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CITY OF ORONO
RESOLUTION OF THE CITY COUNCIL
NO. **7197**

**A RESOLUTION
APPROVING VARIANCES FROM
MUNICIPAL ZONING CODE
SECTIONS 78-305; 78-1279; and 78-1680**

FILE NO. LA21-000030

WHEREAS, on April 20, 2021, Thomas C. Bergstrom and Kathryn A. Bergstrom, husband and wife (hereinafter the "Applicants"), applied for variances from the City Code for the property addressed **1509 Long Lake Boulevard** and legally described as:

Lot 22, and the East half of Lot 21, ALBEE'S LONG LAKE ADDITION, Hennepin County, Minnesota (hereinafter the "Property");

WHEREAS, the Applicants have made application to the City of Orono for a variance to Orono Municipal Zoning Code Section 78-305 to allow construction of a deck within the 50-foot rear, street setback; and

WHEREAS, the Applicants have made application to the City of Orono for a variance to Orono Municipal Zoning Code Section 78-1279 to allow to allow construction of a deck within the 75-foot lake setback; and

WHEREAS, the Applicants have made application to the City of Orono for a variance to Orono Municipal Zoning Code Section 78-1680 to allow construction of a deck resulting in approximately 17 square feet of additional hardcover within the 75-foot setback where 80 square feet currently exist and no hardcover is permitted; and

WHEREAS, on May 17, 2021, after published and mailed notice in accordance with Minnesota Statutes and the City Code, the Planning Commission held a public hearing, at which time all persons desiring to be heard concerning this application were given the opportunity to speak thereon; and

WHEREAS, on May 17, 2021, the Planning Commission recommended denial of the variances finding no practical difficulty to support additional hardcover within the 75-foot setback area; and

WHEREAS, following the Planning Commission meeting, the Applicants made modifications to the proposed plan resulting in a reduction in the overall 75-foot hardcover with the proposal; and



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WHEREAS, on June 14, 2021, the City Council reviewed the revised application and the recommendations of the Planning Commission and City staff and, based on the overall net reduction of hardcover, directed preparation of findings for approval of the variances.

NOW, THEREFORE, BE IT RESOLVED that the City Council of Orono, Minnesota hereby approves the requested variances as amended and described above based on one or more of the following findings of fact concerning the Property:

FINDINGS OF FACT:

1. This application was reviewed as Zoning File #LA21-000030. The analysis contained within staff memos and the exhibits attached to the aforesaid memos, all minutes from the above mentioned meetings, and any and all other materials distributed at these meetings are hereby incorporated by reference.
2. The Property is located in the LR-1A, Single Family Lakeshore Residential Zoning District.
3. The Property contains 0.37 acres in area and has a defined lot width of 130 feet at the OHWL and 116 feet at the 75-foot setback.
4. The Property is within Tier 1 and hardcover is limited to 25% according to the Stormwater Quality Overlay District.
5. Applicant has applied for the following variances:
 - a. Hardcover within the 75-foot Setback Variance
 - b. Rear, Street Setback Variance
 - c. 75-foot Lake Setback Variance
6. In considering this application for variances, the Council has considered the advice and recommendation of the Planning Commission and the effect of the proposed variances upon the health, safety and welfare of the community, existing and anticipated traffic conditions, light and air, danger of fire, risk to the public safety, and the effect on values of property in the surrounding area.

ANALYSIS:

1. "Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance" The rear and lake yard setback variances are in harmony with the purpose of the ordinance. The lot has topographic challenges as well as an extreme curved right-of-way and shoreline virtually eliminating the building envelope on the property.



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2. "Variances shall only be permitted . . . when the variances are consistent with the comprehensive plan." The variances resulting in a permit for construction of a residential deck within a residential zone are consistent with the Comprehensive Plan.

3. "Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. 'Practical difficulties,' as used in connection with the granting of a variance, means that:

- a. *The property owner in question proposes to use the property in a reasonable manner, however, the proposed use is not permitted by the official controls.*

The request to permit construction of the deck addition on the substandard lot, in the proposed location within the rear yard and lake yard setbacks seems reasonable as the Property has extreme topography, curve of the shoreline, and shape of the lot result in challenges for development. The enlarged deck will allow the Applicants to create an outdoor living space on the Property where it is difficult to utilize the lake yard. The elevated deck and proposed removal of hardcover will also provide more infiltration opportunities for stormwater before it reaches Long Lake.

- b. *The plight of the landowner is due to circumstances unique to his property not created by the landowner.*

The configuration and shape of the lot were not created by the owners. Variances were granted in 2018 to construct a new home on the Property Resolution No. 6877. The uniqueness found in the shape, size, slope, and proximity to the lake are difficulties which support granting of the variance for the additional deck space. The proposed deck expansion is located within the footprint of the previously existing home on the Property.

- c. *The variance, if granted, will not alter the essential character of the locality."*

The variances permitting the deck addition will not alter the character of the neighborhood. Many of the surrounding homes have decks on the lake side of their home. It does not appear that the setback variances will adversely impact the adjacent property owners or views of the Property from the lake.

4. "Economic considerations alone do not constitute practical difficulties." *Economic considerations have not been a factor in the variance approval determination.*



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5. "Practical difficulties also include but are not limited to inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth-sheltered construction as defined in Minn. Stat. § 216C.06, subd. 2, when in harmony with Orono City Code Chapter 78." *This condition is not applicable.*
6. "The board or the council may not permit as a variance any use that is not permitted under Orono City Code Chapter 78 for property in the zone where the affected person's land is located." *This condition is not applicable as a residential improvement is permitted in the LR-1A zoning district.*
7. "The board or council may permit as a variance the temporary use of a one-family dwelling as a two-family dwelling." *This condition is not applicable.*
8. "The special conditions applying to the structure or land in question are peculiar to such property or immediately adjoining property." *The lot size and shape, proximity to the lake, and the topography are particular to the Property and surrounding properties within this immediate neighborhood.*
9. "The conditions do not apply generally to other land or structures in the district in which the land is located." *The setbacks of adjacent homes in the neighborhood are somewhat similar to the Property, as well as the conditions specifically impacting the Property. The lot size and shape, topography, home proximity to the lake, and the required 50-foot street setback generally apply to the other substandard properties in this immediate LR-1A neighborhood.*
10. "The granting of the application is necessary for the preservation and enjoyment of a substantial property right of the applicant." *The owner indicates that granting the variances are necessary for the preservation of their property right.*
11. "The granting of the proposed variance will not in any way impair health, safety, comfort or morals, or in any other respect be contrary to the intent of this chapter." *Granting the variances to allow construction of additional deck area while reducing the level of nonconforming hardcover in the lake yard is not likely to impair health, safety, and comfort and is not contrary to the intent of the zoning chapter.*
12. "The granting of such variance will not merely serve as a convenience to the applicant, but is necessary to alleviate demonstrable difficulty." *The substandard area and width of the Property; shape and depth of the lot; steepness of the lot; and unique shoreline configuration create practical difficulties affecting the Property; the variances are necessary and do not merely serve as a convenience to the owner.*



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CONCLUSIONS, ORDER AND CONDITIONS:

Based upon one or more of the above findings, the Orono City Council hereby grants the following:

- A variance from Section 78-305 to allow construction of a deck within the 50-foot rear, street setback; and
 - A variance from Section 78-1279 to allow to allow construction of a deck within the 75-foot lake setback; and
 - A hardcover variance from Section 78-1680 resulting in a reduction of hardcover within the 75-foot setback where 330 square feet of hardcover currently exists and 238 square feet is proposed to construct a deck expansion; subject to the following conditions:
1. Council approval is based on the entire record, above Findings.
 2. The approved project shall conform to the survey and deck plan submitted by the Applicants and annotated by City staff, attached to this Resolution as **Exhibits A & B**.
 3. Any amendments to the plans which are not in conformity with City codes may require further Planning Commission and City Council review.
 4. Authorities granted by this resolution run with the Property not with the Applicants, but are permissive only and must be exercised by obtaining a building permit for the new construction and commencing construction of said project. A building permit must be obtained within one year of the date of Council approval, or the variance will expire on that date (June 28, 2022).
 5. Violation of or non-compliance with any of the terms and conditions of this resolution may result in the termination of any authority granted herein.

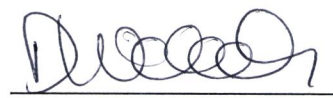
ADOPTED by the Orono City Council on this 28th day of June, 2021.

ATTEST:



Anna Carlson, City Clerk

CITY OF ORONO:



Dennis Walsh, Mayor

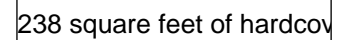
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Exhibit A



(F) RFT. WALL 28 SF EXCLUDABLE

↑ Lake



Spiral Staircase

64" Circumference

Proposed

12'

18'

4'

Existing

14'

6'

12' 6"

House

Road

