or other land alterations are allowed below the 100-year flood elevation as documented on the site plan for the building addition.
4. Prior to the issuance of a certificate of occupancy for the building addition, certification must be provided to the city identifying that the structure was built above the RFPE.
5. The proposed drainage and utility easement must be altered to encompass the entire 100 Year Flood Elevation, and specifically a small portion of the floodplain district immediately north of the proposed addition that is not covered by the proposed easement.
6. The proposed drainage and utility easement must cover the storm sewer pipe that runs across the front of the applicant's property with at least 10 feet on each side of the pipe to provide access to the city.
7. The septic system on the site must be inspected by a professional inspector licensed by the PCA. Documentation must be provided to the city certifying that the inspector found the septic system meets today's requirements and to confirm that there has not been a hydraulic failure with the system.

Passed and duly adopted this 1st day of June 2010 by the City Council of the City of Lake Elmo, Minnesota.



Dean A. Johnston, Mayor

ATTEST:



Bruce Messelt, City Administrator