

RESOLUTION NO. 22-038

CITY OF MAPLE GROVE

RESOLUTION GRANTING A VARIANCE FOR 14719 91st AVENUE NORTH, MAPLE GROVE, MINNESOTA

WHEREAS, Michael and Krisandra Shimpa (“**Applicant**”) have made application for a variance from the 75-foot ordinary high water level setback for the purpose of constructing an addition to the existing home at the property located at 14719 91st Avenue North, Maple Grove, MN (“**Property**”); and

WHEREAS, the City Staff studied the matter, made a report, and provided other information to both the City Council and the Planning Commission; and

WHEREAS, the City’s Planning Commission on January 10, 2022 held a public hearing and recommended approval; and

WHEREAS, the City Council considered the matter at its meeting of January 18, 2022, at which time the City Council received the recommendation of the Planning Commission, the report from City Staff, and further information.

NOW, THEREFORE, the City Council of the City of Maple Grove, makes the following:

FINDINGS

- A. The Applicant is requesting a variance from City Code §36-695(b) that requires a 75-foot setback from the ordinary high water level (“**OHWL**”) for the purpose of constructing an expansion to the existing home on the Property consisting of a sport court, bathroom, golf simulator, and overlook from the upper story.
- B. The Property is zoned R-3 PUD, Single and Two Family Residential (Planned Unit Development), and is subject to the S, Shoreland District and the T, Tree Preservation District.
- C. The land to the north, east, and west of the Property is zoned R-3 PUD, Single and Two Family Residential (Planned Unit Development). The land to the south is Rice Lake.
- D. The Applicant has submitted, for the review and approval of the City Council: (i) Existing Condition Survey of the Property, drafted by W. Brown Land Surveying, dated October 28, 2021 (“**Site Plan**”), which Site Plan shows, among other things, the proposed addition area; (ii) Existing Plan of the proposed addition area, drafted by J Brothers, dated January 2, 2022 (“**Existing Plan**”); and (iii) New Plan of the proposed addition area, drafted by J Brothers, dated January 2, 2022 (“**New Plan**”; Site Plan, Existing Plan, and New Plan collectively the “**Plans**”).

- E. The Property is subject to a 75-foot setback from the OHWL. City Code §36-695(b).
- F. As shown on the Plans, there is currently an impervious concrete patio that extends from the back of the existing home towards the lake within the OHWL setback. The proposed addition will replace the existing concrete patio area. The above improvements, as set forth in the Plans, require a variance from the 75-foot OHWL setback because of the existing legal non-conforming status of the Property and the proposed encroachment. A variance approval would result in an OHWL setback of 69 feet.
- G. The granting of variances within the City of Maple Grove is governed both by the City Code and State Statute.
- H. Minn. Stat. §462.357, subd. 6, allows variances only when they are in harmony with the general purposes and intent of City Code and is consistent with the City's comprehensive plan. Further, the Applicant must establish that there are practical difficulties in complying with the zoning ordinance.
- I. Maple Grove Code §36-121(a)(2) provides that a variance request must comply with the following:
 - 1. Variances shall only be permitted when they are in harmony with the general purpose and intent of the city code and consistent with the comprehensive plan.
 - 2. Variances may only be permitted when the applicant establishes that there are practical difficulties in complying with the zoning ordinance, meaning the property proposes to use the lot or parcel in a reasonable manner not permitted by the zoning code.
 - 3. The plight of the property owner must be due to circumstances that are unique to the lot or parcel and is not created by the property owner.
 - 4. The variance must not alter the essential character of the locality.
- J. Maple Grove Code §36-121(a)(3) defines "unique" as a property or lot having one of the following characteristics:
 - 1. Narrowness, shallowness or shape of a specific parcel of property or a lot existing and of record on September 30, 1976;
 - 2. Exceptional topographic or water conditions of a specific parcel of land or lot; or

3. An existing significant tree or tree stand which would be affected by a structure other than a building. For purposes of this subsection, the phrase "significant tree or tree stand" shall mean a tree having a diameter at breast height of at least 12 inches or a clustering of trees averaging eight inches in diameter, excluding tree diameters of four inches or less in such average calculations.
- K. Maple Grove Code §36-121(a)(4) defines “not altering the essential character of the locality” as the proposed action will not, among other things:
- a. Impair an adequate supply of light and air to adjacent property.
 - b. Unreasonably increase the congestion in the public streets.
 - c. Increase the danger of fire or endanger the public safety.
 - d. Unreasonably diminish or impair established property values within the neighborhood or in any way be contrary to the intent of this chapter.
- L. Due to the Property being subject to the S, Shoreland District, further considerations for a variance are found at City Code §36-693:
- a. The council shall also consider the characteristics of development on adjacent properties, and no variance shall be granted which the council determines will or has a tendency to:
 1. Result in the placement of an artificial obstruction which will restrict the passage of stormwater and floodwater in such a manner as to increase the height of flooding, except obstructions approved by the appropriate watershed district in conjunction with sound floodplain management;
 2. Result in incompatible land uses or which would be detrimental to the protection of surface water and groundwater supplies;
 3. Be not in keeping with land use plans and planning objectives for the city or which will increase or cause danger to life or property;
or
 4. Be inconsistent with the objectives of encouraging land uses compatible with the preservation of the natural land forms, vegetation and the marshes and wetlands within the city.
- M. The variance request is in harmony with the general purpose and intent of City Code and is consistent with the comprehensive plan. The Applicant is maintaining the single-family use of the Property with the proposed addition, the

reduced setback from the OHWL has limited impact on views from the surface of the lake as there is a significant tree stand on the Property between the home and the lake that is subject to the S, Shoreland District and the T, Tree Preservation District, and, because the addition proposes to be within the existing impervious surface, there does not appear to be a measurable impervious surface increase.

- N. There are practical difficulties on the Property due to the location of the house that was not constructed by the Applicant and the substandard size of the Property. City Code requires a 20,000 square foot minimum for the Property. The Property is a legal non-conforming 15,238 square foot lot. The City Code would prohibit the addition as currently proposed without a variance because it would expand upon the existing nonconformity and encroach into the 75-foot OHWL setback. Because of the size of the Property, there is not enough room between the existing home and the 75-foot OHWL setback to construct the addition. Further, the location of 91st Avenue along the north end of the lake has left several relatively shallow lots in this area. The varying shoreline has allowed some neighboring homes to meet the lakeshore setback. However, there are several homes near the Property that appear to share the same setback challenges. The Applicant purchased the Property in 2014 and did not contribute to the hardship.
- O. The proposed addition does not alter the essential character of the locality. The stand of trees between the addition and the surface of the lake will minimize the view of neighbors and will have very little impact on the surrounding area. The Property will continue to be utilized as a single-family home.
- P. The proposed addition will not result in the restriction of stormwater and floodwater passage that increases flooding, is not detrimental to water and groundwater supplies, does not increase or cause danger to life or property, and is consistent with the preservation of the natural landforms. The fact that the addition will not measurably increase impervious surface limits the impact on the natural surroundings and the lake setting.

DECISION

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Maple Grove and based upon the information received and the above Findings, that the City Council does hereby grant the Applicant's variance request from Maple Grove Code §36-3695(b) to allow the construction of the addition as depicted on the Plans that encroaches 6 feet into the 75-foot setback from the OHWL for an effective setback of 69 feet. The variance granted is only for the proposed addition as depicted on the Plans. The approval granted herein and this Resolution shall be subject to the following:

1. The Applicant shall pay upon demand all expenses, determined by the City, that the City incurs in relation to this Resolution. Said expenses shall include, but are not limited to, staff time, including, but not limited to, hourly wage, overhead and benefits,

engineering, legal and other consulting fees incurred in relation to this Resolution and the approvals granted hereunder.

2. The variance granted herein shall be subject to the applicable provisions of City Code, including, but not limited to, City Code §36-123 regarding lapse of variance, City Code Ch. 36, Art. VII, Div. 5 the requirements of the S, Shoreland District, and City Code Ch. 36, Art. VII, Div. 6 the requirements of the T, Tree Preservation District.
3. As part of an application for permits to construct the addition, the Applicant shall submit a plan, subject to the review and approval of the City Director of Community and Economic Development, that clearly shows where excavation materials will be stored and stormwater management protection of excavated materials.
4. During the construction of the addition, all trees within 30 feet of the area impacted by the construction shall have bright orange tree protection fences placed at the drip line of the trees to minimize negative impact to the root systems.
5. Prior to application being made for permits to construct the addition, the Plans shall be modified, subject to the review and approval of the City Engineer, to depict side yard drainage, which grades on the ease side shall drain water toward Rice Lake and not directly at the neighboring property. Permits will not be issued until, among other things, the City Engineer has approved proposed grading and drainage.

Motion to approve the foregoing findings, conclusions, and decisions was made by _____ and seconded by _____, upon a vote being duly taken thereon, the following voted in favor thereof:

and the following were against:

and the following were absent:

whereupon, the resolution was declared duly passed and adopted the 7th day of February, 2022.

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) SS.
CITY OF MAPLE GROVE)

I, the undersigned, being the duly qualified and acting Clerk of the City of Maple Grove, Hennepin County, Minnesota, a Minnesota municipal corporation, hereby certify that the above and foregoing Resolution No. 22-038 is a true and correct copy of the Resolution as adopted by the City Council on the 7th day of February, 2022.

City Clerk