Memorandum

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To: Mayor Danielowski
City Council Members
Clay Wilfahrt, City Administrator

From: Michael Healy, City Planner

Date: December 14, 2016

Re: Deck Variance- Expanding a Non-Conforming Structure and Setback Variance at 401 Lakeshore Drive

Council Action Options:

A motion to approve, deny or table a RESOLUTION as presented approving a variance for the residential property located at 401 Lakeshore Drive.

-or-

A motion to approve, deny or table a RESOLUTION approving a variance for the residential property located at 401 Lakeshore Drive allowing expansion of a nonconforming structure and allowing construction of a deck on the front of the house as long as it observes the required 20-foot setback from the property line along Lakeshore Drive.

BACKGROUND INFORMATION:

Joe Fowler, the Applicant, owns the corner lot property at 401 Lakeshore Drive and is seeking to have a deck in the front yard area that is adjacent to Lakeshore Drive. Earlier this summer, the Applicant constructed a concrete patio without obtaining the necessary zoning permit. The Applicant submitted an application for a zoning permit after being informed by Staff that it is a requirement. Staff approved the patio but informed the Applicant that the approval was just for the patio itself and did not include approval of any decks, staircases, or other projects. The patio was situated several feet below the patio door so it was apparent that some type of structure still needed to be installed. Staff sent the Applicant an email on June 24, 2016 informing him that he would need to apply for a building permit to construct a deck or stairs.

Sometime in late summer 2016, the Applicant constructed a 13’ by 11’ deck on top of the concrete patio. Staff investigated after receiving a complaint. When questioned about why he did not come in for a permit, the Applicant stated that his structure was not structurally attached to the house and therefore it was a platform and not a deck. The Applicant has stated that he believed that, as a platform, the improvement did not require a building permit, just a zoning permit. During the Planning Commission meeting, the Applicant stated that his materials arrived early and he decided to start building the platform with the intent of applying

for a zoning permit later on. Staff went to the site and measured the structure and determined that it is higher than 30 inches off of the ground. Because of its height, it is considered a deck regardless of whether it is structurally attached to the house. This is an important distinction because decks are required to maintain the same setbacks as the principal structure while platforms are permitted to be as close as five (5) feet to property lines. The Applicant's deck is only 18 feet from the property line.

The deck that the Applicant has constructed will require a variance if it is to be allowed to remain in place. A variance is required for two reasons:

1.) A variance is needed any time a nonconforming structure is being expanded. The Applicant's house is only twelve (12) feet away from the property line on Lake Avenue versus the 20-foot setback that is required. The house is therefore considered a nonconforming structure and to add a deck is considered an expansion of the nonconforming structure.
2.) The house previously did meet the 20-foot setback requirement for the property line along Lakeshore Drive (it is a corner lot so the 20-foot setback is required on both streets- Lake Avenue and Lakeshore Drive). The deck, which extends thirteen (13) feet from the house, is only 18 feet from the property line along Lakeshore Drive. This means that the deck creates a new setback nonconformity where there was not one previously.

<u>Image of the Deck</u>

Since the deck has already been constructed, it is possible to provide a visual:

RELATION TO THE ZONING ORDINANCE:

The Zoning Code defines a deck as:

Deck. *A horizontal, unenclosed platform with or without attached railings, seats, trellises, or other features, attached or functionally related to a principal use or site and at any point extending more than thirty (30) inches above average ground level.*

The Zoning Code defines a platform as:

Platform. *A detached deck, having no walls or roof, that is no more than thirty (30) inches above average ground level at any point.*

Staff would note that that the average ground level does not include man-made grade alterations such as the concrete slab that this deck rests upon. Our Code actually defines "average ground level" as being "the average ground elevation at least five (5) years prior to construction." What this means is that in order to be considered a platform and be permitted to encroach the front-yard setback, the structure would need to be reduced in height so that it sat only 30 inches above the ground itself.

The following code sections detail what the setback requirements are for decks versus platforms.

Decks

1001.02: DEFINITIONS:
Accessory Structure (Attached). *Accessory buildings or structures that are attached to the principal building or structure shall have the same architectural features such as roof lines and exterior building materials. Attached means wall-to-wall or any permanent "covered passageway." Said structures, along with attached decks, shall be considered as building additions and shall require building permits and compliance with the applicable setback standards for the principal building or structure. For purposes of this section, the term "covered passageway" shall mean a room or enclosed corridor of similar quality construction. (ord. 2009-03; 02/11/09)*

Platforms

1041.05: PERMITTED ENCROACHMENTS:
Subd. 2. *Terraces, steps, platforms, stoops, patios, or similar features provided they do not extend above the height of the ground floor level of the principal structure or to a distance less than five (5) feet from any lot line. No encroachment shall be permitted in existing or required drainage and utility easements.*

Findings of Fact:

1.) The property is located in the R-5 Residential Redevelopment District.
2.) The property is a corner lot that has frontage along both Lakeshore Drive and Lake Avenue.

3.) The required front yard setback in the R-5 district is 20 feet, measured to the property line. For a corner lot, this setback is required along each frontage.
4.) The house at 401 Lakeshore Drive is a legally nonconforming structure that was built in 1950. It has an 8-foot setback nonconformity along Lake Avenue since the house in only 12 feet from the property line instead of the required 20.
5.) The house is approximately 31 feet from the property line along Lakeshore Drive.
6.) A variance is needed to expand any legally nonconforming structure. An attached deck that is more than 30 inches off the ground is considered an expansion of the structure.
7.) The Applicant constructed a patio without a permit in June 2016. He eventually obtained a permit after being required to by the City. The Applicant was told at that time that the permit was only for the patio and that additional building permits would be needed if he hoped to construct a deck, staircase, etc.
8.) The Applicant constructed a 13' by 11' deck sometime in late summer 2016 without obtaining a building permit. Staff investigated the deck after receiving a complaint.
9.) The deck that the Applicant constructed extends out roughly 13 feet from the house towards Lakeshore Drive. The edge of the deck is roughly 18 feet from the property line along Lakeshore Drive. This is a two (2) foot setback nonconformity that did not previously exist.
10.) The Planning Commission has typically been accommodating of legally nonconforming properties that wish to build a deck so long as the deck does not further increase the nonconformity. Setback variances have been granted in situations where a usable deck could not be built that met setback requirements.
11.) The Applicant could have constructed a deck that extended only 11 feet from the principal structure towards Lakeshore Drive and it would have complied with the 20-foot required front yard setback.
12.) Staff believes that while the Applicant's need for a variance to build a deck on a nonconforming structure was not a self-created difficulty, the Applicant's need for a setback variance to keep a deck that is larger than setbacks will allow (13 feet versus 11 feet) does appear to be a self-created difficulty. Staff believes that the "practical difficulty" is purely financial and self-induced. The Applicant would have to spend extra money to alter the deck in order for it to conform to setbacks. This could have been avoided if the Applicant had gone through the permitting process.
13.) Staff believes that it is appropriate to grant a variance that would allow for a deck on a nonconforming structure. Staff believes, however, that this deck should be required to meet the 20-foot setback requirement from Lakeshore Drive. This would require removing roughly two feet from the deck. The deck could also be lowered to 30 inches and then it would become a platform and would be permitted to encroach on the setback.
14.) The Planning Commission disagreed with Staff at their November 2 meeting. The Planning Commission found that there is a practical difficulty in that the Applicant's front yard is small and cannot accommodate a reasonably sized "usable" deck without a variance. They motioned to recommend approval of the Applicant's variances as requested.
15.) Following the Planning Commission meeting, Staff researched prior variances and determined that, in 2009, the City Council granted a variance to allow the construction of a 10' by 16' foot deck that projected 10 feet from the house and encroached five (5) feet upon the rear yard setback. The variance was justified with the reasoning that a five (5) foot wide deck would not be "usable" but a 10 (ten) foot wide deck would.

16.) To conform to precedent, approval of this variance should hinge on whether or not the two (2) foot setback variance is viewed as a necessary step to allow for a "usable" deck to be constructed.

DISCUSSION:

In determining the appropriate of a variance, the City must determine whether the following conditions are met:

a. *That because of the particular physical surroundings, lot shape, narrowness, shallowness, slope or topographical conditions of the specific parcel of land involved, practical difficulties to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.*

   The structure was conforming when it was constructed in 1950. This creates a practical difficulty in that a variance would be required for any type of deck, even one that conforms to setback requirements. The Planning Commission believes that the lot's small size and orientation prevents the construction of a usable deck without the two (2) foot setback variance.

b. *That the conditions upon which a petition for a variance are based are unique to the parcel of land for which the variance is sought and are not applicable, generally, to other property within the same zoning classification.*

   A variance is needed to expand the nonconforming structure because the house was built in 1950 before the City had setback requirements. The Planning Commission believes that because of the size and shape of this parcel, it is not possible to construct a "usable" deck without also allowing a two (2) foot setback variance.

c. *That the purpose of the variance is not based exclusively upon a desire to increase the value or income potential of the parcel of land.*

   The purpose of the variance is to build a "usable" deck for the Applicant's personal enjoyment.

d. *That the alleged practical difficulties are caused by this Ordinance and have not been created by any persons having an interest in the parcel of land and are not self-created difficulties.*

   The structure is nonconforming because of new setback requirements that were added to the Zoning Code after its construction. Staff believes that the new two (2) foot setback nonconformity is a self-created difficulty brought on by building without a permit. The Planning Commission disagrees and believes that the practical difficulty is that the yard is small and there is not room to build a usable deck without the setback variance.

e. *That the granting of the variance will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.*

   The granting of the variance will not adversely affect adjacent properties.

f. *That the granting of the variance will not be detrimental to the public welfare or injurious to other land or improvements in the neighborhood in which the parcel of land is located.*

   The granting of the variance will not adversely affect adjacent properties.

g. *The variance is the minimum action required to eliminate the practical difficulties.*

   Staff believes that the variance to expand the nonconforming structure with a deck is the minimum action required. The Planning Commission disagrees and believes that the two (2) foot setback variance is also required in order to allow for the construction of a sufficiently "usable" deck.

h. *The variance does not involve a use which is not allowed within the respective Zoning District.*

   Decks are allowed in this zoning district.

i. *The variance is in harmony with the general purposes and intent of the Ordinance.*

   The intent of the Ordinance is to allow for decks but to require attractive front yards along all streets. The Planning Commission believes that the variance is in harmony with this intent.

j. *The variance is consistent with the comprehensive plan.*

   The variance is consistent with the comprehensive plan's policy to improve existing housing stock through updates and renovation.

k. *The property owner proposes to use the property in a reasonable manner not permitted by the Ordinance.*

   The property owner wishes to construct a deck, which is a very reasonable goal. Because it is an expansion of a nonconforming structure, the Ordinance does not permit the use automatically.

l. *The variance will not alter the essential character of the locality.*

   The variance will not alter the essential character of the locality.

Staff would note that the house was built in 1950, prior to Big Lake's adoption of a zoning code. There was no 20-foot front yard setback requirement at that time and the house was built at a distance from Lake Avenue that was considered appropriate at the time of construction. Staff would note that in many cities, nonconforming structures are allowed to be expanded without a variance so long as the nonconformity itself is not being expanded. This is not the case in Big Lake, however, and our Code dictates that a variance is needed anytime a nonconforming structure is being expanded in any way. The existing setback nonconformity (the 8-foot setback nonconformity relative to Lake Avenue) is not being expanded. If the Applicant were to have built this deck 11 feet in length instead of 13 feet in length, the deck itself would comply with all setbacks.

Unfortunately, the deck that has been constructed does not meet setback requirements relative to the property line along Lakeshore Drive. It creates a new setback nonconformity and results in the house failing to conform with front yard setback requirements on either Lake Avenue or Lakeshore Drive. Staff is not convinced that, from a functionality standpoint,

there is not that much difference between an 11-foot long deck and a 13-foot long deck. Staff does not believe that there is any compelling reason to grant the setback variance aside from the fact that the deck has already been built and it will present a financial hardship if the Applicant is required to modify it. To Staff, the practical difficulty appears to be self-inflicted. The Planning Commission disagrees with Staff's assessment and believes that the extra two (2) feet are necessary to make the deck sufficiently sized in order to be "usable." They believe that there is a practical difficulty in that the Applicant has a very small yard.

If the City Council were to approve the variances as requested, the Applicant could retain his existing deck in its current condition. If the City Council were to deny the setback variance but agreed to allow a variance for a deck so long as it did not increase the setback nonconformity, the Applicant could shave two feet off the deck and retain it at its current height. The Applicant's other option would be to lower the height of the deck until it was only 30 inches above average ground level. It would then only be required to be five (5) feet away from the property line.

RECOMMENDATION:

Staff recommended denial of the variance that was requested but recommended approval of a modified variance. Staff is supportive of a variance to allow a deck on the front of the house so long as it observes the required 20-foot setback from the property line along Lakeshore Drive. This variance is only needed because the house is a nonconforming structure. Staff does not support allowing the deck to encroach upon the required 20-foot front yard setback and believes that the practical difficulty is self-inflicted and brought on solely by the Applicant completing work on the deck without a permit.

The Planning Commission disagrees with Staff and recommends approval of the variance as requested. They feel that there is a practical difficulty created by the Applicant's small yard which does not leave enough room for a usable deck. They believe that allowing the 2-foot nonconformity is the minimum action that would result in a usable deck.

The Planning Commission is recommending that the City Council approve a variance with the following conditions:

- The footprint of the nonconforming structure shall be allowed to be expanded by a front yard deck extending from the house towards Lakeshore Drive.
- The new deck shall be allowed to project thirteen (13) feet from the front of the house towards the property line along Lakeshore Drive which will encroach roughly two (2) feet into the required 20-foot setback.
- *STAFF WOULD ADD ONE ADDITIONAL COMPONENT:* The deck must be uncovered and shall not be allowed to be roofed in the future.

ACTION REQUIRED:

A motion is required to approve or deny the application for a variance, either as requested or with modifications. The City Council could also table the item if more information is required or if there are unresolved issues with the application.

LIST OF ATTACHMENTS:

A – Location Aerial Maps
B – Survey with proposed deck
C – Deck Plans
D – Public Hearing Notice

EXHIBIT A

LOCATION AERIAL MAP

EXHIBIT B
2015 AERIAL VIEW OF YARD

EXHIBIT C

SURVEY WITH PROPOSED DECK

*NOTE: SURVEY IS OUTDATED AS THE HOUSE HAS BEEN EXPANDED. THE HOUSE IS NOW 31 FEET FROM THE PROPERTY LINE ALONG LAKESHORE DRIVE, NOT 42 FEET.

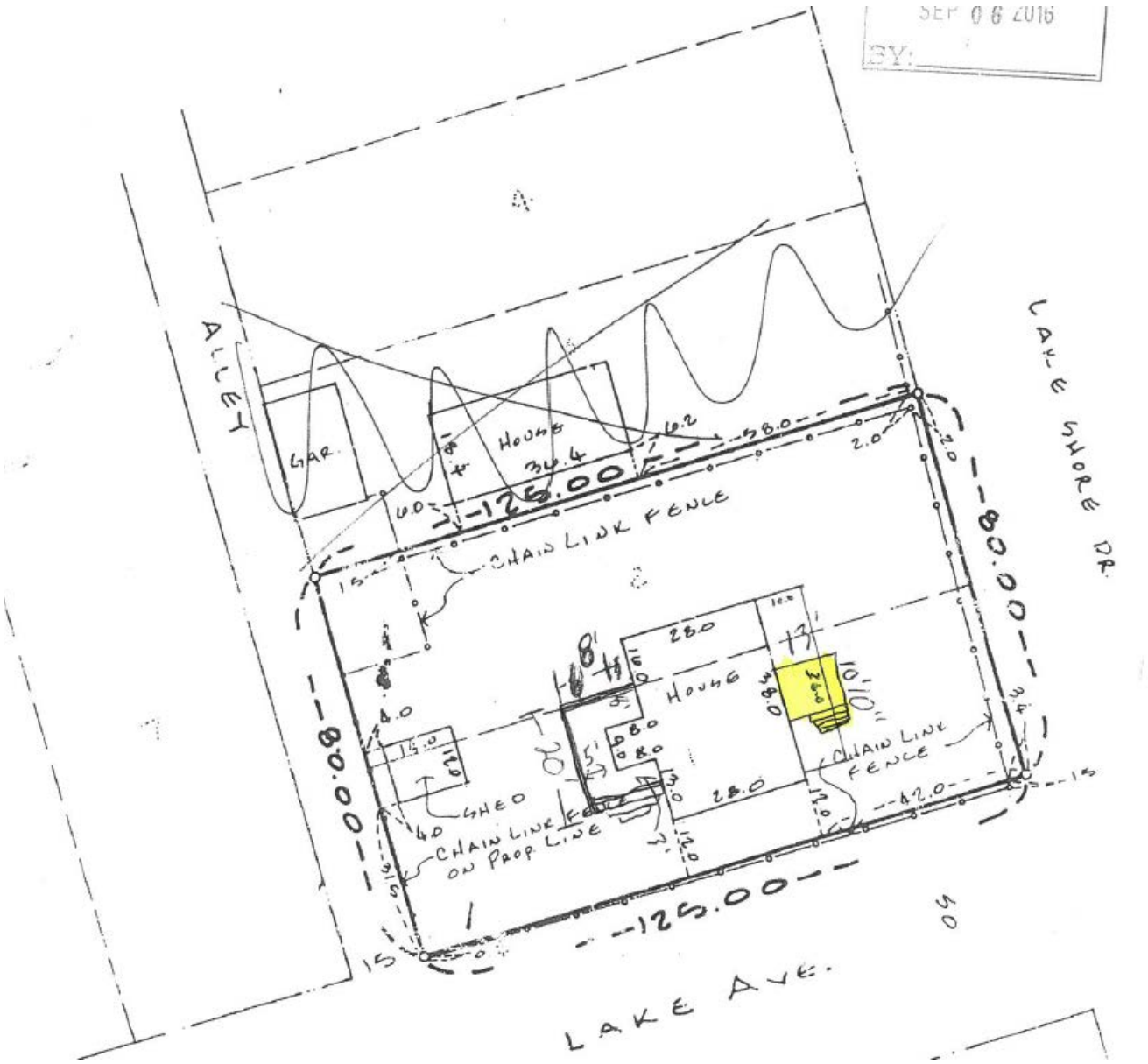

EXHIBIT D

PUBLIC HEARING NOTICE

CITY OF BIG LAKE
NOTICE OF PUBLIC HEARING FOR A VARIANCE

You are hereby notified that the Big Lake Planning Commission will hold a public hearing in order to consider allowing a deck that that encroaches roughly two (2) feet into the required front yard setback at 401 Lakeshore Drive. The public hearing will be held in the City Hall Council Chambers located at 160 Lake Street North on **Wednesday, November 2, 2016, at or about 6:30 p.m.**

Applicant: Joe Fowler
401 Lakeshore Drive

The Applicant owns a corner lot property which has front yards along both Lake Avenue and Lakeshore Drive. The Applicant constructed a 13' by 11' deck in his front yard along Lakeshore Drive without obtaining a permit. The deck is considered an expansion of a nonconforming structure since the house already does not meet setback requirements along Lake Avenue. The expansion of a nonconforming structure requires a variance. The deck itself is also nonconforming as it is located roughly 18 feet from the front property line and decks are required to be 20 feet from the front property line in the R-5 zoning district. The Applicant is seeking a variance that will allow him to retain the deck as he has built it.

Both oral and written comments will be considered by the Planning Commission. If you desire to be heard in reference to these matters, you should attend this hearing or submit written comments to City Hall prior to the hearing.

Michael Healy
City Planner
City of Big Lake

(West Sherburne Tribune) (October 22, 2016 Edition) (Small Legal)

CITY OF BIG LAKE
MINNESOTA

A general meeting of the City Council of the City of Big Lake, Minnesota was called to order by Mayor Raeanne Danielowski at 6:30 p.m. in the Council Chambers of City Hall, Big Lake, Minnesota, on Wednesday, December 14, 2016. The following Council Members were present: Raeanne Danielowski, Seth Hansen, Duane Langsdorf, Scott Marotz, and Mike Wallen. A motion to adopt the following resolution was made by Council Member _____ and seconded by Council Member _____.

BIG LAKE CITY COUNCIL
RESOLUTION NO. 2016-XX

RESOLUTION APPROVING VARIANCE
FOR DECK ADDITION AT 401 LAKESHORE DRIVE

WHEREAS, the Big Lake Planning Commission conducted a public hearing on Wednesday, December 7, 2016 to consider a development application for the following:

- Variance
  - Expansion of a nonconforming structure through the addition of a deck.
  - Increasing the non-conformity of a non-conforming structure by creating a new two (2) foot encroachment into a required front yard.

WHEREAS, notice of the public hearing on the development application was duly published and posted in accordance with the applicable Minnesota Statutes; and

WHEREAS, the Big Lake Planning Commission then proceeded to hear all persons interested in said development application and persons interested were afforded the opportunity to present their views and objections to the granting of said development applications; and

WHEREAS, the Big Lake Planning Commission made recommendation to the Big Lake City Council to approval the development application subject to conditions; and

WHEREAS, the Big Lake City Council makes the following Findings of Fact in support of granting approval of the development application:

1. The Planning Report dated December 14, 2016, shall be the governing document which includes the following attachments:

Attachment A: Site Location
Attachment B: Aerial Maps
Attachment C: Survey with Proposed Deck
Attachment D: Public Hearing Notice

2. Variance

a. That because of the particular physical surroundings, lot shape, narrowness, shallowness, slope or topographical conditions of the specific parcel of land involved, practical difficulties to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.

The structure was conforming when it was constructed in 1950. This creates a practical difficulty in that a variance would be required for any type of deck, even one that conforms to setback requirements. The Planning Commission believes that the lot's small size and orientation prevents the construction of a usable deck without the two (2) foot setback variance.

b. That the conditions upon which a petition for a variance is based are unique to the parcel of land for which the variance is sought and are not applicable, generally, to other property within the same zoning classification.

A variance is needed to expand the nonconforming structure because the house was built in 1950 before the City had setback requirements. The Planning Commission believes that because of the size and shape of this parcel, it is not possible to construct a "usable" deck without also allowing a two (2) foot setback variance.

c. That the purpose of the variance is not based exclusively upon a desire to increase the value or income potential of the parcel of land.

The purpose of the variance is to build a "usable" deck for the Applicant's personal enjoyment.

d. That the alleged practical difficulties are caused by this Ordinance and have not been created by any persons having an interest in the parcel of land and are not self-created difficulties.

The structure is nonconforming because of new setback requirements that were added to the Zoning Code after the home's construction. The Planning Commission believes that there is an additional practical difficulty in that the yard is small and there is not room to build a usable deck without the two (2) foot setback variance.

e. That the granting of the variance will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.

The granting of the variance will not adversely affect adjacent properties.

f. That the granting of the variance will not be detrimental to the public welfare or injurious to other land or improvements in the neighborhood in which the parcel of land is located.

The granting of the variance will not adversely affect adjacent properties.

g. The variance is the minimum action required to eliminate the practical difficulties.

The variance to expand a nonconforming structure is needed in order to construct any type of attached deck. The Planning Commission believes that the two (2) foot setback variance is also required in order to allow for the construction of a sufficiently "usable" deck.

h. The variance does not involve a use which is not allowed within the respective Zoning District.

Decks are allowed as attached accessory structures in the R-1 Single Family zoning district.

i. The variance is in harmony with the general purposes and intent of the Ordinance.

The intent of the Ordinance is to allow for decks but to require attractive front yards along all streets. The Planning Commission believes that the variance is in harmony with this intent.

j. The variance is consistent with the comprehensive plan.

The variance is consistent with the comprehensive plan's policy to improve existing housing stock through updates and renovation.

k. The property owner proposes to use the property in a reasonable manner not permitted by the Ordinance.

The property owner wishes to construct a deck, which is a very reasonable goal. Because it is an expansion of a nonconforming structure, the Ordinance does not permit the use automatically.

l. The variance will not alter the essential character of the locality.

The variance will not alter the essential character of the locality.

3. The request is acceptable subject to the conditions of approval outlined herein.

4. The application has been found consistent with the specific policies and provisions of the Big Lake Zoning and Subdivision Ordinance.

NOW THEREFORE BE IT FURTHER RESOLVED that the Big Lake City Council approves the development application, subject to the following conditions:

1. A building permit shall be submitted to the City and approved for this project.

2. In the event that the applicant fails to commence the construction of the project within one year of the date of variance approval, approvals shall be deemed null and void.

3. The new deck shall be allowed to project thirteen (13) feet from the front of the house towards the property line along Lakeshore Drive which will encroach roughly two (2) feet into the required 20-foot setback.

4. The deck must be uncovered and shall not be allowed to be roofed in the future.

5. Any other conditions recommended by the Planning Commission, Big Lake City Council, and other City staff.

Adopted by the Big Lake City Council this 14th day of December, 2016.

_____
Mayor Raeanne Danielowski

Attest:

_____
Gina Wolbeck, City Clerk

The following Council Members voted in favor:
The following Council Members voted against or abstained:

Whereupon the motion was duly passed and executed.

DRAFTED BY:
City of Big Lake
160 Lake Street North
Big Lake, MN 55309

STATE OF MINNESOTA)
)SS.
COUNTY OF SHERBURNE)

The foregoing instrument was acknowledged before me this _____ day of December, 2016 by the Mayor and City Clerk of the City of Big Lake, a Minnesota municipal corporation, on behalf of the corporation.

_____
Notary Public

LEGAL DESCRIPTION
FOR RECORDING PURPOSES

Lots 1 and 2, Block 4 & That Part of Vacated Lake Shore Drive, Shadywood Park Subdivision, Sherburne County, Minnesota.