

Public Hearing
November 30, 2006

Eureka Township
Dakota County

Held by the Eureka Planning Commission
Variance request by Dennis Ripley

Planning Commission Members present: Mike Greco, Kevin Flaherty, Sharon Buckley, Rich Stevens and Nancy Sauber.

Others present: Township Attorney Jim Sheldon and Clerk Nanett Champlain to record the minutes. Robert Ripley, Attorney Dan McGrath representing Dennis and Robert Ripley, Gloria Belzer, John Storlie, Dennis Ripley.

Planning Commission Chair Mike Greco called the meeting to order at 7:03 PM.

Agenda: Consideration of the application by Robert Ripley 9460 235th St W. Lakeville, MN for a variance from requirements for a buildable lot as established in Eureka Township Ordinance 3, Chapter 3, Section 1 and 2.

Planning Commission Chair Mike Greco explained the procedure for the public hearing.

The application was received on August 28, 2006. Since that time the Township, as required by law, took a 60 day extension because they were unable to act upon the application within the original 60 day time period. The statement of difficulties or particular hardship claimed (on the application): Strict enforcement of the literal provisions of the lot/ parcel split and buildable lot ordinances would cause undue hardship because of physical circumstances unique to this parcel of property. Earlier decisions by the Town Board and improper filing of paperwork at Dakota County are causing undue hardship.

Legal description of property 13-00800-020-50
Site address: 9460 235th St. W. Lakeville, MN 55044

A three page statement was attached to the application.

The Township is being asked to grant a variance from the requirements of Township ordinances defining what a buildable lot in the Township is.

Eureka Township Ordinance 1, page 21 defines variance as: Written approval waiving the literal provisions of these Ordinances in instances where the strict enforcement would cause undue hardship because of physical circumstances unique to the parcel of property under consideration

which are not created by the owner of the variance, and if granted, will not alter the essential character of the locality. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of these Ordinances.

Ordinance 3, Chapter 3, Section 14 (page 64)

A. Criteria For Granting Variances

The following criteria shall be used when considering the issuance of a variance:

1. The proposed use is not prohibited in the zoning district in which the subject property is located.
2. The variance must be in harmony with the general purpose and intent of this Ordinance.
3. The terms of the variance must be consistent with the comprehensive plan.
4. The landowner must show that the variance is necessary to alleviate practical difficulties or particular hardship resulting from strict application of the ordinance.

“Hardship” as used in connection with the granting of a variance means:

- a. The property in question cannot be put to a reasonable use if used under the conditions allowed by this ordinance;
- b. The plight of the landowner is due to circumstances unique to the property, not created by the landowner or a previous landowner;
- c. The variance, if granted, will not alter the essential character of the locality.

If the variance request meets all of the conditions cited above, the variance may be granted. Economic considerations alone shall not constitute a hardship if a reasonable use for the property exists under the terms of this Ordinance.

Planning Commission Chair Mike Greco opened the floor to public comments:

The applicant was asked to make a statement, if desired.

Robert Ripley- 9460 235th St W., Lakeville

They have gone through the proper steps for application of the buildable lot and split according to Township ordinances. They were granted the right for a buildable lot April 12 of this year; they secured a builder, financing and house plans. 4 months later in August the buildability of the lot was questioned. From the point between April and August a tremendous hardship was created, not only financial but investment of time and energy. When his father purchased the land from Eugene Pearson in 1986 he may have been misled to believe that he had purchased two

buildable lots. The two lots were somehow combined into one lot and recorded at the county. Several years later Dennis Ripley spoke to John Curry, Town Board chair at that time, and asked about the buildability of the 2nd lot. Mr. Curry had stated that there was a buildable lot. The Ripleys have planned on building on the lot since purchasing the property in 1986. This year Ripleys decided to apply for the building permits. The Town Board by unanimous vote granted the right to build the house and have a buildable lot. They incurred additional hardships. Because the property was recorded as one lot, it does not meet the exact letter of the ordinance. They are asking for a variance. The variance would allow the ability for a looser interpretation to account for some of the extenuating circumstances, to take into account the decisions of prior Town Board chair and hardships that have followed because of this battle and grant a variance allowing a buildable lot.

Dan McGrath- 3300 Edinborough Way, Edina, MN 55435

Dan McGrath represents Dennis and Robert Ripley.

Mr. McGrath touched on the procedure issues in the ordinance:

1. The proposed use is not prohibited in the zoning district- The area is zoned for residential purposes; it is within the Tillges subdivision, 10 parcels. 8 of the 10 lots are the size of the one proposed to be built. One lot is double the size of the other 8, the Ripleys are requesting to make the one lot into two, according to the survey.

Criteria 1.- The proposed use is appropriate within the zoning district.

2. Is it in harmony with the general purpose and intent of the Ordinance? The homeowner purchased the lot on the belief that it was two buildable lots. To build on a lot that his son, daughter in-law and grandchildren to live on. It is more than an economic hardship it is a familial hardship. Could it be used for a reasonable purpose? What is reasonable to Dennis and Robert Ripley and his wife is to build a family home for the Ripley family.

a. Can it be put to a reasonable use if used under the conditions allowed under this Ordinance? Conditions are that all of the other lots within the Tillges home subdivision has homes built on them of the size and character and nature of what is being requested. Is it reasonable to be vacant property? He submits it is not; it is reasonable that it is used for residential purposes.

b. The plight of the landowner is due to circumstances unique to the property, not created by the landowner or previous landowner- it was not done intentionally. It was filed as a double lot. The record and previous Town Board statements indicate otherwise. There was an error made. The survey was recorded with the surveyor's office, but the actual deeds were not recorded. It was a failure, not due to a unique characteristic of the property; it was due to a failure of someone to act and do what they were supposed to do.

c. It will not alter, if granted, the general characteristic of the locality. It fits and conforms exactly with the other 8 properties in the subdivision. The Township's definition of variance has unique language- "hardship is because of physical circumstances unique to the property" The word "physical" is not in the State Statutes or Elko/ New Market Ordinance. Hardship is by virtue, that someone did not file documents at the recorders office. Mr. Ripley bought this property with the firm belief that it was two buildable lots. The hardship is not just economical it is reliance,

reliance that Mr. Ripley purchased the property, the reliance that the Ripley family that they were advised earlier this year that it was two buildable lots and told later that the second lot was not buildable because of the failure to record the documents. Attorney Dan McGrath submits that the application meets the procedural requirements for the Board to consider the variance and the circumstances compel the Board to grant the variance.

John Storlie - 2344 Dodd Blvd., Lakeville

This is a perfect opportunity to use a variance. He is a neighbor, his land butts up to the property. There have always been two lots. It was set up to build when Tillges developed the property. It should be granted without a doubt. Variances were put in the Township to be used. This is an opportunity to use it in the right way.

Robert Ripley

He feels that we are all on the same page, that we are trying to control the rate of growth in the community. We do not want developers to come in. He is asking to keep in mind that he is a local person; he wants to build on his father's land. To take the opportunity to work with the community not against it, to take a looser interpretation of the ordinance, not to be harsh or hide behind it. It is time to take the variance and to do something that will help the community. To allow a local person in the community to build on property that he has always thought was a buildable lot. Gain tax base, by granting the variance you will gain trust and support of people in the community that you are willing to work for us, not against us. If the variance is denied, it will result in another lawsuit. He has retained Gerald Duffy. He does not want another law suit, but wants to save himself and the Township money. 20 years ago, Tillges was granted it as a buildable lot. In 1984 it was combined. In April the Town Board granted it as a buildable lot.

Hearing no more public comment the Planning Commission closed the public hearing at 7:25 pm.

The Planning Commission deliberated on the application.

Mike Greco asked the Township attorney about clarity of the Township definition: "where the strict enforcement would cause undue hardship because of physical circumstances unique to the parcel of property under consideration" Are physical characteristic literally talking about wetlands, setback requirements, distances to driveways or set back requirements or is potentially broader, like something that has been presented tonight.

Township attorney Jim Sheldon stated in terms of a variance, it is with respect to physical characteristics. For example if you need to change setbacks- physical hardship is designed to deal with these issues.

Rich Stevens asked if this request is considered a land use issue.

Attorney Jim Sheldon- yes, this is a land use issue. They are asking for variance from the zoning ordinance, which is a land use issue, which is not an appropriate use of a variance. The applicant is

not really asking for a variance, they are asking for rezoning. It does not fit into the variance aspect of our ordinance.

Sharon Buckley asked if we have the legal ability to grant a variance for land use.

Jim Sheldon- no you cannot grant a use variance. The ordinance says you can build only one residence on a 40. An exception is, if you have a buildable lot that was created before 1982, and then you can have additional residences on those buildable lots. Ripleys do not have a buildable lot, they are asking for a rezoning for this particular piece of property for a single family residence.

Attorney Jim Sheldon does not think that you can grant a variance for a use “Legally”

Rich Stevens- assuming that Tillges divided the property into 10 lots and these 10 lots were approved by the Town Board. Because the survey was not filed property, with the Recorder’s Office can we legally make this a buildable lot?

Attorney Jim Sheldon- how to do this legally- The 80 acres is divided on paper as 10 lots and 9 lots have houses on them. The Township does not have a residential zoning district. The Township has an agriculture zoning district. If the Township wants to say this is a buildable lot, the way to do this is to consider taking the ten lots and create a single family residential zone. This would be the only location in the Township with this zone. This would be an amendment to the zoning ordinance. This is a solution, but not the only solution.

Kevin Flaherty- If we believe that they have presented a reasonable argument that there was human error, is there a way to undo the mistake in a way that we do not need to change the ordinance or rezone. Is there a way to say that the record indicated, based on previous approvals and the case presented that there was a mistake, that it should have been recorded, it wasn’t recorded properly, it was set to be this way. Is there another way to do this?

Attorney Jim Sheldon- with the limited research he has done, he does not think so. The ordinance says that it has to be recorded. The ordinance can be changed.

Mike Greco- by granting a variance for this are we setting precedent?

Attorney Jim Sheldon- Zoning is not presidential, zoning requests are on an individual basis. Here the lots, except the one, have existed and have houses built on them. It is what it is. It is not a 40 acre tract that they intended to build on but never came in. The rezoning of the property would be unique to this piece of property. If the Township is inclined to grant the building right, a variance is not the way to do it. The variance should be denied and decide if you want to move forward with a rezoning of the property.

Nancy Sauber- It is the property owner’s responsibility to see that the property is properly recorded in the Recorder’s Office. It is not the Town Board’s obligation to file.

Audience members wished to make additional comments. The Planning commission agreed to hear additional testimony.

Dennis Ripley When he purchased the property over 20 years ago, he was told it was two lots. How was he to know? His attorney said it was free and clear and took care of it. When he bought the property he was shown two lots, the survey, he assumed he had two lots.

Robert Ripley He pointed out that Eureka Townships variance is stricter than most. The Township needs to interpret the ordinance. Variances can be used for things other than strict interpretation; it can be used for other things. In their case mistakes were made. If a variance can not be used to clear this up, how can someone go about doing this?

Dan McGrath With regard to the variance process not being appropriate to grant the request of the Ripleys. A variance is defined by Ordinance as “Written approval waiving the literal provisions of these Ordinances in instances where the strict enforcement would cause undue hardship because of physical circumstances unique to the parcel of property under consideration which are not created by the owner of the variance, and if granted, will not alter the essential character of the locality.” The reason it is not a buildable lot is Chapter 3, Section 1- Density. Legal council advised it is not a lot of record in 1982. The Ripleys are asking for an exception because it was not recorded before 1982, it was not a lot of record. Circumstances show that the intent was it to be a lot of record, by the survey. The application for the variance is to grant use of the property. It does not fall under the requirements of existing lot. The variance is to seek relief. Make an exception because of the circumstances of the hardship that exists. To grant a variance to allow building a house on a lot that is consistent with existing lots. He feels a variance is appropriate and the request conforms to the ordinance of the Township.

Nancy Sauber commented ordinance states “not created by the landowner or a previous landowner”

Rich Stevens the survey was filed in Dakota County Surveyor’s office, but not recorded with Dakota County Recorder’s office.

Mike Greco commented that Ripleys have patiently gone through the process since April, that Ripleys genuinely believe that they had two buildable lots. It was not a error of omission, that someone filed something that made it a non buildable lot. The survey filed in Surveyors office in April 1977 shows two separate lots. The contract for deed filed with the records office several months later in October 1977 shows one piece of property. It is not a case of someone not filing something they needed to, it was filing something making it one parcel and it became unbuildable. If the Township would like to find a way to grant the Ripleys request, as advised by our attorney, it is to ask to have the property rezoned. A variance cannot be granted for use. There are two issues, the variance, which cannot be granted. If we want to find a way to make this property buildable-rezoning, this does not set precedence, it requires more effort. It is entirely discretionary.

Kevin Flaherty stated he agrees with Mike Greco’s statement.

Sharon Buckley- by counsel's recommendation a variance cannot be granted. We have to do what we have to and can legally do under our ordinances to allow or not allow a house being built.

Rich Stevens- He agrees that variance can not be issued. But he believes that the predecessors intended that ten houses be built. That we move forward with rezoning of the property.

Attorney Jim Sheldon commented if you rezone, you would rezone the entire 10 lots.

John Storlie- Can we ask counsel to really look into the request and see if there is another way to allow this? He feels this situation can not be dropped; it needs to be cleaned up. Are there just two ways of doing this?

Attorney Jim Sheldon feels there are only two ways and a variance is not correct, rezoning is the only option. Comp plan language and the zoning map may need to be changed. The rezoning would only be for the 10 properties.

A motion by Kevin Flaherty: that based on guidance from counsel and the interpretation of the variance, recommend denial and that the Planning Commission make a recommendation to the Town Board that we investigate all possibilities or alternative avenues to work with the Ripleys to make this a buildable lot and allow them to move forward. Motion seconded by Rich Stevens.

Nancy Sauber offered a friendly amendment: not only to work with the attorney as to how the Ripleys request may be accomplished but also all the other ramifications of what ever may or may not be done and how they apply throughout the Township.

Discussion followed and Kevin Flaherty withdrew his motion. Rich Stevens withdrew his second.

Attorney Jim Sheldon commented that the motion of denial needs to include findings:

1. Section 14. A. 1. The proposed use is prohibited in the zoning district, the zoning district allows one on forty unless you have a buildable lot.
2. Hardship- it is a financial hardship. To the Ripleys it is a personal hardship. It is not a physical hardship.
3. Property can be put to reasonable use. It is part of a building site now, it is vacant land. It is an appropriate use of land: green space.
4. It does not meet the requirements of section 14.
5. It is not a buildable lot.
6. A variance from use is not an appropriate application of the variance mechanism. It is spot rezoning as applied for.
7. The situation was created by a previous owner.

A motion by Mike Greco: To deny the Ripleys application for the request for a variance for the following reasons:

1. Ordinance 3, Chapter 3, Section 14 the first criteria says "The proposed use is not prohibited in the zoning district in which the subject property is located." The proposed use is prohibited in this zoning district; one house is permitted per 40 acres unless you can show you have a buildable lot.

2. The hardship in question here does constitute simply a personal financial hardship to the Ripleys and not a hardship as defined in Eureka Township Ordinance 1- page 21 that it must be a “hardship because of physical circumstances unique to the parcel of property under consideration.”
3. It is a situation that was created by previous owners: It doesn’t meet another definition of hardship: “The plight of the landowner is due to circumstances unique to the property, not created by the landowner or a previous landowner” In this case, the previous landowner Eugene Pearson filed a contract for deed and recorded it with the county as a single parcel, at that point it created a situation that this was not a buildable lot.
4. It doesn’t meet the definition of hardship: Section A. “The property in question cannot be put to reasonable use if used under the conditions allowed by this ordinance” In this case, the land can be put to reasonable use, it is currently part of an existing residential parcel. It can be used for Agricultural land, consistent with agricultural zoning in the Township.
5. It is not a buildable lot based on the last lot of record, recorded for this parcel and based on the research provided by the Township attorney dated November 10, 2006.
6. This request is a variance from a use which is not an appropriate use of a variance as defined by our ordinance. The Ordinance states “waiving the literal provisions of these Ordinances in instances where the strict enforcement would cause undue hardship because of physical circumstances unique to the parcel of property under consideration which are not created by the owner of the variance”

Motion seconded by Sharon Buckley. Motion carried by unanimous vote.

A motion by Kevin Flaherty: To recommend to the Town Board that the Town Board work with the Ripleys and our legal counsel to explore avenues to allow the Ripleys to build on this lot, based on the fact that they have presented a solid and reasonable case and because of past record it is reasonable to believe that this was the original intent and therefore the Town Board should try and find a way to accommodate it. Motion seconded by Rich Stevens.

Mike Greco offered a friendly amendment that the Town Board also look at the ramifications for all those alternatives as well as how they apply to other lots in the Township. The friendly amendment was accepted by Kevin Flaherty and Rich Stevens.

Discussion followed:

Sharon Buckley asked that it be entered into record that during this entire process no persons have spoken against request.

Vote was taken on the amended motion, all were in favor.

A motion by Rich Stevens: To adjourn. Motion seconded by Nancy Sauber. Motion carried by unanimous vote.

Meeting adjourned at 8:12 pm.