

PUBLIC HEARING  
CITY OF CROSSLAKE  
MONDAY, JULY 8, 2002  
6:00 P.M. - CITY HALL

Pursuant to due notice and call, the City Council met in the Chambers of City Hall to hear an appeal for Variance 2002-011 submitted by Gary and Judy Heltemes. The request is an appeal to the City Council regarding a decision made by the Planning and Zoning Commission to deny a variance request to construct a single-family residence at less than the required 75' setback from the OHW mark and to exceed the 25% maximum impervious coverage limit by 1.5%. The property is approximately 16,904 square feet and is described as Lot 5, Bowers' Point, Section 31, Township 137N, Range 27W. Present at the hearing was Mayor Darrell Swanson, Councilmembers Sandy Eliason, Chuck Miller, Irene Schultz and Dean Swanson. Also present was City Administrator Tom Swenson, City Attorney Paul Sandelin, Community Development Director Paul Larson and Clerk/Treasurer Darlene Roach. Planning and Zoning Commission Member Dick Dietz was also in attendance. (Sign in sheet attached as a permanent part of the minutes.)

Mayor Swanson called the Public Hearing to order at 6:00 P.M. and stated that the purpose of the meeting was to hear an appeal of Variance 2002-011 for Gary and Judy Heltemes. The order of events would include a presentation by Planning and Zoning Staff, a legal opinion by the City Attorney, a presentation by the Applicant, comments from the public and final questions and comments by the City Council.

Community Development Director Paul Larson addressed the Council and read the public hearing notice describing the reason for the appeal. Various documents were presented to the Council for their review prior to the hearing. These documents include: (1) A copy of the decision letter from the City notifying the applicant of the Planning and Zoning Commission decision to deny the variance request; (2) Planning and Zoning Staff Report with attachments, dated May 24, 2002; (3) Certificate of Survey of the subject property; (4) On-site Sewer Design; (5) Appeal letter from Gary Heltemes; (6) Copy of the public hearing notice which was sent to adjacent property owners; and (7) Minutes of the May 24, 2002 Planning and Zoning Commission Public Hearing. Paul Larson stated that the applicant was requesting approval to replace the house at the same setback as the current house. Councilmember Miller asked if the Staff had made a recommendation to the Commission and Paul Larson stated that the Staff had recommended approval of the variance request with conditions. These conditions were noted on Page 2 of the Findings of Fact Staff Report. It was the decision of the Planning and Zoning Commission, at their meeting of May 24<sup>th</sup>, to deny the variance request based on the property having a building envelope in which to place a new structure. The Commission did approve a conditional use permit request to allow for the movement of more than 50 cubic yards of dirt within the construction impact zone with conditions.

City Attorney Paul Sandelin presented the general requirements needed to establish undue hardship which the Council would need to consider.

Gary Heltemes addressed the Council and stated that his goal was to build a retirement home for he and his wife that they could live with. He stated that he has spoken with most of the neighbors regarding the variance request and has obtained a petition with the names of all of the neighbors in Lots 2 through Lots 15 in support of the variance request. Mr. Heltemes felt that he was denied the variance request from the Planning and Zoning Commission because he did not stress key facts surrounding the request for the variance. Mr. Heltemes then proceeded to explain his position regarding the variance request.

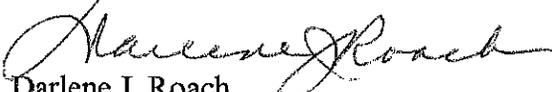
The meeting was then open to the public for comments. Gerry Pritchett addressed the Council and expressed support of the variance request and felt there should be special dispensation for these types of properties. Armond Gease addressed the Council in support of the variance request and stated that what is being proposed is much better than a narrow, tall home. Cliff Clark addressed the Council in support of the variance request and felt that a good septic system and drainfield is what is most important. Pat Ingle addressed the Council in support of the Heltemes' plan and hoped that the variance would be approved. John Pribyl addressed the Council in support of the variance and stated that the City has ordinances, but they also have variances for these types of situations that make common sense. He stated that the neighbors are in attendance at this meeting to thank the Council for the process, which is in place to allow people to listen to the voices of reason. He stated that the applicant has worked very diligently with City Staff to do the right thing. Larry and JoAnn Bendel, Lot 1 stated that they understand the Planning and Zoning Commission and Council's job in dealing with variances but wished to support the applicant on his request. Jean Prichard asked Community Development Director Paul Larson if anyone has objected to the variance request and he stated that he had not received any objections from neighbors regarding the request. Jean Prichard then commented that if support was unanimous, that would be a wonderful thing. She stated that she would be glad to see the holding tank removed as proposed by the applicant.

There being no further questions or comments, MOTION 07PH1-01-02 WAS MADE BY CHUCK MILLER AND SECONDED BY IRENE SCHULTZ TO APPROVE VARIANCE 2002-011 SINCE THE ORDINANCE ITSELF HAS CREATED AN UNDUE HARDSHIP FOR THE APPLICANT AND APPROVAL OF THE VARIANCE WILL ALLOW FOR THE INSTALLATION OF A SEPTIC SYSTEM AND REMOVAL OF A HOLDING TANK WITHOUT THE DWELLING BEING ANY CLOSER TO THE LAKE THAN IT CURRENTLY IS WITH THE FOLLOWING CONDITIONS: (1) CONSTRUCTION SHALL BE COMPLETED AS PER SUBMITTED PLANS; (2) NO FURTHER EXPANSION OF THE DWELLING STRUCTURE SHALL BE ALLOWED WITHIN THE OHW SETBACK; (3) A LANDSCAPING PLAN SHALL BE SUBMITTED AND APPROVED BY STAFF, RE-ESTABLISHING NATURAL VEGETATION WITHIN A 25' WIDE AREA FROM THE OHW AS OUTLINED IN SECTION 8.50, SUBD. 14 AND 15; (4) THE APPLICANT WILL HAVE 12 MONTHS FROM DATE OF APPROVAL TO IMPLEMENT THE LANDSCAPING PLAN; AND (5) THE NEW SEPTIC SYSTEM SHALL BE PROTECTED FROM VEHICULAR TRAFFIC/PARKING. Councilmember Swanson stated that the comments made tonight by the neighbors

reassured him that the variance should be approved. He also supported the installation of a conforming septic system and felt the applicant did the best they could do to work with what they had available. Councilmember Eliason liked the support the applicant received from the neighbors. Councilmember Miller stated that the City hires capable individuals in the Planning and Zoning Department who are trained to review the applications and would support their recommendation. He stated that the Commission is a group of volunteers who do the best they can and he does not want them to feel as if the Council is stepping on their toes. Mayor Swanson stated that the Council does value citizen commissions and Planning and Zoning does have statutory power, however there is an appeal process whereas the applicant can appeal to the City Council or to District Court. Mayor Swanson directed City Attorney Sandelin to prepare an opinion to support approving the variance if the Council approves the motion that is on the floor. (See attached Findings of Fact and Conclusions of the City Council.) Mayor Swanson stated that he would support approving the variance since the only individual hurt by setting the home further back on the property is the applicant, that installation of a septic system far outweighs a holding tank, the removal of sidewalks, which the applicant is proposing, helps the lake, and the new dwelling will enhance the character of the land. Community Development Director Paul Larson read the five conditions recommended by Planning and Zoning Staff into the record. MOTION CARRIED WITH ALL AYES.

MOTION 7PH01-02-02 WAS MADE BY CHUCK MILLER AND SECONDED BY SANDY ELIASON TO ADJOURN THIS SPECIAL PUBLIC HEARING AT 6:34 P.M. MOTION CARRIED WITH ALL AYES.

Recorded and transcribed by,

  
Darlene J. Roach  
City Clerk/Treasurer

HELTEMES APPEAL  
PUBLIC HEARING  
6:00 P.M.  
JULY 8, 2002  
SIGN-IN SHEET

NAME	ADDRESS	PHONE
Sean Swanson	Crosslake	692-2688
Danell Swanson	Crosslake	692-2688
Tom Swanson	CITY ADMINISTRATOR	692-2688
Jane Schult	Crosslake	692-2663
Sandy Elason	Crosslake	692-3109
Chad Heltemes	Brooklyn Center, MN	763 592 1602
Judy Heltemes	New Brighton, MN	651-636-9033
Ray Heltemes	New Brighton, MN	651-636-9033
Jaime Bendl	Fridley, MN	763-571-9655
Garry Bendl	" "	" " "
Barbara Pirkoff	Fridley, MN / Crosslake	218-692-5214 763-586-7835
John Pohl	33557 LAKE ST. Crosslake	218-692-5214
Walt Clark	33554 LAKE ST. Crosslake	692-2395
Sean Pritchett	33540 Lake St Crosslake	692 4015
Gerry Pritchett	33540 Lake St Crosslake	692 4015
Pat Doyle	33566 Lake St Crosslake	692 2738
Dick Dietz	38559 Waukegan D	
Gregory Dean	11770 CROSS AVE	692-2260
Jon Henke	Public Work Dir	692-2748
Jon Henke	PARK DIR.	692-4271
Bryan	Echo Puc	
Allen Klason	35474 Marada Dr	692-3109
<del>Pat</del>	FRIDLEY, MN / CROSSLAKE	
Betty Whitley	13086 Gladich Ln	218/692-2183
Mary Brophy	Fort Collins CO	970-229-1929
Mark Brophy	Fort Collins	
Susan Whitley	Crosslake MN	692-2183



CITY OF CROSSLAKE  
COUNTY OF CROW WING  
STATE OF MINNESOTA

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IN RE: VARIANCE OF  
GARRETT AND  
JUDITH HELTEMES

FINDINGS OF FACT AND  
CONCLUSIONS OF THE  
CITY COUNCIL  
July 8, 2002

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INTRODUCTION

The City of Crosslake Planning Commission met on May 24, 2002 at the City of Crosslake City Hall to hear and decide a request for a variance by Garrett and Judith Heltemes (the "Applicant") to allow the construction of a single family residence and deck at a setback of less than 75 feet from Cross Lake and to exceed the 25% maximum impervious coverage limit by 1.5%. The applicant has also requested a Conditional Use Permit to move more than 50 cubic yards within the shoreland area; however, due to re-location of the proposed structure, this Conditional Use Permit is no longer necessary. The property is approximately 16,904 square feet and is legally described as **Lot 5, Bowers' Point, Section 31, Township 137N, Range 27W, Crow Wing County, Minnesota (the "Property")**. The property is zoned R-3, Medium Density Residential.

The Planning Commission denied the variance and this matter was appealed to the City Council. The Applicants were present at the City Council Hearing. The City heard comments from the Applicants, the Planning and Zoning Administrator, City Attorney, City Council members, and interested citizens. Based upon the evidence presented to the City Council at the July 8, 2002 hearing, and all of the files, records and proceedings, including the prior decision and record of the City of Crosslake Planning Commission relating to the Application, the Council hereby makes the following:

## FINDINGS OF FACT

The City Council adopted the written Findings of Fact as adopted by the Crosslake Planning Commission dated May 24, 2002 as set forth below. The adoption of said findings is based upon the record presented to the City Council as well as the record presented to the Planning Commission, which record is memorialized in the minutes and Findings of Fact. Those findings are as follows:

1. The existing dwelling is located approximately 70 feet from the OHW of Cross Lake.
2. The existing deck is located approximately 60 feet from the OHW of Cross Lake.
3. The Applicant is proposing to erect a new dwelling structure at the same location as the existing structure.
4. Existing impervious coverage is 20.4%.
5. Proposed impervious coverage is 26.5%. The proposed impervious coverage includes elimination of part of the driveway, all sidewalks and a non-conforming patio located within the shore impact zone (SIZ).
6. The existing structure is currently serviced by a shallow well and a holding tank.
7. The Applicant is proposing to install a new deep well on the subject property, which allows the neighbor to the South to install a new deep drilled well. Both existing shallow wells will be capped.
8. The Applicant cannot place a drainfield on the North side of the property due to the location of the North neighbor's shallow well. According to the Applicant, the north neighbor was not willing to install a deep well. Thereby limiting Applicant's options for locating a drainfield on the Property.
9. The Applicant is proposing to install a conforming on-site septic system to replace the existing holding tank.
10. The original application involved the movement of approximately 140 cubic yards of dirt within the shoreline setback area. The Applicant revised their plans to reduce the amount of dirt moving impact to the site. The proposed plan is within the permitted guidelines for dirt moving within the construction impact zone (CIZ), 50 cubic yards.
11. There will be no dirt moving within the shore impact zone (SIZ).
12. The location of Applicant's existing home and proposed new construction does not encroach any further on the lakeside setback and is consistent with the location of other homes in the neighborhood.

13. The topography of the lot, and location of neighboring wells and septic systems, limits the availability of viable septic systems on the property.
14. The Planning and Zoning staff recommended approval of the variance.

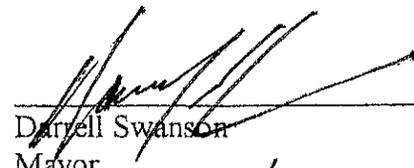
### CONCLUSIONS

Based upon the aforementioned Findings of Fact, the City Council makes the following conclusions:

1. Variance 02-011 shall be granted per the Staff Report.
2. Construction shall be completed as per submitted plans;
3. No further expansion of the dwelling structure shall be allowed within the OHW setback;
4. A landscaping plan shall be submitted, and approved by Staff, re-establishing natural vegetation within 25' wide area from the OHW as outlined in Section 8.50, Subd. 14 and 15;
5. The Applicant will have 12 months from date of approval to implement the landscaping plan; and
6. The new septic system shall be protected from vehicular traffic/parking.
7. The following elements of a variance pursuant to the Crosslake City Code and Minnesota Law have been met:
  1. The strict interpretation of this Chapter would create undue hardship; and
  2. The strict interpretation of this Chapter would be impractical because of circumstances relating to lot size, shape, topographic or other characteristics of the property not created by the land owner; and
  3. The deviation from this Chapter with any attached conditions will still be in keeping with the spirit and intent of this Chapter; and
  4. The variance will not create a land use not permitted in the zone; and
  5. The variance will not alter the essential character of the locality; and
  6. The variance is not for economic reasons alone, but reasonable use of the

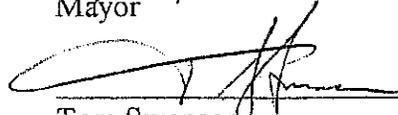
property does not exist under this Chapter.

Passed by the City Council this 10<sup>th</sup> day of July 2002 with 5 Council Members voting to approve the variance and reverse the decision of the Planning Commission.



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Darrell Swanson  
Mayor



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Tom Swenson  
City Administrator

ATTEST: \_\_\_\_\_

This document was drafted by:

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