

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

**RESOLUTION NO. 2012-002**

*A RESOLUTION APPROVING SETBACK VARIANCES RELATED TO THE CONSTRUCTION  
OF A SUBSURFACE SEWAGE TREATMENT SYSTEM AT  
2860 LAKE ELMO AVENUE NORTH*

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

**WHEREAS**, Clyde Durand, 2860 Lake Elmo Avenue (the "Applicant") has submitted an application to the City of Lake Elmo (the "City") for variances to allow the construction of a subsurface sewage treatment system (SSTS) that does not meet the required setback from property lines, the Ordinance High Water Elevation (OHW) of Lake Elmo and a principal structure at 2860 Lake Elmo Avenue North, 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 August 8, 2011; and

**WHEREAS**, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated August 23, 2011; and

**WHEREAS**, the City Council considered said matter at its August 23, 2011 meeting and tabled the item; and

**WHEREAS**, the City Council reconsidered said matter at its September 20, 2011 and February 8, 2012 meetings.

**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 variances are to allow the construction of a subsurface sewage treatment system at 2860 Lake Elmo Avenue North, that specifically includes the following components:
  - a) Variances from the front and side property line setbacks to allow the placement of a pressure bed 0 feet from the southern property line and 3.5 feet from a front property line (the Lake Elmo Avenue right-of-way line). The Washington County SSTS regulations require a minimum setback of 10 feet to property lines.
  - b) A variance to allow the placement of a sewage treatment system within 39 feet of the Ordinary High Water Elevation (OHW) of Lake Elmo. The Lake Elmo Shoreland Ordinance requires a minimum setback of 75 feet from the OHW.
  - c) A variance to allow the installation of a septic tank five feet from an occupied building and a treatment and dispersal area within 10 feet of an occupied building. The Washington County SSTS regulations require a minimum setback of 10 feet between tanks and 20 feet between treatment areas and an occupied structure.
- 4) That the Variance will be located on property legally described as PT GOV LOT 1 BEING THAT PT OF FOLL DESC LYING WLY OF C/L OF WASH CO HWY#17; ALL THAT PT LOT 1 DESC AS FOLLOWS: COMM AT PT ON N LINE OF SD SEC 993.5FT W FROM NE CORN OF SD LOT THN S1DEG57'E 823.1FT TO AN IRON MONUMENT WHICH IS 495.375FT FROM SO LINE OF SD LOT THN RETURN NLY ALG SD LAST DESC COURSE 120FT TO PT OF BEG FROM SD PT OF BEG SO1DEG57'E 120FT TO LAST MENTIONED IRON MONUMENT THN WLY PAR WITH THE S LINE OF SD LOT THE BEARING THEREOF BEING S88DEG17'W 447.9FT TO AN IRON MONUMENT THN NLY AT RT ANG 60FT THN WLY PAR WITH SD S LINE OF SD LOT TO SHORE OF LAKE ELMO THN NLY ALG SD SHORE 60FT M/L TO A LINE DRAWN THRU SD PT OF BEG PAR WITH SD SO LINE OF SD LOT THN ELY TO PT OF BEG TOG WITH ALL RIPARIAN & OTHER RTS TITLE INTER EST IN & TO THE WATERS BED & SHORE OF THAT PT OF SD LK ELMO BORDERING UPON & APPURTENANT TO ABOVE DESC TRACT & LYING WITHIN THE NLY & SLY BOUNDARIES OF SD TRACT AS EXTEND TO & INTO SD LAKE SUBJ TO SURFACE WATER DRAINAGE EASEMENT Section 24 Township 029 Range 021 Commonly known as 2860 Lake Elmo Avenue.
- 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:*
  - a) *The requested variances allow the continued use of the property for residential purposes. A continuation of a residential use is reasonable as the property is in a residential neighborhood, has been used for residential purposes for decades*

*and is guided in the Lake Elmo Comprehensive Plan for residential purposes. It is reasonable to continue to use this property for residential purposes.*

- b) No other alternative waste management system has been found for this property outside of the proposed septic system with setback variances. A method of waste management is necessary for the property to continue to be used for residential purposes.*
  - c) The inability to continue to use this property for residential purposes would drastically reduce the value of the applicant's property.*
  - d) The applicant is interested in selling the property and is thus required to bring the septic system into compliance.*
- 6) That the plight of the landowner is due to circumstances unique to the property not created by the landowner. *Specific findings:*
  - a) The applicant's property is just 0.14 acres in size where 1.5 acres is required.*
  - b) The property has been in use for residential purposes since at least 1968, though no building permit has been found on record.*
  - c) The small residential property is on Lake Elmo, the water body, and is therefore also subject to lakeshore requirements.*
  - d) It is believed that this is the second smallest residential property used for single family detached dwelling purposes within the City limits.*
  - e) The property does not have access to other methods of waste management. A City-run 201 system (community collector) does not have capacity for this home to connect. The Lake Elmo Comprehensive Plan does not guide this property for future sewer connection. The applicant has stated that a septic system off-site is not an option for this property.*
  - f) A portion of the 5,908 square feet is paved and utilized for County Road 17 (Lake Elmo Avenue North).*
- 7) That the proposed variance will not alter the essential character of the locality in which the property in question is located. *Specific findings:*
  - a) The requested variances allow the continued use of the property for residential purposes. A continuation of a residential use is reasonable as the property is in a residential neighborhood, has been used for residential purposes for decades and is guided in the Lake Elmo Comprehensive Plan for residential purposes. It is reasonable to continue to use this property for residential purposes.*
- 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:*
  - a) The requested variances would be to utilize a method of underground management for waste. This would allow the continued use of the home for*

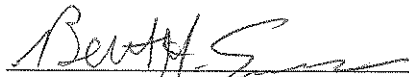
*residential purposes which would not change the existing impact to the neighborhood.*

### CONCLUSIONS AND DECISION

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

- 1) The applicant shall provide a written acknowledgement and consent from the property owner to the south regarding the construction of the drain field at a zero setback from their property line.
- 2) The proposed septic design shall incorporate a second tank in accordance with the review comments from Pete Ganzel of Washington County dated February 3, 2012. The final design shall be reviewed and approved by the City Engineer prior to construction of any portion the treatment system.
- 3) The applicant shall plant a replacement tree on the premises to account for the large oak tree that will be removed due to the installation of the treatment system. The type of tree and replacement location shall be reviewed and approved by the Planning Director.
- 4) The applicant shall comply with all conditions of approval as specified by the City Engineer in his review memorandum dated February 7, 2012.
- 5) The applicant shall review measures to be undertaken to avoid potential problems from flooding with the City Engineer prior to installation of the septic tanks.
- 6) The applicant shall sign a legal short form that will be recorded against the property documenting the conditions of approval that are attached to the variance.

Passed and duly adopted this 8th day of February 2012 by the City Council of the City of Lake Elmo, Minnesota.

  
Brett Emmons, Acting Mayor

ATTEST:

  
Dean A. Zuleger, City Administrator