

**RESOLUTION NO. 2016-\_\_\_**

**A RESOLUTION DENYING VARIANCES TO REDUCE THE REQUIRED FRONT SETBACK FOR A PLAY APPARATUS/ACCESSORY STRUCTURE FROM 30 FEET TO 6.5 FEET, TO REDUCE THE REQUIRED SIDE SETBACK FROM 15 FEET TO 14.7 FEET AND TO ALLOW A PLAY APPARATUS/ACCESSORY STRUCTURE IN THE FRONT YARD AT 9617 WYOMING CIRCLE**

**WHEREAS**, in Planning Case PL2016-56, Amanda and Geoffrey Elfstrum, the owners of certain real property located at 9617 Wyoming Circle, in the City of Bloomington, County of Hennepin, State of Minnesota, (hereinafter the “Applicant”) legally described as:

**Lot 9, Block 2, South Bay**

(hereinafter the “Property”) applied for variances to reduce the required front setback for a play apparatus/accessory structure from 30 feet to 6.5 feet, to reduce the required side setback from 15 feet to 14.7 feet and to allow a play apparatus/accessory structure in the front yard at a single-family residence in an R-1 zoning district.

**WHEREAS**, the owner constructed a play apparatus/accessory structure in the front yard in violation of the zoning code.

**WHEREAS**, the City’s zoning code Section 19.08 provides that the minimum side and rear setback for play apparatuses is 15 feet and is not permitted in the front yard. Section 21.301.19 provides that the minimum setback for accessory structures must be equal to the setback for principal structures but is not permitted to be located closer to the property line along a public street than the principal structure.

**WHEREAS**, Minnesota Statutes §462.357, subd. 6(2) and City Code §2.98.01 (b)(2) each require affirmative findings that the requested variance is in harmony with the general purposes and intent of the ordinance and consistent with the comprehensive plan and 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 the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the

property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.

**WHEREAS**, on May 26, 2016, in its regular meeting assembled, the City Planning Commission reviewed the background materials provided in the staff report, conducted a public hearing during which the Applicant was provided with an opportunity to put forth the basis for the requested variance.

**WHEREAS**, following public testimony, the Planning Commission closed the public hearing. Following the closure of the public hearing and discussion among the Planning Commission, a motion to recommend denial of the variances failed 3-3.

**WHEREAS**, on June 6, 2016, in its regular meeting assembled the City Council, acting in its quasi-judicial capacity, conducted a public hearing on the requested variances. Prior to that hearing, both City staff and the Applicant were provided with an opportunity to submit all materials relevant to the City Council's consideration of the requested variances. Those materials were made part of the record before the City Council. The Applicant, appeared before the City Council and argued for the variance.

**WHEREAS**, the City Council has considered the report of the City staff, the discussion of the Planning Commission, the comments of persons speaking both in favor of and in opposition to the proposed variance and the required findings in Bloomington City Code Section 21.07(d) (1) through (5) and has found as follows:

- (A) When the variance is in harmony with the general purposes and intent of the ordinance;
  - The variance is not in harmony with the general purposes and intent of the ordinance. Code requirements related to play apparatus and accessory structures are intended to achieve a reasonable balance between the desire for outdoor play with the aesthetic, maintenance, and security concerns of the City and neighbors by not permitting play apparatus and accessory structures within the front yard.
- (B) When the variance is consistent with the comprehensive plan;
  - The Comprehensive Plan designates the property as Low Density Residential and does not provide specific guidance regarding play equipment. Play equipment is incidental to single-family residential land uses. The variance is not inconsistent with the Comprehensive Plan.
- (C) When the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. Economic considerations alone do not constitute practical difficulties.
  - The applicant does not have a practical difficulty. The property owner has the ability to install play apparatus/accessory structure on the property, albeit not in the applicant's preferred location.

Practical difficulties as used in connection with the granting of the variance, means that:

- (i) The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;
  - The proposed variances would allow permanent continuation of a non-conforming play apparatus and accessory structure. Minimum standards related to play equipment and accessory structures in single-family neighborhoods are reasonable and have been applied consistently. Play equipment may be installed elsewhere on the subject property in conformance with City Code.
- (ii) The plight of the landowner is due to circumstances unique to the property not created by the landowner; and
  - The plight of the landowner was created by the landowner. The applicant constructed the play apparatus in 2012 in violation of City Code.
- (iii) The variance if granted will not alter the essential character of the locality.
  - The proposed variance would allow existing non-conforming play apparatus and accessory structure to become permanent. Given the play apparatus has existed since 2012 and is partially screened from Wyoming Avenue, its continued presence is not likely to alter the essential character of the neighborhood.

**NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF BLOOMINGTON** in regular meeting assembled, based upon the materials and arguments presented by both the Applicant, the Public and City staff, that the following **FACTS** have been demonstrated by a preponderance of the evidence:

1. The consistent application of the setback requirements promotes compatibility of residential uses, protects property values, enhances the safety and livability of the City's residential neighborhoods.
2. The Applicant has not set forth an adequate basis for the requested variances in that:
  - a. the location of the play apparatus/accessory structure is not in harmony with the general purposes and intent of the City Code; and
  - b. the Applicant has not identified practical difficulties as that term is used in Minnesota Statutes § 462.357, subd. 6, and City Code §2.98.01 (b)(2)(C) in connection with the granting of the variances due to circumstances unique to the property not created by the landowner.

**NOW THEREFORE BE IT FURTHER RESOLVED BY THE CITY COUNCIL FOR THE CITY OF BLOOMINGTON**

Based upon the foregoing, including the entire case files in Case PL2016-56, the staff reports, the public testimony, the testimony and materials provided by the Applicant, the City Council

hereby **RESOLVES** that, in Case PL2016-56, the requested variances to reduce the required front setback for a play apparatus/accessory structure from 30 feet to 6.5 feet, to reduce the required side setback from 15 feet to 14.7 feet, and to allow a play apparatus/accessory structure in the front yard are denied.

Passed and adopted this 27 day of June, 2016.

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Mayor

ATTEST:

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Secretary to the Council