

**RESOLUTION NO. 22-079**

**CITY OF MAPLE GROVE**

**RESOLUTION GRANTING A VARIANCE FOR  
7103 BIRCHVIEW ROAD NORTH, MAPLE GROVE, MINNESOTA**

WHEREAS, I-Site Development dba Home Building & Remodeling Experts (“**Applicant**”) have made application for a variance from the 75-foot ordinary high water level setback for the purpose of constructing a deck on the property located at 7103 Birchview Road North, Maple Grove, Minnesota (“**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 March 28, 2022 held a public hearing and recommended approval; and

WHEREAS, the City Council considered the matter at its meeting of April 4, 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 a deck connected to the existing home on the Property. The deck is part of a larger remodel and second floor addition to the existing home. The Applicant is proposing to convert the existing deck into an enclosed porch and extend a new deck along the lakeward side of the home.
- B. The Property is zoned R-2, Single Family Residential and is subject to the S, Shoreland District.
- C. The land to the north, east, and south of the Property is zoned R-2, Single Family Residential. Cedar Island Lake is to the west of the Property.
- D. The Applicant has submitted, for the review and approval of the City Council: (i) Certificate of Survey – Existing Only, drafted by Stonebrooke Engineering, Inc., dated February 2, 2022, which shows the existing conditions of the Property (“**Existing Conditions Survey**”); and (ii) Certificate of Survey, drafted by Stonebrooke Engineering, Inc., dated February 2, 2022, which shows the existing conditions of the Property with the deck improvements (“**Proposed Deck Survey**”; Existing Conditions Survey and Proposed Deck Survey, collectively

the “**Plans**”). The Applicant provided a narrative dated February 22, 2022 and testimony before the Planning Commission and the City Council. In addition, three neighbors provided letters supporting the variance request.

- 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 existing wood deck that extends from the back of the existing home towards the lake within the OHWL setback. The Applicant proposes to enclose the existing wood deck and extend a new deck along the back of the house. The construction of the new deck will encroach into the 75-foot OHWL setback by 32.5 feet and requires a variance. A variance approval will result in an OHWL setback of 42.5 feet as shown on the Plans. It should be noted that the current deck encroaches into the 75-foot setback by 27.4 feet, resulting in a setback of 47.6 feet. The requested setback encroachment is 5.1 feet more than the current encroachment.
- 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, is consistent with the comprehensive plan, and does not alter the essential character of the neighborhood. The Applicant's planned improvements to the Property will compliment the neighborhood and the deck addition on the lakeside consistent with other nearby homes. The variance request combined with the planned improvements to the home will not exceed the impervious coverage limitations.
- N. There are practical difficulties on the Property due to the nonconforming location of the house and the lack of room to build a deck on the lakeward side of the house. Current zoning code would prohibit the deck addition as proposed because it would expand upon the existing nonconformity. A variance is necessary to permit what appears to be a reasonable request. The current Property owners purchased their home in 2016 and did not contribute to the circumstance. The lots on Birchview Road North, including the Property, were platted in 1963, before the current shoreland regulations went into effect which is why many of these homes were built into the 75-foot setback.
- O. 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 deck will not exceed the limitations for impervious coverage 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 §36-695(b) to allow the construction of the deck as depicted on the Plans that encroaches 32.5 feet into the 75-foot setback from the OHWL for an effective setback of 42.5 feet. The variance granted is only for, as depicted on the Plans, the proposed deck and its appurtenances. 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, and City Code Ch. 36, Art. VII, Div. 5, the requirements of the S, Shoreland District.

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 18<sup>th</sup> 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. 22-079 is a true and correct copy of the Resolution as adopted by the City Council on the 18<sup>th</sup> day of April, 2022.

\_\_\_\_\_  
City Clerk