

RESOLUTION NO. 22-060

CITY OF MAPLE GROVE

**RESOLUTION REGARDING VARIANCES FOR
7479 FERNBROOK LANE NORTH, MAPLE GROVE, MINNESOTA**

WHEREAS, Michael Ball (“**Applicant**”) has made application for several after-the-fact variances from City Code for the color, height, area, and location of a recently constructed shed at the property located at 7479 Fernbrook Lane North, Maple Grove, Minnesota and depicted on attached Exhibit A (“**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 February 28, 2022 held a public hearing and recommended approval of the color variance, denial of the location variance, and no recommendation for the height and area variances; and

WHEREAS, the City Council considered the matter at its meeting of March 7, 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 constructed a shed on his Property that, due to its color, height, size, and location, requires variances from City Code. Applicant is requesting after-the-fact variances to allow the shed to remain in its current location as constructed.
- B. The Property is zoned R-2, Single Family Residential, and is subject to the S, Shoreland District.
- C. The land to the north and south of the Property is zoned R-2, Single Family Residential. The land to the east of the Property is zoned R-2 PUD, Single Family Residential (Planned Unit Development). Fish Lake is to the west of the Property.
- D. The Applicant has submitted, for the review and approval of the City Council: (i) Existing Condition Survey of the Property, drafted by Lot Surveys Company, Inc., dated January 11, 2022 (“**Survey**”), which Survey shows, among other things, the location of the shed; and (ii) photographs of the shed (hereinafter referred to as the “**Photographs**”). Along with the Survey and the Photographs, the Applicant has submitted a letter from his attorney dated January 17, 2022.

The Applicant and the Applicant's attorney provided testimony. In addition, members of the public provided testimony and submitted letters.

- E. The shed is a water-oriented accessory structure. City Code §36-695(b)(1) requires that water-oriented structures within the 75-foot setback from the ordinary high water level must not be more than 10 feet in height, must not be more than 100 square feet in area, and must be screened as much as practical from view from the public water, utilizing vegetation, topography, and/or color treatment (assuming summer leaf on condition). City Code §36-295(3)b. provides a 5-foot side yard setback. The shed, as constructed: (i) encroaches 2 feet 2 inches into the 5-foot side yard setback; (ii) the area of the shed is 124 square feet; (iii) the height of the shed is 10 feet 8 inches; and (iv) the color of the shed is not a color that effectively screens the shed from the public water (assuming summer leaf-on conditions). The Applicant is requesting a variance from City Code §36-295(3)b. to allow for the shed to encroach into the 5-foot side yard setback by 2 feet 2 inches. The Applicant is also requesting 3 separate variances from City Code §36-695(b)(1) to allow for the 124 square foot shed area, the 10-foot 8-inch shed height, and to allow the current shed color.
- F. The granting of variances within the City of Maple Grove is governed both by City Code and State Statute.
- G. Minn. Stat. § 462.357, subd. 6, allows variances only when they are in harmony with the general purposes and intent of City Code and are consistent with the City's comprehensive plan. Further, the Applicant must establish that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties" means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.
- H. 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.
- I. 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.
- J. 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.
- K. 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.
- L. Prior to construction of the shed, the Applicant approached the City and he was provided the City's requirements for the shed on the Property. At the beginning of constructing the shed, City staff discussed at the Property with the Applicant that the shed encroached into the side yard setback. Despite having this information, the Applicant completed the construction of the shed in its current configuration and location and is now asking for after-the-fact variances.
- M. City Code §36-695(b) requires that water-oriented accessory structures shall be screened as much as practical from view from the public water, utilizing vegetation, topography and/or color treatment (assuming summer leaf-on conditions). City Code does not provide the color required. The current color of the shed is similar to the color of the house on the Property and does not stand out as out-of-place from view from the public water. The current color is in harmony with the intent of City Code, is reasonable as the color effectively blends into the color of the existing house, and it does not alter the essential character of the neighborhood.
- N. City Code §36-695(b) provides that water-oriented accessory structures shall not be more than 10 feet in height nor greater than 100 square feet in diameter. The Applicant, with full knowledge of this height and area maximum requirement, constructed the shed with a height of 10 feet 8 inches and 124 square feet in area. The Applicant has stated that the purpose of the shed is to store, among other things, equipment and items related to a hockey rink he maintains on the ice of Fish Lake. The height and area proposed is contrary to City Code, which limits structure size within the 75-foot setback from the ordinary high water level to lessen the impact from public waters. Although it may be more difficult for the Applicant to store his equipment, the Applicant has not established that there are practical difficulties in complying with the City Code requirements. Any narrowness, shallowness, or shape of the Property is not by itself a justification for the shed to be larger than allowed by City Code. The Applicant stated that he purchased existing and new equipment and items without knowing if it would fit into a conforming shed. The purchasing of the items and equipment and the claimed need for a larger shed are issues created by the Applicant, not by the uniqueness of the Property.
- O. City Code §36-295(3)b. requires a 5-foot side yard setback. The Applicant constructed the shed within the 5-foot side yard setback. The Applicant claims

that that the narrowness of the Property constitutes uniqueness that allows for the shed to encroach into the 5-foot side yard setback. The Applicant is asking for a side yard setback of 3 feet 10 inches to accommodate the current location of the shed. In reviewing the Survey and the Photographs, it appears there are existing locations on the Property for the shed that would comply with the current City Code requirements. As such, the request for a variance is not based on circumstances that are unique to the Property nor are there practical difficulties in locating the shed on the Property in conformity with City Code.

- P. The City Council, at its March 7, 2022 meeting: (i) voted 4-1 to direct the City Attorney to draft a resolution approving a variance from City Code §36-695(b)(1) to allow the current color of the shed; (ii) voted 3-2 to direct the City Attorney to draft a resolution denying a variance from City Code §36-695(b)(1) for shed height that exceeds the 10-foot maximum; (iii) voted 3-2 to direct the City Attorney to draft a resolution denying a variance from City Code §36-695(b)(1) for shed area that exceeds the 100 square foot maximum; and (iv) voted 5-0 to direct the City Attorney to draft a resolution denying a variance from City Code §36-295(3)b. allowing an encroachment into the 5-foot side yard setback.

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 §36-695(b)(1) to allow for the color of the water-oriented structure that is similar to the color of the house on the Property, subject to a shallow swale being dug 6 inches deep and 24 inches wide in such a manner that mitigates the impervious surface coverage created by the construction of the water-oriented structure, then have it filled and maintained with 3 inches of compost and planted with daylilies, which swale shall be completed, to the satisfaction of the City Engineer, by July 1, 2022 or a later date approved by the City Engineer.

BE IT FURTHER 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 deny the Applicant's variance request from Maple Grove Code §36-695(b)(1) to allow a water-oriented structure on the Property that exceeds the 10-foot maximum height.

BE IT FURTHER 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 deny the Applicant's variance request from Maple Grove Code §36-695(b)(1) to allow a water-oriented structure on the Property that exceeds the 100 square foot area maximum.

BE IT FURTHER 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 deny the Applicant's variance request from Maple Grove Code §36-295(3)b. allowing an encroachment into the 5-foot side yard setback.

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:

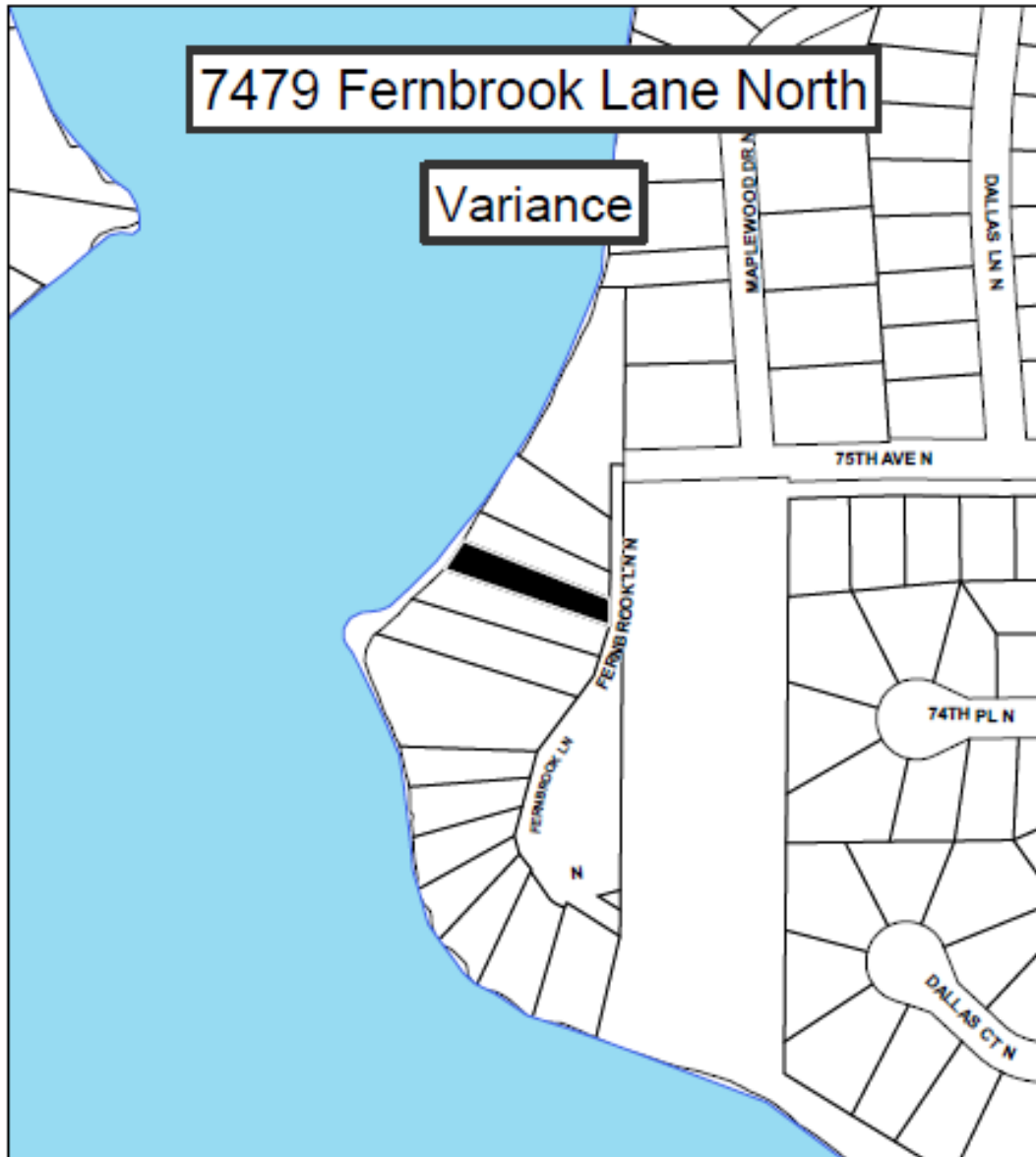
whereupon, the resolution was declared duly passed and adopted the 4th day of April, 2022.

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. 22-060 is a true and correct copy of the Resolution as adopted by the City Council on the 4th day of April, 2022.

City Clerk

EXHIBIT A



NEIGHBORHOOD LOCATION MAP

