

**Birchwood Village
Regular Council Meeting**

April 11, 2017

Supplemental Packet

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Variance Case No. 17-01-VB
191 Wildwood Ave
Resolution No. 2017-15

**CITY OF BIRCHWOOD VILLAGE
MEMORANDUM**

TO: Birchwood Village City Council
FROM: Tobin Lay, City Administrator
DATE: Tuesday, April 11, 2017
CASE NO: 17-01-VB
APPLICANT: Bill Rust, Rust Architects
LOCATION: 191 Wildwood Avenue

REQUEST

The Applicant is requesting a variance from City Code 302.020 to allow for a 6 foot 9½ inch variance from the 10 foot side yard setback requirement to demolish and construct a new deck. He also requests a variance from City Code 302.050 to allow for a 6.8% variance from the maximum 25% impervious surface coverage allowed for the lot.

This property currently does not conform to City Code 302.020 and 302.050 because the existing house already encroaches slightly on the side yard setback by 0.2 feet and the existing impervious surface coverage of the lot is at 32.9%. If approved, this project will encroach an additional 3½ feet on the side yard setback. The project will reduce, however, the impervious surface coverage of the lot by 1.1%; from 32.9% to 31.8%.

The proposed project includes replacing an existing deck with a large deck that includes a narrow side deck measuring 3½ feet wide and less than 18' long. The proposed project also includes an eyebrow side and back roof between the first and second floors. The back roof would only increase the impervious surface of the lot slightly.

Any increase to impervious surface coverage will be mitigated by the removal of existing impervious surfaces and the installation of new pervious pavers.

Furthermore, the design of the deck extension allows the grill to be hidden next to the existing structure. The addition of eyebrow roofs and hiding the grill out of the neighbor's sightlines will preserve the essential character of the locality.

SITE CHARACTERISTICS

The subject site is 11,020-square feet in size. The property is a narrow undersized lot that contains a single-family residence with a three-stall, unattached garage. The property abuts the lake on the north and Wildwood Avenue on the south.

PRACTICAL DIFFICULTY

- 1) The lot is extremely narrow and long, leaving little side yard to work with. Even the existing house encroaches on the side yard setback by 0.2 feet.
- 2) The position of a mature backyard tree prevents the deck from being pushed further into the backyard than is being proposed.

STATUTORY REQUIREMENTS FOR PERMITTING VARIANCES

Minnesota State Statute 462.357 allows for a variance to be permitted only when: (1) The proposed use is in harmony with the general purposes and intent of the City's zoning ordinance; (2) The variance is consistent with the City's comprehensive plan; and, (3) The applicant establishes that there are practical difficulties in complying with the zoning ordinance. Statutory criteria used to establish a practical difficulty include: (a) The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; (b) The plight of the landowner is due to circumstances unique to the property not created by the landowner; and (c) The variance, if granted, will not alter the essential character of the locality.

ANALYSIS

Although the property located at 191 Wildwood Avenue is classified as non-conforming and the proposed project would increase that non-conformity, the property is an extremely narrow lot. City Code 302.015 allows undersized lots to be utilized for single-family detached dwelling purposes provided the measurements of such area, width, or open space are at least 60% of that required.

This project proposes a 3½ foot side yard setback variance. That would place the completed deck 6 feet 9½ inches from the side yard property line. This is within the 60% allowed under 302.015.

Furthermore, although the proposed project would leave the impervious surface coverage of the lot at 31.8%, above the 25% maximum allowed for the lot, this would be a 1.1% reduction from the existing impervious surface coverage. The mitigating

measures in the project would reduce the impervious surface from 32.9% to 31.8%, bringing it into closer alignment with 302.050.

JUSTIFICATION FOR RECOMMENDING VARIANCE APPROVAL

This lot is an extremely narrow lot that provides little side yard space to work with. Because of how narrow this and neighboring lots are, the homes are almost completely hidden from the street by the garages that fill almost the entire width of the property.

Furthermore, a mature backyard tree on this lot prevents the deck from extending further into the backyard than is proposed in this project. Allowing a narrow side deck will provide a storage space for the grill that will keep the grill out of the neighbor's site lines.

Additionally, this project proposes to decrease the lot's impervious surface coverage by removing existing impervious surface and including pervious pavers. On these narrow lake lots, it is difficult to align with 302.050 but this project would bring the property closer into alignment with it.

Finally, 302.015 specifically provides a 60% allowance to undersized lots to be utilized for single-family detached dwelling purposes.

Accordingly, this project meets the 302.015 60% allowance, would preserve the essential character of the locality, and would even decrease the impervious surface coverage of the property.

JUSTIFICATION FOR RECOMMENDING VARIANCE DENIAL

A primary goal of the City of Birchwood Village's Zoning Ordinance is "to ensure that a non-conforming use is not intensified and that, over time, the non-conforming use will, where possible, be brought into conformity with the Zoning Code." If this variance were to be approved, the deck located at 191 Wildwood Avenue would not conform to the current zoning code for a normal sized lot. Therefore, it could be argued that the applicant's proposed use is not in harmony with the general purposes and intent of the City's Zoning Ordinance. 302.015 makes an exception to the zoning code, however, for undersized lots.

CONDITIONS

The requested variance may be approved, subject to the following conditions:

1. All application materials, maps, drawings and descriptive information submitted with this application shall become part of the building permit.
2. Per City Code 304.090, the variance shall become null and void if the project has not been completed or utilized within one year after the date it was granted, subject to petition for extension by the City Council.
3. The applicant shall obtain a building permit prior to beginning construction.
4. The applicant shall verify their property lines and have the property pins exposed at the time of inspection.
5. Land alteration may not cause adverse impact upon or result in additional drainage onto abutting property or White Bear Lake. The applicant shall install gutters or employ other solutions should drainage issues arise.
6. The applicant shall confirm with the power company the necessary distance from the overhead power lines prior to construction if needed.

Recommendation by Planning Commission

Planning Commission has voted 5-0 in favor of recommending this variance to Council subject to the following conditions:

- 1) The pervious pavers included in this project must be the most permeable available, as approved by the City Engineer
- 2) The eyebrow side roof overhang must be equal to or less than the main roof overhang
- 3) The area of added impervious surface caused by the additional overhang from the new eyebrow back roof must be offset by the new pervious paver area.

ATTACHMENTS

1. Draft Resolution of Approval
2. Application Form
3. Applicant's Narrative
4. Current Survey and Survey with Proposed Deck Addition
5. Site/Elevation Plans
6. City Code 302.015, 302.020 and 302.050

RESOLUTION NO. 2017-15

**RESOLUTION APPROVING A VARIANCE FROM
THE CITY OF BIRCHWOOD VILLAGE ZONING CODE
FOR 191 WILDWOOD AVENUE**

WHEREAS, a proposal (17-01-VB) has been submitted by Bill Rust at Rust Architects on behalf of Steve and Nancy Ferry to the City Council requesting a variance from the City of Birchwood Village at the following site:

ADDRESS: 191 Wildwood Avenue

WHEREAS, THE APPLICANT SEEKS THE FOLLOWING: A variance from City Code 302.020 to allow for a 6 foot 9½ inch variance from the 10 foot side yard setback requirement to demolish and construct a new deck. And a variance from City Code 302.050 to allow for a 6.8% variance from the 25% maximum impervious surface coverage allowed for the lot because the project will decrease the impervious surface coverage by 1.1% from existing coverage; and

WHEREAS, the Planning Commission has held a public hearing as required by the City Zoning Code on March 9, 2017; and

WHEREAS, the request was determined to be reasonable and not out of character with the immediate neighborhood and City's Comprehensive Plan; and

WHEREAS, the City Council has considered the advice and recommendations of the Planning Commission regarding the effect of the proposed variance upon the health, safety, and welfare of the community and its Comprehensive Plan, as well as any concerns related to compatibility of uses, traffic, property values, light, air, danger of fire, and risk to public safety in the surrounding areas;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Birchwood Village after reviewing the proposal, that the City Council accepts and adopts the following findings of the Planning Commission:

1. That granting the variance will be in harmony with the general purpose and intent of this Code.
2. That granting the variance will not impair an adequate supply of light or air to adjacent property, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, or welfare of the residents of the City.
3. That the non-conforming use of neighboring lands, structures, or buildings is not the sole grounds for issuance of the variance.

FURTHER, BE IT RESOLVED, that the City Council of the City of Birchwood Village hereby approves the requested variance subject to the following conditions:

1. All application materials, maps, drawings and descriptive information submitted with this application shall become part of this permit.
2. Per Section 304.090, the variance shall become null and void if the project has not been completed or utilized within one (1) year after the date it was granted, subject to petition for extension by the City Council.
3. The applicant shall obtain a building permit prior to beginning construction.
4. The applicant shall verify their property lines and have the property pins exposed at the time of inspection.
5. Land alteration may not cause adverse impact upon or result in additional drainage onto abutting property or White Bear Lake. The applicant shall install gutters or employ other solutions should drainage issues arise.
6. Water service line must be sized appropriately for proposed additions.
7. The applicant shall confirm with the power company the necessary distance from the overhead powerlines prior to construction.
8. The pervious pavers included in this project must be the most permeable available, as approved by the City Engineer.
9. The eyebrow side roof overhang must be equal to or less than the main roof overhang.
10. The area of added impervious surface caused by the additional overhang from the new eyebrow back roof must be offset by the new pervious paver area.

The foregoing resolution, offered by _____ and supported by _____, was declared carried on the following vote:

Ayes:
Nays:
Absent:

ATTEST:

Mary Wingfield, Mayor

Tobin Lay, City Administrator

Approval is contingent upon execution and return of this document to the City Administrator.
I have read and agree to the conditions of this resolution as outlined above.

Applicant's Signature

Date

Variance Case No. 17-02-VB

441 Lake Ave

Resolution No. 2017-16

**CITY OF BIRCHWOOD VILLAGE
MEMORANDUM**

TO: Birchwood Village City Council
FROM: Tobin Lay, City Administrator
DATE: Tuesday, April 11, 2017
CASE NO: 17-02-VB
APPLICANT: Thomas D. McKeown
LOCATION: 441 Lake Avenue

REQUEST

The Applicant is requesting a variance from City Code 302.020 to allow for a 16 foot variance from the 40 foot municipal street setback requirement to demolish and construct a new garage. He also requests a variance from City Code 302.050 to allow for a 5.87% variance from the maximum 25% impervious surface coverage allowed for the lot.

This property currently does not conform to City Code 302.020 and 302.050 because the existing garage is right on the municipal street property line and the existing impervious surface coverage of the lot is at 29.07%. If approved, this project will replace the existing garage with a new one 24 feet from the municipal street. The project will also increase the impervious surface coverage to 30.87%.

The Applicant requests approval to build within the existing prevailing setback of his neighbor's structures, which has been surveyor at 21.7 feet. If the prevailing setback is approved, the new garage will be in conformance with 302.020.

The Applicant proposes mitigating measures that will reduce the impervious surface coverage of the lot to below 25%. Specifically, the Applicant plans to construct one or more rain gardens on the lot. If done, these measures will bring the project into conformance with 302.050.

SITE CHARACTERISTICS

The subject site is 26,561-square feet in size. The property contains a single-family residence and a double-stall, unattached garage. The property is a wedge shaped lot facing the lake with just enough room on the municipal street (wedge) side of the lot for a steep narrow driveway next to the existing garage.

PRACTICAL DIFFICULTY

- 1) Because of the shape of the lot, there is no room to move the garage closer to the side yard.
- 2) Because of the location of the existing house, there is no room to move the garage back to 40 feet.

STATUTORY REQUIREMENTS FOR PERMITTING VARIANCES

Minnesota State Statute 462.357 allows for a variance to be permitted only when: (1) The proposed use is in harmony with the general purposes and intent of the City's zoning ordinance; (2) The variance is consistent with the City's comprehensive plan; and, (3) The applicant establishes that there are practical difficulties in complying with the zoning ordinance. Statutory criteria used to establish a practical difficulty include: (a) The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; (b) The plight of the landowner is due to circumstances unique to the property not created by the landowner; and (c) The variance, if granted, will not alter the essential character of the locality.

ANALYSIS

Although the property located at 441 Lake Avenue is classified as non-conforming, City Code 302.020.2.4 allows for the prevailing municipal street setback of structures in the immediate vicinity to be used as the minimum setback of a new structure, following Planning Commission recommendation and Council approval. The official survey shows the prevailing setback as 21.7 feet. The Applicant's proposed location of the new garage is 24 feet.

Accordingly, not only would the proposed location of the new garage be in conformance with the prevailing setback but pushing the garage back from the municipal street an additional 21-24 feet would bring the structure into closure adherence to the 302.020 standard setback of 40 feet.

Furthermore, although the proposed project would increase the impervious surface coverage of the lot to 30.87%, above the 25% maximum allowed for the lot, mitigating measures in the project would reduce the overall impervious surface to below 25%. The project proposes up to three (3) rain gardens.

Accordingly, not only would the approval of this project decrease the already high impervious surface coverage of this lot but it would bring it into complete conformity with 302.050.

JUSTIFICATION FOR RECOMMENDING VARIANCE APPROVAL

All along the northeast side of Lake Avenue, numerous garages are located less than 40 feet from the road right-of-way. Therefore, it can be argued that if approved, this variance would not alter the essential character of the locality.

The applicant's proposed garage demolition is supported in the Housing Plan section of the City's Comprehensive Plan. As Principle 4 states, "The City of Birchwood Village supports a community of well-maintained housing and neighborhoods." Additionally, a general housing goal in the Comprehensive Plan is "the continued maintenance of all dwelling units in a habitable and presentable condition." In this case the new garage would fit this category.

City code 302.020.2.4 allows for the prevailing municipal street setback of structures in the immediate vicinity to be used as the minimum setback of a new structure, following Planning Commission recommendation and Council approval. The official survey shows the prevailing setback as 21.7 feet. The Applicant's proposed location of the new garage is 24 feet. This proposal would fit this category.

Although the applicant's current impervious surface is at 29.07% and the project would increase this to 30.87%, the addition of one or more rain gardens included in this project would drop that percentage below the required 25%, bringing the lot into complete conformance with 302.050.

Finally, the Planning Commission has approved this variance request upon satisfaction of the below conditions. None of the Applicant's neighbors have rejected this request and at least one supports it.

JUSTIFICATION FOR RECOMMENDING VARIANCE DENIAL

A primary goal of the City of Birchwood Village's Zoning Ordinance is "to ensure that a non-conforming use is not intensified and that, over time, the non-conforming use will, where possible, be brought into conformity with the Zoning Code." If this variance were to be approved, the unattached garage located at 441 Lake Avenue would not conform to the current zoning code standard. One could argue that the applicant's proposed use is not in harmony with the general purposes and intent of the City's Zoning Ordinance. That would be true but for 302.020.2.4, which allows for the prevailing municipal street setback of structures in the immediate vicinity to be used as the minimum setback of a new structure.

CONDITIONS

The requested variance may be approved, subject to the following conditions:

1. All application materials, maps, drawings and descriptive information submitted with this application shall become part of the building permit.
2. Per City Code 304.090, the variance shall become null and void if the project has not been completed or utilized within one year after the date it was granted, subject to petition for extension by the City Council.
3. The applicant shall obtain a building permit prior to beginning construction.
4. The applicant shall verify their property lines and have the property pins exposed at the time of inspection.
5. Land alteration may not cause adverse impact upon or result in additional drainage onto abutting property or White Bear Lake. The applicant shall install gutters or employ other solutions should drainage issues arise.
6. The applicant shall confirm with the power company the necessary distance from the overhead power lines prior to construction if needed.

Recommendation by Planning Commission

Planning Commission has voted 5-0 in favor of recommending this variance to Council subject to the following conditions:

- 1) A final rain garden plan be designed and submitted that shows the mitigating affect on the lot's impervious surface coverage.
- 2) The final rain garden is approved by the City Engineer.

ATTACHMENTS

1. Draft Resolution of Approval
2. Application Form

3. Applicant's Narrative
4. Current Survey and Survey with Proposed Garage and Rain Garden Additions
5. Site/Elevation Plans
6. City Code 302.020 and 302.050

Tobin Lay

From: Daren Wickum [wicku001@gmail.com]
Sent: Sunday, April 09, 2017 8:08 PM
To: BVInfoEmail
Subject: Mckeown variance

Mayor, and councilmembers:

This e-mail is in support of The Mckeown's variance request. They have reviewed their plans with us, and we believe it will be an improvement not only to better align the garage off the main street, but also to improve visibility (and safety) from both pedestrians on the street and on the driveways.

Sincerely,

Jessica & Daren Wickum

RESOLUTION NO. 2017-16

**RESOLUTION APPROVING A VARIANCE FROM
THE CITY OF BIRCHWOOD VILLAGE ZONING CODE
FOR 441 LAKE AVENUE**

WHEREAS, a proposal (17-02-VB) has been submitted by Thomas D. McKeown to the City Council requesting a variance from the City of Birchwood Village at the following site:

ADDRESS: 441 Lake Avenue

WHEREAS, THE APPLICANT SEEKS THE FOLLOWING: A variance from City Code 302.020 to allow for a 16 foot variance from the 40 foot municipal street setback requirement to demolish and construct a new garage. And a variance from City Code 302.050 to allow for a 5.87% variance from the maximum 25% impervious surface coverage allowed for the lot because the project will mitigate the impervious surface coverage to below 25%; and

WHEREAS, the Planning Commission has held a public hearing as required by the City Zoning Code on April 5, 2017; and

WHEREAS, the request was determined to be reasonable and not out of character with the immediate neighborhood and City's Comprehensive Plan; and

WHEREAS, the City Council has considered the advice and recommendations of the Planning Commission regarding the effect of the proposed variance upon the health, safety, and welfare of the community and its Comprehensive Plan, as well as any concerns related to compatibility of uses, traffic, property values, light, air, danger of fire, and risk to public safety in the surrounding areas;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Birchwood Village after reviewing the proposal, that the City Council accepts and adopts the following findings of the Planning Commission:

1. That granting the variance will be in harmony with the general purpose and intent of this Code.
2. That granting the variance will not impair an adequate supply of light or air to adjacent property, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, or welfare of the residents of the City.
3. That the non-conforming use of neighboring lands, structures, or buildings is not the sole grounds for issuance of the variance.

FURTHER, BE IT RESOLVED, that the City Council of the City of Birchwood Village hereby approves the requested variance subject to the following conditions:

1. All application materials, maps, drawings and descriptive information submitted with this application shall become part of this permit.
2. Per Section 304.090, the variance shall become null and void if the project has not been completed or utilized within one (1) year after the date it was granted, subject to petition for extension by the City Council.
3. The applicant shall obtain a building permit prior to beginning construction.
4. The applicant shall verify their property lines and have the property pins exposed at the time of inspection.
5. Land alteration may not cause adverse impact upon or result in additional drainage onto abutting property or White Bear Lake. The applicant shall install gutters or employ other solutions should drainage issues arise.
6. Water service line must be sized appropriately for proposed additions.
7. The applicant shall confirm with the power company the necessary distance from the overhead powerlines prior to construction.
8. A final rain garden plan be designed and submitted that shows the mitigating effect on the lot's impervious surface coverage.
9. The final rain garden is approved by the City Engineer.

The foregoing resolution, offered by _____ and supported by _____, was declared carried on the following vote:

Ayes:
Nays:
Absent:

Mary Wingfield, Mayor

ATTEST:

Tobin Lay, City Administrator

Approval is contingent upon execution and return of this document to the City Administrator. I have read and agree to the conditions of this resolution as outlined above.

Applicant's Signature

Date

CITY CODE 302

**use with both variance
requests**

302.015: UNDERSIZED LOTS: Any lot which was held in a single ownership of record as of January 1, 1975, and which does not meet the requirements of this Code as to area, width, or other open space may nevertheless be utilized for single-family detached dwelling purposes provided the measurements of such area, width, or open space are at least 60% of that required.

302.020 STRUCTURE LOCATION REQUIREMENTS

1. GENERAL REQUIREMENTS. All structures must be located so that minimum setback requirements are met or exceeded. All measurements (in feet) as set forth below shall be determined by measuring from the foundation of the appropriate structure perpendicular to the appropriate lot line.

Exceptions: Front, back, side street and other lot line setback requirements shall not apply to chimneys, flues, belt courses, sills, pilasters, lintels, ornamental features, cornices, eaves, gutters, and the like, provided they do not project more than two (2) feet into a required yard setback.

2. MINIMUM SETBACK REQUIREMENTS:

<u>Lot line or Land Boundary</u>	<u>TYPE OF STRUCTURE</u>		
	<u>Fences</u>	<u>Driveways & Walkways</u>	<u>All Other Structures</u>
Municipal Street Front, Back, and Side	20 ft.	0	40 ft.
County Road Front, Back, and Side	20 ft.	0	50 ft.
Ordinary High Water Level of Lost Lake	75 ft.	75 ft.	75 ft.
Ordinary High Water Level of White Bear Lake, Hall's Marsh, and other wetlands	50 ft.	50 ft.	50 ft.
All Other Lot Lines	0 ft.	1 ft.	10 ft.

The ordinary high water levels of three water bodies have been established to be the following:

ORDINARY HIGH WATER LEVELS (Feet Above Mean Sea Level)

DNR ID #82-167	White Bear Lake	924.7 (NGVD, 1929)
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DNR ID #82-134	Lost Lake	925.6 (NGVD, 1929)
DNR ID #82-480W	Hall's Marsh	924.7 (NGVD, 1929)

3. ACCESSORY STRUCTURES. No accessory building or structure, unless an integral part of the principal structure shall be erected, altered, or moved to, within five (5) feet of the principal structure except fences, driveways, walkways, and decks which may be as close as actually abutting the principal structure.

4. SETBACK REQUIREMENTS EXCEPTIONS.

a. Street and Highway Setbacks: If structures on adjacent lots, existing as on January 1, 1975, have lesser street or highway setbacks from those required, the minimum setback of a new structure may conform to the prevailing setback in the immediate vicinity. The City Council shall, upon recommendation of the Planning Commission, determine the necessary minimum front yard setback in such areas.

b. Dock and Pier Setbacks: Setback requirements from the ordinary high water levels shall not apply to piers and docks. Locations of piers and docks shall be controlled by applicable state and local regulations.

b. Retaining Wall Setbacks: Front, back, side street and other lot line setback requirements shall not apply to retaining walls except that the ordinary high water level setback requirements shall apply to retaining walls.

5. STRUCTURES IN WETLANDS. No structures are allowed within any wetlands.

302.050 IMPERVIOUS SURFACES.

Impervious surface coverage of lots must not exceed twenty-five (25) percent of the lot area.

**There are no meeting minutes
for the Regular Council
Meeting of March 14, 2017.**

**Staff requests this agenda item be
tabled until the May Council meeting.**

Thank you.

RESOLUTION 2017-12
TREASURER-DEPUTY CLERK

REVISED

RESOLUTION 2017-12

**CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA**

**APPROVING THE HIRING AND APPOINTMENT OF BAILEY BECKMAN AS
CITY TREASURER-DEPUTY CLERK, EFFECTIVE APRIL 12, 2017.**

At a regular meeting of the City Council of the City of Birchwood Village held on Tuesday, April 11, 2017, at Birchwood City Hall, 207 Birchwood Avenue, Birchwood, Minnesota, with the following members present: Mayor Mary Wingfield, Councilmembers Megan Malvey, Randy LaFoy, and Kevin Woolstencroft, and the following absent: Trilby White, the Birchwood City Council resolved:

WHEREAS, The City of Birchwood Village will employ Bailey Beckman as City Treasurer-Deputy Clerk for 36 hours/month; and

WHEREAS, The City of Birchwood Village will compensate Bailey Beckman at a rate of pay of \$16.50/hour.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Birchwood Village hereby approves the hiring and appointment of Bailey Beckman as City Treasurer-Deputy Clerk, at-will and with terms and conditions as the Administrator sees fit, effective April 12, 2017.

Voting in Favor:

Voting Against:

Resolution duly seconded and passed this 11th day of April, 2017.

Mary Wingfield, Mayor

Attest:

Tobin Lay
City Administrator-Clerk