

City of Columbus
Public Hearing –5027 and 5043 190th Lane Variance (PC-13-104)
(Roger and Susan Nelson – owners)
June 19, 2013

The June 19, 2013 Public Hearing to receive testimony regarding the request for a variance at 5027 and 5043 190th Lane N.E., Columbus, MN (owners Roger and Susan Nelson) was called to order at 7:03 p.m. by Chair Barbara Hvass at the City Hall. Present were Commission members Andy Anderson, Myron Organ, Pam Wolowski, Jesse Preiner, and Jody Krebs; City Administrator Elizabeth Mursko; City Council members Bill Krebs, Jeff Duraine, Jessie Messina, Denny Peterson, and Mayor Dave Povolny (7:10); and Recording Secretary Karen Boland.

Also in attendance were Pat Preiner, Mary Preiner, Kevin Dunaway, Susan and Roger Nelson, Brian Hansen, and Colleen Orde.

Hvass: Now we will have a Public Hearing and discussion of, of 5027/(5043) 190th Lane variance application, pages 1 through 6 and enclosure in our packet. Karen would you like to read the notice as it appeared in the paper?

Notice was read at this time.

Hvass: Okay. Is there somebody here for this hearing? Do you want to step forward?

Nelson: Sure. Does the mike work?

Hvass: Yeah. The mike is for recording purposes only. It doesn't, it doesn't amplify.

Nelson: Thank you for entertaining our request here tonight. This is my wife Susan, as well, too. And I'll try to be real brief and give you a little bit of background on our situation.

Hvass: You can be seated. Mr. Nelson you can be seated.

Nelson: Oh sure. Okay. Thank you. Uh, our venture began about eight years ago when Sue and I lived in Stillwater and were looking for a place that we would eventually call our retirement place. We were approaching that age and that event in our life, and, uh, and that led to Coon Lake. And we found a piece of property out there that was 150 feet on the south shore of Coon Lake and it had a 1959 stucco dwelling on it that was two-bedroom and one bath, and it was adequate to, to get us through the period of time when we thought we'd build a home.

Hvass: Mr. Nelson?

Nelson: Yes?

Hvass: I'm sorry to interrupt, but would you state your address for the record? Your name and address?

Nelson: Current address is 5043 190th Lane N.E., Wyoming, Minnesota. And we also own the 5027 190th Lane property, which is what we're talking about tonight.

Hvass: Right.

Nelson: So, for eight years that 1959 house served us, uh, better than we had anticipated, and until we approached last year we, we now have the ability and resources to, to build a new home, and a retirement home on our 5043 property. In the process, uh, the adjacent piece of property. We face to the north. We're on the south shore of Coon Lake. We face to the north. The adjacent piece of property to the left, which is 50 feet, was for sale and, uh, we purchased that piece of property just a, a few months ago, and, uh, saw an opportunity to include our family in our retirement scenario. We've got three daughters and son-in-laws, and eight grandchildren within an hour of us—within the Twin Cities. They all live in the area here, so they frequent our lake cabin quite a bit. And, uh, in the process of building a new home, our plans are to put it right where she's pointing (referring to a projected map). That's currently our home right now, but the new home will essentially have the same footprint. It'll be about the same length and it'll be eight feet wider than that, so there's no real change to that whole layout. Uh, the 1959 house, as we've had people come through, we anticipated even doing some remodeling to that, to try to make it more habitable, to add a bedroom and a bathroom. It gets tough when you've got 14 people and one bathroom there for a weekend. And, uh, it was expensive to do the, the doggone remodeling, so we could...you know, it was almost half the price of building a modest new retirement home, which is what we plan to do on the whole thing. But, that's a very serviceable house. It's been sitting on a full basement, or mostly full basement, for all those years since 1959, and there's only been water in the basement twice from downpour rains. We've never had any problem with that whole thing. So, in my history, I've known of moving homes, and it's not that big a deal. Most people don't understand that process, and it's really quite a simple process when you've got the guys that know how to do it. So, we've had like three of the premiere home movers out, and, uh, essentially to move that piece—that house to the adjacent piece of property—it's like a 100-foot move—they don't even put it on wheels, they put it on tracks, and he said you could pull it over with a, with a four-wheeler, once we get it up on our system, so... We would like to preserve that 1959 house. It's a very serviceable house. And we've gotten more elevation on the lot to the left as well, too, and we've been talking to Leon about putting a basement under it and/or a walk-out to the lake, 'cause we're, you know, it's a long ways to the lake there. It's well over 100 feet to the lakeshore. And the problem is, that we've got a 50-foot lot there, and we've got a 35-foot, 2 ½-wide house. And so it can't meet the 10-foot and 10-foot boundary setbacks, uh, that would be required by, by the statutes for you. To the left of us, we have a very nice young couple, uh, Carol, and uh, and uh, Brad Reardon. And their plan—they have a 75-foot lot adjacent to that—their plans are to build a new home next year. They're both young engineers in their 30s and just the nicest people in the world, so, it was my thought that if we could leave that left setback be about 15 feet, and run it on the property line, since we own both pieces of property, that we would give them a little more breathing room over there for their new home and so forth. And from the right side of that, of the relocated house to the new house, that's 95 feet. And there'll never be another structure built in between there, so there's not a, there's not a setback issue at all involved in between where that is and for the perpetuity, whether we're there or somebody else buys this in the future, whatever, so... So that was our, that was

the reason for this, uh, ... The basis for this, too, was we stopped in November, before we ever purchased that property, had a visit with your, your City staff: Elizabeth and company, and Leon. And, and just a plug, those folks are very nice. They're very accommodating. They're very competent. So you can be very proud of the staff that sits over there during the day. And I would be. And I am, because they're part of my city as well too, so that's a plus. And, you know, we talked to them about this plan. They were very succinct and very deliberate in saying, 'We can't grant variances. Don't go by our word for it, but...' I said, does it seem like a reasonable request to you, given the circumstances? Should we present this to the Planning Commission, do you think? And they thought it was a reasonable request. So, based on that, we purchased the lot and, uh, we're in the process of getting all the bids and doing all, most of the general contracting ourselves. Uh, the new home, of course, will have its own general contractor and so forth, but it's a big deal. It's a lot of screwing around and it's taking our...it'll take the rest of our summer as well too. And we live in Florida in the winter time. We have a place down there. And it's our intention that, within two years from now, we're going to sell our property in Florida, move back here and make this our permanent retirement residence, on Coon Lake, so... The sun fishing is good there. That's about what I have to say.

Hvass: Okay. As you know, Andy Anderson and I were out to your place yesterday.

Nelson: Jody was out today too.

Hvass: Good Jody.

Nelson: Yup. Mm-hmm.

Hvass: Um, and, I had some concerns about all the trees that were going to be cut. Do you know how many there are?

Nelson: About twenty, twenty-some. Yup.

Hvass: And they're mostly pine?

Nelson: Mostly pine. A few oaks, and nobody says they're worth a crap. You know, you could build a house practically with what's coming down there. And we've actually talked to the fella at the end of the lane there. There's a possibility to saw those into boards and, and, uh to use those for floorboards or whatever as well too. But we've got four or five different entities out there, and they've given us bids on it, and, uh, it's, the, the best bid we got was from the Rivard people. And they, uh, they'd turn 'em into chips and haul it away and clear the lot out there. Essentially, it just clears the path between the two homes. We've got tons of trees on our lot all over the place there, yet, that are left there.

Hvass: Okay. Planning Commission members?

Anderson: Well, I'm uncomfortable building a house, or moving a house, onto the lot line. And I'm wondering—and I know you've explained why you chose to go 15 feet on one side and no feet on the other side.

Nelson: Only to accommodate the neighbors that were close.

Anderson: To accommodate your neighbors.

Nelson: Yeah. That's all.

Anderson: But, unfortunately, people move on. And what may be accommodating someone right now, they may sell or move or die...

Nelson: Who's they? Andy, I'm sorry?

Anderson: Your neighbor that you're getting the 15 feet on the one side.

Nelson: Yeah. Sure. Sure.

Anderson: And so, so you create a, a non-conforming situation by putting your, your, moving your residency on the lot line.

Nelson: Uh, non-conforming to the neighbor?

Anderson: Not conforming to the 10-foot setback ordinance.

Nelson: I don't follow you, I'm sorry. Uh, we're, we're more than conforming on the side that we have the, the neighbor that we're trying to accommodate, we're 15 feet over there.

Anderson: I know. I know. But you, you want to move your house on the lot line. And I'm wondering if you might entertain changing that thought somewhat, and having a 10-foot setback in lieu of 15 feet, and then...

Nelson: Do five on that side?

Anderson: ...do five feet on the other side, and asking for a five-foot variance.

Nelson: No, that would...I don't have a problem with that. I true...there's only...they didn't request this, this is, it was my motivation to help this nice young couple out. And, and whoever buys their property in the future, good Lord you want as much setback as you can get from your neighbors! So I was trying to be accommodating Andy. If that works better for you folks, it flies through the system better, we're, we're fine with that. I would like to give 'em the 15 feet, but if we go back and say, 'Sorry, we just couldn't get that approved, and we're gonna have to go ten foot from the line...'—which is where the house sits now. It sits ten feet from the line now Andy, currently. So, we could set that, and then have five feet over there. We're okay with that.

Organ: I think Andy was confusing the lot lines there.

Nelson: I'm sorry?

Organ: Andy was probably confusing the lot lines there, with who was on that side.

Nelson: Yeah. Yeah. The zero setback...

Organ: And you seem like a nice fella, and I'd like you to live to be 110 years old, but eventually you're going to die, and that's where I get uncomfortable with being on the lot line, because when you're gone, the next fellow comes in and...

Nelson: Well, my only, here's my only thought on that. Maybe I'm wrong okay? But, I don't know how anybody could object to that, because they're two separate pieces of property. You know, they're two... And we could sell that piece of property off sometime in the future. But, whoever is on my 150 feet now, that I build the house on, they can't build another house any closer to 95, than 95 feet to that structure Myron. So, that was my thought process. Good Lord, whoever's gonna be in, buying my home—and maybe it's my kids that take that over when we pass on—or if they sell it or whatever, they got 95 feet to, to where we relocated that house. There's no issue whatsoever there. And so, then, trying to give that other neighbor as much of a breathing room as we can, that was my logic, Andy for the 15 feet. That's all.

Anderson: I understand that.

Nelson: I was just trying to be a good guy to the neighbors. And they're good neighbors.

Anderson: Sure. There's nothing wrong with being a good guy.

Nelson: We have excellent neighbors out there. We truly do.

Anderson: No, I understand that.

Nelson: They're a wonderful young couple.

Anderson: But, but, as Myron pointed out, people change, move on, die and whatever.

Nelson: Yeah, but everybody's better off for my move though. I don't understand that Andy.

Anderson: Well...

Nelson: Who would not be better off for my move?

Anderson: It still, it still doesn't conform to the 10-foot setback. And that's the issue.

Nelson: Okay.

Anderson: That, those are my thoughts. Okay?

Hvass: Mm-hmm.

Anderson: Now, when Barb and I visited, you have had well people and septic system people out to look at...to properly service the building...?

Nelson: Oh sure, it's a 25-foot, 500-foot deep, we've got all kinds of room for...

Anderson: Okay. And you had a survey done, so you know where all the property lines are, and that those are well-established? I believe, we saw that didn't we Barbara?

Hvass: Yes.

Nelson: Yeah.

Anderson: So those aren't issues. One of the thoughts that I had...

Nelson: One of the...excuse me, one of my, one of the, (turned and pointed to Kevin Dunaway)

Anderson: He's right there. He was smiling behind you.

Nelson: He's my staff guy, I brought with me.

Anderson: One, one of the other thoughts I had is that, was there a possibility of taking five feet...?

Wolowski: Before we move on from that Madam Chair, can I ask a question about the septic system? Is the same septic system...

Nelson: Ma'am. Pam. I'm a hard of hearing person, I'm sorry.

Wolowski: Oh. Okay. Is the same septic system going to work for both properties now?

Nelson: No.

Wolowski: Okay. So are you...?

Nelson: It'll be a separate, new system.

Wolowski: It'll be a new system? Okay.

Nelson: Yeah. Probably a mound system in there.

Wolowski: A mound in there?

Nelson: Yeah. The other two neighbors, down the next two places, both have mounds as well—I don't have a mound on my property, it's just elevated a little bit.

Wolowski: Okay. Thank you.

Nelson: Yup.

Anderson: The other thought I had was to take five feet away from 5043 and add it on to 5027, but I find out that those are non-conforming lots. They are not five-acre lots, and so we can't do that now.

Hvass: Are attorney won't...

Nelson: Yeah, subdivide it?

Anderson: So that isn't going to work. So that thought is not going to work. Um, that's all I have. Thank you.

Hvass: Other questions?

Nelson: Is that five-acre requirement...? My understanding was that that was waived on lakeshore property. Am I not...?

Hvass: No.

Nelson: You can't subdivide? It has to be minimum?

Mursko: Yeah, these lake lots cannot be subdivided. And that's the... I think one of the issues is, because they're less than five acres, all the lots are considered non-conforming. We did form an overlay district where we do have the ten-foot sideyard setback. But the ordinance doesn't allow further subdivision, because you can't make a non-conforming lot more non-conforming. So, even though you might make another lot more conforming, you've made another lot the other way, so...

Nelson: No, no I don't think we would, because that is not three plots there, the 150 feet is one lot.

Mursko: Right, but it's not more than five acres.

Nelson: Oh, so I can't make it a little smaller?

Mursko: Correct. 'Cause you're making it more non-conforming, because it's not five acres.

Nelson: Oh. Oh jeez.

Mursko: So, that's the reason why it doesn't work there.

Nelson: Get's down to a definition doesn't it?

Mursko: It is.

Hvass: Are there any other questions from the Planning Commission?

Nelson: You know, the, the other reason that...and, uh, you folks maybe remember this, because you had to act on it, but, on the other side of us, the neighbor next to us, uh, they had, they moved in, uh, this is seven, eight years ago? Kevin, how long ago was that? That you did the sewer?

Dunaway: About seven years.

Nelson: About seven years, 5-7 years ago. And they purchased a piece of property that had a conforming house on it, a 1970s house. And this young couple decided they were going to tear that down. Okay? So they demolished that '70s house, just after they put new windows in it. It's one of those things that makes you scratch your head. And they wanted to build a new, a new, a brand new house on there. And son-of-a-gun if they didn't do it. And they had a 50-foot lot and they put a 40-foot house on there. So somehow you folks worked through that process, and they set that new house right smack dab on the property line. There is no setback there.

Hvass: Elizabeth?

Mursko: I looked at, I looked at the file, and they do not have a variance, so I don't know how that happened. Um, they have a variance for the septic system, but they do not have a sideyard setback variance.

Nelson: They don't have a setback variance on their house?

Mursko: ...because it says clearly in the, on the building permit and the house, that there's an 11-foot sideyard setback. So I'm not sure how that happened, because, um, there is not a variance for a sideyard setback on that property.

Nelson: Well not only that, but two years ago, then they did it again. They built a brand new 40-foot garage on there, okay? It's separate from the house, so they had to go through permitting then too. That son-of-a-gun set within one foot of the sideline too, so I don't...There're no variances there?

Mursko: There's...I looked in the record, there's no variances there. So...and the survey that was submitted has eleven feet on both sides.

Nelson: No, they don't have it.

Mursko: So, I'm not sure how that happened, because...

Nelson: Well, let me ask you this, uh, the person that sold 'em that house is the next-door neighbor the other way. Okay. It's James Hahn. Do you folks know James? He's been here for 60 years. He was born and raised on the lake. And he sold the house to this young couple. And so, somehow, could that happen, that he granted an easement to them for 10 feet of use?

Hvass: No.

Nelson: To build a house on the property line? 'Cause that happened. It just plain happened.

Mursko: I, I can't give you any answers for it, because I did pull the file earlier tonight, and it clearly has on the survey that there's 11 feet on either side of that house.

Nelson: There isn't. Nick came out to James Hahn—Nick, your former building inspector—and says you just granted a 10-foot easement to these folks, by default. After the house was built. He said nobody asked me about it. He said Nick just came out and said, 'I gave 'em 10 feet.' So, I don't know the process, but, I thought, I was hoping you folks knew the process on that.

Mursko: We know the process and there was a variance on the property, but it wasn't for a sideyard setback.

Nelson: It wasn't for that, it was for the sewer.

Mursko: I It was for the sewer. (Changed from "I" to "It" per PC direction on 7/23/13)

Nelson: Yeah, 'cause that was set on the property line on my property line. Right smack dab on my property line, so that's the other thing that happened there.

Mursko: Yes. And that was granted.

Nelson: Kevin put that sewer in.

Mursko: So, I can't explain that one.

Nelson: Okay, well, so I guess the only, my only point, makes no difference to me, I'm happy, I'm not a disgruntled neighbor over any of this, okay? But, it's not without precedence that people have put structures on property lines Andy, and somehow it went through here, or didn't go through here.

Anderson: Or it didn't go through.

Nelson: What do you do then, go tear the place down and burn it down or what?

Hvass: It's happened.

Nelson: Do you have a big fine, or what happens then?

Anderson: You're asking the wrong person that question. I don't know. I could refer you to someone that could answer that question. Several of them are here right now. And Mr. Nelson, you understand the process? We recommend a decision and forward it on to the City Council...

Nelson: Sure. I understand.

Anderson: ...who happen to be present here tonight. And then they act, yes or no. So, we're strictly advisory.

Nelson: Who grants, who grants a variance then, the City Council does? That's where it's granted from. Denny, you folks remember that scenario of our next-door neighbor there?

Peterson: I don't remember it. I remember the easement for the septic system, but...

Nelson: Not for the house?

Peterson: ...not for the house.

Nelson: That sucker's right on the property line. Plain and simple. Yup. Two stories, walk-out...

Hvass: If there, if there are no other questions here at the Planning Commission, I'm going to open it up for questioning from the public. Is there anyone from the public that wishes to make comments on this situation? Or Council members? Anyone?

Messina: I guess I would, I would question...there is no precedent of moving the property line five feet? That can't be done, even by Council? Seems like a simple thing. Make the lot five feet bigger. They're both non-conforming, you'd just be creating another non-conforming lot.

Nelson: That was Jody's solution too.

Mursko: Are you, are you talking about a lot line adjustment?

Messina: Right.

Mursko: Well the...

Anderson: Can't do it.

Mursko: Your ordinance says that you need a minimum of five acres. Unless you're willing to give a variance to the five-acre minimum, that's the only way it could be done. And once you give one variance to a five-acre minimum—not that you set precedent—but, because each variance stands on its own merits, but, again, once you do a non-conforming lot and say it can be less than—even more non-conforming---that's something that you'd have to decide whether you want to go down that avenue.

Messina: Can I just bring up a story. I heard a story of a builder that had built a subdivision—I happen to live in it—and all of the homes on that entire subdivision were non-conforming 'cause they were under five acres. And they were built without a variance. For many years the bus wouldn't even go down that road, because for some reason the City wouldn't allow the school bus...Is that true? I mean, has there been, um, lots that were smaller than five acres and weren't variances?

Mursko: Well at one point, the five-acre minimum, you know, hasn't been forever. So there was at one point Columbus had one-acre lots and 2.5-acre lots, because, when you look around, there are plats that have different size lots. So, yes, per the ordinance, there are different size lots, but then in, I want to say, just about 1979 and about that area, my understanding is that we went to a five-acre minimum.

Nelson: There was a separate district created for Coon Lake though. I know that.

Mursko: The overlay district was created and that was because we continually had variances to the sideyard setback and, you can well imagine, it's a 50-foot lot, it's a 20-foot sideyard setback. Nobody was going to build 10-foot wide houses. So, when I first came here I said, you know, we're going to have to do something, because what's happening is every person that comes in has to have a variance of some sort. So this was the remedy that we had, was the 10-foot sideyard setback on a 50-foot lot. But, again, when you think about that, a 50-foot wide lot and you have 10 feet on each side, it leaves only 30 feet for the width of a house. So, it could work. We've seen in some instances it works, and, we've seen in a lot of instances that it doesn't work and they come in for variances. So, we've had variances on sideyard setbacks in Coon Lake. The instance that came up prior to this—I'll look a little further. What I found tonight, there was not a variance for the sideyard setback.

Hvass: Okay. Thank you Elizabeth. If there are no further questions I'm going to close...

Bill Krebs: Barb?

Hvass: Okay. Bill.

Krebs B.: I still...both these lots are non-conforming, right?

Mursko: Yes they are.

Nelson: Every lot on the lake is non-conforming.

Krebs B.: Right. So, they're non-conforming anyways, so I don't understand how, you know, if we, this whole, these three lots are going to become one, right?

Mursko and Hvass: They are one.

Krebs B.: Okay. So you added three, you added three lots here. You combined all three lots together, they're still a non-conforming lot right?

Mursko: It is a non-conforming lot, yes.

Krebs B.: So that was okay, but why isn't it okay to give five feet. If you have five feet here then you could do your ten feet on each side and you'd be fine.

Hvass: Right.

Mursko: But he combined the lots. They're combined already. It's considered one lot. So the only way to un-combine it is to subdivide it.

Roger and Sue Nelson: We didn't combine the lots.

Mursko: Yes. And that was, it was done some time ago. So, now you have two lots, and they're both non-conforming.

Krebs B.: But if we did this. If we did five feet and it was okay to put this house, you know, move it five feet the other way, you'd have your ten-foot setback on each side and now it's, the house is legal. Now we got another house that's basically paying taxes and we get to put a new house in there that's going to pay more taxes.

Mursko: And, as I was saying before, if you're willing to do a variance from the five-acre minimum, and the Nelsons would have to go through a platting process, then that would be the only way to do it.

Nelson: That's, that would be costly too, wouldn't it? I mean, you don't get re-plotting for nothing. True?

Mursko: Well, there is going to, there would be added costs and generally the planning process can go from anywhere from 60 days to 120 days, depending on getting all the materials together and such. So, again, along with that has to be a variance, because it's not five acres.

Krebs B.: I understand that, but, neither, I mean, it's never gonna be.

Mursko: I agree with you, but-- and that's what we run into—we run into the legalities of what a non-conforming lot is and the subdivision ordinance doesn't allow you to subdivide property when you don't have ten acres.

Krebs B.: Now, is this, Mr. Nelson, your new house, is that going to be more in the center of the property?

Nelson: Right where the old one was.

Krebs B.: Oh is it...

Nelson: Yeah, virtually, it's going to be, it's going to be eight feet wider and not quite as long.

Krebs B.: Oh. Okay. So it's going to come eight feet more towards the lot we're talking about.

Nelson: Yes. So, but, subtracting all that up, I still end up with 96 feet between the two structures. And, of course, no other structure can be built on any of those lots in the future. So that's it for perpetuity, you know. They could do an addition on that, somebody could in the future. But nobody could build another structure on that, on those lots. There's still a 90-foot separation between those houses so...

Hvass: So, moving along, I'm going to close the public hearing with the right to reopen it if it becomes necessary.

Hearing closed at 7:29 p.m.

Respectfully Submitted:

Karen Boland, Recording Secretary