



MEMORANDUM

TO: Sunfish Lake Mayor and City Council

FROM: Michelle Barness/Alan Brixius

DATE: January 31, 2013

RE: Sunfish Lake - Planning Update for February City Council Meeting

FILE: 211.02- General

2/5/13 CC Mtg.
**Agenda
Item
6a**

January 2013 Planning Commission Meeting

The Sunfish Lake Planning Commission January meeting was cancelled due to lack of development applications.

January 2013 City Council Meeting

No planning or development applications were considered at the January City Council Meeting.

At the January meeting City Council requested that planning staff investigate the following issues:

- 1) Council asked if building expansion within shoreline setbacks would be more effectively managed via Conditional Use Permits rather than a variance. A memo summarizing and comparing the two approaches has been included with the planning update.
- 2) Council directed planning staff to coordinate with the City Forester to investigate the tree harvesting activities reported by Dr. Chesney on Acorn Drive. Planning staff spoke with Kevin Huebscher of Kev's Corner, who has been participating in the removal of primarily dead or invasive trees from the property in question. Mr. Huebscher confirmed that he had permission to perform these activities from neighbor Barbara Telander. Ms. Telander had spoken with the owners of the property, the Harding family, who had communicated their approval of Mr. Huebscher's intentions. Planning staff spoke with the City Forester, who confirmed this knowledge and who has, in concert with the Police Chief, provided a more detailed explanation of the situation.

- 3) Council inquired as to whether the State of Minnesota requires fencing around swimming pools. A review of Minnesota State Rules and Statutes pertaining to swimming pools demonstrated that fencing is currently required for public swimming pools having a depth of 24 inches or greater, while fencing regulations for private swimming pools are left to individual municipalities to decide. Planning staff was in contact with City Attorney Kuntz to confirm his knowledge on this matter. Attorney Kuntz indicated that the State Building Code does not currently require that a private swimming pool have a fence or barrier around it. He provided an example of Inver Grove Heights ordinance requiring fencing for private swimming pools, as well as a list of other communities that have required fencing based on specific swimming pool design parameters. A description of these items has been provided as an attachment to the planning update.

Development Applications

2250 Delaware Avenue. We have received a development application for 2250 Delaware for a major site and building plan review. The applicants recently purchased the property and are proposing removing the existing home in order to construct a new home and garage in approximately the same location. The existing home falls within the required minimum 200 foot shoreline setback, so that any new building expansion would typically require a variance. However Section 1243.03 "General Provisions" of the Shoreland Overlay District has a provision allowing a shoreline setback average based on the setbacks of adjoining properties. In the case of 2250 Delaware, the average shoreline setback of adjoining neighbors will reduce the required setback from that maintained by the existing home. The new home is being built in the same location as the current home and meets the average shoreline setback allowance; no variance is required to move ahead.

The proposed home is approximately 6,732 square feet in area and two stories in height. The proposed garage is approximately 1,357 square feet in area. The new home reduces both impervious surface on the site, as well as the width of the building footprint closest to the lake. A few trees have been identified for removal as a result of construction, while vegetation nearer the lake will be preserved. New septic drain fields are also proposed. Detailed site and building plans are currently undergoing review. This application will proceed to the February Planning Commission meeting.

345 Salem Church Road. We have received application from 345 Salem Church Road for a variance from shoreline setback requirements. The applicants recently purchased the property and would like to construct a small addition to enclose a walkway between the garage and principal building on the property. They would also like to remove an existing skylight on the home and install a new hipped roof over a portion of the home in place of the skylight. There will be no change to site grading, landscaping, lighting, or septic systems as a result of these proposed construction activities.

A variance is required because the proposed building addition and hipped roof will result in a minimally expanded building footprint and increased building height. The home is non-conforming in that it falls within the minimum required shoreline setback. When a home is expanded in volume or height within the required shoreline setback, a variance from shoreline

setback standards is required. The proposed project should otherwise meet all R-1 District setback and performance standards. This application will proceed to the February Planning Commission meeting.

Flynn/Park Subdivision. We have received inquiries for a minor subdivision that would split Lot 4 Knutson Addition in two and have the new created parcel added to adjoining properties. This will result in two large single family lots. This lot split will be handled as a Minor Subdivision. We have informed the applicant of the subdivision requirements and process. We also explained that they will need to vacate the easements that follow the existing lot lines.

cc: Catherine Iago, City Clerk
Tim Kuntz, City Attorney
Don Sterna, City Engineer
David Neameyer, Building Official
Jim Naves, City Forester
Ron Wasmund, Septic System Inspector



MEMORANDUM

TO: Sunfish Lake Mayor and City Council

FROM: Michelle Barness/Alan Brixius

DATE: January 31, 2013

RE: Sunfish Lake – Shoreline Setback Variance

FILE: 211.02 - General

BACKGROUND

At the January 8, 2013 meeting the City Council inquired as to whether building expansion within shoreline setbacks could be effectively managed via Conditional Use Permit (CUP) rather than variance. This memo provides a brief review of the use of variances and CUPs in addressing planning issues.

A variance provides for deviations from the literal provisions of the Ordinance in instances where compliance with the requirements would cause practical difficulties because of circumstances unique to the individual property under consideration. In essence, a variance allows an exception to a specific performance standard. A variance from performance standards established to protect the health, safety, and essential character of a community requires carefully weighing the implications of the variance. As such, the variance review process is designed to provide the City significant discretion in finding for or against the variance. This is accomplished by providing the opportunity for a detailed site evaluation, with special attention to characteristics unique to the property, and a determination of whether granting the variance will permit the property owner a reasonable use of the property. The conditions governing consideration of variance requests are somewhat general. This provides the City ample room in evaluating variance requests on a case by case basis, sensitive to individual circumstances. If the City finds that a development request does not fully satisfy the criteria as applied to the property in question, the application may be denied.

Conditional Use Permits (CUP) differ from variances in that they allow uses appropriate in specific zoning districts that may not be directly permitted in that district, with the understanding that the use must meet additional measurable and demonstrable conditions. CUPs provide the City the opportunity to determine the suitability of certain uses by affirming that they meet additional requirements deemed necessary to control

the use. This is not a site specific evaluation. Rather, if an applicant can demonstrate that the use in question meets conditions specified by the City for a CUP, the CUP must be approved. In this sense, the City has much less discretion in determining against a CUP request.

It would be difficult to allow reduced shoreline setbacks through the conditional use process for several reasons. The shoreline setback is a performance standard, the exception from which has commonly been governed through the variance process, as described. On the other hand, Conditional Use Permits guide conditions under which specific land uses may be allowed, not the circumstances under which a use may be released from the requirements of a performance standard. In addition, it would be difficult to establish a common set of measurable and demonstrable conditions in connection with a conditional use permit for a reduced shoreline setback. Shoreline lots around Sunfish Lake vary significantly, so it would be difficult to create a comprehensive list of conditions for allowing reduced shoreline setbacks that fully addresses all possible variables affecting the practical application of a reduced setback.

The topic of building expansion on shoreline lots and the requirement for shoreline setback variances has arisen recently in the case of two properties: 345 Salem Church Road and 2250 Delaware Avenue. The existing homes on both properties are legally non-conforming in that neither currently meets the required minimum 200 foot shoreline setback. In both instances, the City received requests to remove the existing homes, and rebuild and expand in the same general location within the required shoreline setback, which typically requires a variance from the setback requirement.

The 345 Salem Church Road application did include a request for a variance, which came to the Planning Commission whereby circumstances unique to the property in question were carefully weighed against the request. After a detailed site evaluation the Planning Commission determined that practical difficulties existed, stemming from unique conditions on the property, which prevented the applicants from using the property in a reasonable manner. As such the commission voted to allow the requested variance.

The 2250 Delaware Avenue application did not include a request for a variance. The Ordinance currently provides an exception to the shoreline setback requirement, in situations where it can be found that the average shoreline setback of adjoining properties is less than the requested shoreline setback. The home at 2250 Delaware Avenue would sit approximately 135 feet back from the shoreline, while the adjoining properties averaged only a 100 feet from the shoreline. As such, a variance was not required. The proposed home is still undergoing a detailed site and building plan review, but it was determined that a reduced shoreline setback was reasonable and fair in consideration of the setbacks exhibited by surrounding properties.

CONCLUSION

In discussion of the issue of shoreline setback variances at the December 19, 2012 Planning Commission meeting, the Planning Commission concluded that the existing variance review process provides the proper discretion for addressing variance requests on a case by case basis. Given this conclusion, and review of the matter provided here, planning staff recommends that the City continue to grant or deny reduced shoreline setbacks via the variance review process, as opposed to managing setbacks via the use of CUPs.

City of Inver Grove Heights

Pools: Swimming Pools, Hot Tubs, Spas and Inflatable Pools

(Effective 1-23-07)

Fencing

A minimum four (4) foot non-climbable fence or approved barrier is required around outdoor swimming pools, hot tubs, spas, and inflatable pools or around the property.

Exceptions to the above requirement are:

- A. Hot tubs and spas equipped with latching covers conforming to ASTM F 1346-91, Standard Performance Specifications for Safety Covers and Labeling Requirements.

Note: Label must be visible at time of inspection.

- B. Inflatable pools with a surface area of fourteen (14) or less feet in diameter, and less than thirty (30) inches in depth from the deepest point to the spill level, and erected between Memorial Day and Labor Day.

- C. Pool covers conforming to ASTM F 1346-91, Standard Performance: Specifications for Safety Covers and Labeling Requirements.

Note: Label must be visible at time of inspection.

In instances where the hot tub or spa contains a latching cover or the pool contains a cover or the fence has a door or gate, then the property owner must keep the cover closed and the door and gate closed unless a resident of the property is present outdoors and within 25 feet of the hot tub, spa or pool.

If the fence is equipped with doors or gates, then the doors or gates shall be self-closing, latching and child proof .

(Source: Received from Tim Kuntz on January 22, 2013. Request for Council Action "Swimming Pool Barriers," Franklin Marshall, Chief Building Official, Inver Grove Heights, February 23, 2009)

Neighboring Cities Requirements:

Apple Valley: Fencing of pools/spas equal or greater than 24 inches in depth is required.

Bloomington: Fencing of pools/ spas less than 48 inches in depth is required.

Burnsville: Fencing of pools/spas equal or greater than 36 inches in depth is required.

Lakeville: Fencing of pools/ spas equal or greater than 24 inches in depth and a surface greater than 150 square feet.

Rosemount:	Fencing of pools/spas equal or greater than 5,000 gallons is required.
South Saint Paul:	Fencing of pools/ spas equal or greater than 1,000 gallons is required.
West Saint Paul:	Fencing of pools/ spas equal or greater than 5,000 gallons is required.

(Source: Received from Tim Kuntz on January 22, 2013. Memo "Barriers Around Hot Tubs & Spas," Franklin Marshall, Chief Building Official, Inver Grove Heights, July 6, 2006)