

**ELYSIAN PLANNING AND ZONING COMMISSION
REGULAR MEETING
AUGUST 1, 2017**

The Elysian City Planning and Zoning Commission met in regular session Tuesday, August 1, 2017 at City Hall at 6:00 pm.

Present were: Chairperson Shawn Anderson; Commissioners Gary Buchschacher, Dan Engebretson, Rick Galewski, Clint Stoen; Zoning Administrator Lorri Kopischke. Absent: None.

On motion by Stoen, seconded by Buchschacher, all voting in favor, to close the Regular Meeting and go to Public Hearing at 6:02 pm.

The purpose of the Public Hearing is to consider the request of Dennis Jewison, the property owner of a property located at 206 East Main Street, Elysian, Le Sueur County, Minnesota, for a variance request to add a deck and a garage to a non-conforming use and to locate the deck within the side-yard setback (4) four feet from the west property line.

Kopischke reported that Mr. Jewison recently purchased the property located at 206 Main Street East. The property is zoned C-1 Central Business Commercial. There is a house located on the property. Jewison would like to add a deck to the west side of the house. A “deck” is included in the City Zoning Ordinance as a “structure” hence this would be an expansion of the house which is not allowed in the C-1 District. The proposed deck is 4-foot from the property line.

Jewison would also like to add a garage to the property. A garage would be an “accessory use”. Accessory uses allowed are those that are incidental to the “permitted uses” that are located on the same lot. As the house is not permitted, a garage would not be allowed.

The entire block of Main Street East between Second and Third Street is zoned C-1 Central Business Commercial. This may have been done to allow for future expansion of the commercial district as the existing commercial area becomes utilized to capacity. There are businesses on the west end of this block on both the north and south side of Main Street East.

Dennis Jewison, owner of the property at 206 East Main Street, stated that this is a house and will be staying a house. Most places on this street have a deck and a garage. It would be nice to have. There is a single garage foundation on the property. The proposed garage would be larger than that foundation – 32 feet by 24 feet. The garage would be located on the back side of the property. Mr. Jewison stated he would probably rent or sell the property once the remodel is completed.

There were no statements from the public. No written comments had been received.

On motion by Anderson, seconded by Galewski, all voting in favor, to close the Public Hearing and open the Regular Meeting at 6:23 pm.

Steve Moline, Pettipiece & Associates, stated he felt the real problem here was the zoning issue. He suggested the City may want to look at a rezone of the entire block. He asked the Commissioners to consider if there would be a future demand for commercial property on that street which would require someone to buy up those lots, tear down the houses and build

something commercial. Or, is it more likely, that it is going to remain the way it is - residential. Changing the zoning to residential would allow the homes located there to be improved.

Galewski also commented on the difficulty of obtaining an FHA loan when purchasing a lot that is zoned commercial to be used for a residential purpose.

After discussion, there was no action on the Jewison variance request for 206 East Main Street for the garage and to add a deck.

On motion by Anderson, seconded by Stoen, all voting in favor, to call a public hearing for September 5, 2017 to consider a change in zoning designation from C-1 Commercial to R-1 Residential for properties of 206, 208, 210, 212, and 213 East Main Street.

On motion by Stoen, seconded by Engebretson, all voting in favor, to close the Regular Meeting and go to Public Hearing at 6:30 pm.

The purpose of the Public Hearing is to consider the request of Larry and Sherri Knutson, the property owners of a property located at 6 Cedar Point NW, Elysian, Le Sueur County, Minnesota, for an "after the fact" variance request to install a patio within the required setback to the Ordinary High Water Level (OHWL) on Lake Francis.

Kopischke reported that on November 14, 2016, the City Council approved a request of Larry & Sherri Knutson, 6 Cedar Pt Drive NW, to allow a variance of twenty-five (25) feet from the road setback, and an increase to a non-conforming structure so that the Knutsons could remove their current house (already removed) and place a new larger home on the lot in the same location. The original home was approximately 55' by 40' and the new home is 78' x 52'.

Since that home was built there have been numerous calls in regard to the size of the driveway, the removal of trees and vegetation on the shoreline, and the installation of a new larger patio.

On June 16, 2017, City Staff visited the site. It appeared that the trees on the shoreline had all been cut and that there was a new patio installed that went from one side of the new house to the other side of the house and basically to the edge of the shoreland. The contractor on the job was emailed and a letter was sent to the owner, expressing concerns with the driveway, the shoreline and new larger patio. At this point Todd Piepho of the Department of Natural Resources was contacted to solicit his input.

Subsequently, the contractor did provide the lot coverage calculation and it appeared to be under the allowed coverage of 25%. The lot is 1.3 acres. There is a wetland on the lot as well.

On July 7, 2017, a letter was sent to Mr. Knutson regarding the patio and the trees. In talking with him since, he states this is a replacement of the old patio. He states he has no pictures of the old patio to show how it looked prior to the construction of the new home. Pictures of the previous patio have been located on google earth and the previous patio also shows on his site plans.

Also, he has stated that he would send pictures of the storm damage to the trees to both Piepho and the city, and to date, neither entity has received any pictures. Pictures were taken by the DNR and were provided to the Commissioners. These pictures show where the trees have been removed along the shoreline. The pictures from google of the previous house also provide an outline of where trees were located prior to the new house being built.

An email from Todd Piepho, Department of Natural Resources, was provided to the Commissioners. Piepho suggests the patio be reduced and trees be planted to provide a screen of view from the lake. His email dated June 22, 2017 is as follows:

“I was at the Knutson site this morning and took the attached pics. There are a couple items I had further questions on.

1. I assume the OHWL setback variance was given for the structure? From what I can tell that appeared to be roughly what the map showed I didn't measure. However, the paver patio extended out from the house to within ~20' of the shore. The only remaining portion of natural ground on the shoreline was the bank dropping off to the lake. That might be something you want to address assuming the variance was for the house and not patio, which in my opinion when reading MN rule 6120 would be considered a structure, definition below;

Subp. 16. **Structure.** "Structure" means any building or appurtenance, including decks, except aerial or underground utility lines, such as sewer, electric, telephone, telegraph, gas lines, towers, poles, and other supporting facilities.

2. The majority of the trees are removed from the shore. I talked with the landowner and he mentioned the large trees were damaged by a storm event and was going to send photos showing that (have not received them yet). I did notice a handful of small cedar stumps that were cut, not sure if they were damaged from the larger tree falling?? Small cedars were likely not damaged by the storm, but I can't say for sure. Pictures showing the east and west side of the lot show the difference in land coverage, both sides are well wooded so tree removal occurred, I'm just not sure when. I don't know what the site looked like prior to the building.

Depending on how you proceed, maybe a compromise could be made on this site?? I would recommend that if they indeed want to leave the patio that it be reduced to what is proposed in the drawing, essentially a walk way around the back of the house with the addition of a small patio area that they would be able to have a grill, table etc. I would also recommend they plant trees to provide a screen for view from the lake. Not saying to totally screen off the property, however a handful of trees would go a long way in screening at this site. They appeared to leave the lake alone, I didn't see anything too alarming for work below the OHWL other than the 2 poured in place stairways that extended into the lake (which fall in a grey area because we do allow a 4' walkway or stairway for access to the lake, but I have never seen a poured in place concrete stairway). Give me a call and we can discuss this if you would like. I'll be back on July 5th.

Todd Piepho

Area Hydrologist | Ecological and Water Resources

Minnesota Department of Natural Resources”

A drawing by the Public Works Department was provided with measurements of the lot, house, driveway and patio as it is now. Using a ruler on the google picture of the house best estimates have been made on the dimensions of the previous patio. The new patio is approximately 1,170

square feet and the previous patio was approximately 160 square feet. Pictures of the new patio provided by the DNR were also provided to the Commissioners.

Larry Knutson, owner of the property located at 6 Cedar Point Drive NE, showed the Commissioners a picture on his phone of a downed tree that he stated was from storm damage.

Abby Leach, Leach Law PLLC, representing Knutson, noted the placement of the old patio on the site plan and that it was a rounded patio of permanent cement that connected with the stairs going down to the lake. She stated it did go down to the lake in that area.

Engebretson acknowledged that the small area may have extended to the stairs by the lake but the entire patio was not 78 feet wide. The new patio is 78 feet wide and goes all the way to the lake. In granting the variance for the house, the Commissioners did not want any more surface coverage along the lakeshore. There was no variance granted for an extension of the patio. There is concern with the run off to the lake and to the neighboring properties. The plan also called for a small driveway and there is a 44-foot-wide driveway on the property.

Stoen stated that it did not matter that the previous patio was close to the lake. That patio was removed and a larger patio just as close to the lake was installed. The house is too big, the patio is too big, the driveway is huge, and the trees have been cut down.

Knutson stated that when the tornado came through there were trees downed and he took care of them immediately and the people at the city dump really appreciated that because he got things cleaned up. He stated you can clearly see that these trees were broken off. He stated he had cleaned them up and now he was being crucified. He did not understand. He stated that the trees that were undamaged were left. He will gladly plant trees. He has a right to clean up trees that are damaged.

Engebretson stated there were six or seven trees that were cut down not just two. Engebretson stated he was concerned with the run off from the large driveway onto the neighboring property.

Buchschacher asked Knutson if he will be replacing the trees that were damaged by the storm. Knutson stated that he certainly can.

There were no public comments.

Written comments:

The following email from Bard and Tina King, owners of the property at 5 Cedar Point Drive was read into record:

“To: Elysian Planning and Zoning Commission

From: Brad and Tina King

RE: Knutson Variance Request

Date: July 31, 2017

Thank you for the opportunity to provide feedback on the variance request submitted by Larry and Sherri Knutson. We are the owners of the property at 5 Cedar Point Drive NW, Elysian MN.

It is our understanding that the Knutson's were granted several variances in order to build a larger home than allowed within the shoreline and road setbacks last year. As I recall, the

“hardship” they cited was a desire to spare the trees on their property. As our property lies within the 350 foot notification area, we reviewed the plan and provided feedback via letter. We also reviewed and agreed to the final proposal.

There are several areas of concern that we have with the construction of the Knutson home and the “after the fact” variance that they are now requesting.

Lake Frances is one of the cleanest lakes in the southern MN area and the biggest threat to property values is the degradation of the water quality. The quality of the water impacts the land values more than the homes square footage or any other home feature. Ask any realtor and they will tell you that the value of a home on Frances is more than that of the exact same home on another area lake— why? The excellent water quality of our lake.

Statewide, there are major efforts to limit the runoff into area lakes and streams. Farmers are being asked to keep 50 foot buffers along waterways. In recent years, over \$450,000 has been spent in the area counties to restore natural shorelines. The City of Elysian and the Lake Frances Lake Association have both participated in several of these projects, including one at the City park. It is well known that the removal of shoreline trees and plants and construction of impervious surfaces near the lake adds to the run off, negatively impacting water quality.

We believe the City of Elysian recognizes Lake Frances as a valuable community asset. As such, it has a critical responsibility to protect it for the residents of Elysian, current lake property owners and future generations to come. Backed by science and supported by both state and local government agencies, the DNR has established shoreline management guidelines to guide cities and ensure the water quality of our lakes. These are not the rules of the City of Elysian, but the DNR. We believe that it is the City’s obligation to follow these rules consistently and fairly except in situations of proven hardship.

Last year, the City of Elysian accommodated the Knutson’s desire for a larger home by granting significant road and lake setback variances. The City did so in good faith. My husband and I also agreed to their plan in good faith. Unfortunately, the plan was not followed. Not in their plan, or approved, was a 78ft by 15+ft patio within the lake setback. Not in their plan, or approved, was the elimination of many of the trees by the lake – even though the reason (hardship) given for their initial variance was to spare tree removal. Not in their plan, or approved, was a 86 fat x 44 ft. driveway with a frontage on our private road of a whopping 62 feet. Not only does this mammoth driveway negatively impact the curb appeal, but the entire surface drains towards the private road which has no curb or gutter. Where will the drainage for this driveway go?

People are watching what the outcome of this situation will be. They say (and have said), “why should I worry about my shoreline if they don’t?”, “Why shouldn’t I cut down my trees so I can improve my view to the lake too?” , “Why can’t I build a bigger home, patio?, driveway?” , “The City doesn’t care about the lake, just the tax revenue” or maybe “It’s easier to just do it and ask forgiveness later, right?” We’ve seen a lot of new construction in the last several years, and I’m sure it will only continue - and so will these issues.

For all of the reasons above, we believe that the DNR recommendations and regulations be followed in this situation and whenever possible in the future. It is a privilege to own lakeshore.

Home owners and their builders/landscapers are responsible for knowing the lakeshore regulations and adhering to them with designs that accommodate the lake and the rules – not the other way around. Building plans should be followed as originally proposed and approved.

Sincerely,

Brad and Tina King”

No further written comments were received.

Motion by Engebretson, seconded by Buchschacher, all voting in favor, to close the Public Hearing and reopen the Regular Meeting at 6:51 pm.

Buchschacher stated there is a Minnesota Statute and County rules that trees should not be removed from the lakeshore so he believed Knutson should be required to replace the trees. The lakeside trees are important to maintain and help improve water quality.

Stoen stated he did not vote to approve the original variance. Everything on this lot is too big. There is too much coverage, too much run off into the lake, and the trees are down. He does not support the variance request and he would like the patio to be removed and put back to the size of the original patio which was agreed to at the time of the original variance.

Engebretson stated that Knutson had disrespected his neighbors, disrespected the lake, and disrespected the Board. And in the process, he was granted a variance and instead decided to abuse the Board’s consideration. Engebretson stated he does not support the variance and that the patio should be removed, the trees that were removed along the shoreline be replaced, and if it were possible to reduce the driveway as well. He also would support a fine be levied.

Galewski stated this variance request could not be approved as the three conditions or “practical difficulties” cannot be satisfied. Condition #2 – Uniqueness could never be proved. He read: “The second factor is that the landowners’ problem is due to circumstances unique to the property not caused by the landowner.” This problem is definitely caused by the landowner and not by the property.

Anderson agreed that this request could not be supported by the three practical difficulties required for granting a variance. This clearly does not meet Condition #2. This is an area of flat wide-open space.

Steve Moline, Pettipiece & Associates, stated that this did not meet the criteria in the variance laws. A variance can be granted if the property owner cannot put the property to a reasonable use – that does not apply here. A variance can be granted if the landowner’s problem is due to circumstances unique to the property not caused by the landowner – the Board has already talked about that. A variance, if granted, will not alter the essential character of the neighborhood. Economic considerations alone are not a hardship and must be consistent with the City’s land use plan.

On motion by Stoen, seconded by Galewski, all voting in favor, to deny the variance based on the following findings of fact:

1. The request and supporting documentation does not meet Practical Difficulties Condition #1 Reasonableness. The smaller existing patio was allowed as it was existing and would have allowed the homeowner to utilize the property in a reasonable manner.
2. The request and supporting documentation does not meet Practical Difficulties Condition #2 Uniqueness. There are not unique circumstances to this property. The patio is not affected by topography of the lot. The patio is based on the desire of the homeowner and not due to constraints of the land.
3. The request and supporting documentation does not meet Practical Difficulties Condition #3 Essential Character. The patio covering the entire area between the house and the shoreland is not consistent with the Shoreland Ordinance and with what other properties on the lake have in place.
4. The patio is 78 feet long by 15 to 21 feet wide. The patio is right up to the bank that drops down to the lake. This results in run-off of all surface water in the area straight into the lake. The large amount of house, driveway, and patio results in a large amount of water running directly into the lake.
5. Per the Shoreland Ordinance, in shore and bluff impact zones and on steep slopes, limited clearing of trees and shrubs and cutting, pruning and trimming of trees is allowed to provide a view to the water from the principal building site and to accommodate the placement of stairways and landings, picnic areas, access paths, beach and watercraft access areas and permitted water-oriented accessory structures or facilities, provided that: The screening of structures, vehicles or other facilities as viewed from the water, assuming summer, leaf-on conditions, is not substantially reduced. In this instance, almost all of the trees have been removed and the home is not screened from the lake basically from end to end.
6. And to adhere with the recommendation of Todd Piepho, Area Hydrologist, Minnesota Department of Natural Resources as follows: I recommend that if they indeed want to leave the patio that it be reduced to what is proposed in the drawing, essentially a walk way around the back of the house with the addition a small patio area they would be able to have a grill, table etc. I would also recommend they plant trees to provide a screen for view from the lake. Not saying to totally screen off the property, however a handful of trees would go a long way in screening at this site.

After considerable discussion, on motion by Galewski, seconded by Stoen, all voting in favor, that the patio be reduced to the size (footprint) of the original patio as shown on google maps and require replacement of the trees that were removed along the altered shoreline per the DNR recommendations for the type and number of trees to be replaced.

This recommendation will be considered at the City Council Meeting on August 14, 2017.

On motion by Stoen, seconded by Engebretson, all voting in favor, to approve the minutes of the July 12, 2017 Regular Meeting as presented.

On motion by Stoen, seconded by Engebretson, all voting in favor, to approve the agenda as presented.

Based on recommendations and discussion at the July 12, 2017 meeting, the following driveway restrictions were discussed:

1. A Driveway Permit is required and can be obtained at the office of the City Administrator. **Agreed – no changes.**
2. Single-family residential uses shall be limited to one curb cut or driveway access per property. **Discussion:** that this should apply to all residential properties – not just “single-family”. Also, why “one” curb cut? What about corner lots? **Agreed to: Residential uses shall be limited to two curb cuts or driveway accesses per property.**
3. Driveways are limited to a maximum width of twenty-four (24) feet at the curb. **Discussion:** Galewski stated he had measured multiple driveways in the Roemhildt Addition and they had varying widths from 26 feet to 40 feet. He felt it would be difficult to back a trailer into a 24-foot-wide driveway opening. Engebretson stated the driveway curb cut openings in Lake View Manor are 16 feet wide. He did not believe a 36-foot curb cut was necessary to accommodate a trailer and noted a bigger driveway resulted in more impervious surface. **Agreed – no changes.**
4. Driveways may widen after a five (5) foot setback from the curb. **Agreed – no changes.**
5. Driveways are limited to a maximum of thirty-six (36) feet in width. **Agreed – no changes.**
6. Driveways shall meet the required side yard setback for the adjacent structure. For example, a driveway that serves an attached garage must meet the eight (8) foot side yard setback; a driveway that serves a detached garage must meet the three (3) foot side yard setback. **Agreed – no changes.**
7. Driveway setback for corner lots shall not be less than 20-feet from adjacent right-of-way, (meeting Front Yard setback). **Agreed – no changes.**
8. All driveways and required off-street parking spaces shall be surfaced with concrete or bituminous. All existing driveways that are not surfaced with concrete or bituminous shall be upgraded within one-year of sale of the property to a new owner. **Discussion:** This may be difficult for a new homeowner. How will this be enforced? Also, should other surfaces be included such as pavers? Comments from people in the audience that this will result in more impervious surface than gravel driveways. **Agreed – only change to above is the addition of – surfaced with concrete, bituminous or “pavers”... .**

On motion by Stoen, seconded by Engebretson, to incorporate the above changes and present in the form of a driveway ordinance to City Council for consideration at their next meeting.

Voting in favor: Anderson, Buchschacher, Engebretson, Stoen. Voting against: Galewski.
Motion carried.

On motion by Anderson, seconded by Stoen, all voting in favor, meeting adjourned at 7:46 pm.

Attest:

Shawn Anderson, Chairperson

Lorri Kopischke, Zoning Administrator