

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

PRESENT: Chairman Walter Linder, Commissioners Barbarajean Brandt, Kent Carlson, Scott Hemink, John McGary and Pete Onstad

ABSENT: Commissioner Bob Werneiwski

OTHERS PRESENT: Council Liaison Josh Hackney and Zoning Coordinator Gus Karpas

MINUTES OF August 16, 2011

Motion by Commissioner McGary, seconded by Commissioner Onstad, to approve the minutes of August 16, 2011 as presented. Motion carried 4-0-2. Commissioners Hemink and Linder abstained.

PUBLIC HEARINGS

VARIANCE – Request from Steven Streeter, 20240 Lakeview Avenue, to construct a new single family home which would encroach into the required lake yard setback and exceed the maximum permitted impervious surface area.

Section 1310.02 of the Zoning Ordinance requires a minimum lake yard setback of one hundred feet in the Shoreland District. The proposed single family home would be setback sixty-one feet, two inches from the Ordinary High Water Level. A variance of thirty-eight feet, ten inches is sought of the required lake yard setback.

Section 1350.06(2)(a) permits a maximum impervious surface area of 25%. The proposed impervious surface area on the property would be 35%. A variance to exceed the maximum impervious surface area by 10% is sought.

Zoning Coordinator Karpas presented his staff report and indicated he recommended approval for the proposed lake setback variance, but recommended denial for the proposed impervious surface variance. He felt that even though the overall amount was being reduced by seven percent, the applicant would still well exceed the permitted percentage if his lot met the minimum lot area requirement.

Steven Streeter, 4200 North Lane, said the proposed concept was chosen from a number of options. He said it was chosen after studying traffic conditions in the neighborhood at all hours of the day. He noted the property currently has an impervious surface area of 42% without a garage, while the proposal reduces the impervious surface area while adding a garage. He said they could get closer to the required impervious surface level if the garage was turned to face the street, but felt the design as proposed was more aesthetically pleasing. He said the large parking area on site was necessary due the amount of street parking for the nearby beach. He feels the courtyard provides additional safety by taking vehicles off the street. He reiterated the existing property consists of a 3,000 square foot home without an on-site garage. As for the proposed deck, he said it is very narrow in some areas and it blends in with the existing topography.

Mr. Streeter said the house was set on the lot in a way to minimize to massing impact on adjacent properties. He said the height of the structure would be similar to those adjacent to it and the intent is to put in more landscaping than would be taken out to soften the look. He feels the design is good and fits on the property, noting someone could buy the existing structure and remodel it leaving the site with the existing encroachments and 42% impervious surface, whereas he's lessening the number of encroachments and reducing the impervious surface area by seven percent.

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

Commissioner Hemink clarified the hardcover calculation. Commissioner Brandt asked about the material to be used in the "passage garden." Mr. Streeter said there would be plantings in that area.

Commissioner Hemink said he liked the overall plan since it pushed the structure back from the lake and agrees that an on-site garage is a key feature for the property.

Commissioner McGary asked about the future dock and asked why it wasn't included in the impervious surface calculation. Zoning Coordinator Karpas said the dock was removable, therefore not counted. McGary said he liked the design and feels it would be an improvement. He agrees with staff that there could be some compromise in regards to the hardcover percentage since the lot can be reasonably used with a different design.

Commission Onstad agreed with Commissioner McGary that there are ways to reduce the impervious surface to a point where it fits with the lot area, stating that he's not necessarily in favor of holding the applicant to the ordinance provision, rather reducing the impervious surface area further from what is being proposed.

Commissioner Carlson disclosed for the record that the applicant currently rents a property from him. He thanked the applicant for investing in the community and asked what material would be used for the driveway. Mr. Streeter indicated they would use pavers, though the City of Deephaven does not recognize them as permeable. Carlson said one option the city could look at is design features such as the use of pavers and rain gardens as a means of handling runoff on the site. He asked about the material used for the deck. Mr. Streeter said the deck would be wood construction. Carlson noted that water would pass through the deck. He feels the ordinance is a bit harsh when it comes to impervious surfaces and that he likes the design and supports the request.

Chairman Linder said he likes that the proposed structure reduces the number and degree of encroachments, noting the lakeside encroachment is measured to the front of the deck, while the bulk of the house is set back further, lessening the impact from the lake. He said he has no issues with the hardcover variance request since the overall hardcover is reduced. He noted that the proposed structure is considerably larger than the existing structure, and that the size was close to what he thought the maximum that could be supported by the lot. He also noted that even though the setback encroachment on the east side was reduced at its maximum, substantially the entire length of the house was not at the setback point, whereas only a limited portion of the existing structure was at the maximum encroachment. He concluded, however, that the proposed structure was consistent in size and appearance with the immediate

neighbors and other lakeside houses on the street, did not result in massing “creep”, and would fit in nicely with the existing neighborhood. He is supportive of the request.

Commissioner Brandt noted the existing structure is a walkout and asked about the proposed structure and the grading required. Mr. Street said the proposed home would be a two story structure without a walkout and that the structure would be lowered about three feet from what currently exists. Brandt asked if the house would be two stories from the lake to Lakeview Avenue, with a basement. Mr. Streeter said it would and that the basement would not be visible. Brandt is concerned that the house would look more massive than the existing home with more “girth” along the west property line and Lakeview Avenue. She asked about the location of the proposed driveway, noting the city does not regulate the location of driveways and parking courts, they do typically impact neighbors negatively. Mr. Streeter said the proposal uses the curb cut of the existing driveway and that the overall massing of the proposed structure is consistent with the houses on either side of it. Brandt feels the house is going to look too large for the lot and expressed concern that the proposed hardcover would have a negative drainage impact on the property to the west. Mr. Streeter said he is proposing a six foot hedge along the west side of the home to soften the impact and noted, in terms of drainage, that the existing home sits about three and a half feet higher than the property to the west, while the proposed structure would be set lower. Brandt is still concerned there could be a drainage issue due to significant grading and questioned its compliance with city and watershed district regulations. Mr. Streeter said the proposal would reduce the overall impervious surface on the property and that the water already goes the west and the proposal is a good scenario for the neighborhood since it better controls the runoff from the property.

Commissioner Brandt discussed her concerns about the proposed height of the structure. Mr. Streeter noted the height was in compliance with the ordinance.

Commissioner Brandt feels that just because an existing structure is nonconforming that the city should approve a proposal because it lessens the nonconformities. She feels the previous owners made reasonable use of the property by using the garage across the street. She is not in favor of the request because she feels it's too much structure for the lot.

Mr. Streeter said the only other option he has to further reduce the impervious surface area is to turn the garage towards the street, which is less aesthetically pleasing and removing a garage stall could lead to additional outside storage.

Kurt Bowman, architect for the applicant, said they looked at designs which would reduce the footprint by pushing the garage into the house more, but found that by doing so the overall height of the structure would be increased, having a more massive appearance.

The Commission discussed the use of pavers. Zoning Coordinator Karpas reminded the Commission that the applicant no longer had to prove and undue hardship and that the new standard was proving a practical difficulty which prevented the reasonable use of the property.

Commissioner McGary is in favor of looking at options such as rain gardens to minimize the impact of runoff, but doesn't feel there is enough practical difficulty to say there isn't another reasonable use for the property.

Commissioner Hemink said in order to meet the required impervious surface percentage, the applicant would have to essentially remove the entire garage and driveway. Commissioner Onstad said he would accept a percentage higher than the requirement, but feels 35% is too much.

Chairman Linder stated he didn't sense a clear majority in favor of the request and explained the options available to the applicant including continuing the request and coming back with modifications, withdrawing the request or continuing on to the City Council with a negative recommendation. Mr. Streeter indicated he wanted to continue on to the Council regardless of the vote.

Motion by Commissioner Hemink to recommend the City Council approve the variance requests to encroach thirty-eight feet, ten inches into the required one hundred foot lake yard setback and to exceed the maximum permitted impervious surface area by 10%, as presented at 20240 Lakeview Avenue, based on the findings of staff, with further consideration by the applicant on how to mitigate the impact of the increased impervious surface area. Commissioner Carlson seconded the motion. The motion failed 3-3. Commissioners Carlson, Hemink and Linder voted aye. Commissioners Brandt, McGary and Onstad voted nay. A tie vote constitutes a recommendation for denial per state statutes.

OLD BUSINESS

Ordinance Amendment – Discuss amendment of Zoning Ordinance provisions to address the adoption of the Intoxicating Liquor Ordinance.

Zoning Coordinator Karpas said as part of the process of implementing a liquor control ordinance in the city, changes must be made to the zoning ordinance outlining many aspects related to the sale of alcoholic beverages.

The proposed liquor ordinance has been passed on to the City Council for their review. They have delayed a discussion on the proposed ordinance until they have received the recommended zoning ordinance amendments from the Planning Commission.

Karpas said he has worked with Councilmember Hackney and Commissioner Carlson to develop a couple of options on how to address zoning ordinance changes. Two options have been developed, labeled Option A and Option B, which are included with the memo.

Both options require changes in the "Schedule of Uses" to permit the sale of liquor as a Special use permit. However, Option A would rezone the C-1 Commercial District along Highway 7 to C-2 Commercial. The schedule of uses would then permit all liquor related uses included in the liquor ordinance in the C-2 District, while only off-sale and wine licenses would be permitted in the C-1 District. The thought behind this was that restaurants selling intoxicating liquor would tend to have establishments with higher traffic which would be more suitable along the major arterials on the fringes of the city. Also, establishments issued a wine license would also be permitted, by ordinance, to sell intoxicating malt liquor, which would not exclude the current restaurant in the C-1 District from being permitted to offer alternatives that would match their current menu selections.

The selection of Option A would require a minimal amendment to the liquor ordinance since now the sale of on-site intoxicated liquor would be limited to the C-2 District.

The City must also determine what a reasonable setback would be in terms of adjacent residential uses. After some research, any type of setback from a commercially zoned property line to residentially zoned property line would eliminate essentially all commercially zoned properties from having a liquor use since they either directly abut residentially zoned property or are located across the street from one. This leaves the concept the city used in the setback requirement for cell towers, where the setback is measured from the tower itself to the principal structure on a residentially zoned property. The task is to select a reasonable structure to structure setback that would not eliminate the majority of commercial properties. For example, initial research has shown that a 150 to 200 foot setback would limit only a handful of commercial properties from being eligible for a liquor use, in both districts.

Business hours would be impacted differently based on the option selected by the Commission. Option A would have two permitted hours of operation based on the zoning district. Properties within the C-1 District, allowed to sell wine and intoxicating malt liquor, would be permitted business hours currently allowed by the ordinance, 7 AM to 9:30 PM. Businesses located in the C-2 District would be permitted hours of operation consistent with the allowable hours of operation under State Statute, unless changed by the City Council during the Special Use process based on factors such as type of business and adjacent uses.

Option B would have uniform hours of operation, which could be the current permitted hours under the existing ordinance, though they would most likely need to be amended to permit businesses to be competitive with neighboring communities.

Both options would have to comply with the existing sign ordinances and the hours of illumination would be limited to the hours of operation. This may or may not be an issue for a couple of properties that directly abut commercially zoned properties in the C-2 district if they are permitted to follow the State Statute in terms of permitted business hours. This would have to be a discussion during the Special Use process.

The final change identified by staff are parking requirements, which will remain constant regardless of which option is chosen, though the chosen option may dictate the requirement. There will need to be two changes. The first would be for restaurant uses. The current ordinance requires a minimum of three employee parking spaces and one space for each three seats in the main seating area or 300 square feet of gross floor area, whichever is greater. The model ordinances used in drafting the city's ordinance varied from one space per forty square feet to one space per seventy-five square feet. Using the most restrictive, one space per seventy-five square feet would require four spaces per 300 square feet of gross floor area, or four times the current requirement. Consideration must be given to the option selected.

Option A, which rezones the properties along Highway 7 to C-2, contains commercial properties which tend to be larger and structures dedicated to single use, so a more restrictive parking requirement could be implemented, whereas restrictive parking requirements may be prohibitive to the smaller, multi-use properties located in Chowen's Corner if Option B is selected.

The second area of consideration in terms of parking is the required parking for off-sale liquor stores. Staff viewed the use as other commercial and followed the existing ordinance in

requiring one space per three hundred square feet of gross floor area. Staff felt, unlike many other retail type uses, that liquor store customers tend to spend less time in the establishment causing greater turnover and lessen the need for parking.

The Commission agreed to select Option A, which required the rezoning of a portion of the C-1 District to C-2, though some Commissioners didn't have strong feelings either way. The Commission felt limiting the more intensive alcohol uses to the outskirts of the city there would be less impact on the more dense residential area surrounding Chowen's Corner.

Commissioner Brandt commented that she believes most residents didn't understand the ramifications of supporting the liquor referendum in terms of the types of businesses the city has opened itself up to. She did note the city has a number of regulations which would lessen the possibility of a business with liquor sales at the core of their business.

The Commission discussed hours of operation supporting the language permitting hours consistent with the state statutes in the C-2 District, but felt the same language should be included in the C-1 District since the 9:30 PM closing time may be too restrictive.

The Commission agreed that a one hundred foot structure to structure setback would be appropriate for liquor uses and principal structures.

Zoning Coordinator Karpas said he would take the steps necessary to begin the rezoning and ordinance amendment processes.

LIAISON REPORT

Council Liaison Hackney has not report.

OTHER BUSINESS

Commissioner Brandt said she was interested in making some tweaks to the fence ordinance as previously discussed by the Commission. She raised the issue of a new fence placed along Minnetonka Boulevard which she's concerned may be an eyesore to residents. At the very least she would like to see provisions regarding the type of material used for fences.

Chairman Linder said he knew the fence that Commissioner Brandt was talking about and agreed that it was "ugly" but didn't give it a second thought. Brandt said that was the point and Linder's opinion might change if it were located within his sightlines in his neighborhood.

Commissioner Hemink said he was reluctant to start regulating the types of materials used in any construction since it puts the city on a slippery slope.

A majority of the Commission agreed to do nothing at this time, though one Commissioner questioned the fences conformity with the existing ordinances. Zoning Coordinator Karpas said it would take a look at the fence.

ADJOURNMENT

Motion by Commissioner Carlson to adjourn the meeting. Commissioner Hemink seconded.
The meeting adjourned at 8:30 p.m.

Respectfully submitted,
Gus Karpas
Zoning Coordinator