



City of Pine Springs
Washington County Minnesota
PO Box 487 111 Wildwood Road
Willernie, Minnesota 55090
651/770-5720

RESOLUTION # 2022- 38
RESOLUTION TO RESCIND RESOLUTION # 2007-09

Whereas, in the fall of 2006, the City Council of Pine Springs charged the planning commission to investigate whether "grandfather" provisions had ever been addressed in City Zoning Codes to allow for undersized lots to be built on when, or after, the City Code was changed in 1973 to require 2 ½ acre minimum lots; **and**

Whereas, the planning commission report of October 18, 2006 (report attached) indicated that the City had never addressed, nor made provisions for, "grandfathering"; **and**

Whereas; it has since been discovered, contrary to the above mentioned Planning Commission Report, that indeed there were provisions made in the City Zoning Code Section 403.01 and 403.2 (attached) which addressed the qualifying requirements for undersized lots, although not identifying them as "grandfathering"; **and**

Whereas, the Planning Commission report was the primary reasoning for the enactment of Resolution 2007-09, and the report since being discovered in error of the facts, **and**

Whereas, according to Minn. Stat. § 462.357 and City Zoning Code Section 403.02, outlined in City Attorney – Viet -Hanh Winchell's memorandum dated July 6, 2020 (attached), reporting that any provisions to qualify undersized lots would have lapsed if not acted upon within one-year after the zoning change, and (according to attached City Code 403.01 and 403.02) would then have to be combined with any adjacent undersized lots, under the same ownership, to bring them up to the 2 ½ acre minimum size; thus

Be it therefore resolved, that resolution #2007-09 be rescinded as of April 5, 2022.
(11 pages attached)

Attested Victoria R. Keating Attested Frank Bastyr
Victoria Keating Frank Bastyr

City Administrator date 5/3/22 Mayor date 5/3/2022



Resolution 2007 – 09 Minimum Lot Size

Whereas - The City of Pine Springs, prior to August 1973, required a 1 acre minimum building site; and, after August 1973, by mandate of Judge Miles Lord presiding in Federal Court in the case of Pine Springs Limited Partnership vs. the City of Pine Springs, required the City to establish a minimum lot size of 2 1/2 acres as recommended by the Metropolitan Council, and

Whereas - The City of Pine Springs, in order to prevail in Federal Court, and to protect the environment of the City, and, to insure that onsite septic and freshwater wells would function indefinitely to avert public utilities, from that date forward, would thus require a 2 1/2 acre minimum lot size.

Whereas - the City, at this time, is being asked to determine if lots less than 2 1/2 acres that conformed to the building code prior to August 1973 are now eligible to be built on, and

Whereas - the City has recently researched past minutes, ordinances, and correspondence to ascertain whether unbuilt lots under 2 1/2 acres platted prior to the code change were grandfathered. An extensive research & debate has resulted in no definitive answer, and

Whereas - the City intends to act on the matter in conformance with the intent of the Comprehensive Plan of the City and in conformance with the reasons of the Federal Court to protect the general health, safety, and welfare of the City;

Therefore be it resolved that the City will, by variance, and declare that any lot, one acre or more, that conformed to the building code prior to August 1973 can be eligible for a single family residence if it meets all applicable building codes as well as the following 6 requirements:

- 1) The lots in question must have been in conformance with the code prior to the lot size change, i.e. buildable 1 acre minimum, and conforming in all respects prior to August 1973.
- 2) The lots in question must be individual entities, each carrying separate survey descriptions, and individually taxed from August 1973 to the present as an independent parcel.
- 3) The lots must be proven adequate (more than marginal) to support on site water and sewer indefinitely, thus having, in addition to the building site, adequate area for the primary as well as a secondary septic field, both of which must pass all current septic standards.
- 4) The lot must have safe and feasible access to public roads that will accommodate emergency vehicles. The access must be obtained by private procurement, and meet any and all specifications determined by the City.
- 5) Each lot must pass or mitigate any and all additional factors and requirements relating to health, safety, welfare, esthetic, and environmental concerns that come before the Council.
- 6) Upon application for approval, a public hearing will be convened to hear from all interested parties, after which, the City Council will vote on the application.

Approved by majority vote of the City Council in regular session Tuesday, February 6, 2007

Attested to by: Frank Bastyr (signature)
Mayor

Karen Pirozzoli (signature)
City Administrator

City of Pine Springs, MN
Planning Commission Meeting of 10-18-06
at O.H. Anderson School 7:00 pm

*Preliminary statement, to date, on the issue of what previous
Pine Springs' City Councils and Planning Commissions
indicated by their statements, and actions regarding
"minimum acreages," for Pine Springs' homes.*

The Planning Commission, after reviewing the minutes of past Planning Commission and Village/City Council meetings, with special attention to those of March, April and May of 1973, believes that the sitting councils (and Planning commissions) in the early 70's clearly had the strong mindset of doing everything within their power to sustain, maintain and enforce a minimum of 2 ½ acres per home/house. Many references of the council to this conviction occur in the minutes. Those which most specifically refer to this issue in policy-related statements and/or action have been excerpted and copied. Virtually no place and almost at no times has an alternate opinion been recorded. In the vote to accept the Metropolitan Council's recommendation that Pine Springs establish the minimum of 2 ½ acres, from its previous (pre 1973) 1 acre minimum, only Mr. Marvin Odell, on the Planning Commission, voted to sustain a 1 acre minimum. Other than this, no reference in any minutes reviewed, advocates a 1 acre minimum.

(See copies of excerpts included in this information packet)

(191) Zoning District. An area or areas within the limits of the zoning jurisdiction for which the regulations and requirements governing use are uniform.

Section 4. GENERAL PROVISIONS

401. Application of This Ordinance

401.01. In their interpretation and application, the provisions of this Ordinance shall be held to be the minimum requirements for the promotion of the public health, safety, morals, and welfare.

401.02. Where the conditions imposed by any provision of this Ordinance are either more restrictive or less restrictive than comparable conditions imposed by any other law, ordinance, statute, resolution, or regulation of any kind, the regulations which are more restrictive, or which impose higher standards or requirements shall prevail.

401.03. Except as this Ordinance specifically provides, no structure shall be erected, converted, enlarged, reconstructed or altered, and no structure or land shall be used, for any purpose or in any manner which is not in conformity with this Ordinance.

402. Non-Conforming Uses And Structures

402.01. Any structure or use lawfully existing upon the effective date of this Ordinance may be continued at the size and in a manner of operation existing upon such date except that no structural alterations shall be made.

402.02. Unsafe Structures. Nothing in this Ordinance shall prevent the placing of a structure in safe condition when said structure is declared unsafe by the Zoning Administrator.

402.03. When any lawful non-conforming use of any structure or land in any district has been changed to a conforming use, it shall not thereafter be changed to any non-conforming use.

402.04. Restoration.

Whenever a lawful non-conforming building or structure shall have been damaged by fire, flood, explosion, earthquake, war, riot, or act of God, it may be reconstructed and used as before if it is reconstructed within twelve (12) months after such calamity.

402.05. Discontinuance. Whenever a lawful, non-conforming use of a building or land is voluntarily discontinued for a period of one (1) year any future use of said building or land shall be in conformity with the provisions of this Ordinance.

402.06. Wear and Tear. Normal maintenance of a building or other structure containing or related to a lawful non-conforming use is permitted, including necessary non-structural repairs and incidental alterations which do not extend or intensify the non-conforming use.

402.07. Lawful Alterations. Alterations may be made to a structure or building containing lawful non-conforming residential units when they will improve the livability thereof, provided they will not increase the number of dwelling units.

403. Lot Provisions

403.01. A lot or parcel of land for which a deed has been recorded in the office of the Washington County Register of Deeds or Registrar of Titles upon, or prior to, the effective date of this Ordinance shall be deemed a buildable lot provided it has frontage on a public right-of-way and said space requirements for the district in which it is located can be maintained or adjusted to conform as follows: a lot or parcel of land of record upon the effective date of this Ordinance which is in a Residential District and which does not meet the requirements of this Ordinance as to area, width, or other open space, may be utilized for single family detached dwelling purposes provided the measurements of such area, width and yard space are all within forty percent (40%) of the requirements of this Ordinance; and it can be demonstrated that a proper and adequate sewerage disposal system can be installed.

403.02. If in a group of contiguous platted lots under a single ownership any individual lot does not meet the minimum requirements of this Ordinance, such individual lot cannot be considered as a separate parcel of land for purposes of sale or development, but must be combined with adjacent lots under the same ownership so that the combination of lots will equal one or more parcels of land each meeting the full minimum requirements of this Ordinance.

403.03. Any lot or group of lots of five (5) acres or less, or less than three hundred (300) feet in width, created by any means after the effective date of this Ordinance for purposes of erecting a structure must be as approved by the City Council of Pine Springs. The plan for such subdivision shall be reviewed by the Planning Advisory Commission which shall submit a report to the City Council of Pine Springs.

403.04. Lake and Stream Frontage Lots.

All lots having frontage on a water body shall be governed in the following manner:

- (1) Waterfront uses shall be maintained in a safe, orderly, and efficient manner that presents a good appearance from the water; the design of the individual sewage disposal system must be approved by the Zoning Administrator before a building permit can be issued; the City Council of Pine Springs may require a special use permit if deemed necessary to protect lake frontage from adverse conditions affecting the public.
- (2) Principal and accessory buildings shall not be located within seventy-five (75) feet of the average waterline, except boathouses may be located up to the normal high water mark provided they are not used for habitation and they do not contain sanitary facilities.
- (3) To the extent feasible and practicable, shorelines shall be maintained so as to present a natural or landscaped appearance.
- (4) All lake and stream frontage land shall be subject to the adopted standards, codes, ordinances and regulations of the Planning Advisory Commission and/or the City Council of Pine Springs and all regulations in the City Ordinance adopted to implement the Comprehensive Plan. (see Chapter Two)

403.05. Lots on Floodways.

All lots which are adjacent to a floodway shall be subject to flood plain zoning. All such lots are subject to the provisions of the Flood Plain Ordinance which is on file with the Planning Advisory Commission and as contained in the City Ordinance adopted to implement the Comprehensive Plan. (see Chapter Three)

403.06. Through or Double Frontage Lots.

Such lots are those as defined in the Subdivision Regulations and including lake and stream frontage lots having a public road as one lot line and a water body at substantially the opposite lot line. The Zoning Administrator, subject to approval by the Planning Commission, shall determine what shall be considered the front, side and rear yards for application of the provisions of this Ordinance.

403.07. Reduction of Required Yards and Open Space.

- (a) No yard or other open space shall be reduced in area or dimension so as to make such yard or other open space less than the minimum required by this Ordinance, and if the existing yard or other open space as existing is less than the minimum required, it shall not be further reduced.
- (b) No required yard or other open space allocated to a building or dwelling group shall be used to satisfy minimum lot area requirements for any other building.



Memorandum

To: Pine Springs City Council
From: Viet-Hanh Winchell
Date: July 6, 2020
Re: **Requests of Pat and Laurine Kinney regarding buildable lot**

BRIEF ANSWER AND RECOMMENDATION

Is the parcel in question a buildable lot?

Short Answer: No.

In reviewing the applicable laws and City ordinances (cited later in this memo), this parcel was at one time a legal nonconforming lot. In 1973, when the City decided to require a minimum 2.5 acre lot, this parcel would have been a legal nonconforming lot. However, it ceased to be a legal nonconforming lot because it lapsed after one year, pursuant to Minn. Stat. 462.357, in approximately April 1974. Within that one year, Loeffler, the owner at the time, would have been able to sell and develop it separately from the other parcel. Said action would have been legal. However, after the one-year lapse, pursuant to 403.02, the two Loeffler lots should have been combined as one lot under one ownership. If Loeffler wanted to sell or develop it separately after April 1974, a variance would have been required.

However, the City passed Resolution #07-09, which allows, in essence, a second chance for lots with less than 2.5 acres at the time the ordinance was passed in 1973, to maintain legal nonconformance. The process is a variance request that is subject to both “practical difficulties” and six factors. The six factors to consider is not more restrictive than the “practical difficulties” test, rather the six factors are in harmony with the “practical difficulties” analysis. If the lot meets the six criteria, then the lot becomes a legal nonconforming lot.

RECOMMENDATION:

As it stands, the parcel in question is not legal and should have been combined with the other parcel long ago. It is not a buildable lot pursuant to Minnesota Statute and Pine Springs Ordinance. However, if the Kinneys wish to construct a home, the Kinneys are required to submit a formal variance request. If the Kinneys require a definitive answer today, the criteria in Resolution #07-09 have not been met and would need to be denied.

SUMMARY OF FACTS

Property address: 3525 Ranch Road

- Parcel 1- Parcel ID- 3203021310007
 - Has home built on it
 - 1.15 acres- Washington County GIS
 - Current ownership- Lisa Madison
 - Kinney conveyed to Lisa Madison on 2/13/20
- Parcel 2- Parcel ID- 3203021310008
 - 1.15 acres- Washington County GIS
 - Current ownership- Patrick and Laurine Kinney
 - No current road access
 - Land locked
 - The Kinneys wish to build a home on this parcel
- Ownership History
 - 1973- during amendment of ordinances to require 2.5 acre minimum lot size- Gilmore Loeffler owned both Parcel 1 and Parcel 2
 - 2/13/20- after Gilmore Loeffler passed, both parcels were conveyed to Patrick and Laurine Kinney

APPLICABLE AUTHORITY AND EXPLANATION

- Procedure
 - The Kinneys' official variance request has been withdrawn by the Kinneys; and therefore, the Council is not required to make a decision within 60 days as governed by Minn. Stat. § 15.99
 - However, the Kinneys have requested the Council have a discussion regarding whether Parcel 2 is a buildable lot.
 - The Kinneys have requested that a decision be made by the August 2020 Council Meeting.
 - Should a formal application be submitted to the Council, a public hearing must be held.
- **Minn. Stat. § 462.357, subd. 1e**
 - Legal nonconformities represent legal uses, structures, or lots that predate current zoning regulations; and therefore, do not comply with the current zoning ordinance(s). Here, the Kinney parcels were nonconforming at the time of the 1973 change from 1 acre minimum to 2.5 acre lot size minimum. Generally, a municipality cannot enact, amend, or enforce an ordinance that eliminates a use which use was lawful at the time of its inception. This would be the case for both Parcel 1 and Parcel 2 in 1973.
 - Generally, such nonconformities cannot be expanded, but if legally existed prior to the adoption of an ordinance is permitted to continue, even through repair, replacement, restoration, maintenance, and improvement.
 - However, such nonconformity cannot continue if the nonconformity or occupancy is discontinued for a period of more than one year (there is an additional "expiration" factor, but that does not apply in this instance).

- Under this statute alone, the legal nonconformity of Parcel 2 has lapsed long ago. In other words, in 1973 when the amendment was passed to require a minimum lot size of 2.5 acres, Parcel 2 did not have any structures on it. Loeffler would have had until 1974 to maintain its legal nonconformity, the 1.15 acre lot, by building a home on it, but he did not; and therefore, the time has expired to do so. Parcel 2 is no longer a legal nonconformity. It should have been combined with Parcel 1 after the one-year lapse.
- A request for variance is required to build on Parcel 2.

➤ **Resolution #07-09**

- Pine Springs has chosen to provide a process for a nonconforming lot to be considered buildable, notwithstanding Minn. Stat. §462.357, upon proper application and review.
- In essence, a variance request. The Council could still consider a nonconforming lot, past the “one year” lapse period, a buildable and legal nonconformity, only if it met all of the following six criteria
 - 1) The lot in question must have been in conformance with the code prior to the lot size change, i.e. buildable one acre minimum, and conforming to all building codes in all respects prior to April 1973;
 - 2) The lot in question must be an individual entity, each carrying a separate survey description, and individually taxed from April 1973 to the present as an independent parcel;
 - 3) The lot must be proven adequate (more than marginal) to support on site water and sewer indefinitely, thus having, in addition to the buildable site, adequate area for primary, as well as secondary septic field, both of which must pass all current septic standards;
 - 4) The lot must have safe and feasible access to public roads that will accommodate emergency vehicles. The access must be obtained by private procurement, and meet any and all specifications determined by the City;
 - 5) The lot must pass or mitigate any and all additional factors and requirements relating to health, safety, welfare, aesthetic, and environmental concerns that come before the Council; and
 - 6) Upon application for approval, a public hearing will be convened to hear from all interested parties, after which, the City Council will vote on the application.
- The criteria here is nothing out of the ordinary, but rather, seems to give clear guidance when a resident requests for variance of lot size and a determination of “practical difficulties” is required.

➤ **403.01**- 2.5 acre lot minimum

- When this ordinance was passed, Pine Springs allowed lots under the 2.5 acre minimum to be grandfathered as long as:
 - 1) The lot has frontage on a public right-of-way;

- 2) The lot was within 40% of the requirements of the ordinance (one or more acres); and
 - 3) It can be demonstrated that a proper and adequate sewage disposal system can be installed.
- Resolution #07-09 encompasses these requirements, but provides more detail for the Council to consider whether a lot that was less than 2.5 acres in 1973, can continue and be deemed buildable under the current ordinances.
 - While Parcel 1 is not at issue at this point, it is important to point out that there would be no question that Parcel 1 is a legal nonconforming lot because it has been used in the same manner as it has been since at least 1973 without expansion. The problem is Parcel 2.
- **403.02**- if any individual lots under a single ownership did not meet the minimum requirements, such individual lots could NOT be sold or developed separately, but they could be combined with ADJACENT lots under the same ownership that would allow the full combination to meet the full requirements, i.e. the 2.5 acre minimum.
- In 1973, Gilmore Loeffler owned Parcel 1 and Parcel 2.
 - Gilmore Loeffler was also part of the Council at that time when the City passed the 2.5 acre minimum as well as this particular ordinance
- In reviewing the applicable laws and City ordinances, Parcel 2 was at one time a legal nonconforming lot; however, it ceased to be so because it lapsed after one year, pursuant to Minn. Stat. 462.357, in approximately April 1974. At that point, pursuant to 403.02, Parcel 1 and 2 should have been combined as one lot under one ownership (with the Loefflers).
- Loefflers then sold both parcels to Kinneys and Kinneys have apparently sold/transferred Parcel 1 to Lisa Madison, without any variance or exception on Parcel 2.
 - However, because Parcel 2 was at one point a legal nonconforming lot, it is possible that it is still a buildable lot depending on the analysis under Resolution #07-09.
- At the heart of this discussion is truly a variance request from the 2.5 acre minimum requirement (an application that was submitted, but withdrawn by the Kinneys). In such a review, the City Council must consider the “practical difficulties” before deciding whether or not to grant any variances pursuant to Minn. Stat. § 462.357.
- The three factors to consider are as follows:
 - 1) the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;
 - 2) the plight of the landowner is due to circumstances unique to the property not created by the landowner; and
 - 3) the variance, if granted, will not alter the essential character of the locality.
 - Economic considerations alone do not constitute practical difficulties.
 - Resolution #07-09 criteria will guide the City Council in its analysis in determining practical difficulties. The criteria will be addressed separately below.

- (1) Use the property in a reasonable manner
 - Variance for lot size for construction of home would appear to be reasonable and within the definition of a residential zoning district.
- (2) Is the need for the variance due to the resident's own doing?
 - Technically, yes. The Kinneys bought both parcels knowing that each were below the 2.5 acre minimum.
 - *Myron v. City of Plymouth*
 - Attorney Lemmons contends that when Parcel 2 was created, it was a buildable conforming parcel, and that the Loefflers could have constructed a home on Parcel 2 if they chose. Attorney Lemmons interpretation of is misplaced.
 - Nothing in the decision in *Myron v. City of Plymouth*, creates a bright line rule stating that once a parcel is buildable/conforming, it is always buildable/conforming in perpetuity. This would be in direct contradiction to Minn. Stat. §462.357.
 - Instead, the Court of Appeals found, “[A]ctual or constructive knowledge of a zoning ordinance before a purchase of land is not a bar to granting a variance.” Meaning, the city council in this case could not use the fact that the resident purchased the property with knowledge of the zoning ordinance as a “hardship” he created himself. Rather, the decision was given back to the city council to make a determination, without taking into account that he purchased with knowledge of the zoning ordinance. The city council was free to deny the application again, but needed other justification.
 - Attorney Lemmons further argues that the Loefflers “had the right to a variance,” and therefore, the Kinneys would also have that same right. Again, this argument is misplaced. The Loefflers certainly could have applied for a variance, but there was no guarantee that such variance would be granted. An analysis under Resolution #07-09 would have been required, as it is required for the Kinneys.
 - The remaining analysis is encompassed in the analysis required by Resolution #07-09, below.
- (3) Will the essential character of Pine Springs be altered should the variance be granted?
 - This factor is encompassed in the analysis required by Resolution #07-09, below.

➤ **Analysis of criteria in Resolution #07-09**

It would be a good idea for the Council to involve the planning commission to take a look at these criteria and provide a more detailed recommendation addressing each of the factors. The Kinneys will need to provide additional information. For this memo's purpose, the responses below are provided based on the information provided to me.

- 1) The lot in question must have been in conformance with the code prior to the lot size change, i.e. buildable one acre minimum, and conforming to all building codes in all respects prior to April 1973;
 - This factor appears to have been met. Parcel 2 is 1.15 acres (more than one acre) that has been in compliance with all building codes prior to April 1973.
- 2) The lot in question must be an individual entity, each carrying a separate survey description, and individually taxed from April 1973 to the present as an independent parcel;
 - This factor has been met. Parcel 2 is a separate tax parcel with a separate legal description from Parcel 1.
- 3) The lot must be proven adequate (more than marginal) to support on site water and sewer indefinitely, thus having, in addition to the buildable site, adequate area for primary, as well as secondary septic field, both of which must pass all current septic standards;
 - This factor is yet to be determined. The Council will need the site/development plans to determine whether this factor is met or can be met. I have not been provided with any plans to review.
- 4) The lot must have safe and feasible access to public roads that will accommodate emergency vehicles. The access must be obtained by private procurement, and meet any and all specifications determined by the City;
 - This factor has not been met and yet to be determined. Parcel 2 is landlocked. The Kinneys have proposed an access easement, but the Council will need to decide if such access is sufficient to address the concerns.
 - It is not uncommon for residents to have driveway easements to avoid the number of driveways on a particular road for safety reasons. However, much planning usually goes into such a decision, including, but not limited to setbacks being met and the impact on neighbors, etc.
- 5) The lot must pass or mitigate any and all additional factors and requirements relating to health, safety, welfare, aesthetic, and environmental concerns that come before the Council; and
 - The character of Pine Springs is meant to be large enough lots to promote single family use with open space rather than what you see in suburbs with less than 1/4 acre lots and homes essentially on top of homes. Of course, there are grandfathered lots, but Pine Springs wants to continue to keep the open spaces. Filling those open spaces with structures that require a multitude of variances is not within the City's essential character.

- A home being constructed in this area would not be physically out of place, or otherwise inconsistent with the surrounding area (this of course is an assumption since the Council does not have proposed plans for the home construction), but the City has generally held fast related to the 2.5 acre minimum. Parcel 2 should not be an exception.
- 6) Upon application for approval, a public hearing will be convened to hear from all interested parties, after which, the City Council will vote on the application.
- This factor is self-explanatory, and has not yet been met. No formal application has been submitted.

COUNCIL ACTION RECOMMENDED

Motion: Refer matter to the Planning Commission to make a recommendation based on the six criteria of Resolution #07-09, paying specific attention and gathering information to address concerns related to road access and water/sewer system issues.