

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

PRESENT: Chairman Bob Werneiwski and Commissioners Barbarajean Brandt, Kent Carlson, Scott Hemink, John McGary (7:07) and Walter Linder

ABSENT: Commissioner Pete Onstad

OTHERS PRESENT: Council Liaison Darel Gustafson and Zoning Coordinator Karpas

MINUTES OF February 19, 2013

Motion by Commissioner Carlson, seconded by Commissioner Werneiwski, to approve the minutes of February 19, 2013 as submitted. Motion carried 4-0-1. Commissioner Linder abstained.

PUBLIC HEARINGS

Variance - Revision, LLC, 20050 Lakeview Avenue - request to remove an existing lakeside deck and construct a new four hundred and ninety (490) square foot lakeside deck which would encroach into the required lake yard setback and exceed the maximum permitted impervious surface area in Shoreland District.

Section 1310.02 of the Zoning Ordinance requires a minimum lake yard setback of one hundred feet. The proposed deck would be setback fifty feet from the Ordinary High Water Level. A variance of fifty feet of the required lake yard setback is being sought.

Section 1350.06(2)(a) permits a maximum impervious surface area of 25%. The proposed impervious surface area on the property would be 32.7%. A variance to exceed the maximum impervious surface area by 7.7% is sought.

Zoning Coordinator Karpas presented his staff report. He said the applicants are proposing to remove the existing lakeside deck and stairs, which is primarily located on the east side of the home and construct a new four hundred and ninety (490) square foot deck that would span the majority of the lake side of the home. The proposed deck would be elevated and no longer have access to grade.

He said the point at which the deck would be expanded would be the greatest degree of encroachment. The encroachment decreases from fifty (50) feet to thirty-seven (37) feet as the deck moves east to west along the home due to the angle of the shoreline. He said the proposed deck complies with the other required yard setbacks.

Karpas said the applicants are also seeking a variance to exceed the maximum impervious surface area by 2.7%, but as part of the project are reducing the overall impervious surface area on the property by 2.5%, or six hundred and eighty-one (681) square feet.

Karpas noted the City Council approved the location of the existing home in 1988, permitting a fifty foot setback from the OHWL. In 1991 the City Council reaffirmed the deck setback by its approval of a variance to permit the reconstruction of the lakeside deck.

Karpas said he recommended approval of the request stating the purpose and intent of the ordinance is to allow the orderly development and redevelopment of property within the city and when the ordinance standards cannot be met, it outlines the procedures to vary from these standards. In this instance, the applicant is seeking to vary from the stated dimensional requirements and impervious surface standards of the ordinance. The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the development of residential property within the city. He felt the reconstruction and expansion of the existing is a reasonable use of the property in that it takes advantage of the natural

architecture of home. The footprint of the proposed deck will not extend any closer to the lake than the existing deck and the actual encroachment decreases on the new portion of the deck as it runs from the east to the west to the angle of the lot line. The placement of the home and the existing deck were approved by the City Council in 1988 and the placement of the deck was reaffirmed in 1991 when the previous homeowner was granted a variance to replace the deck. The findings for approval of the home included that it was in character with the placement of other homes in the neighborhood in terms of lake setback. There was no mention of a variance granted for impervious surface, though at the time of the home's construction, the Shoreland Management Ordinance regulating impervious surface was not in effect; and the proposal would not alter the essential character of the locality since it would have no additional visual impact above and beyond the additional deck from adjacent neighbors.

John Daly, Revision, LLC said concurred the existing steps to the grade would be removed and the encroachment would be decreased on the new portion of the deck.

Chairman Werneiwski opened the public hearing. Hearing no comments the hearing was closed.

Commissioner Brandt asked for clarification on the impervious surface area. Mr. Daly said the actual amount of impervious surface would be reduced.

Commissioner Hemink liked the reduction in impervious surface area and given the architecture of the lakeside of the home he's surprised the deck wasn't originally designed as proposed. Commissioner McGary agreed and also had no issues with the request.

Commissioner Carlson said he was supportive of the request but felt it would be helpful for the survey to more clearly identify those areas of rock and plastic to be removed. He would personally remove all of the rock and plastic to get closer to the percentage and go with a pervious material. Chairman Werneiwski agreed with Commissioner Carlson and would also like to see all the landscape plastic removed.

Commissioner Linder was supportive of the request.

Commissioner Brandt said she was supportive of the request, though she would not have been previously when it was originally approved by the city.

Motion by Commissioner Werneiwski to recommend the City Council conditionally accept the recommendation of staff and approve the variance requests as presented by Julie Brown and Sarah Buxton to encroach fifty (50) feet into the required one hundred (100) foot lake yard setback and to exceed the maximum permitted impervious surface area by 7.7% for the proposed deck alteration at 20050 Lakeview Avenue. The motion is based on the following findings: (a) the purpose and intent of the ordinance is to allow the orderly development and redevelopment of property within the city and when the ordinance standards cannot be met, it outlines the procedures to vary from these standards. In this instance, the applicant is seeking to vary from the stated dimensional requirements and impervious surface standards of the ordinance; (b) the request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the development of residential property within the city; (c) the reconstruction and expansion of the existing is a reasonable use of the property in that it takes advantage of the natural architecture of home. The footprint of the proposed deck will not extend any closer to the lake than the existing deck and the actual encroachment decreases on the new portion of the deck as it runs from the east to the west to the angle of the lot line; (d) the placement of the home and the existing deck were approved by the City Council in 1988 and the placement of the deck was reaffirmed in 1991 when the previous homeowner was granted a variance to replace the deck. The findings for approval of the home included that it was in character with the placement of other homes in the neighborhood in terms of lake setback. There was no mention of a variance granted for impervious surface, though at the time of the home's construction, the Shoreland Management Ordinance regulating impervious surface was not in effect; and (e) the proposal would not alter the essential character of the

locality since it would have no additional visual impact above and beyond the additional deck from adjacent neighbors. Commissioner Brandt seconded the motion. The motion was conditioned that the applicant remove the remaining plastic landscaping material on the property and replace it with pervious material to further reduce the impervious surface percentage on the property. Motion carried 6-0.

Variance - David Garber, 18880 Ridgewood Road – request to construct a new one thousand, seven hundred and fifty (1,750) square foot detached garage which would exceed the maximum permitted accessory structure area in R-2 District and maximum permitted accessory structure height.

Section 1310.10(1)(f) of the Zoning Ordinance permits a total area of accessory structures that contain walls and/or a roof of 1,000 square feet on property zoned R-2. The aggregate total area of all accessory structures proposed on the property is three thousand, five hundred (3,500) square feet. The applicant is seeking a variance to exceed the maximum permitted accessory structure area by two thousand, five hundred (2,500) square feet.

Section 1310.10(1)(a) of the zoning ordinance permits a maximum accessory structure height of fifteen feet, as measured to the average of the highest peak. The applicant proposes an accessory structure height of seventeen (17) feet. The applicant is seeking a variance to exceed the permitted accessory structure height by two (2) feet.

Zoning Coordinator Karpas presented his staff report. He said the applicant is proposing to construct a detached storage building which would exceed the maximum permitted accessory structure area permitted on an R-2 single family lot and increase the existing accessory structure area non-conformity on his property. In addition the applicant is seeking to exceed the maximum permitted accessory structure height.

The property currently contains a one thousand, seven hundred and fifty (1,750) square detached garage. The proposal would add a detached storage building of a similar size, increasing the total accessory structure area by one thousand, seven hundred and fifty square (1,750) square feet for a total accessory structure area of three thousand, five hundred (3,500) square feet. The applicant is seeking a variance to exceed the permitted accessory structure area by two thousand, five hundred (2,500) square feet.

The zoning ordinance permits a maximum accessory structure height of fifteen (15) feet, as measured to the average of the highest peak. The proposed accessory structure would have an average height of seventeen (17) feet and an overall height of twenty-four (24) feet. The applicant is seeking a variance to exceed the permitted accessory structure height by two (2) feet.

Karpas said the proposed structure is being constructed to mimic the existing structure in terms of area and height. The existing detached structure was constructed on the property in 1996. Even though the structure exceeds the maximum permitted accessory structure area and accessory structure height, it was issued a building permit without the issuance of variances. The building permit information is clear and it should have been apparent at the time the proposed structure did not comply with the ordinance requirements.

Karpas said he recommended denial of the request stating the purpose and intent of the ordinance is to allow the orderly development of property within the city under set standards adopted by the city. When these standards cannot be met; it outlines the procedures to vary from these standards. In this instance, the applicant is seeking to vary from the stated structural area requirements of the ordinance. The request is not inconsistent with the Comprehensive Plan's Housing Elements Goals and Policies which does not specifically address accessory structures. He said though a detached storage building is not an unreasonable use for a single family property, the proposed structure doubles the existing detached structure area on the property, which already exceeds the permitted accessory structure area. The existing detached structure serves as a garage and contains over seventeen hundred square feet. The proposed storage would also serves as storage for a hobby the applicant has yet to begin, meaning other

arrangements could be made that would not require the city issuing a variance from its ordinance. He said the proposed use of the building, per the application, is to store classic cars which are not currently owned by the applicant. It can be argued the circumstances creating the need for the storage facility are created by the landowner. In terms of the height, the design of the building could be modified to comply with the required maximum height requirement since the proposed use of the building does not necessitate excess height. He said previous requests to exceed the maximum permitted accessory structure area were unique in that the requests were necessary to create primary garage space. The principal structure on this property contains an attached three stall garage in addition to the existing detached structure. The request before the city is for the creation of additional storage for hobby purposes which is a unique circumstance created by the homeowner and the structure itself may not be visible outside the subject property but the amount of detached accessory structure area is out of character for the neighborhood and will exceed that of the principal structure. The intent of accessory structures is to create uses subordinate to that of the principal use of the property which is single family residential.

David Garber, 18880 Ridgewood Road said he spoke with his neighbors and none of them had an issue with the request. He said lot is approximately one hundred and fifty thousand (150,000) square feet and with only twelve (12) percent impervious surface area. He doesn't feel what he's asking for is unreasonable and feels it is unobtrusive and not overstepping the bounds given the size of his lot. He noted he doesn't own any classic cars as of yet because he's not going to make that investment until he has someplace to store them.

Chairman Werneiwski opened the public hearing.

Bob Elwell, 4505 Chickadee Lane, said he had no issues with the request, noting it was buried enough into the hillside that it would not be visible. As a neighbor, he was supportive of the request.

Zoning Coordinator Karpas read Resident Comment Forms submitted by the residents from 18900 and 18955 Ridgewood Road in favor of the request into the public record.

Hearing no further public comment, the public hearing was closed.

Chairman Werneiwski said he originally thought the proposal was piling on a lot of structure onto a lot and was generally opposed to the request but now he would like to hear what other Commissioners have to say about the request. He noted it is situated where no one can see it and the neighbors are supportive, which makes the decision more difficult.

Commissioner Linder agreed it's tucked into the lot and the neighbors won't see it and there's certain logic for granting the request, but the reality is it's a big building and it's a "rule buster." He's thinking long term and the unknown future use of the structure and its impact on the adjacent properties. He's leaning towards being opposed to the request.

Commissioner Brandt said she tends to error on the side of the ordinance. She's definitely not in favor of the additional height. She asked about the number of permitted accessory structures on a lot. Zoning Coordinator Karpas said accessory structures are limited based on square foot area and not on number. She didn't feel that made much sense. She noted how it defies logic that the city approves variances to jam structures on small lots and in this case we have a lot that is oversized and underutilized and it may not be approved.

Commissioner Carlson said he struggles with the request and he too fears a future use. He said the intent of the accessory structure ordinance is to permit the storage of typical yard maintenance type equipment. He said larger buildings such as this lend themselves for potential business uses which are out of character with the surrounding residential uses.

Commissioner McGary agrees there is a lot of room on the property and the city does grant a lot of variance for small properties. He said the structure could be viewed as a principal use on the property. He asked about the footprint area.

Zoning Coordinator Karpas said, taken as a whole, the accessory structure footprint area exceeds that of the principal structure. He feels that takes away the intent of having accessory structures as a subordinate use on a lot. He also noted if the variance was approved by the Council, there would also have to grant approval for Mr. Garber to exceed the maximum permitted aggregate footprint area on an R-2. He noted this was not a Planning Commission issue, nor did it require public notifications.

Commissioner Hemink asked about the previous accessory structure request. Zoning Coordinator Karpas said that request was different in that the applicant was removing their existing primary garage and constructing a larger detached garage. It was the only garage that served the property and the excess accessory structure area was approximately nine hundred and fifty (950) square feet. The applicant before the Commission has a three-stall attached garage along with a detached garage. The proposed detached structure would be an additional storage structure.

Commissioner Hemink expressed concern about having multiple detached structures with multiple uses. Though he's not concerned with the current homeowner, he does have concern about future owners and the use of the structures. He agrees the proposal is a "rule buster" that takes the current ordinance and goes way past it. He said it's totally logical to approve the request, but to do so would be contrary to the intent of the ordinance.

Motion by Commissioner Linder to recommend the City Council accept the recommendation of staff and deny the variance requests as presented by David Garber to exceed the maximum permitted accessory structure area by two thousand, five hundred (2,500) square feet and the maximum permitted accessory structure height by two (2) feet in the R-2, Zoning District for the proposed construction of the detached storage structure as presented at 18880 Ridgewood Road. The motion is based on the following findings: (a) the purpose and intent of the ordinance is to allow the orderly development of property within the city under set standards adopted by the city. When these standards cannot be met; it outlines the procedures to vary from these standards. In this instance, the applicant is seeking to vary from the stated structural area requirements of the ordinance; (b) the request is not inconsistent with the Comprehensive Plan's Housing Elements Goals and Policies which does not specifically address accessory structures; (c) though a detached storage building is not an unreasonable use for a single family property, the proposed structure doubles the existing detached structure area on the property, which already exceeds the permitted accessory structure area. The existing detached structure serves as a garage and contains over seventeen hundred square feet. The proposed storage would also serve as storage for a hobby the applicant has yet to begin, meaning other arrangements could be made that would not require the city issuing a variance from its ordinance; (d) the proposed use of the building, per the application, is to store classic cars which are not currently owned by the applicant. It can be argued the circumstances creating the need for the storage facility are created by the landowner. In terms of the height, the design of the building could be modified to comply with the required maximum height requirement since the proposed use of the building does not necessitate excess height. Previous requests to exceed the maximum permitted accessory structure area were unique in that the requests were necessary to create primary garage space. The principal structure on this property contains an attached three stall garage in addition to the existing detached structure. The request before the city is for the creation of additional storage for hobby purposes which is a unique circumstance created by the homeowner; and (e) the structure itself may not be visible outside the subject property but the amount of detached accessory structure area is out of character for the neighborhood and will exceed that of the principal structure. The intent of accessory structures is to create uses subordinate to that of the principal use of the property which is single family residential. Commissioner Brandt seconded the motion. Motion carried 4-2. Commissioners McGary and Werneiwski voted against the motion.

OLD BUSINESS

Discuss – Ordinance 13-62, Creating Section 1312 – Construction Regulation – amend proposed ordinance which would realign existing construction regulations within the existing city codes, amend the existing grade ordinance and create additional survey requirements. Direct Staff to schedule public hearing.

Zoning Coordinator Karpas presented the proposed ordinance as it would be presented at the public hearing and asked the Commission if they had any further changes to the ordinance or if they felt it was ready to be scheduled for a public hearing.

Chairman Werneiwski suggested expanding the requirement under 1312.05(2)(a)(6) to include all erosion control measures. The Commission agreed to the change.

Commissioner McGary questioned the need for a permit for any grade alteration in the city, feeling it was a little heavy handed. Commissioner Hemink was under the impression that requirement was removed to prevent people to have to come to the city for trivial things such as gardens. Zoning Coordinator Karpas said the ordinance gave him some discretion on who required a permit and he also believed on those applying for a building permit required an engineer review. Commissioner Brandt noted the drainage issue is what prompted the grade change ordinance in the first place and now we're changing the ordinance to permit up to a three foot change without a permit. She feels that can have a real negative impact on drainage, especially in Cottagewood. Commissioner Linder noted Section 1312.04, as drafted, requires all grade alterations to receive written approval. Zoning Coordinator Karpas suggested changing the term permit to approval to loosen the regulation, but still require city review. The Commission agreed to the change.

Commissioner McGary asked if Section 1312.05(1)(i), requiring the use of temporary or permanent electrical hook up as the primary source of electrical power on a construction site could be removed. He said providing the service to the site adds expense and time, noting even with electrical service, air compressors would still be used which are just as loud, if not louder, than generators. Commissioner Carlson said the issue with generators is the impact they have on adjacent properties, especially during the summer hours when people are trying to enjoy their outside spaces. Commissioner Linder suggested a language change that would permit the use of generators until such time temporary or permanent service could be establish at a construction site. The Commission agreed to the change.

Motion by Commissioner Carlson that staff schedule a public hearing for Ordinance 13-62, as amended, to be held at the Planning Commission's April 16th meeting. Commissioner Werneiwski seconded the motion. Motion carried 6-0.

NEW BUSINESS

Appoint Chair and Vice-Chair for 2013 – Appoint Chair and Vice Chair to serve until April 2014

Motion by Commissioner Werneiwski that the Commission appoints Kent Carlson to serve as Chairman and John McGary to serve as Vice-Chair for 2013. Commissioner Hemink seconded the motion. Motion carried 6-0.

LIAISON REPORT

Council Liaison Gustafson said massing ordinance is of particular importance to the Council and there is some expectation that the Planning Commission is working based on a schedule to get something up to the Council for action sooner rather than later. Commissioner Carlson said the Commission was working on a schedule and confirmed with the Commissioners they were at a point to get an ordinance drafted at the next meeting and solicit the comments of architects. Zoning Coordinator Karpas said his intent was to keep the process moving so the Commission didn't get bogged down.

DEEPHAVEN PLANNING COMMISSION

TUESDAY MARCH 19, 2013

7:00 P.M.

PAGE 7

Zoning Coordinator Karpas said the Council addressed two other issues that were before the Commission last month. He said David Garber withdrew his request for an ordinance amendment to permit the operation of a firearms business in the C-1 Zoning District and the Council unanimously approved the variance request by the Hemink's to exceed the permitted impervious surface area.

ADJOURNMENT

Motion by Werneiwski to adjourn the meeting. Commissioner McGary seconded. The meeting adjourned at 8:45 p.m.

Respectfully submitted,
Gus Karpas
Zoning Coordinator