Memorandum

7E

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

From: Michael Healy, City Planner

Date: December 14, 2016

Re: Deck Setback Variance at 5023 Bluff Road

Council Action Requested: **A motion to approve a resolution to approve, deny, or table the proposed variance for the construction of a deck at 5023 Bluff Road.**

BACKGROUND INFORMATION:

5023 Bluff Road is part of Mitchell Lake Ridge Second Addition. The lot was platted in 1999 and the home was built in 2000. The lot is a corner lot, which means that front yard setbacks are required along each of its two street frontages. The front of the house is oriented towards Bluff Road and the northern side of the house faces Ridge Road. The parcel is zoned R-1 Single Family Residential which means that a 30-foot front yard setback from the property line is required. This setback is required along each of the two street frontages. The house is set back 30.5 feet from the property line along Bluff Road and is set back 33 feet from the property line along Ridge Road. The house currently conforms to all setback standards.

The Applicant, Mr. Tom Provo, recently purchased the house at 5023 Bluff Road and is in the process of completely renovating it. He is refinishing the basement, remodeling the kitchen, and completing other significant repairs and improvements in order to prepare the house for himself and his wife to live in. The Applicant purchased the house after inspecting the property and determining that it would be able to support all of the features that he wanted in a house. The Applicant noticed that the house already had an elevated patio door, built by the original builder, which is installed in the dining room. The dining room wall is reinforced to support a future deck. After purchasing the house, the Applicant immediately visited City Hall and applied for a series of building permits including a permit to build a deck. His intent is to build an elevated deck projecting from the existing patio door area in the dining room area.

Unfortunately, the Applicant's dining room and patio door are located on the north side of the house, the side of the house that fronts Ridge Road. Because the patio door is only 33 feet away from the property line, the Applicant is only able to build a deck that extends three (3) feet out from the patio door. This would not result in a usable deck. The Applicant has requested a variance that would allow him to construct a deck that projects twelve (12) feet

from the patio door. This would result in a nine (9) foot setback encroachment and the edge of the deck would be only 21 feet from the property line instead of the required 30 feet.

SUMMARY OF PROJECT:

The Applicant is proposing to install a 12 x 12 elevated deck on the side of his house. The deck would jut out twelve (12) feet from the existing patio door. The deck platform will be accessible only from the house as no staircase is being proposed.

The following is a photograph taken of the existing patio door on the side of the house at 5023 Bluff Road:

PLANS:

The attached survey shows the lot dimensions and the approximate location of the proposed structure. Also included in the attachments is a graphic rendering of the proposed deck with its dimensions.

RELATION TO THE ZONING ORDINANCE:

As stated previously, the zoning code requires that principal structures in the R-1 zoning district be set back at least 30 feet from front lot lines. For corner lots, this 30-foot setback must be observed along each frontage. Attached decks that are higher than 30 inches off of the ground are considered part of the principal structure and must conform to the 30-foot setback requirement.

Staff would note that the current Big Lake Zoning Ordinance, adopted in 2002, mandates that homebuilders configure their site in such a way that there is room for a future deck that meets all setback requirements. This rule did not exist in 2000 when the Applicant's home was built. The rule's addition to the Code may have been a direct response to problems that were created by builders constructing homes with bad site configurations with "deck doors to nowhere" that did not leave enough space for a deck that meets setbacks. The relevant Code section reads as follows:

1040.03: SINGLE FAMILY DWELLINGS AND MANUFACTURED HOMES: *All single family detached homes and manufactured homes shall conform to the following standards:*

9. Provision shall be made for possible future decks, porches or additions that meet setback standards, as part of the initial building plans.

FINDINGS OF FACT:

1. 5023 Bluff Road is part of the Mitchell Lake Ridge Second Addition subdivision and was platted in 1999.
2. The property is in the R-1 Single Family Residential zoning district.
3. The property is a corner lot and has frontage along both Bluff Road and Ridge Road.
4. In the R-1 district, a 30-foot setback is required from all front lot lines. A 30-foot setback is therefore required from the property line along both Bluff Road and Ridge Road.
5. The house was constructed in 2000 and was built according to approved building plans.
6. The house was constructed with a 30.5-foot setback from Bluff Road and a 33-foot setback from Ridge Road.
7. The house was constructed with an elevated "patio door to nowhere." This door is located off of the dining room area and opens up into the required front yard along Ridge Road. The wall area around this patio door is reinforced to support a future deck.
8. In 2002, the City amended the zoning code to add a rule that "provision shall be made for possible future decks, porches, or additions that meet setback standards, as part of the initial building plans." This indicates that the City decided to take an active stand against site plans that have "deck doors to nowhere" but not enough yard space to actually install a deck.
9. The patio door is located exactly 33 feet from the property line along Ridge Road.
10. The Applicant could "as-of-right" only build a deck that projects three (3) feet from the patio door. Any additional projection would encroach into the required 30-foot setback.
11. The Applicant has a large back yard that has ample room for a deck or patio.
12. The Applicant's house is not currently configured to support access to a deck in the back yard. The house does not have a back door and the entire back of the house is bedroom space and garage space.
13. Access to a deck is typically provided by means of an access located in a kitchen, dining room, or other common area. It would be very unusual to have a deck access provided by a bedroom.
14. The house would have been required to be laid out differently if the City's 2002 rule were already in effect. The house would have needed to be laid out in a way that could support a future deck that meets setbacks.
15. With the site's existing layout, there is no practical way to construct a usable deck that opens from a common area.
16. In 2009, another property with an unusable "deck door to nowhere" was allowed to construct a 10' by 16' deck which encroached five (5) feet into the required rear yard

setback. The deck would have only been five (5) feet wide and therefore unusable if it was built to comply with setbacks.

17. Staff believes that the site's improper layout, which the Applicant unknowingly inherited when he purchased the property, presents a practical difficulty that requires a variance to mitigate.

DISCUSSION:

In determining the appropriateness 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.

   Because the lot is a corner lot and the site was improperly configured at the time of the home's construction, the lot cannot support the construction of a usable deck if the strict letter of the regulations is to be carried out.

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.

   Since 2002, the City has had a zoning code rule that "deck doors to nowhere" must be configured in such a way that there is room for a deck that meets setbacks. Most of the houses in this zoning district, including all houses built since 2002, are configured in such a way that a deck can be built that meets setbacks.

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 construct a usable deck for the enjoyment of the Applicant and his family.

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 "deck door to nowhere" that cannot support a usable deck that meets setbacks was inherited when the Applicant bought the house. The practical difficulty is not self-created. The Ordinance was strengthened in 2002 to clarify the City's rules on site configuration and affirm that the City wants each house to have the opportunity to build a future deck, porch, or addition that meets setbacks if there is room on the lot.

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 variance will not impede the supply of light and air.

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.

Many of the houses in this single-family neighborhood have decks.

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

The Planning Commission believes that the variance is the minimum action required to eliminate the practical difficulties.

It might be technically possible to eliminate the practical difficulty by building a staircase down from the patio door which would culminate in a patio or a platform. Patios and platforms only need to be five (5) feet away from property lines. This would still require a variance to accommodate the staircase, however, and this configuration would be far less user-friendly.

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

Decks are allowed in the R-1 district.

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

The intent of the Ordinance is to allow decks but to ensure that each property maintains an attractive front yard and that corner lot properties maintain an attractive yard along both frontages. This corner lot property will still have a 21-foot unencumbered "front" yard along Ridge Road.

j. The variance is consistent with the comprehensive plan.

The variance is consistent with the Comprehensive Plan.

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

It is reasonable to have a deck in the R-1 district. The poor configuration of the existing house prevents the deck from being built in full accordance with the Ordinance.

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

Many of the houses in the R-1 district have decks. The proposed improvement will not alter the essential character of the locality.

PLANNING COMMISSION PUBLIC HEARING ON DECEMBER 7, 2016

The Planning Commission held a public hearing. No members of the public were present. The Planning Commission discussed the deck and determined that there is a practical difficulty since the lot is configured poorly. They believe that the definition of "usable" varies depending on the lots individual characteristics. They motioned to recommend approval of the variance as requested and to allow a 12' by 12' deck with the condition that the deck must remain uncovered.

RECOMMENDATION:

Staff would recommend approval of a variance to allow the Applicant to build a deck. Staff believes that there is a practical difficulty in that the structure was built in 2000 with a poor site configuration that does not allow for a usable deck. The Applicant purchased the house after seeing the existing patio door and reinforced wall and reasonably assumed that there

was room to install a usable deck. The City now has a rule that builders must account for setbacks when they are setting up their site configuration.

Staff would note that the longstanding precedent has been to allow property owners in this type of situation to construct a “usable” deck but the definition of usable is somewhat subjective and a specific number has not been consistently adhered to. In 2009, a property owner was allowed to build a 10’ by 16’ deck that encroached five (5) feet into a setback by projecting 10 feet out from the back of the house.

The Planning Commission believes that 12’ by 12’ is an appropriate size deck to allow to eliminate the practical difficulty at 5023 Bluff Road. Therefore, Staff and the Planning Commission would support a variance with the following conditions:

- A building permit shall be submitted to the City and approved for this project.
- 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.
- The deck may extend up to 12 feet from the existing elevated patio door towards Ridge Road.
- The deck platform shall be no wider than 12 feet at any point.
- The deck must be uncovered and shall not be allowed to be roofed in the future.
- Any additional conditions placed upon the project by the Planning Commission or the City Council.

ACTION REQUIRED:

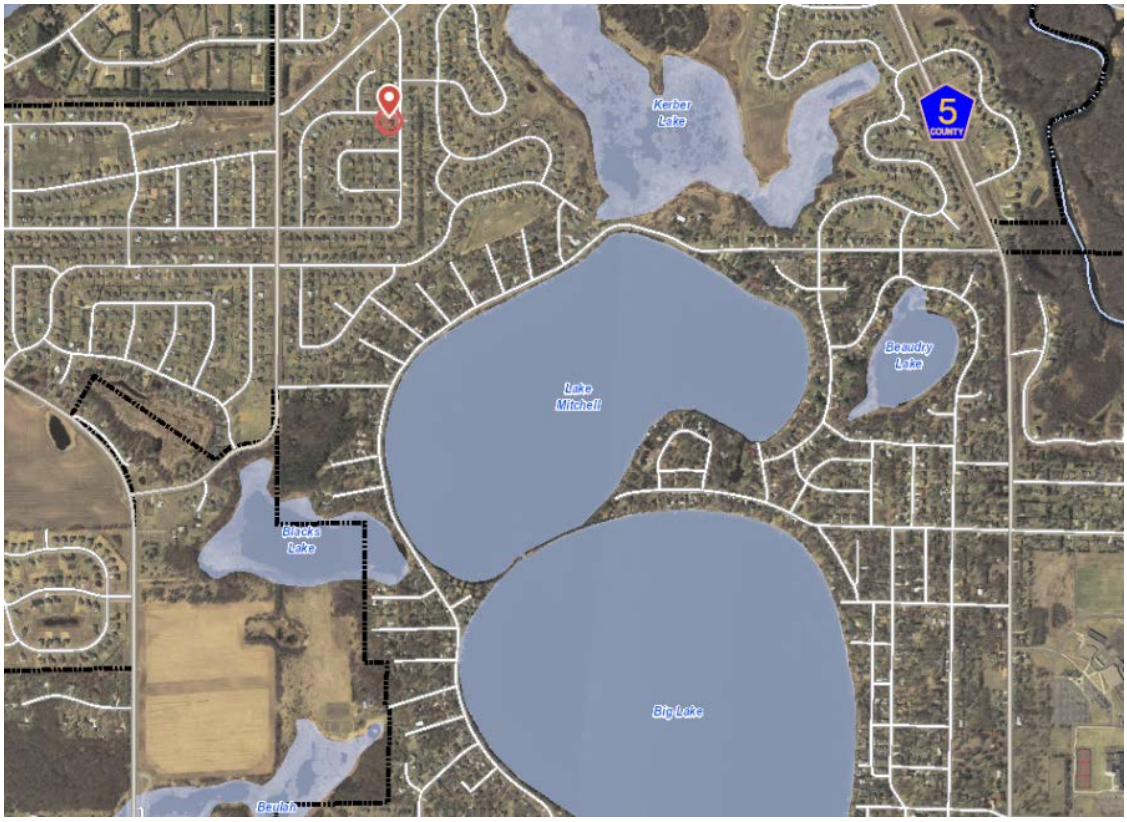
A motion to approve a resolution to approve, deny, or table the proposed variance for the construction of a deck at 5023 Bluff Road.

LIST OF ATTACHMENTS:

A – Location Aerial Maps
B – Certificate of Survey with Proposed Deck
C – Deck Plans
D – Public Hearing Notice

EXHIBIT A

LOCATION AERIAL MAPS



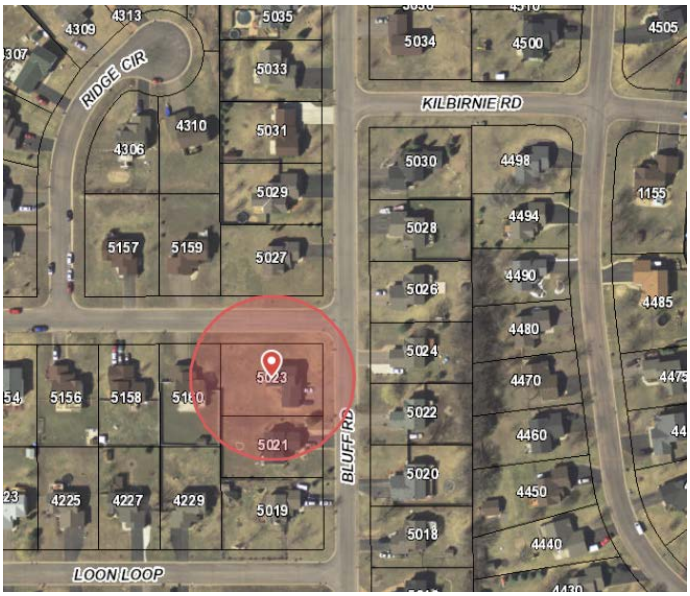


EXHIBIT B

CERTIFICATE OF SURVEY WITH PROPOSED DECK

Established in 1962

LOT SURVEYS COMPANY, INC.

LAND SURVEYORS

REGISTERED UNDER THE LAWS OF STATE OF MINNESOTA

7601 73rd Avenue North
Minneapolis, Minnesota 55428

612-560-3093
Fax No. 560-3522

INVOICE NO. 55137
F.B.NO. 848-31
SCALE: 1" = 20'

o Denotes Iron Monument
□ Denotes Wood Hub Set for excavation only
x000.0 Denotes Existing Elevation
(000.0) Denotes Proposed Elevation
Denotes Surface Drainage

NOTE: Proposed grades are subject to results of soil tests.
Proposed building information must be checked with approved building plan and development or grading plan before excavation and construction.

944.8 Proposed Top of Block
944.3 Proposed Garage Floor
941.6 Proposed Lowest Floor

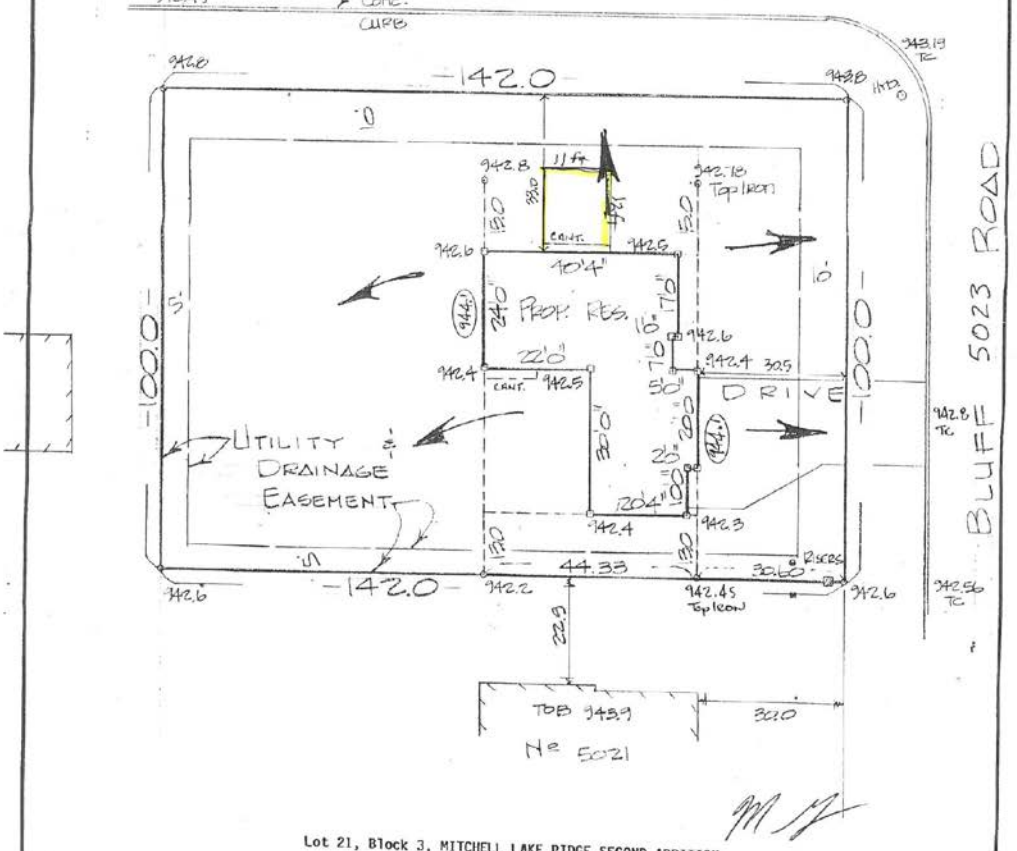
Type of Building
5 COURSE BASEMENT

Surveyors Certificate

M M HOME BUILDERS

Property located in Section 13, Township 33, Range 28, Sherburne County, Minnesota

OK per Grading Plan GPS.



Lot 21, Block 3, MITCHELL LAKE RIDGE SECOND ADDITION

The only easements shown are from plats of record or information provided by client.

We hereby certify that this is a true and correct representation of a survey of the boundaries of the above described land and the location of all buildings and visible encroachments, if any, from or on said land.

Surveyed by us this 2nd day of December 19 99

Signed

Charles F. Anderson, Minn. Reg. No.21753 or
Gregory R. Prosch, Minn Reg No. 24992

EXHIBIT C

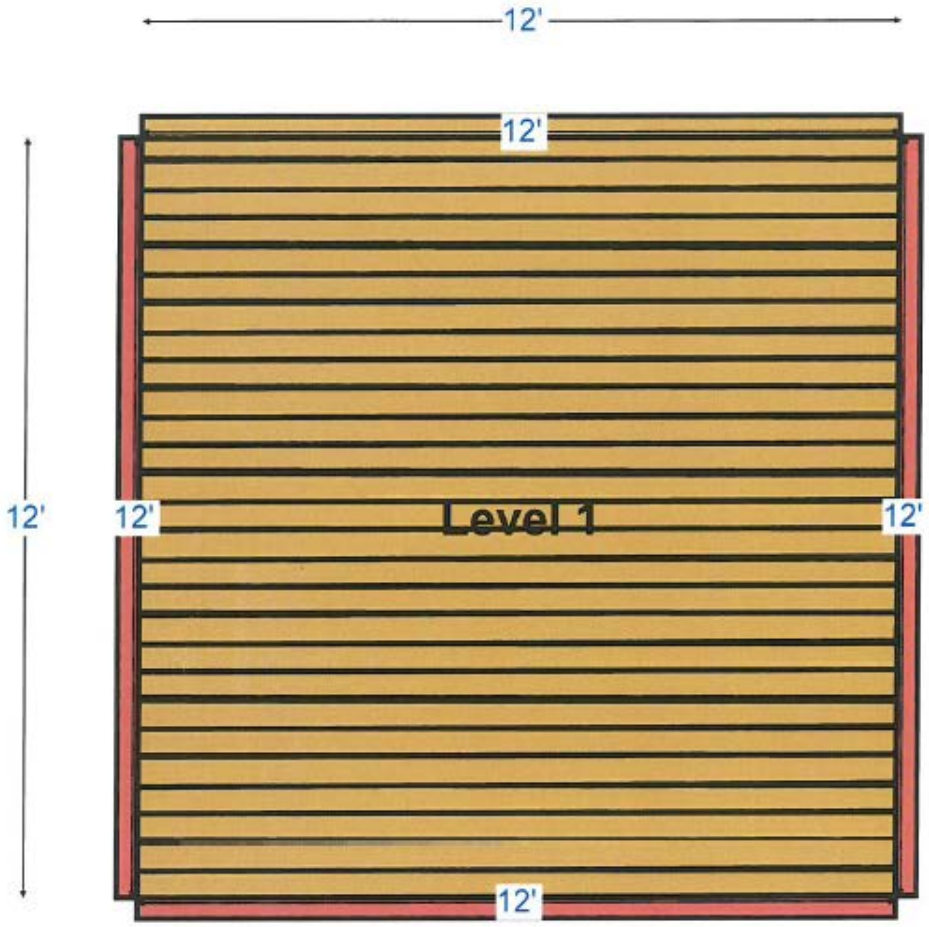
DECK PLANS

Design Id: Design Not Saved
Estimate Id: 79542

MENARDS Design-It Deck

09/26/16

RECEIVE
OCT 19 2016
BY:



Wall Attached | Railing

ATTACHMENT 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 the construction of a deck that encroaches nine (9) feet into a required front yard for the corner lot property at 5023 Bluff Road. The public hearing will be held in the City Hall Council Chambers located at 160 Lake Street North on **Wednesday, December 7, 2016, at or about 6:30 p.m.**

Applicant: Tom Provo
5023 Bluff Road

The Applicant recently purchased the corner lot property at 5023 Bluff Road which has frontage along both Bluff Road and Ridge Road. The structure is required to maintain a 30-foot setback from the property line along each road. The existing house was built in 2000 and currently conforms to setback requirements. The side of the house along Ridge Road was built with a reinforced wall and patio door to support the construction of a future deck. The builder configured the site incorrectly, however, and only left thirty-three (33) feet between the patio door and the property line. The Applicant can therefore only build a deck that projects out three (3) feet from the patio door and this would not be enough space to construct a usable deck. The Applicant is seeking a variance that would allow him to build a deck that projects twelve (12) feet from the existing patio door which would require an encroachment of nine (9) feet into the required 30-foot setback.

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) (November 26, 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 5023 BLUFF ROAD

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

- Variance
  - Allowing a roughly nine (9) foot encroachment into a required front yard on the non-driveway side of a corner lot to allow a usable deck to be constructed off of an existing elevated patio door.

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 and Aerial Maps
Attachment B: Survey with Proposed Deck Drawn On
Attachment C: Deck Plans
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.

Because the lot is a corner lot and the site was improperly configured at the time of the home's construction, the lot cannot support the construction of a usable deck if the strict letter of the regulations is to be carried out.

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.

Since 2002, the City has had a zoning code rule that "deck doors to nowhere" must be configured in such a way that there is room for a deck that meets setbacks. Most of the houses in this zoning district, including all houses built since 2002, are configured in such a way that a deck can be built that meets setbacks.

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 construct a usable deck for the enjoyment of the Applicant and his family.

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 "deck door to nowhere" that cannot support a usable deck that meets setbacks was inherited when the Applicant bought the house. The practical difficulty is not self-created. The Ordinance was strengthened in 2002 to clarify the City's rules on site configuration and affirm that the City wants each house to have the opportunity to build a future deck, porch, or addition that meets setbacks if there is room on the lot.

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 Planning Commission believes that the variance is the minimum action required to eliminate the practical difficulty.

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 decks but to ensure that each property maintains an attractive front yard and that corner lot properties maintain an attractive yard along both frontages. This corner lot property will still have a 21-foot unencumbered "front" yard along Ridge Road.

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.

It is reasonable to have a deck in the R-1 district. The poor configuration of the existing house prevents the deck from being built in full accordance with the Ordinance.

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

The R-1 zoning district is the City's standard zoning district for single family residential properties. Many houses in this zoning district have attached decks

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 deck may extend up to 12 feet from the existing elevated patio door towards Ridge Road.

4. The deck platform shall be no wider than 12 feet at any point.

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

6. 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

Lot 21, Block 3, Mitchell Lake Ridge Second Addition