

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

PRESENT: Chairman Bob Werneiwski, Commissioners Barbarajean Brandt, Kent Carlson, Scott Hemink and John McGary

ABSENT: Commissioner Walter Linder

OTHERS PRESENT: Council Liaison Keith Kask and Zoning Coordinator Gus Karpas

MINUTES OF August 18, 2009

Motion by Commissioner McGary, seconded by Commissioner Hemink, to approve the minutes of August 18, 2009 as presented. Motion carried 3-0. Commissioners Carlson and Werneiwski abstained.

PUBLIC HEARINGS

SUBDIVISION/VARIANCE – Clifford Traff, 18500 Maple Ridge Road, (R-2, 40,000)

subdivision request to subdivide the existing property into two lots which would not meet the minimum seventy-five foot road frontage requirement.

Section 1200.10(3)(e) of the Subdivision Ordinance requires that lot dimensions, in terms of width, depth and area, be in compliance with the requirements of the Zoning Code. Section 1310.02 requires a minimum lot width for lots located in the R-2 District of seventy-five feet.

A variance of approximately three feet of the required lot width is sought for proposed Lot 1 and a variance of approximately five feet of the required lot width for proposed Lot 2.

Zoning Coordinator Karpas presented his staff report. He said the request was to create an additional lot from an existing lot to provide a new home site for his son. The proposal would require either a variance of the minimum required road frontage or agreement from the city to accept a land donation creating a larger radius for the cul-de-sac, removing the need for a variance. Karpas said a concern was raised by a resident that the proposal did not meet the minimum lake frontage requirement. He said he measured it from what appears to be the ordinary high water level of the wetland rather than Lake Marion. He said using the Lake Marion line would make Lot 1 non-compliant with the minimum lake frontage requirement. He said he recommended denial for the request and outlined his findings.

Bill Traff presented the request on behalf of his father. He outlined the number of ways he has served the City of Deephaven in a volunteer capacity and said the biggest value to this request is it would keep him in the area and allow him to continue his volunteer activities. In addition, he said the approval of the request would enable him to be close to this autistic son and elderly parents.

Mr. Traff spoke on the concerns about the lake frontage, stating he thought since the setback was measured from the edge of the wetland that would be where the lake frontage measurement would be taken from. He feels the ordinance is open for interpretation.

Speaking on the issue of potential variances in the future, he said at this time none would be needed, but didn't disagree one may not be sought in the future. He said he would like to think any resident would have the ability to approach the city for variances, regardless how the lot was created.

Mr. Traff outlined his great appreciation for Lake Marion and discussed actions he had taken in the past to protect the lake and fight the threat of milfoil. He said he has discussed the request with the adjacent neighbors on the north side of the property and tried to address their concerns regarding impervious surface.

In closing, Mr. Traff feels the future development of the property is not an issue and noted the adjacent properties would not be negatively impacted by any development on the property since their garages face the property. He reiterated the benefits of allowing him to remain in the community to serve in a voluntary on the Fire Department and to be close to his son and parents.

Commissioner Hemink asked if the intent was to live in the existing detached garage. Mr. Traff said it was.

Commissioner McGary asked if the detached structure was connected to the principal structure, could it be occupied. Zoning Coordinator Karpas said it could.

Commissioner Brandt asked if the garage was currently being occupied. Mr. Traff said it was not and is not connected to sewer and water.

Attorney John Winston, speaking on behalf of the applicant commented the thought all along was the plan was flexible and could be adjusted to meet the desires of the city. He said it was his understanding that the plan complied with the dimensional requirements of the city. He said the ultimate goal is to attain to lots, but that they don't have to be in the configuration presented tonight. He said the applicant would like to address the concerns raised by the city and neighboring residents. As it pertains to the detached structure, he feels the proposed alterations would be an improvement.

Mrs. Traff, 18500 Maple Ridge Road, commented the structure has been in place for over forty years, so the neighbors are already used to seeing it. She said the other issues can be altered in terms of lot dimensions.

Chairman Linder opened the public hearing.

Zoning Coordinator Karpas directed the Planning Commission's attention to a letter he received from Kathy Murphy and Norm Rickman, 3200 Robinson's Bay Road, outlining their concerns and opposition to the proposal.

Mary Mithun, 2303 Robinson's Bay Road, said she had some concerns about the request and didn't feel family hardships equate to the need for lakeshore and lake access for both lots. She finds the proposed configuration weird and done solely for lake access. She said there have been neighbor issues in the past regarding lake access and does not want to create a situation that could cause future issues. She feels the applicant has a history of not abiding by the rules.

Tony Miller, 3100 Maplewood Road, said he had a number of concerns and said, even though he is an adjacent property owner, he did not receive notification, so he does not feel he's had enough time to review the proposal. He said he does have concerns about lake access, which has been an issue in the past, with some citizens believing they have unfettered access, though there's no public access to Lake Marion. He feels the request would add to the access issues related to the lake. He questioned what the standard was in order to be deemed to have lake access. He feels granting a lake frontage variance would be setting a bad precedent.

Carl McElroy, 3265 Robinson's Bay Road, said he shares the concerns of his neighbors and said they purchased their lot for aesthetic reasons, with the belief there were no additional buildable lots in the area. He noted there is a current lot encroachment onto his property with the existing driveway. He believes the future use of the property should be factored in when making the decision, and not just the current need.

Hearing no further public comment, the public hearing was closed. He asked for the Commissioner's thoughts.

Mr. Traff stated that Federal riparian rights are based on having property along the ordinary high water line of a water body, regardless of the amount of lakeshore owned. Having access permits a property owner the right to transverse and recreate on the entire lake basin. He said this has been a point of contention with his neighbors in the past. He said under his interpretation of the ordinance, the proposed lots comply with the lake frontage requirements. Mrs. Traff said her son has worked hard to keep Lake Marion beautiful.

Commissioner Carlson thanked Mr. Traff for his volunteer efforts with the Fire Department and his efforts to keeping the lake clean. He said, however, he can't support the request. He feels it opens up the potential for similar proposals in the future. He said the proposal creates a lot that will have issues with impervious surface issues in the future. He is not willing to create that situation in an environmentally sensitive area such as Lake Marion.

Commissioner McGary said he feels his past decisions were based on findings related to the impact on the adjacent neighborhood. With this request, he feels the proposal would create more of a negative impact on the neighborhood, rather than a positive one. He said he agrees with the comments of Commissioner Carlson and the findings presented by Staff.

Commission Hemink said he is opposed to the request. Though the spirit behind the request is commendable, the approach taken by the applicant to provide lake access for both lots is a concern to him. He said the shape of Lot 2 creates an issue with build-ability in the future. He feels another approach should be taken by the applicant to make the accessory structure habitable which didn't include subdividing the property.

Commissioner Brandt said she was opposed to the request. She was unclear how Lot 2 was originally subdivided and asked why was it defined as unbuildable where maybe an easement would have been a better solution if this property was only subdivided for lake access. Commissioner Brandt feels the current cul-de-sac would accommodate an emergency vehicle. She feels the neighbor concerns are warranted and commented they should have been notified.

Chairman Werneiwski said he agreed with the comments of the other Commissioners. His issue is more with the configuration rather than lake access. He said regardless of the good

intentions behind the request, the city will eventually have to deal with a variance request for Lot 2.

Mr. Traff said he wants to work with his neighbors to attain the required road frontage, which would remove the need for the lot frontage variance and approach the Commission again with a request without any variances.

Council Liaison Kask said the city has seen requests similar to this in the past. He noted the road radiuses are not clear and hard to read. He suggested any future requests should be easier to read. He said when reviewing requests like this, the city looks critically at the road frontage and type of road that serves the proposed lots. He said a clear delineation of the setbacks would also be needed to define the proposed building pads for each lot. He feels a separate drawing showing these issues should be submitted in conjunction with the preliminary plat.

Kask said the applicant needs to present what the proposal is since it is not the job of the Planning Commission to design the lots. He reminded the applicant, that even if the proposal is recommended for denial, he has the right to approach the Council, but warned if the proposal is denied by the Council, by ordinance, he would have to wait six months prior to resubmitting to the city.

Mr. Traff indicated there was some work needed with the mortgage lenders for the adjacent properties, which may take some time. He would like to withdraw the request at this time.

Zoning Coordinator Karpas asked the applicant to clarify for the official record his intent to withdraw the request. Mr. Traff, speaking on behalf of his father, the applicant, stated he would like to withdraw the request at this time.

NEW BUSINESS

Regulation of Outdoor Play Structures

Zoning Coordinator Karpas said the Council discussed the Planning Commission's desire to revisit the issues related to the regulation of play structures and felt they were willing to look at any proposed ordinances drafted by the Commission. He said he would be able to do some research using the League of Minnesota Cities resource library to get an idea how other cities address the issue.

Council Liaison Kask said the Council was willing to examine the subject in light of the recent issues surrounding it since there could be some level of protection with an ordinance. He reiterated there has always been an issue with defining what a play structure is and defining the area of a play structure. He said the Council was clear, since issues like this can drag on for some time, that they wanted a concise set of regulations that didn't need to be continually edited by the Council. He said the Council is relying on Staff and the Commission to review the issue and present a complete ordinance.

Kask said, speaking about the recent play structure constructed on a corner lot, that the city has never allowed accessory structures within a front yard setback, even though there are issues related to corner lots. He said this case may have found some sympathy. He said any

ordinance should address issues such as corner lots, should take into consideration lot size, a clear definition of play structure and be consistent with the current Zoning Ordinance.

Commissioner Carlson said regulating such uses could lead to a slippery slope, noting there are a number of items he may find objectionable and unsightly, but he wouldn't want to have them regulated. He used the example a wood splitter and boat trailers.

Chairman Werneiwski said he doesn't see a reason for creating such regulations. Carlson agreed and likes the idea of having young families in the neighborhood.

Commissioner Brandt said she has been raising the issues related to play structures since 2007. She finds some of the structures very obtrusive and believes the city is behind the trend in not regulating them. She feels modern play structures are permanent structures. She believes the one most recently constructed has devalued the adjacent property. The city's willingness to leave play structures unregulated is irresponsible to the residents. She said the city needs to anticipate trends, especially since play structures are three dimensional structures and are permanently placed for the most part.

Commissioner Hemink stated if the city decides to regulate play structures, it should also research the issues other cities have had that do regulate them. He believes most people don't view these types of structures as permanent.

Zoning Coordinator Karpas noted there are permits required for their construction under State Statutes. This makes regulation difficult since most violations would be after the fact and quite costly to property owners.

Commissioner Carlson stated if the city were to set an acceptable envelop for play structures, manufacturers would begin designing to fit that envelope. He feels the specific issues objectionable to those wanting regulation have to be ascertained. Is it the size of the structures, the color, or the location.

Council Liaison Kask said it is up to the Commission whether to regulate play structures since it was not a directive by the Council that they do so.

Commissioner Brandt stated that without regulations, the structures could be larger than other accessory structure and the city needs to address the issues before they exist.

Zoning Coordinator Karpas said one option was to have a special use process like the one used to allow property owners to exceed the allowable aggregate building area on a lot. This would permit issues such as size, location and screening and permit neighbors to weigh in on the decision. He said there is always going to be the issue on how to define area of a play structure.

Commissioner Brandt said in her opinion footprint is the area that is covered and manufacturers provide the square foot areas of their structures. She noted they also have recommendations for separation from adjacent properties.

Council Liaison Kask reminded the Commission that it did not have to propose regulation of play structures if the majority of Commissioners were opposed to it. Zoning Coordinator Karpas said

the Commission could vote amongst themselves to gauge the willingness of reviewing this issue, noting it would not be a good use of the Commission's time to work on this if a majority were opposed to it.

Commissioner Brandt asked if that were the case, would the issue basically be dropped. Council Liaison Kask said it would at the Planning Commission level, but that any citizen can petition the Council to have the issue addressed. If the Council agrees, it could direct the Planning Commission to develop proposed regulations.

Zoning Coordinator Karpas suggested that he be permitted to gather information from the League of Minnesota Cities for the Commission's review prior to any vote on the willingness to regulate play structures.

The Commission agreed.

LIAISON REPORT

Council Liaison Kask said the Council approved the variance requests for the Gallagher's and Landis'. Commissioner Brandt asked about the cantilever issue. Kask said the city typical has allowed cantilevered areas provided they are under the permitted eaves.

ADJOURNMENT

Motion by Commissioner Carlson to adjourn the meeting. Commissioner McGary seconded. The motion carried 5-0. The meeting adjourned at 8:40 p.m.

Respectfully submitted,
Gus Karpas
Zoning Coordinator