

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0719**

Rosalie Miller, et al.,
Appellants,

vs.

City of White Bear Lake,
Respondent,

Kenneth B. MacDonald,
Respondent,

Ann T. MacDonald,
Respondent.

**Filed December 22, 2025
Affirmed
Slieter, Judge**

Ramsey County District Court
File No. 62-CV-24-1031

Chad D. Lemmons, Kelly and Lemmons, P.A., St. Paul, Minnesota (for appellants)

Paul A. Merwin, League of Minnesota Cities, St. Paul, Minnesota (for respondent City of White Bear Lake)

Ken MacDonald, White Bear Lake, Minnesota (*pro se* respondent)

Ann MacDonald, White Bear Lake, Minnesota (*pro se* respondent)

Considered and decided by Slieter, Presiding Judge; Bjorkman, Judge; and
Bratvold, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this zoning dispute, appellants Rosalie and Michael Miller argue that respondent City of White Bear Lake (the City) erred when it granted variances to respondents Kenneth and Ann MacDonald, which the district court affirmed. Specifically, the Millers argue that the City erred because the request should have been governed by the City of White Bear Lake Zoning Code (Zoning Code) provision addressing nonconformities, not variances, which would require a conditional-use permit. Alternatively, the Millers argue that even if the City could grant the variances, it did not have a rational basis for doing so. Because we conclude that the City applied a permissible provision of the Zoning Code and its action was reasonable, we affirm.

FACTS

The Millers and MacDonalds own property adjacent to each other in the City of White Bear Lake. Both properties are part of a strip of properties located between Highway 61 and White Bear Lake. They share a property line on the Millers' eastern lot line and the MacDonalds' western lot line.

When the MacDonalds acquired their property, it had a one-story, single-family home constructed in the 1920s on it. The home had an attached, single-car garage. The home was 3.2 feet from the western lot line and 7.5 feet from the eastern lot line. The house was nonconforming because it did not comply with the Zoning Code which requires a 15-foot side-yard setback. Zoning Code § 1303.040, subd. 5(c)(2) (2025).

The MacDonalds intended to demolish the existing house and build a new, two-story one. For this reason, the MacDonalds applied for two variances from the City. They requested setback variances that would allow the house to be 3.36 feet from the western lot line and 6 feet from the eastern lot line.

The City provided public notice of the application and accepted public comments. The Millers submitted comments through their attorney, arguing that a variance was impermissible.

The White Bear Lake City Planner prepared a memorandum summarizing the MacDonalds' variance requests. The memorandum reviewed the statutory requirements for a city to grant a variance and applied them to the MacDonalds' requests. The city planner found, in relevant part, that the MacDonalds had established that there were "unique circumstances [to the property] not created by the landowner[s]," including that the "property is only 38 feet wide on the street side and 34 feet wide on the lake side at the setback line. The required setbacks are 15 feet from each side, leaving only 4 to 8 feet of buildable space." He noted that the Zoning Code "requires houses to be a minimum of 22 feet wide" which meant that "a minimum of an 18-foot variance is required" to make the MacDonalds' lot buildable. The city planner recommended approval of the MacDonalds' requests because he determined that they satisfied all of the requirements.

The White Bear Lake Planning Commission held a public hearing, discussed the MacDonalds' application, heard comments from the MacDonalds and Millers, and unanimously voted to recommend approval of the variance requests.

The White Bear Lake City Council then heard the matter. The Millers’ attorney presented their reasons for opposing the variance requests. The council unanimously approved the variances. The council found that the MacDonalds met all the statutory requirements to obtain a variance and required them to comply with certain conditions. The resolution also incorporated the city planner’s memorandum.

The Millers initiated an action in district court to seek review of the City’s decision. The City moved for summary judgment seeking affirmance of its decision, which the district court granted.

The Millers appeal.

DECISION

I. The City did not err when it granted the MacDonalds’ variance requests.

As a preliminary matter, the parties dispute the import of the Minnesota Supreme Court’s decision in *Krummenacher v. City of Minnetonka*, 783 N.W.2d 721 (Minn. 2010) on their case. In *Krummenacher*, the Minnesota Supreme Court addressed whether Minn. Stat. § 462.357, subd. 1e (2008), prohibits a municipality from granting a variance that allows for the expansion of a nonconforming structure. *Krummenacher*, 783 N.W.2d at 725-27.¹ The court concluded that it does not. *Id.* The court added, however, that “[a]lthough Minn. Stat. § 462.357, subd. 1e(a) (2008), restricts the ability of property

¹ At the time *Krummenacher* was decided, Minnesota Statutes § 462.357, subdivision 1e(b), stated, “A municipality may, by ordinance, permit an expansion or impose upon nonconformities reasonable regulations to prevent and abate nuisances and to protect the public health, welfare, or safety.” This provision has not been amended since the supreme court decided *Krummenacher*. See Minn. Stat. § 462.357, subd. 1e(b) (2024); *Krummenacher*, 783 N.W.2d at 725.

owners to expand their nonconforming uses, subdivision 1e(b) authorizes a municipality to allow an expansion pursuant to ordinance.” *Id.* at 723. Consistent with the statute, the municipality in this case had adopted an ordinance which provided that ““an expansion of any non-conforming use may not be done without first obtaining a variance.”” *Id.* at 727 (quoting Minnetonka, Minn., City Code § 300.29(g)(1) (2008)). The supreme court thus concluded “because the legislature gave the municipality discretion to authorize the expansion of a nonconforming use, the decision to allow respondent to seek a variance under the ordinance to expand a nonconformity was consistent with” subdivision 1e. *Id.* at 723. The issue presented in this case, then, is whether the City has exercised this legislative grant of authority by adopting such an ordinance, one that allows for the expansion of a nonconformity through a variance application.

Before we begin our analysis, we clarify that a nonconforming use in the zoning context refers to a situation where a property does not comply with a current zoning ordinance but is allowed to continue under specific conditions because it existed lawfully before the ordinance was enacted. *See* Minn. Stat. § 462.357, subd. 1e; *see generally* *AIM Dev. (USA), LLC v. City of Sartell*, 946 N.W.2d 330, 335 (Minn. 2020) (describing nonconforming-use rights).

This issue requires us to interpret a municipal ordinance. “The interpretation and application of a city ordinance is a question of law, which we review *de novo*.” *In re Khan*, 804 N.W.2d 132, 142 (Minn. App. 2011). “The rules governing statutory interpretation are applicable to the interpretation of city ordinances.” *Id.* That is, appellate courts first assess “whether the [ordinance’s] language, on its face, is clear or ambiguous.” *Am. Fam.*

Ins. Grp. v. Schroedl, 616 N.W.2d 273, 277 (Minn. 2000). Appellate courts “begin with the plain language, and, if there is only one reasonable interpretation of that language, [they] adopt that meaning.” *In re Est. of Ecklund*, 20 N.W.3d 351, 355 (Minn. 2025). “If, however, there is more than one reasonable interpretation, then the [ordinance] is considered ambiguous and [appellate courts] may apply additional canons of construction to determine its meaning.” *Id.*

Section 1302.010 (2010) of the Zoning Code “provide[s] for the regulation of nonconforming buildings, structures and uses” and specifies “those requirements, circumstances and conditions under which nonconforming buildings, structures and uses will be operated and maintained.” Zoning Code § 1302.010, subd. 1.² The City has an ordinance that addresses the expansion of nonconformities. *See id.*, subd. 2(e). It provides that “Nonconforming, single family dwelling units may be expanded to improve livability as a conditional use as regulated by Section 1301.050 of this Code, provided that the nonconformity is not increased.” *Id.*; *see also* Zoning Code, § 1301.050 (2008) (outlining the requirements for obtaining a conditional-use permit).

The Millers argue that section 1302.010, subdivision 2(e), unambiguously prohibits the City from granting a variance that allows for the expansion of a nonconformity because it allows for expansion “as a conditional use.” We understand their interpretation to rely

² The City amended its Zoning Code which took effect on August 20, 2025, after the City approved the MacDonalds’ variance requests. *See* Zoning Code §§ 1301.010-1314.020 (2025). We cite the version of the Zoning Code in effect when the City approved the variance requests.

on the Zoning Code term “may” as restricting how the City can allow landowners to expand nonconformities.

The City argues that this provision unambiguously allows it to grant a variance that permits the expansion of a nonconformity. It argues that subdivision 2(e) offers *one* mechanism by which the City can approve the expansion of a nonconformity, but it is not the *exclusive* mechanism. Under this interpretation, the term “may” identifies the City’s authority to allow landowners to expand nonconformities by means of a conditional-use permit, but it does not restrict the City to only this means. It follows, then, that the City may allow a landowner to expand a nonconformity by other means under the Zoning Code, including a variance.

We first consider whether the term “may” in subdivision 2(e) is ambiguous. We do this by analyzing the ordinance’s “text, structure, and punctuation” and by applying the canons of interpretation. *In re Civ. Commitment of Benson*, 12 N.W.3d 711, 715 (Minn. 2024) (quotations omitted). “In determining whether a statute is ambiguous, [appellate courts] give words and phrases their plain and ordinary meaning.” *Scheurer v. Shrewsbury*, 24 N.W.3d 670, 677 (Minn. 2025). Appellate courts “may consult dictionary definitions to determine the plain and ordinary meaning of undefined words in a statute.” *Id.* Black’s Law Dictionary provides two principal definitions for the term “may.” The first is “[t]o be permitted to” and the second is “[t]o be a possibility.” *Black’s Law Dictionary* 1169 (12th ed. 2024) (defining may). Furthermore, the legislature has specifically stated that the word “may” is “permissive.” Minn. Stat. § 645.44, subd. 15 (2024); *see also Friends of Animals & Their Env’t (FATE) v. Nichols*, 350 N.W.2d 489, 491 (Minn. App. 1984) (“When the

term ‘may’ is used in a statute it means permissible, not mandatory, unless another intention clearly appears on the face of the statute.”), *rev. denied* (Minn. Dec. 20, 1984); *cf.* Minn. Stat. § 645.44, subds. 15a, 16 (2024) (stating that “must” or “shall” are “mandatory”). Both the dictionary and statutory definitions of “may” support the City’s interpretation of subdivision 2(e) as providing one means by which it may grant the expansion of a nonconformity, but not the exclusive one.

The Millers argue that the whole-statute canon supports their interpretation of the ordinance. Under this canon, “language in dispute is not examined in isolation; rather, all provisions in the [Zoning Code] must be read and interpreted as a whole.” *Hagen v. Steven Scott Mgmt., Inc.*, 963 N.W.2d 164, 170 (Minn. 2021) (quotation omitted).

The Millers argue that this canon supports their interpretation of the ordinance because “[t]o allow an owner of a nonconforming single-family dwelling to ignore the provisions of [subdivision 2(e)] and apply for a variance” would render the provision “meaningless.” That is, there would be no need for subdivision 2(e) if landowners can opt to expand a nonconformity through a variance.

We find this argument unpersuasive. Interpreting subdivision 2(e) according to the City’s interpretation would not render it meaningless. Instead, under this interpretation, subdivision 2(e) would identify a conditional-use permit as one mechanism for landowners to use to expand their nonconformity; but it would not be the *sole* mechanism available. In further support of our conclusion, various provisions of the Zoning Code contemplate that the City will grant variances to landowners with nonconformities. *See* Zoning Code § 1302.040, subd. 4(d) (2002) (allowing City to grant a variance “[w]here an addition is

proposed to a pre-existing, dimensionally non-conforming structure . . . and the proposed addition extends no closer to a property line or other structure than the pre-existing, non-conforming structural encroachment currently on the site”); Zoning Code § 1301.060, subd. 6(a) (2014) (granting an administrative-variance panel the authority to review variance requests concerning “pre-existing, dimensionally nonconforming structures”). The Millers’ interpretation is therefore inconsistent with the Zoning Code’s authorization of variances for landowners who possess nonconformities.

Because the Millers’ interpretation is not a reasonable one and the City’s interpretation is the only reasonable one, the ordinance is unambiguous. We conclude that “may” as used in subdivision 2(e) is permissive such that the provision articulates one mechanism by which the City can allow a landowner to expand a nonconformity, but the provision also allows the City to do so by variance. Accordingly, the City did not err when it granted the MacDonalds’ request for a variance rather than requiring them to seek a conditional-use permit.

II. The City provided a rational basis for granting the MacDonalds’ variance requests.

We next address the Millers’ argument that the City lacked a rational basis to grant the variances. Appellate courts review a local government’s zoning decision “independent of the findings and conclusions of the district court.” *Nw. Coll. v. City of Arden Hills*, 281 N.W.2d 865, 868 (Minn. 1979). “The setting aside of routine municipal decisions should be reserved for those rare instances in which the [c]ity’s decision has no rational basis. Except in such cases, it is the duty of the judiciary to exercise restraint and accord

appropriate deference to civil authorities” *White Bear Docking & Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 176 (Minn. 1982).

The supreme court clarified the different formulations of the rational-basis standard of review in *Honn v. City of Coon Rapids*: “the standard of review is the same for all zoning matters, namely, whether the zoning authority’s action was reasonable.” 313 N.W.2d 409, 415-17 (Minn. 1981). Thus, parties challenging a municipality’s grant of a variance must “show the grant was *unreasonable*.” *Sagstetter v. City of St. Paul*, 529 N.W.2d 488, 492 (Minn. App. 1995) (emphasis added).

We apply a two-step analysis to determine whether a municipal body’s action was reasonable. *Murphy v. City of Minneapolis*, 20 N.W.3d 62, 78 (Minn. App. 2025). First, we determine whether the city supported its action with legally sufficient reasons. *Id.* Second, we determine whether those reasons have a factual basis in the record. *Id.* We affirm a city’s decision when at least one of the reasons for its decision is legally sufficient and supported by evidence in the record. *Id.* We next turn to the statutory language that the City relied on to grant the MacDonalds’ variance requests.

Minnesota Statutes § 462.357, subdivision 6(2) (2024), sets forth the requirements for the City to grant a variance:

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 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.*

(Emphases added.)

The Millers contest only two parts of the City’s determination that the MacDonalds satisfied the “practical difficulties” requirement.³ First, they argue that the City’s decision that the MacDonalds satisfied the unique-circumstances requirement was unreasonable because their neighbors’ properties suffer from the same zoning problems. Second, they argue that the City’s decision was unreasonable because the practical difficulties were based on economic considerations alone. The City counters that its decision to grant the variance requests was reasonable because it correctly determined that the MacDonalds’ situation was due to circumstances unique to their property and that it relied on considerations other than economic ones. We address each argument below.

A. The City’s decision that the MacDonalds satisfied the unique-circumstances requirement was reasonable.

To meet the “practical difficulties” requirement under Minnesota Statutes section 462.357, subdivision 6(2), a zoning authority must determine that “the plight of the landowner is due to circumstances unique to the property not created by the landowner.”

³ The Millers state that the existing home “represented a reasonable use of the property.” The Millers appear to argue that the City acted unreasonably when it determined that the MacDonalds satisfied the requirement that “the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance.” Minn. Stat. § 462.357, subd. 6 (2024). An assignment of error on mere assertion, unsupported by argument or authority, however, is forfeited and need be considered only if prejudicial error is obvious on mere inspection. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971). Because the Millers offer no legal authority or argument to support this claim and prejudicial error is not obvious on mere inspection, it is forfeited.

The Zoning Code states that “[v]ariations from the strict application of the Zoning code may be granted to alleviate practical difficulties such as . . . lot shapes . . . or other exceptional physical conditions.” Zoning Code § 1301.060, subd. 1(c) (2014). The Millers argue that the City erred when it determined that the MacDonalds satisfied the unique-circumstances requirement because “[a]ll the neighbors of the MacDonalds property suffer from the same problem of lot width.”

We recently rejected a similar argument in a factually similar, though nonprecedential, case. In *Herbst v. City of Deephaven*, No. A24-0987, 2025 WL 1023871, at *6 (Minn. App. Apr. 7, 2025), *rev. denied* (Minn. July 15, 2025), the appellant argued that the disputed property did not meet the unique-circumstances requirement “because there are a few nearby properties that also sit significantly below street-level and have driveways that exceed the maximum grade limit.” In rejecting this argument, we explained that “the supreme court has never interpreted ‘unique’ so narrowly.” *Id.*; *see also Merriam Park Cmty. Council, Inc. v. McDonough*, 210 N.W.2d 416, 420-21 (Minn. 1973) (holding that disputed property met statutory requirement “because of unique circumstances not reflective of conditions general to the neighborhood”), *overruled on other grounds, Arden Hills*, 281 N.W.2d at 868 n.4. Although it does not bind us, we are persuaded by the reasoning in the *Herbst* decision. Here, the City correctly analyzed whether the MacDonalds met this requirement by discussing the challenges posed by the specific lot shape, including the fact that “an 18-foot variance is required to make the lot buildable.” The City correctly noted before our court that the current setback requirements make it “mathematically impossible” for the MacDonalds to comply with the Zoning Code. Based

on these findings, we conclude that the City’s decision that the MacDonalds satisfied the “practical difficulties” requirement because they demonstrated circumstances unique to their property was reasonable.

B. The City’s decision did not rely solely on economic considerations.

Minnesota Statutes section 462.357, subdivision 6(2), states that “[e]conomic considerations alone do not constitute practical difficulties.” The Millers argue that the City’s decision that the MacDonalds satisfied the “practical difficulties” requirement was unreasonable because it relied solely on economic considerations. Specifically, they claim “[n]one of the findings adopted by the City of White Bear Lake found that rehabilitation or reconstruction of the existing home would violate an existing [c]ity [o]rdinance. The only purpose in granting the variances requested by the MacDonalds were to allowed [sic] them to build a more valuable home.”

We disagree. The City made several findings that demonstrate that the practical difficulties were not based on economic considerations alone. For example, the City stated that the “lots in this area are narrow and the City Council has granted variances to other properties for building projects that had similarly challenging narrow lots.” Additionally, the City noted that the “requested variances are consistent with the 2040 Comprehensive Plan.” *See Murphy*, 20 N.W.3d at 69 (concluding that municipality had a reasonable basis for granting a variance where municipality determined that difficulties were not based on economic considerations alone because granting the variances “would bring the project site in line with the 2040 Plan’s land use policy”). We therefore conclude that the City’s

decision was reasonable because it determined that the MacDonalds satisfied the “practical difficulties” requirement based on more than economic considerations alone.

Affirmed.