

DEEPHAVEN PLANNING COMMISSION

TUESDAY JANUARY 20, 2009

7:00 P.M.

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CALL TO ORDER: Chairman Werneiwski called the meeting to order at 7:00 p.m.

PRESENT: Chairman Bob Werneiwski, Commissioners Barbarajean Brandt, Kent Carlson, Dan Dyb, Walter Linder, Jeff McKinney and Warren Nelson

ABSENT: Council Liaison Keith Kask

OTHERS PRESENT: Zoning Coordinator Gus Karpas

MINUTES OF December 16, 2008

Motion by Commissioner Dyb, seconded by Commissioner Linder, to approve the minutes of December 16, 2008 as presented. Motion carried 7-0.

PUBLIC HEARINGS

VARIANCE - Craig and Maggie Allen, 19865 Lakeview Avenue, (R-3, 20,000) variance requests to construct a fifteen square foot garage addition and to alter the roofline of the non-conforming portion of the existing garage which would exceed the maximum permitted impervious surface area and would encroach into the required south side yard setback.

Section 1350(2)(a) of the Shoreland Ordinance permits a maximum impervious surface area of twenty-five percent. The proposal is to exceed the permitted impervious surface area by four percent.

Section 1310.02 of the Zoning Ordinance requires a minimum side yard setback of fifteen feet in the R-3 Residential District. The proposed alteration of the non-conforming garage would be setback seven feet, nine inches from the south side yard setback. A variance of seven feet, three inches is sought of the required side yard setback.

Zoning Coordinator Karpas presented his staff report. He said the applicant sought to enlarge the garage so it could accommodate two vehicles. The applicant would also reconfigure a portion of the existing home to gain garage space. The request to alter the roofline would provide additional height in the garage along with allowing for a higher ceiling in the room over the garage.

Karpas discussed the variance request to exceed the maximum permitted impervious surface area, noting that the amount of impervious surface was actually being reduced by nearly nine percent.

Karpas said he recommended approval for the request. He felt the dimension and size of the lot, the placement of the home and the need to create a usable garage constituted a hardship under the ordinance requirements.

Chairman Werneiwski opened the public hearing.

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Dave Ferguson, 19880 Lakeview Avenue said he was shown the plan and that he was supportive of the request. He said his only concern was whether the structure would be moved closer to his property, and it was not.

Hearing no further public comment, the hearing was closed.

Commissioner Brandt clarified there would be no further encroachments into any of the required yards. She asked about the platted alley adjacent to the property. Zoning Coordinator Karpas said it was owned by the city and requires an increased side yard setback since the lot is then considered a corner lot, but that the setback had no bearing on this request. Brandt said she was supportive of the request.

Commissioner Linder asked about the lakeside porch and whether it was to be enclosed and whether the location of the wall extending between that porch and the garage would be removed. The applicant said it the porch would be enclosed but the location of the wall would be unchanged. Linder thought the plan looked fine and was supportive of the request.

Chairman Werneiwski said he liked the plan, noting the applicant took steps to reduce the impervious surface on the property. He confirmed the landscaping poly was being removed, the applicant said it was. Werneiwski liked the idea and was in favor of the plan.

Commissioner Dyb asked about the air conditioning units under the proposed overhang. The applicant said they were going to be relocated. Dyb asked what the applicant intended to put in place of those areas where the poly was being removed. The applicant said they would plant grass. Dyb thought the plan looked good and was supportive of the request.

Commissioner Nelson feels the applicant did a good job on the plan but questioned the placement of an existing dock that appears to encroach onto the city owned alley adjacent to the property. He feels that issue needs to be clarified. He feels the proposed alterations tie nicely into the existing structure and he is happy to see the reduction in impervious surface. He is supportive of the request, with the issue of the dock being addressed.

Commissioner Carlson said it is nice to see younger families move into the neighborhood and invest into the existing housing stock. He feels the design team has done a great job in designing the project so as to minimize the impact on the neighboring properties. He disclosed that he was employed by one of the applicant's fathers. He too, was happy to see the reduction in impervious surface and was supportive of the request.

Commissioner McKinney said he was in favor of the request.

ACTION: Motion by Commissioner Carlson to recommend that the City Council approve the variance requests to construct a fifteen square foot garage addition and to alter the roofline of the non-conforming portion of the existing garage which encroach seven feet, three inches into the required fifteen foot south side yard setback and would exceed the maximum permitted impervious surface area by four percent, as presented for 19865 Lakeview Avenue. A practical difficulty exists in the dimension and size of the lot, the placement of the home and the need to create a usable garage constituted a hardship under the ordinance requirements. The proposal would not alter the essential character of the neighborhood. The motion is conditioned that the

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dock encroachment be addressed prior to the Council meeting. Commissioner Dyb seconded the motion. Motion carried 7-0.

ORDINANCE AMENDMENT – Regulation of Patios – Discuss Ordinance No. 13-51, an amendment to the Zoning Ordinance, establishing provisions for the regulation of at-grade patios, including the establishment of a required setback and site plan review process.

Zoning Coordinator Karpas presented draft language for the regulation of patios. The ordinance would require a minimum setback of ten feet for larger patios and a reduced setback for patios less than 120 square feet in area. He said no patio would be allowed in a required lake yard setback.

He said a site plan would be required for all larger patios showing spot elevations and that the City Engineer would review the plan to determine if there would be any issues with drainage. Karpas said there was a screening requirement, when feasible, for all patios.

He said the Commission voted on this item at their December meeting even though it had not been noticed publicly.

Chairman Werneiwski opened the public hearing. Hearing no public comment, the public hearing was closed.

Commissioner Carlson, noting that he had not been at the last meeting, asked if the current policy was to allow the construction of patios without review. Zoning Coordinator Karpas said there are no current regulations addressing at-grade patios. Carlson asked why the ordinance only addressed side and rear yards setbacks. Karpas said the intent was to mirror the accessory structure ordinance which permits reduced setbacks for smaller structures only in the side and rear yards, but requires compliance with the front yard setback which is most visible from the street.

Commissioner Brandt asked about Subdivision F which requires screening when feasible. She asked who determines when it's feasible or not. Zoning Coordinator Karpas said that would be up to staff. Brandt asked why the placement of screening should be mandatory.

Chairman Werneiwski said he would lean to removing the phrase. He said most people construct a patio to be outside, not boxed in by trees or fencing.

Commissioner Linder asked if the phrase could be replaced with "where reasonable." The other Commissioners felt that would be even more confusing.

Commissioner Brandt felt open patios would look better than enclosed boxes. Zoning Coordinator Karpas said the requirement could be removed all together.

Commissioner Nelson said he like the provision because it would create a buffer that provides privacy for both the person who built the porch and those on adjacent properties.

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Chairman Werneiwski supports removal of the provision. Commissioner Dyb agreed saying the idea of having a required fence so close to a property line would be noxious to adjoining properties.

Commissioner Linder confirmed the requirement would apply to all patios regardless of how far they are from the property line. Zoning Coordinator Karpas said it would. Linder didn't feel that made much sense.

Brian Kensicki, 18975 Highland Avenue commented that the term feasible would not be the right word to use since anything is feasible without consideration given to cost.

Commissioner Carlson suggested removing the language since it causes more problems. Commissioner Brandt agreed.

ACTION: Motion by Commissioner Carlson to recommend that the City Council adopt Ordinance 13-51, establishing provisions for the regulation of at-grade patios, with removal of Subdivision F, requiring screening. Commissioner Dyb seconded the motion. Motion carried 7-0.

NEW BUSINESS

PLANNING COMMISSION CANDIDATES

Zoning Coordinator Karpas said there were four candidates in attendance interested in serving of the Commission. He said the Council has directed the Planning Commission to recommend two of the candidates and one of the existing Commissioners whose term is expiring for appointment to the Commission.

Chairman Werneiwski suggested that each candidate be given the opportunity to speak prior to any questions being asked of them. It was agreed that the candidates would speak in alphabetical order.

Scott Hemink, 4080 Sibley Avenue, said he and his family have lived in the community since 2001. He said he is a buoy holder and the interaction he had with city staff had led him to apply to serve the city. He said he likes the feeling of community he gets from Deephaven and believes service on the Planning Commission would be fun and interesting. He said he was President of his Homeowner's Association in North Carolina and in that capacity had to deal with issues relevant to development. He said he also owns a cottage that is listed on the Registry of Historic Places, which has enlightened him on regulations in terms of community character.

Brian Kensicki, 18975 Highland Avenue, said he was a new resident. He likes the scale of Deephaven and the sense of community. He said his primary interest was to get involved in the community. He said he is a partner in a law firm and though he does not directly deal with real estate law, he is fairly familiar with it.

Brian Larson, 18920 Park Avenue, said he is a Financial Advisor and is fairly knowledgeable in the areas of accounting and finance. He has volunteered in the past and hopes to bring

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honesty to the Commission. He said, as a neighbor, the toughest part of being a Commissioner will be the balance between being a neighbor and being in a position of leadership. He is an eight year resident of the city.

John McGray, 18870 Lake Avenue, said he is a relatively new resident and that he and his wife spent over a year searching for a home in Deephaven. He is the founder of Lucid Developments which is a building company that does work throughout the Twin Cities. He is familiar with the construction and the building permit process. He is a member of the Builder's Association of the Twin Cities and has earned a Certificate of Development through the University of St. Thomas. He is a licensed contractor.

Commissioner Dyb said one of the toughest things to do on the Commission is to look at a family who's presenting the plans for their dream home and after reviewing the requirements, having to tell them no. He asked if the candidates were comfortable with that.

Mr. Hemink said he would have no issue saying no if the discussion was straightforward and based on the rules and historic precedence. He would be willing to discuss compromises and agrees it would be tough to say no, but the Commission has to do what's best for the city.

Mr. Kensicki agreed that precedence plays a big role. He said the Commission has to consider what a decision means to future requests. He agrees that compromise is an option as long as it keeps the integrity of the rules.

Mr. Larson also agreed that precedence plays a large part. He feels there is always room for compromise as the Planning Commission level since plans can be amended. He said part of being a good neighbor is not trying to take advantage of your neighbors.

Mr. McGray said he would base his decision making on the fact the Planning Commission is established for the betterment of the entire community and not just one homeowner.

Commissioner Linder asked a question of Mr. Kensicki and Mr. McGray. As recent additions to the community, could they describe their past relationships with previous communities they lived in terms of being involved.

Mr. Kensicki, said he moved from Ohio to Eden Prairie and eventually to Deephaven. He doesn't believe his judgment on the Planning Commission would be based on his time in the community, rather by relying on the ordinances and interpreting them in a true and fair manner. He doesn't believe decision making is based on time, rather it is based on logic.

Mr. McGray said he was a graduate of Wayzata so he has ties to the area. He has lived in a number of other places since then, but feels what brought them back to the area if the quaintness and feel of the community.

Commissioner Brandt asked the candidates what they think the residents who did not have a request before the city expected from the Planning Commission.

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Mr. Hemink said fairness. He said they expect the Commission to look at the logic behind the request and consider the impact on adjacent properties. He feels they look for consistency and consideration to the maintenance of the integrity of the individual neighborhoods.

Mr. Kensicki agreed. He also feels that applicants want to be taken seriously and that due diligence is given to their requests, meaning the Commissioners inform themselves on the requests before them and be prepared to asked questions.

Mr. Larson believes the average resident views the Commission as a body that protects their property values by determining what fits with the community as a whole.

Mr. McGray said they expect consistent character and are looked up to keep up the character of the community by trying to allow applicants to live their dreams, but doing so while maintaining orderly fashion in the community.

Commissioner Nelson asked the candidates for one thing they don't look forward to in serving as a Commissioner.

Mr. Hemink said that saying no would be the least fun on the Commission, even when it may be justified. He noted it is always easier to say yes. He said another frustration would be if the Commission's decisions are consistently overturned by the Council.

Mr. Kensicki agreed with saying no, but the great thing about being on the Commission would be serving the community.

Mr. Larson said being asked special favors and asked if Commissioner Nelson had ever encountered that. Nelson said he has been approached on many occasions with people seeking advice. Nelson said another thing that sometimes is frustrating is when you give your opinion to an applicant and they become upset with you, even though you feel it's an honest opinion.

Mr. McGray said he doesn't look forward to rejecting requests, but also doesn't like the idea of approving requests with costly attachments (conditions).

Commissioner Nelson commented that all the applicants appear to be well qualified and each brings a diversity of qualifications. He said that even if a candidate doesn't get selected for a position on the Commission, they should keep trying to be involved in the community.

The Commission discussed the process for selection. Chairman Werneiwski preferred to be up front and hold a voice vote. The Commission was unsure on how the process would work since each preferred different candidates at different levels. Zoning Coordinator Karpas suggested each Commissioner write their preferences down in order and he would tally the votes.

Based on the balloting Mr. Hemink and Mr. McGray were the preferences of the Commission.

ACTION: Motion by Commissioner Nelson to recommend the Council appoint Scott Hemink and John McGray to fill two of the upcoming vacancies on the Planning Commission, with terms beginning in April. Commissioner McKinney seconded the motion. The motion carried 7-0.

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The Commission discussed the appointment of an existing Commissioner to fill the third vacancy on the Commission. Commissioner McKinney said he was no longer interested and requested his name be removed for consideration.

Commissioners Dyb and Nelson both expressed an interest in serving an additional term.

The Commission discussed the spirit behind the establishment of term limits, expressing hesitation on having to recommend on sitting Commissioner over another.

Commissioner Linder asked about the length of service for both Dyb and Nelson. Mr. Dyb has served for about nine years, while Mr. Nelson has served about twelve years. Linder said that following the spirit of term limits and based on the time of service, the recommendation should be for Mr. Dyb.

The Commission discussed the possibility of deferring the decision to the City Council. Zoning Coordinator Karpas said that was an option, though he was informed the Council wanted a recommendation from the Planning Commission.

Commissioner Nelson expressed his pride in serving on the Commission but said he would be willing to step down, though with great regret and anguish, from the Commission if it would be easier.

ACTION: Motion by Commissioner Linder to recommend the Council appoint Commissioner Dan Dyb to fill the final upcoming vacancy on the Planning Commission, with a term beginning in April. Commissioner Werneiwski seconded the motion. The motion carried 6-0-1. Commissioner Nelson abstained.

LIAISON REPORT

There was no Liaison report.

ADJOURNMENT

Motion by Commissioner Dyb to adjourn the meeting. Commissioner Werneiwski seconded. The motion carried 7-0. The meeting adjourned at 8:45 p.m.

Respectfully submitted,
Gus Karpas
Zoning Coordinator