

**CITY OF LAKE ELMO  
WASHINGTON COUNTY STATE  
OF MINNESOTA**

**RESOLUTION NO 2019-093**

*A RESOLUTION APPROVING VARIANCES TO ALLOW AN ADDITION WHICH WOULD NOT MEET THE FRONT AND SIDE YARD SETBACKS, ON A LEGAL NON-CONFORMING STRUCTURE, FOR THE PROPERTY LOCATED AT 2038 INWOOD AVE.*

**WHEREAS**, Haupheng Vang and Vance Vang (the “Applicant”) has submitted an application to the City of Lake Elmo (the “City”) for a variance(s) to allow the construction of an addition onto a legal non-conforming structure which will not meet the front and side yard setback within the Residential Estate Zoning District for the property located at 2038 Inwood Ave, Lake Elmo MN 55042 (21.029.21.34.0013) (the “Property”); and

**WHEREAS**, notice has been published, mailed, and posted pursuant to the Lake Elmo Zoning Code, Section 154.109; and

**WHEREAS**, the Lake Elmo Planning Commission held a public hearing on said variances on November 13<sup>th</sup>, 2019; and

**WHEREAS**, the Lake Elmo Planning Commission has submitted its report and recommendations with respect to the requested variances to the City Council as part of the City Staff Memorandum dated December 17<sup>th</sup>, 2019; and

**WHEREAS**, the City Council considered the variances at its December 17<sup>th</sup>, 2019 meeting; and

**NOW, THEREFORE**, based on the testimony elicited and information received, the City Council makes the following:

**FINDINGS**

- 1) That the procedures for obtaining a variance are found in the Section 154.109 of the Lake Elmo Zoning Code.
- 2) That all submission requirements of Section 154.109 of the Lake Elmo Zoning Code have been met by the Applicants.
- 3) That there is an existing legal non-conforming structure on site which the property owners would like to construct an addition onto. The proposed addition requires variances consisting of the following:
  - a) Minimum Structure Setback from the front property line – Allowing a 50 ft. 9 in. setback
  - b) Minimum Structure Setback from the North side lot line – Allowing a 27 ft. 11 in. setback

4) **Practical Difficulties** A variance to the provision of this chapter may be granted by the Board of Adjustment upon the application by the owner of the affected property where the strict enforcement of this chapter would cause practical difficulties because of circumstances unique to the individual property under consideration and then only when it is demonstrated that such actions will be in keeping with the spirit and intent of this chapter. Definition of practical difficulties;

“Practical difficulties” as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control”

- **Variance For Front Yard Setback:** *With respect to the proposed variance for a reduced setback from the front lot line, strict enforcement of the City's zoning regulations will cause practical difficulties and the applicant is proposing to use the property in a reasonable manner. The request to expand the existing home on site does appear to be reasonable. Considering that the home is existing and the development was established around the home, property owners would be limited when it comes to improvements that could comply with the code. Also, the addition does not further increase the non-conformity to the front lot line, the reduced setback does appear reasonable.*

- **Variance For Side Yard Setback:** *With respect to the proposed variance for a reduced setback from the side lot line, strict enforcement of the City's zoning regulations will cause practical difficulties and the applicant is proposing to use the property in a reasonable manner. With the Residential Estate requiring a minimum of 50 ft. as a setback from the side lot line, which is the largest of all rural zoning districts only being less restricting than the Agricultural district, which requires a 100 ft. setback. The City must also keep in mind that perhaps there is an alternative to the request to avoid a variance. But placing the addition to the South of the existing home would more than likely infringe on the existing driveway, access to the garage, and possibly the septic system. The addition to the north does appear reasonable and they are still able to maintain a 27 ft. and 9 in. setback from the north property line.*

5) **Unique Circumstances** the plight of the landowner is due to circumstances unique to the property not created by the landowner;

- **Variance For Front Yard Setback:** *With respect to the proposed variance for the front yard setback, the plight of the Applicant is unique and has not been caused by the applicant. Although the lot is large enough to accommodate the size of home that is desired the applicant was not involved with the construction/placement of the existing house or with the platting process that triggered this home to become legal non-conforming. With the structure being legal non-conforming, additions become difficult especially with when the required setback is 100 ft. The location to the roadway is no fault of the property owner. Furthermore, given the circumstances, approval for the addition on the structure with a setback less than 100 ft. from the front lot line does appear to be reasonable.*

- **Variance For Side Yard Setback:** *With respect to the proposed variance for the side yard setback, the plight of the Applicant is unique and has not been caused by the applicant. Generally speaking property owners do not have to contend with legal non-conforming structures and it appears that there was little anticipation to one day build onto the existing structure. Although the home as existing, is capable of meeting the required setback from the northern side lot line there is limited room and options to expand to the north. Beyond this, it is impractical to expand the structure to the south where the setbacks can be met. This is justified because an expansion would then be to conflict with the driveway, garage, and the driveway would be forced south towards where the drain field is located. The standard appears to be met.*

6) **Character of Locality** the proposed variance will not alter the essential character of the locality in which the property in question is located;

- **Variance For Front Yard Setback:** *With respect to the proposed variance for the front yard setback, the addition would not appear to alter the character of the locality. Though affiliated with the Torre Pines Development the home primarily appears to have a limited impact on the development due to its location in the rear of the lot, as compared to the other homes. Allowing a variance to the front lot line appears to have limited bearing on the character of the locality.*
- **Variance For Side Yard Setback:** *With respect to the proposed variance for the side yard setback, the addition would not appear to alter the character of the locality. The City recognizes that allowing a reduced setback for the side yard lot line would be different from what has been allowed by the Zoning Code and the Locality. However, understanding that this was the original home in the subdivision and given its location on the property being able reasonably notice the setback form within the development appears stretched.*


7) **Adjacent Properties and Traffic** the proposed variance will not impair an adequate supply of light and air to properties adjacent to the property in question or substantially increase the congestion of the public streets or substantially diminish or impair property values within the neighborhood;

- **Variance For Front Yard Setback:** *With respect to the proposed variance for the front yard setback, the proposed variance will not impair an adequate supply of light and air to the adjacent property or substantially increase congestion of the public streets or substantially diminish property values. Drawing a conclusion that allowing a variance from the front property line would cause negative impacts appears limited in this situation when reviewed through the required scope. Since the home is on the opposite side of the lot of where the neighborhood road is located the impacts of the proposal would be severely limited.*
- **Variance For Side Yard Setback:** *With respect to the proposed variance for the side yard setback, the proposed variance will not impair an adequate supply of light and air to the adjacent property or substantially increase congestion of the public streets or substantially diminish property values. The only property that would be perceivably impacted is the property to the north (vacant). However, there would still be an estimated 77 ft. setback (or more) from the proposed home addition and a new home on the neighboring property to the north (8381 21<sup>st</sup> N.). There is also a strong stand of trees on the northern not that further helps to minimize the visibility of the structure. Although the required setback is being infringed on there still appears to be a sufficient setback to accommodate approval. Furthermore, allowance of the reduced setback appears to have a limited bearing on reducing property values when it comes to the setback.*

CONCLUSIONS AND DECISION

1. The applicant shall vacate the existing driveway and install a new driveway access onto 21st Street.
2. The applicant shall follow up with the Valley Branch Watershed District regarding permitting and provide their conclusion to City Staff. If a permit is required then an approved permit shall be provided to the City prior to issuance of the building permit.
3. The applicant shall follow up with Washington County Septic Department regarding permitting and provide their conclusion to City Staff. If a permit is required then an approved permit shall be provided to City Staff prior to issuance of a building permit.
4. Additional internal alterations to the home may require a permit, before altering internal spaces of the home the applicant must follow up with the building department for possible permitting requirements.

Passed and duly adopted this 17<sup>th</sup> day of December, 2019 by the City Council of the City of Lake Elmo, Minnesota.

  
Mike Pearson, Mayor

ATTEST:

  
Julie Johnson, City Clerk