

PUBLIC HEARING  
CITY OF CROSSLAKE  
TUESDAY, AUGUST 27, 2002  
1:00 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 2002-023 submitted by Elizabeth Whitley. 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. The property is approximately 12,942 square feet in area and described as Lot 9 and Lot 10 of Section 17, 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. (Sign in sheet attached as a permanent part of the minutes.)

Mayor Swanson called the Public Hearing to order at 1:00 P.M. and stated that the purpose of the meeting was to hear an appeal of Variance 2002-023 submitted by Elizabeth Whitley. He stated that the order of events would include a presentation by the Planning and Zoning Staff, a legal opinion by the City Attorney, a presentation by the Applicant, comments from the public, and final questions or comments by the City Council.

Community Development Director Paul Larson addressed the Council and read the public hearing notice which describes the reason for the appeal. This notice was published in the City's official newspaper, the Lake Country Echo, and mailed to neighboring property owners. A handout was distributed to the Council which describes six conditions the Council needs to consider in making their decision as defined in Chapter 8, Section 8 of the City Code. Paul Larson stated that the variance request, not only requests approval to construct a single-family residence at less than the required 75' setback from the OHW mark, but includes a request for less than the required 35' setback from the road. Paul Larson stated that based on the Findings of Fact, staff recommends denial of the variance request. He stated that if the Council, however, chooses to approve the request, several recommendations are being recommended. Councilmember Miller asked if any other houses in the area are as close to the road as what is being proposed by Mrs. Whitley and Paul Larson stated that there probably are homes in the area closer to the road than the current setback requirement of 35 feet. Mayor Swanson asked what has changed in the application since it was heard by the Planning and Zoning Commission in January of 2002. Paul Larson stated that this Variance request is a different application from the one originally submitted. After the hearing in January, the applicant appealed the decision to the City Council. At the appeal hearing on June 11, 2002, the applicant revised the variance request and withdrew their request for an appeal. The appeal was then denied by the Council and the applicant re-applied for a variance on June 26, 2002. The revised variance application was heard by the Planning and Zoning Commission on July 26, 2002 and denied. An appeal to the City Council was filed on July 31, 2002.

Councilmember Miller stated that if the plat were to come before the Council today, it would not be approved for subdivision. However, the property was approved as a plat many years ago and now the Council needs to determine whether greenspace is considered reasonable use. Mayor Swanson stated that the history of the request is confusing, since originally Staff recommended approval and now Staff was recommending denial. Community Development Director Paul Larson stated that Mayor Swanson's statement is correct. Since the original request was received, Staff has had considerable time to review the application and are now recommending denial.

City Attorney Paul Sandelin stated that Paul Larson has reviewed with the Council what they need to consider in reviewing the variance request. He further stated that the burden of proof is on the landowner. Mayor Swanson asked what type of activities could take place on the property if the request to construct a home is denied. He was informed that there would not be much use for the property since even tenting would be disallowed. Councilmember Miller asked if the access lot affects how the assessor views the property. The City Attorney stated that the Assessor would have to answer that question. Councilmember Schultz felt it would be a safety issue to construct a home so close to the road and Councilmember Miller stated that there are other properties in the area that are also close to the road.

Elizabeth Whitley addressed the Council. She stated that the site was buildable when the property was purchased. She showed drawings which were prepared in 1964 - 1965 for a proposed home on the property. She presented a history of the family owning the property and the health reasons which prevented them from constructing a home as had been proposed. Councilmember Eliason asked if a walkout was being proposed and Mrs. Whitley stated that most of the homes in the area are walkouts and that could be considered. Mayor Swanson noted that in 1964, a two story home 20' x 32' was proposed and it now appears that a 40' x 24' home is being proposed. Mayor Swanson also questioned why the DNR is proposing a one story home and Staff is proposing a two-story home. Kevin McCormick of Landecker & Associates, the engineering firm representing Mrs. Whitley, addressed the Council. Mr. McCormick stated that the current application submitted by Mrs. Whitley contains a conforming septic system location. This was not true of the first application. He stated that the plat was recorded in July 24, 1964, and the Whitley's have owned the property since that time. He stated that although the property is short and stubby, the impervious coverage is 16%. Susan Whitley, daughter of the applicant, stated that Mrs. Whitley would have no problem with putting in nice landscaping. Councilmember Swanson asked if the Whitley's would have any problem with the six conditions being recommended by Staff or the conditions recommended by the DNR. The Applicant responded that she was agreeable to the conditions. Mayor Swanson stated that he would like to see the Planning and Zoning Commission and the Planning and Zoning Department look at the request one more time to determine reasonable use. Councilmember Miller stated that in 1965 no one cared about the distance to the lake. He stated that if a walk-out was constructed, it seems to indicate reasonable use. He stated that he struggles with a flat out "no". Councilmember

Swanson agreed with Councilmember Miller. He stated that if the applicant would consider a walkout, it would not have as much of an impact on the lake.

The hearing was open to the public for comments. Dean Brodin, a member of the Planning and Zoning Commission addressed the Council. He stated that the Commission did consider reasonable use of the property, but that the setbacks being requested are significant. Mayor Swanson commented that "when government changes the rules, we need to work with that". Councilmember Miller agreed and stated that is the reason why variances are allowed under the law.

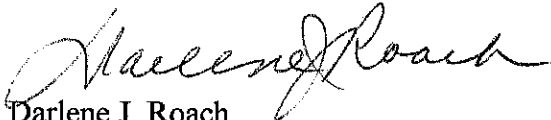
City Attorney Paul Sandelin advised the Council to obtain feedback from the property owner regarding whether she would be agreeable to a walkout or a two-story. Community Development Director Paul Larson stated that he would re-consider recommending approval with additional conditions: (1) that a single story walkout (no two story) be allowed; (2) that Lots 9 and 10 be combined at the County; and (3) that the home be tilted on the east end.

There being no further questions or comments, MOTION 8PH1-01-02 WAS MADE BY CHUCK MILLER AND SECONDED BY DEAN SWANSON TO APPROVE VARIANCE 2002-023 FOR ELIZABETH WHITLEY WITH THE FOLLOWING CONDITIONS: (1) THERE WILL BE NO ADDITIONAL STRUCTURES OR ADDITIONS PERMITTED WHICH REQUIRE A VARIANCE; (2) THE DRAINFIELD AREA SHOULD BE MARKED TO PROTECT IT FROM CONSTRUCTION TRAFFIC/PARKING AS WELL AS TRAFFIC/PARKING IN THE FUTURE; (3) AN EARTHEN BERM SHALL BE INSTALLED ON THE SOUTH SIDE OF THE DRAINFIELD TO DIRECT STORMWATER RUNOFF FROM THE ROAD AROUND THE DRAINFIELD. THIS BERM SHALL BE COVERED WITH SOD IMMEDIATELY AFTER CONSTRUCTION; (4) THE PROPOSED STRUCTURE SHALL BE CONSTRUCTED ACCORDING TO THE REVISED PLANS SUBMITTED TO THE PLANNING & ZONING DEPARTMENT WITH ALLOWANCE FOR THE EAST SIDE OF THE BUILDING TO BE SLIGHTLY TILTED TOWARD THE LAKE TO ALLOW FOR MORE PARKING AREA; (5) NO VEGETATION REMOVAL WITHIN THE SHORE IMPACT ZONE AND BETWEEN THE STRUCTURE AND THE OHW MARK SHALL BE ALLOWED. A 15 FOOT ACCESS PATH SHALL BE PERMITTED WITH AN APPROVED SITE PLAN AND LAND ALTERATION PERMIT; (6) SILT FENCING SHALL BE INSTALLED BETWEEN THE CONSTRUCTION ZONE AND THE OHW MARK UNTIL ALL CONSTRUCTION IS COMPLETE AND VEGETATION IS ESTABLISHED AS PART OF AN OVERALL STORMWATER MANAGEMENT AND EROSION CONTROL PLAN; (7) LOT 9 AND LOT 10 SHALL BE COMBINED WITH CROW WING COUNTY INTO ONE LOT PRIOR TO ISSUANCE OF ANY ZONING PERMITS; (8) ONLY A SINGLE-STORY STRUCTURE WITH A WALKOUT MAY BE CONSTRUCTED ON SITE. NO SECOND STORY SHALL BE ALLOWED; (9) PERCOLATION TESTS AND SOILS INFORMATION TO SHOW THAT THE DRAINFIELD WILL FUNCTION PROPERLY SHALL BE SUBMITTED PRIOR TO ISSUANCE OF ANY ZONING PERMITS; (10) DOCUMENTATION THAT

ADEQUATE TREE COVER EXISTS TO PROVIDE REASONABLE SCREENING OF THE STRUCTURE WHEN VIEWED FROM THE WATER MUST BE PROVIDED. IF ADEQUATE SCREENING DOES NOT EXIST, A SUFFICIENT NUMBER OF LARGE TREES WILL BE REQUIRED TO BE PLANTED; (11) CONSIDERING THE CLOSE LAKE SETBACK, CONSIDERATION SHOULD BE GIVEN TO LIMITING THE HEIGHT OF THE STRUCTURE TO ONE STORY, IN ORDER TO REDUCE VISIBILITY FROM THE LAKE; (12) THE STRUCTURE MUST COMPLY WITH FLOODPLAIN REGULATIONS, WHICH WOULD REQUIRE A FIRST FLOOR ELEVATION NO LOWER THAN 1233.8 FEET AND A CERTIFICATE OF ELEVATION SHALL BE PROVIDED TO VERIFY SUCH ELEVATION; (13) ALL PERMIT CONDITIONS SHALL BE RECORDED ON THE PROPERTY DEED. MOTION CARRIED WITH ALL AYES. City Attorney Paul Sandelin was directed to prepare a Findings of Fact.

MOTION 8PH1-01-02 WAS MADE BY CHUCK MILLER AND SECONDED BY IRENE SCHULTZ TO ADJOURN THIS PUBLIC HEARING AT 2:22 P.M. MOTION CARRIED WITH ALL AYES.

Recorded and transcribed by,

A handwritten signature in cursive script, appearing to read "Darlene J. Roach".

Darlene J. Roach  
City Clerk/Treasurer

WHITLEY  
PUBLIC HEARING APPEAL  
1:00 P.M.  
AUGUST 27, 2002  
SIGN-IN SHEET

[illegible]