



## PUBLIC WORKS

Wayne H. Sandberg, P.E., Director, County Engineer  
Frank D. Ticknor, P.E. Deputy Director

### BOARD OF ADJUSTMENT & APPEALS

#### MEETING MINUTES

Tuesday, May 23, 2023

#### CALL TO ORDER:

Chair Melander called to order the meeting of the Board of Adjustment & Appeals at 5:17 pm, asked the board members and staff to introduce themselves and explained the hearing process.

Commissioners Present: Harry Melander, Chair  
Mark Doneux,  
Shane Bauer  
Anna Zanko  
John Rheinberger

Commissioners Absent: Kevin Kelly

Staff Present: Andrew Jackola, Assistant Washington County Attorney  
Daniel Elder, Planner  
Sara Favreau, Office Specialist  
Lyssa Leitner, Planning Director  
Sara Allen, Planner  
Erin Clarkowski, Engineer

Others Present: Patty Bestler, Dick Polta, Tom Schmidt, Dan Schlick, Vivian Tanniehill,  
Dan Roeller, Ted Ries, Steve McMan, Mary Jo McMan, Mark Willis

#### AGENDA ITEM 1 – Steve McMan and Mary Jo McMan, Variance Request

Daniel Elder gave a brief description of the variance requested for property owned by the McMan's, as described in his memorandum dated May 16, 2023. The applicant is requesting variances to the Washington County Development Code.

- Exceed the maximum number of accessory structures on a parcel.
- Exceed minimum setback requirements for structures housing Domestic Farm Animals
- Construct an Accessory closer to the right-of-way than the Principal Structure

Steve and Mary Jo McMan want to construct a 1,207 SF detached accessory building on their property. They propose building a barn with stalls for up to three horses, with storage space above the stalls for hay. The proposed structure would be located on the west half of the parcel, closer to the right-of-way than the principal structure.

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The County's Zoning Ordinance outlines accessory structure requirements, including limits to the number, size, and location of accessory structures. The code also includes additional setback requirements for accessory structures housing domestic farm animals. However, the site of the principal structure, 155 feet from the ordinary high-water level (OHWL), and the layout of the parcel make it difficult for the proposed structure to meet all the requirements of the County's Zoning Ordinance. The property is located on the northwestern side of North Twin Lake and approximately half a mile north of Dellwood Road. The parcel is 9.77 acres and has a pond in the southwest corner of the parcel. The parcel contains six detached accessory structures and the principal building. Several accessory structures are legally nonconforming to today's standards (permitted prior to current ordinance requirements).

### **Ordinance Requirements**

#### *Location of Detached Accessory Structure*

Washington County Chapter Two Zoning Ordinance (Part 2 Section 1.2 Accessory Structures) outlines the requirements for the placement of accessory structures. The code states that a detached accessory structure shall not be closer to the right-of-way than the principal building unless the following conditions are met:

1. The local unit of government approves the building location; and
2. All setbacks are met.

The Stillwater Township Board met on January 12, 2023 and approved the variance. As such, they have approved the location of the accessory structure closer to the right-of-way. All setbacks will be met if the Planning Commission approves the remaining variances below.

#### *Size and Number of Detached Accessory Structures*

Section 1.2 (3) (A & B) outlines the number and total size allowed for detached accessory structures based on the parcel size. For example, a parcel between two and one-half acres (2 ½) and twenty (20) acres can have a maximum of two accessory structures. Additionally, a lot between 5.01 acres – 20 acres is allowed a maximum structure size of 2,500 SF. Currently, the parcel exceeds the number of permitted structures with six detached accessory buildings. Three of the sheds are accessory structures under 120 SF, which do not require building permits but count against the allowed size and number. The code indicates that only one (1) shed of 120 SF is permitted in addition to the accessory structures. The owners have indicated that they are willing to remove sheds 2,4,5,6 and the extended roofline of shed 1.

The owner is becoming more aligned with the County ordinances by removing four sheds and the roofline of another shed, which will bring the proposal under the allowed maximum size of 2,500 SF. As such, they are proposing to have three detached accessory structures on the property, one under 200 SF. This will require a variance for the number of allowed accessory structures. The applicant does not need a variance for the size since they will be removing multiple sheds. The Planning Commission should discuss the variance for the number of sheds and specify actions to take as conditions for approving the request for the additional shed.

The minimum setback from any property line is 100 feet; the proposed barn is 25 feet from the

north property line. The minimum setback from waterbodies is listed at 200 feet. While the proposed barn is ample distance from the lake, it is only 116 feet from the pond on the property's west side. Twin Lakes is a natural environment lake that requires a 200-foot setback from the lake. The property is limited in terms of locations that meet setbacks from Twin Lakes, waterbodies, and the property lines. A 200-foot setback places the barn past the home and within the setback of the pond. The 100-foot setback from all property lines prohibits most areas north or south of the existing house. The 200-foot waterbody setbacks from the lake and pond overlap south of the house. Combined with the standard requirements of accessory structures, virtually no areas would not require a setback from a variance of some kind.

### **Partner Agency Review of Request**

Stillwater Township, the Carnelian Marine St. Croix Watershed District, and the Washington Conservation District reviewed the application.

- The Stillwater Township Board met on January 12, 2023 and approved the variance. The board's resolution is attached as an exhibit.
- The Carnelian Marine St. Croix Watershed District reviewed the application. It indicated that the project would trigger multiple watershed rules (stormwater management, erosion control, buffers, floodplain) and would require a buffer agreement and a declaration for maintenance of stormwater facilities on the site. The applicant is working with the watershed currently on obtaining the permits.
- The Washington Conservation District indicated the following: The more significant concern would be the closeness to the lake as it's a more valued public water resource. I don't think we would have any concerns around it's closeness to the wetland as long as there is a reasonable natural vegetated buffer.

### **Ordinance Criteria for Granting a Variance**

Washington County Development Code Chapter 1, Section 6.4 outlines the criteria for granting variances within Washington County. Variances are only granted when they are in harmony with the general purpose and intent of the Official Controls, in cases where there are practical difficulties in meeting the official control's strict letter.

"Practical difficulties" used in connection with the granting of a variance means:

- (1) The property owner proposes to use the property in a reasonable manner not permitted by an official control.
- (2) The plight of the landowner is due to circumstances unique to the property, not created by the landowner.
- (3) The variance, if granted, will not alter the essential character of the locality.
- (4) Economic conditions alone do not constitute practical difficulties if reasonable use for the property exists under the terms of the Development Code.
- (5) The Board may consider the practical difficulties to include inadequate access to direct sunlight for solar energy systems. This criterion does not apply to the request

### **Summary of Findings of Fact**

Based on the findings listed below, the requested variance is in harmony with the general purposes and intent of the Development Code and Comprehensive Plan for the following reasons:

(1) The property owner proposes to use the property in a reasonable manner not permitted by an official control.

The proposed use is for a barn to house horses—livestock, such as horses, are permitted within Stillwater Township in agricultural-zoned parcels. Additionally, the applicant is proposing to install a vegetated natural buffer between the water body and the proposed barn. The design has limited its impact on the lake and waterbody. Through the removal of accessory buildings, the owner is bringing the property into further conformance and under the allowed maximum size. The proposed 197-square-foot accessory structure the owner proposes to leave is reasonable due to its small size and the removal of 4 additional structures.

(2) The plight of the landowner is due to circumstances unique to the property, not created by the landowner. The parcel is uniquely shaped and unique for having a pond and lake within its boundaries. The pond and lake trigger setback requirements that overlap south of the home. The parcel currently has a home and six accessory structures on site which are not conforming to today's standards. The home's location at the back of the property limits the placement of the barn both behind and in front of the house, with setbacks restricting it on both sides. Placing the barn behind the house puts it within the setback from the lake and in front of the house within the setback of the property line and the pond. These present several constraints to the barn's construction and the plight is unique to the property and not created by the Landowner.

(3) The requested variances will not alter the essential character of the locality.

The property in the past has been utilized for raising domestic animals at a much greater scale. The applicant is proposing to utilize the property in a reasonable manner by removing four accessory structures on the property and maximize the setback from the lake. The proposed 197-square-foot accessory structure the owner is proposing to leave is reasonable due to its small size and the removal of 4 additional structures. Nearby properties along Mendel also have livestock and farm animals on them. The property has several structures that were previously used for livestock on the site, with a number of existing structures located close to the north property line and closer to the ROW than the house. The owner will be removing these to become more conforming, and the proposed structure will not alter the essential character of the locality.

(4) Economic conditions alone do not constitute practical difficulties if reasonable use for the property exists under the terms of the Development Code.

Current economic conditions alone do not constitute practical difficulties in this case.

Planning Staff recommends approval of the variances from the requirements of the Washington County Development Code with the following conditions:

1. The applicant will build the barn up to 1,207 SF in size, as shown on the plans submitted to the County and reviewed with this request.
2. The applicant will construct the barn in the location as shown on the plans and survey submitted and reviewed by the County.
3. The applicant shall provide a natural vegetation barrier between the barn and the water body to be reviewed by the County and the Washington Conservation District.
4. The applicant shall acquire all applicable permits from the Watershed District and adhere to the requirements.

5. The applicant shall acquire a building permit from the Township and adhere to the requirements.
6. The applicant shall remove sheds 2, 4, 5, and 6 and the lean-to on shed 1 before the proposed horse barn is completed.
7. The applicant shall acquire all other applicable local, County, State, and Federal permits for the proposed project and shall adhere to their requirements.
8. The applicant shall apply for and receive a building permit from Stillwater Township and meet all permit requirements. In addition, the applicant shall provide the county with a copy of the permit.
9. All construction and grading excavation or disruption of the natural ground cover resulting from the onsite construction shall be re-sodded or seeded within one hundred eighty (180) days of the date of issuance of the building permit from Stillwater Township.
10. The applicant shall replace all trees cut down due to the construction and grading at a 1:1 replacement rate.

#### **Board Questions**

None brought forward.

#### **Applicant/ Representative Presentation**

Mark Willis, Contractor for the owners, 9575 Mendel Road, Stillwater, MN 55082 Presented on behalf of the applicant giving a brief description stating the build would be in accordance with the plans submitted March 31, 2023. He stated that a lot of grading will be done to go to a rain garden to prevent runoff from the pond and lake.

#### **Board Questions for Applicant**

Ms. Zanko asked if any trees will be removed? The applicants representative Mr. Willis replied no trees are being removed.

Mr. Melander asked what the height of the building will be. Mr. Willis replied to the question the building will be 28 feet tall at the peak from the lowest elevation of the building.

#### **Public Hearing**

*Chair Melander opened the Public Hearing at 5:28.*

No comments received

*Chair Melander closed the Public Hearing at 5:28.*

#### **BOARD DISCUSSION**

Mr. Rheinberger commented he doesn't think the placement could be any better.

Mr. Doneux asked if there are any comments from the neighbor to the north? There have not been any comments.

*Mr. Doneux made a motion to approve the variance based on the Findings of Fact.*

- (1) The property owner proposes to use the property in a reasonable manner not permitted by an official control.
- (2) The plight of the landowner is due to circumstances unique to the property, not created by the landowner.
- (3) The variance, if granted, will not alter the essential character of the locality.
- (4) Economic conditions alone do not constitute practical difficulties if reasonable use for the property exists under the terms of the Development Code.
- (5) The Board may consider the practical difficulties to include inadequate access to direct sunlight for solar energy systems. This criterion does not apply to the request.

Included in the packet and identified by Chair Melander the following exhibits:

- Exhibit A is the staff report from Daniel Elder, dated 5/16/2023.
- Exhibit B is the application packet, received 3/21/2023.
- Exhibit C is the location map prepared by Washington County Survey Division.
- Exhibit D is the 2022 11 x 17 aerial map prepared by the Washington County Survey Division.
- Exhibit E is the 2022 11 x 17 aerial contour map prepared by the Washington County Survey Division.

*Ms. Zanko seconded the motion, Chair Melander called the question, all were in favor. Motion Carried 5-0.*

## **ADJOURNMENT**

*Commissioner Zanko made a motion to adjourn. Seconded by Commissioner Bauer. All were in favor. Motion Carried 5 – 0.*

Meeting adjourned at 5:35 pm

Respectfully submitted,

Sara Favreau  
Public Works Department, Recording Secretary