

WINONA COUNTY BOARD OF ADJUSTMENT MINUTES
MAY 18, 2023 – 1:00 PM

1. **Call to Order:** Chair Robert Redig called the meeting to order at 1:00 p.m.

Board Members Present: Robert Redig, Elizabeth Heublein, Kelsey Fitzgerald, Jordan Potter and Ed Walsh

Board Members Absent: None

Others Present: Eric Johnson, Zoning Administrator; Stephanie Nuttall, Assistant Winona County Attorney and Anne Schwertel, Administrative Specialist

2. **Pledge of Allegiance:** The Pledge of Allegiance was recited.

3. **Approval of Agenda:** On motion of Jordan Potter and seconded by Ed Walsh, the Board of Adjustment voted to approve the agenda. Vote: Yes – All.

4. **Approval of the April 20, 2023, Minutes:** On motion by Jordan Potter and seconded by Elizabeth Heublein, the Board of Adjustment voted to approve the minutes. Vote: Yes – All.

5. **Petitions**

Docket # BOA 05-18-23-01

To consider the petition of Philip & Rebecca Schumacher (Schumacher Trust) and represented by Blake Vandermoon, Mike Sherman Plumbing, who seek a Variance regarding the following:

- To allow for a reduced setback for a sub-surface sewage treatment system (SSTS) drain field, two (2) foot reduced setback from a property line to the drain field, instead of the required ten (10) feet pursuant to Chapter 13.6 of the Winona County Zoning Ordinance SSTS standards adopted by reference (MN Rules 7080.2150 Subpart 2(F)-Table VII).

Chair Robert Redig introduced the petition.

Zoning Administrator Eric Johnson gave a PowerPoint presentation which included overview mapping exhibits of the parcel showing the proposed septic location, project details, site considerations and limitations, site photos, acknowledgement from Wilson Township indicating “no comments” regarding the request and a short video.

49 Additionally, Eric Johnson pointed out received comments from an advanced Subsurface Sewage
50 Treatment System (SSTS) inspector, Chad Knudson of Olmsted County, whose expertise is needed due
51 to the type of system being installed:

BOA Comments:

The nature of this lot requires a reduced property line setback as there are no alternative locations to install a septic system that would meet the 10' setback requirement from a drainfield to a property line. Alternate locations are too steep, do not contain natural soils, are located near or on an existing system or cannot meet soil separation requirements for the septic system in those areas. The location of the proposed septic system should have no visual or physical impact to the adjacent neighboring property (a golf course) once construction is complete and new vegetation is established over the drainfield trenches. It is my recommendation that the reduced setback variance be granted from 10' to 2' as proposed in the design.

If the BOA wants more information on the system, you can add this...

Once in operation the system should have no detrimental impacts to water quality or surrounding physical environment including adjacent properties. When maintained and operated within manufacturer specification this system will effectively treat effluent to Type IV - TLA standards. This allows for reduced soil separation (12"-17" of soil-based treatment) between the bottom of the drainfield media and any restrictions found within the soil profile. Reduced soil separation (soil-based treatment) is allowed due to the pretreatment process found within the tanks (aerobic vs anaerobic). This process produces effluent that is much "cleaner" than the typical effluent delivered to a standard Type I - TLC drainfield that is found on most properties.

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54 Chair Robert Redig asked if the petitioners wished to speak on behalf of their project.

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56 Philip Schumacher, of Winona County, shared that he and his wife have no plans to move but desire to
57 bring their SSTS up to the correct standards.

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59 On motion of Jordan Potter and seconded by Kelsey Fitzgerald, the Board of Adjustment voted to open
60 the public hearing. Vote: Yes – All.

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62 Chair Robert Redig asked three times if anyone wished to speak for or against the petition; no response.

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64 On motion of Jordan Potter and seconded by Elizabeth Heublein, the Board of Adjustment voted to close
65 the public hearing. Vote: Yes – All.

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67 Blake Vandermoon, of Sherman Plumbing, explained the term "trash tank," as requested by Kelsey
68 Fitzgerald. Additionally, he said the Schumacher system has been considered a failed system for 3 years.
69 This type of system is becoming more common and is often utilized when there are difficult soils.
70 Erosion control measures will need to be in place and service agreements will be required for
71 maintenance.

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73 On motion of Jordan Potter and seconded by Elizabeth Heublein, the Board of Adjustment voted to adopt
74 the Findings of Fact and to approve the variance with the conditions as presented. Vote: Yes – All.

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76 Chair Robert Redig read aloud the Board of Adjustment Appeal to District Court.

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78 **Findings of Fact:**

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1. The variance request is in harmony with the intent and purpose of the ordinance.

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The request will allow a non-compliant subsurface sewage treatment system (SSTS) that is failing to protect groundwater to be replaced with a compliant system in accordance with the Winona County Zoning Ordinance and MN Rules Chapter 7080. The new system, if managed properly, will provide for the health, safety, and general welfare of the public, protect and conserve natural resources, minimize pollution, and improve water quality, which is in harmony with the intent and purpose of Winona County Zoning Ordinance Chapter 2.1

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86 2. The variance request is consistent with the comprehensive plan.

87 *The Comprehensive Plan recommends protection of natural resources. A non-compliant SSTS*
88 *system can negatively impact water resources. The technical requirements that help ensure that there*
89 *is a properly functioning SSTS on the site, in turn protects water resources and the health, safety, and*
90 *general welfare of the public.*

91 3. The applicant has established that there are practical difficulties in complying with the official control
92 and proposes to use the property in a reasonable manner.

93 *Practical difficulties related to this request arise from the parcel's small size and location within an*
94 *old, platted subdivision that does not have public infrastructure to collect and treat wastewater or*
95 *provide a community water supply. The location of the existing structure, topographical relief and*
96 *configuration of the parcel, does not provide any other suitable locations where an SSTS can be*
97 *installed and meet State standards.*

98 4. The variance request is due to special conditions or circumstances unique to the property not created
99 by owners of the property since enactment of the Ordinance.

100 *The residence was built, and the property was developed during a time when on-site wastewater*
101 *treatment and disposal was not as prioritized in site development as it is now. This was not a*
102 *situation created by the property owner but reflects a time where there was a lack of adequate*
103 *regulatory framework to plan for future wastewater needs on the property. The lot is small and*
104 *cannot accommodate a standard treatment system, therefore special conditions (advanced*
105 *pretreatment proposed system and a requested setback reduction from property line) are a necessity*
106 *and are not the sole actions of the owners of the property.*

107 5. The variance will not alter the essential character of the locality nor substantially impair property
108 values, or the public health, safety, or welfare in the vicinity.

109 *SSTS are primarily subsurface and are part of the residential landscape in rural areas. Functioning*
110 *wastewater treatment systems are essential for maintaining property values that helps to preserve the*
111 *essential character of the locality. Fixing systems that are failing to protect groundwater will*
112 *improve public health, safety, and general welfare, as well as protecting property values for the*
113 *parcel and the adjacent parcel.*

114 6. Economic considerations alone do not constitute practical difficulties.

115 *Economic considerations have not been the primary focus of the applicant or the analysis of*
116 *practical difficulties in this case.*

117 7. The variance cannot be alleviated by a reasonable method other than a variance and is the minimum
118 variance which would alleviate the practical difficulty.

119 *The petitioner has been in contact with a number of licensed SSTS contractors to evaluate and*
120 *determined the most reasonable method of accommodating a system that meets the requirements of*
121 *the Winona County Zoning Ordinance and MN Rules Chapter 7080. Given the small lot size and*
122 *location of existing structures, there were no other locations or system types to consider, absent of*
123 *installing just a holding tank, which is the least preferable method to deal with wastewater onsite,*
124 *due to the cost of pumping associated with it.*

125 8. The request is not a use variance and does not have the effect of allowing any use that is not allowed
126 in the zoning district, permit a lower degree of flood protection than the regulatory flood protection
127 elevation or permit standards lower than those required by State Law.

128 *The variance is from dimensional standards (setbacks) which do not constitute a use variance. The*
129 *site is not located within a regulated flood zone and is located above the regulatory flood protection*
130 *elevation for the area.*

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With the following conditions:

1. *The owner(s) of the property to which this variance is issued will abide by all representations and commitments made during the permitting process as well as before the Board of Adjustment, in accordance with all conditions to the variance.*
2. *The petitioners obtain the required Septic Permit and comply with all relevant regulations and standards of Winona County and the State of Minnesota.*

6. Adjourn

On motion of Jordan Potter and seconded by Elizabeth Heublein, the Board of Adjustment voted to adjourn at 1:22 p.m. Vote: Yes – All.

Respectfully submitted by,
Anne Schwertel
Administrative Specialist

Signed by  15 JUNE 2023
Board of Adjustment Chair/Vice Chair Date