



Memorandum

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| To: | <u>Stillwater Township Town Board</u> | Reference: | <u>Sinclair Variance and Lot Split Application</u> |
| Copies To: | <u>Barbara Riehle, Clerk</u> <u>Tim & Debbie Sinclair, Applicants</u> | | |
| From: | <u>Evan Monson, Planner</u> | Project No.: | <u>18409.000 Sinclair Variance</u> |
| Date: | <u>November 1st, 2022</u> | Routing: | |

SUBJECT: Variance from setback requirements in order to create a 5 acre lot with a buildable area under one acre in size

MEETING DATE: November 10, 2022

LOCATION: 14411 Dellwood Road North, PID 21.030.20.22.0004

APPLICANT/OWNERS: Tim and Debbie Sinclair

ZONING: Agricultural District, Shoreland Management Overlay

REVIEW PERIOD: 60-day period ends November 11th, 2022

DESCRIPTION OF THE REQUEST

The property owner is looking to split their current property into two lots. The current residence would remain on one lot, and the second, or new lot, would be able to become a residence for their children. The new lot would be located on the west end of the current property, and would be 5 acres in size. The property is bounded by Highway 96 along the north side, and Brown's Creek Trail to the south.

The township's zoning ordinance has requirements for new lots. Highway 96 is required to have a 150 foot setback, as a result of the road being designated as an 'arterial' in our latest Comprehensive Plan. Due to the property's proximity to Brown's Creek, the property is also within the Shoreland Management Overlay zoning district. This zone is governed by [Washington County's Development Code](#). The county's shoreland regulations set the minimum setbacks from waterbodies, wetlands, bluffs, etc. The setback required for new structures from the creek is 200 feet, while the setback from the top of blufflines is 30 feet. The setbacks from the highway and the creek overlap, which leaves no areas outside of setbacks to build without a variance. New lots are required to have a buildable area (area outside of setbacks) of one acre; in order to create a lot with less buildable area a variance is necessary.

Variance requests are approved or denied by the Town Board.

PROPERTY INFORMATION

Parcel description: 14411 Dellwood Road North is a 20.1 acre parcel located on the southern edge of the township, southeast of Town Hall. The property is narrow, as it is bounded by a highway and the Brown's Creek Trail. The site has a few flat areas near the highway before sloping down towards the south to the creek. Apart from the current residence near the center of the property, most of the land is wooded.

Land use: Single-Family Residential



Figure 1: Subject property and neighboring areas, per County GIS. Parcel lines are in orange, tan/brown is ROW

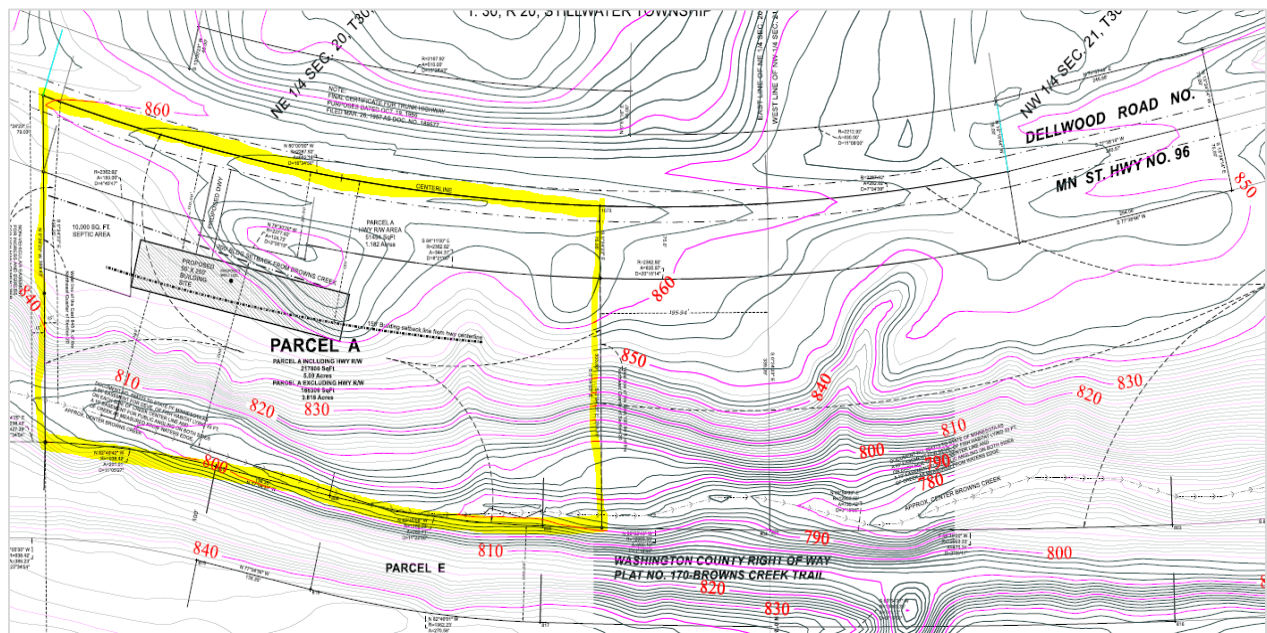


Figure 2: Zoom-in of survey, with proposed new parcel A outlined in yellow



EVALUATION OF THE REQUEST

Ordinances

Township Ordinances

When splitting a lot, the newly proposed lot must adhere to current applicable zoning requirements in order for the subdivision request to proceed. For this proposed parcel, identified as 'parcel A' on the submitted survey, the new lot would have to meet minimum requirements for size, frontage, buildable area (areas outside setbacks), etc. The zoning ordinance notes the minimum setback from property lines in Chapter Two, Part 2, Section 2.1(4). Section 2.1(6) also notes that a setback from arterial roads of "150 feet from the centerline, or 75 feet from the right-of-way (ROW), whichever is greater" is required. Since Highway 96 is designated as an arterial roadway, this setback applies. Chapter Two, Part 3, Section 1.1(10) notes the minimum required amount of buildable land on a new parcel is one acre of contiguous land.

Shoreland Management Overlay

The property is zoned as Agricultural. Due to its proximity to Brown's Creek, it is also within the Shoreland Management Overlay zone as well. The overlay zone is regulated by the county under the Washington County Development Code – Chapter Six. Chapter Six, Section 8.1(1) notes the setback from rivers/streams of 200 feet when no public sewer is available. Section 8.1(2) notes the setbacks from the top of blufflines, arterial roads, and other features; many of these setbacks are the same as what is found in the township ordinance. The setback from the creek actually overlaps the setback from the highway, leaving no areas outside of a setback.

Without having any areas outside of a setback, the one acre buildable area requirement is unable to be met. The survey shows a proposed buildable area of 50 feet by 250 feet (12,500 SF) for the site, which would require a 31,060 SF variance from the minimum one acre (43,560 SF) requirement. The applicant further clarifies in their application that the setback reductions from the highway (110 feet, from 150) and the creek (140 feet, from 200 feet) would leave a 50 foot by 650 foot buildable area. This would be 11,060 SF below the minimum of one acre.

Comments received

Below are comments received from other staff and agencies regarding the requested variance:

Washington County

The county planner noted 'significant concerns' with the proposed request. "Variances are only granted when the plight of the landowner is due to circumstances unique to the property, not created by the landowner. This standard would not be able to be met since [a] non-buildable lot would be created by the landowner. Therefore, I recommend Stillwater Township refrain from approving the potential lot split."

Brown's Creek Watershed District

The subject property is located within the Brown's Creek Watershed, which covers the southern edge of the township, some areas on the western edge of the township west of the twin lakes, and some areas extending north of the town hall. In conversations with staff, they noted there is a number of watershed requirements that would create significant challenges with development on this site, if this variance request were to be approved.



Variance Criteria and Findings

Chapter One, Section 6 of the township's Zoning Ordinance includes the criteria and required process for considering variances. The criteria to consider a variance are identified below in *italics*, followed by the Planner's findings regarding the request.

- *Variances shall only be permitted when they are in harmony with the general purposes and intent of the Comprehensive Plan and official controls.*

Apart from open space developments, the 2040 Comprehensive Plan does not get into much detail on the specifics of subdividing land. The intent and purpose of the Subdivision Ordinance is listed in the ordinance as guaranteeing the orderly subdivision of land. This includes the prevention of problems associated with inappropriately subdivided lands; including premature subdivision, excess subdivision, partial or incomplete subdivision, or scattered subdivisions. The Zoning Ordinance is intended to 'provide for the compatibility of different land uses and the most appropriate use of land throughout the Township'. Inappropriate use of land is discouraged through the requirements found throughout the ordinance, such as minimum lot sizes, setbacks, and the identification of what uses are and are not permitted within certain zones. Ordinances change over time, though, so what was at one time permitted is not guaranteed to remain permitted.

While the site is uniquely challenged in that the required setbacks overlap, leaving no buildable areas, the setbacks are meant to limit or prohibit development in environmentally sensitive areas (land in close proximity to the creek and bluffs), as well as limit or prohibit lands in close proximities to heavily used arterial roadways. Granting the requested variance to buildable area requirements does not appear to be in harmony with the Comprehensive Plan and official controls.

- *The property owner proposes to use the property in a reasonable manner not permitted by an official control.*

The proposed site for parcel A is undeveloped currently. The proposed use of the parcel, if the variances are granted, is to construct a single-family residence on the site. Such a land use would be permitted by right in this zoning district. The proposed parcel A would be a new lot; new lots must adhere to the standards in effect at the time of application. The lack of buildable area for the proposed parcel A would suggest that, under the ordinances in effect today, the site should not be built on or developed. The applicant does not propose a reasonable use under conditions allowed by the official controls.

- *The plight of the landowner is due to circumstances unique to the property, not created by the landowner.*

The plight preventing the applicant from completing the lot split is due to the ordinance requirement that a lot cannot have less than one acre of buildable area. This is due to the required setbacks overlapping, leaving no buildable area. This issue is unique, as most sites in the township are not encumbered in such a way. This issue, though, is present a result of the applicant requesting the creation of a new lot (parcel A), which would mean the plight of the landowner is created by the landowner. The plight of the landowner is created by the landowner.



- *The variance, if granted, will not alter the essential character of the locality.*

Granting the requested variance to allow a buildable area of under an acre would result in a new lot being able to be created. Said lot would be used for a single family residence, a similar use in this area of the township. The variance, if granted, would not alter the essential character of the locality.

- *Economic conditions alone shall not constitute a hardship if reasonable use for the property exists under the terms of the Zoning Ordinance.*

The hardship identified by the applicant is the lack of buildable area for the proposed parcel A, which is not an economic condition. Economic conditions alone do not constitute a hardship.

- *The Board may consider the inability to use solar energy systems as a “hardship” in granting of the variance.*

N/A; the requested variance is not related to solar energy systems having adequate access to sunlight.

Not all of the criteria for the variance request as proposed are met.

ACTION REQUESTED

The Town Board can do one of the following:

1. Approve, with or without conditions
2. Deny, with findings for denial
3. Table the request

RECOMMENDATION

The Planner recommends that the Town Board deny the request to create a lot with a buildable area of under one acre in size, located at 14411 Dellwood Road North. The following variance criteria are not met, per the findings above:

1. The request, as proposed, does not appear to be in harmony with the official controls (zoning ordinance, subdivision ordinance, and shoreland management overlay zone).
2. The applicant does not propose a reasonable use under conditions allowed by the official controls.
3. While setbacks overlapping is unique, the plight of the landowner is created by the landowner through the desire to create a new lot unable to meet the minimum buildable area requirement.

