

Land Use Application – Variance

12 July 2019

Property Location

All of Government Lot 4 in Section 9, Township 29 north, Range 21 west, City of Lake Elmo, Washington County, Minnesota, according to government survey containing 59.4 acres of land. Also the south 30.6 acres of Government Lot 4 in Section 4, and of the southwest quarter of the southeast quarter of said Section 4, all in Township 29 north, Range 21 west, according to government survey, being the south 688 feet thereof.

Detailed Reason for the Request

In 1954, the Discalced Carmelite Nuns of Saint Paul, a non-profit corporation under the laws of the State of Minnesota, were looking for property upon which to build a permanent monastery. They were advised of the property which they now own and entered into negotiations with the owners of the property.

On 2 February 1954, Phillip C. Mackey and his wife Bernadine R. Mackey conveyed their property, along with its easement, to the Discalced Carmelite Nuns of Saint Paul by warranty deed, dated that day, and filed for record in Washington County, Minnesota, on 4 February 1954. As part of their deed of purchase, they obtained a right of way across the neighboring property to the north (owned by the Jesuit Retreat House) which gave them access to Demontreville Trail. This right of way has existed since 1904. At the time that the Carmelite Nuns purchased their property, the right of way across the Jesuit property was the only access from a public road to the Carmelite property, and it remains the only access today. The Carmelite Nuns have used this right of way continuously for 64 years.

In 1987 Carmel of the Blessed Virgin Mary (aka Carmelite Hermitage, Carmelite Hermitage of the Blessed Virgin Mary) was incorporated in the State of Minnesota as a community of Carmelite Priests and Brothers. In December of 1991, the City of Lake Elmo approved a master plan for the Carmelite Hermitage consisting of four phases: Phase 1, consisting of a community building and garage was constructed in 1991/92. Phase 2, consisting of a central courtyard with covered walkways (cloister) was constructed in 2001/2002. Phase 3 consists of a chapel and is the building we would now like to construct. Phase 4 will consist of a guest building and library. We hope to commence Phase 4 around 2022. Additionally, in 1991 the City of Lake Elmo granted a variance to the Carmelite Hermitage because the Hermitage also uses the easement over Jesuit land to access Demontreville Trail. The Jesuit Retreat House made no objection to the variance. The Carmelite Fathers and Brothers have used the easement continuously for 32 years.

In the intervening years, the Carmelite Hermitage has built four new buildings. In 2007, it requested and received an amendment to its master plan to add an additional building. This building was built in 2008. In none of the four construction projects did the City of Lake Elmo require the Carmelite Hermitage to obtain an additional variance. We maintain that our variance is valid for all buildings shown on the master plan which was approved by the City Council in 1991. City practice towards our Hermitage is evidence of our interpretation.

The Carmelite Hermitage wishes to construct its chapel, shown as phase three on its master plan. An objection has been raised by the Jesuit Retreat House that the Carmelite Hermitage needs a new variance to proceed with its chapel project because it does not meet the CUP requirements established by the City in 2000 and amended in 2006. Since there is doubt about the scope and language of the original variance as well as doubt about the meaning of the word *direct* in the City's CUP requirements, City staff have suggested that we apply for a new variance that will clarify all issues related to access to our property. In a spirit of cooperation, we have agreed to apply for a new variance.

Variance Request, Practical Difficulties:

The Carmelite Hermitage of the Blessed Virgin Mary requests a variance from the direct access requirement of Section 154.600(B)(2) of the City Code. It further requests that the variance apply to all 90 acres of the property owned by the Discalced Carmelite Nuns of St. Paul and that the variance apply to all buildings currently existing on the property as well as all buildings shown on its approved master plan which remain to be built.

Strict enforcement of the City Code requiring direct access creates not only a practical difficulty but a serious hardship in that we would be unable to complete our monastery as planned and approved in 1991 by the City of Lake Elmo. In 1991, The City Council recognized the hardship that existed with regard to access to our property, and the Council granted us a variance at that time.

2. a.

Owner of Record

Discalced Carmelite Nuns of Saint Paul
8251 Demontreville Trail
Lake Elmo, MN 55042
651-777-3882

Officers of the Corporation

Sr. Angela Barrett
Sr. Maravillas Schwab
Sr. Rose Zaleski

Applicant

Carmelite Hermitage of the Blessed Virgin Mary
8249 Demontreville Trail
Lake Elmo, MN 55042
651-779-7351
carmelbvm@gmail.com

Officers of the Corporation

Reverend John Burns
Br. Joseph Bubanko
Br. Christopher Burnside

2.b.

Legal Description of the Property

All of Government Lot 4 in Section 9, Township 29 north, Range 21 west, City of Lake Elmo, Washington County, Minnesota, according to government survey containing 59.4 acres of land. Also the south 30.6 acres of Government Lot 4 in Section 4, and of the southwest quarter of the southeast quarter of said section 4, all in Township 29 north, Range 21 west, according to government survey, being the south 688 feet thereof.

PID

0902921120002

Parcel Size

90.109 acres

3,924,760 square feet

Existing Use of the Land

Religious. Two monasteries reside on the property whose members engage in a life of prayer, worship, gardening, arts, and crafts.

Current Zoning

Public Facility (PF)

2.c.

Section 154.600(B) (2) a. "Direct access is provided to a public street classified by the Comprehensive Plan as major collector or arterials."

2.d.

The Carmelite Hermitage of the Blessed Virgin Mary requests a variance from the direct access requirement of Section 154.600(B)(2) of the City Code. It further requests that the variance apply to all 90 acres of the property owned by the Discalced Carmelite Nuns of St. Paul and that the variance apply to all buildings currently existing on the property as well as all buildings shown on its master plan which remain to be built.

2.e.

In December of 1991, the City of Lake Elmo approved the master plan of the Carmelite Hermitage consisting of four phases: Phase 1, consisting of a community building and garage was constructed in 1991/92. Phase 2, consisting of a central court yard with covered walkways (cloister) was constructed in 2001/2002. Phase 3 consists of a chapel and is the building we would now like to construct. Phase 4 will consist of a guest building and library. Additionally, the City of Lake Elmo granted a variance to the Carmelite Hermitage in 1991 since the Hermitage also used the easement over Jesuit land to access Demontreville Trail. The Jesuit Retreat House made no objection to the variance.

An attorney for the Jesuit Retreat House sent a letter to the City Attorney contending that the variance of 1991 is not valid for the construction of the chapel because the CUP code enacted by the City in 2000 and amended in 2006 requires direct access to a collector road or major arterials. The City Attorney stated that an argument can be made that we do not have direct access. Furthermore the City Attorney contends that the 1991 variance applied only to the building

which we built in 1991. We dispute this interpretation because it contradicts the practice of the City to date. We have built several buildings since 1991, including one in 2007 which required an amendment to our master plan, and in none of these cases did the City require a new variance.

At a meeting with the City Attorney and the Director of Planning held at City offices on 2 July 2019, we stated our point of view. Nevertheless, we agreed to apply for a new variance in order to clarify all issues related to access to our property.

2.f.

The circumstances of our property are quite unique in that the property has never bordered a public road since it was divided from the property to the north in 1904. At that time, an unrestricted easement through the northern property was given in order that the southern property could have access to Demontreville Trail. The Discalced Carmelite Nuns received this easement as part of their deed of purchase.

In 2011 the Carmelite nuns acquired three small lots that border their property as well as Hidden Bay Trail. The lots are undeveloped and have no driveways into them. Hidden Bay Trail is not a collector road or major arterial street. It is not suitable as an access road to our property.

Strict enforcement of the City Code requiring direct access creates not only a practical difficulty but a serious hardship in that we would be unable to complete our monastery as planned and as approved by the City of Lake Elmo in 1991.

2.g.

Our plight was in no way created by ourselves; it is rather the result of the division of the property in 1904. Our circumstances were recognized as unique by the City Council in 1991, and for this reason the Council granted us a variance.

2.h.

Far from altering the essential character of the neighborhood, granting a variance will maintain the essential character of the neighborhood as it has always been since the Carmelite Nuns purchased the property in 1954. Building a driveway to Hidden Bay Trail would alter the neighborhood and is vehemently opposed by our neighbors on Hidden Bay Trail and Birch Bark Trail.