

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

PRESENT: Chairman Kent Carlson and Commissioners Barbarajean Brandt, Brandon Gustafson, Scott Hemink, Gen McJilton and Pete Onstad

ABSENT: Commissioner John McGary

OTHERS PRESENT: Council Liaison Darel Gustafson and Zoning Coordinator Gus Karpas

MINUTES OF April 16, 2013

Motion by Commissioner Brandt, seconded by Commissioner Onstad, to approve the minutes of April 16, 2013. Motion carried 4-0-2. Commissioners Gustafson and McJilton abstained.

PUBLIC HEARINGS

Variance – Dan and Tracy Cosentino, 19780 Lakeview Avenue - request to alter an existing 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-eight feet, four inches from the Ordinary High Water Level. A variance of forty-one feet, eight inches 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 41.9%. A variance to exceed the maximum impervious surface area by 16.9% is sought.

Zoning Coordinator Karpas summarized the request. He said there was some confusion on what the exact lake setback was, but the variance was based on the one hundred foot setback. He said there has also been a potential discrepancy in the impervious surface calculation brought to his attention that the applicant needs to address. He said he did recommend approval and felt the reconstruction and expansion of the existing deck is a reasonable use of the property in that it creates an aesthetically more pleasing deck while decreasing the existing non-conformities. He said the removal of the existing hot tub along with the associated decking around it reduces the lake side encroachment by nine feet, four inches and also reduces the impervious surface area. He said the existing non-conformities that exist on the property were all created through the variance process, noting the proposal would be reducing the extent of the variances already granted by the city. He said 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.

Mike Sharratt, Sharratt Design, presented the request. He said there was in fact a discrepancy in the impervious surface number. He said there was about one hundred square foot more impervious surface area than what was being represented. He said the intent of the project was to make things better on the property and the owners are willing to work with city staff to further reduce impervious surface area, suggesting the use of pervious pavers. He said he knows this is not an option currently supported by the ordinance. Commissioner Brandt asked for clarification on the impervious surface calculations. Mr. Sharratt said the current percentage is 44.6%, as originally presented, the percentage was to be reduced to 41.9%, but with the error the exact percentage is not known, but he would guess it would still be a reduction around the 43% area.

Chairman Carlson opened the public hearing. Zoning Coordinator Karpas said he has received written support from a number of neighbors including George Carisch, Mark Wheaton, Colleen Ryan and Richard Corson. Hearing no further public comment, the hearing was closed.

Commissioners Hemink and Gustafson had no concerns.

Commissioner Onstad also had no issues with the request, noting even with the error in impervious surface area, there was still a reduction in the percentage.

Commissioner Brandt was in favor the request and feels it is an improvement and agrees if even with the discrepancy, there is a reduction in the overall impervious surface area. She noted the strong neighbor support for the project.

Commissioner McJilton was supportive of the request though she is inclined to pursue further reductions in the impervious surface area if that were possible. Chairman Carlson, also supportive of the request, agreed, stating he would like to see some alternative methods used to reduce impervious surface on the property.

Motion by Commissioner Carlson to recommend the City Council accept the recommendation of staff and recommend the council approve the variance requests as presented by Dan and Tracy Cosentino to encroach forty-one feet, eight inches (41'-8") into the required one hundred (100) foot lake yard setback and to exceed the maximum permitted impervious surface area by 16.9% for the proposed deck alteration at 19780 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 deck is a reasonable use of the property in that it creates an aesthetically more pleasing deck while decreasing the existing non-conformities. The existing hot tub will be removed along with the associated decking around it, thus reducing the lake side encroachment by nine feet, four inches and reducing the impervious surface area by 2.7%; (d) the non-conformities that exist on the property were created through the variance process. The property has a history of variances being granted by the city including and the proposal would be reducing the extent of the variances already granted by the city; 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. Motion seconded by Commissioner McJilton. Motion carried 6-0.

OLD BUSINESS

Discuss – Regulation of Non-Conforming Lots – continue discussion on the regulation of non-conforming lots in the R-3 District.

Zoning Coordinator Karpas summarized his memo to the Commission outlining the format of the proposed ordinance. He said the bulk of the amendments are contained in Section 1310.02; Schedule of Dimension Requirements. The opening paragraph has been altered slightly to remove a reference to accessory structure setback permits which are no longer in existence in the city code and now references the code section for reduced setbacks for some accessory structures.

He said this Section also contains the table that outlines the various dimensional requirements based on a property's designated zoning district. He said the informational changes are primarily limited to the R3 District since the city is targeting the non-conforming lots in that district. There has been a distinction made in the required setbacks between lots that comply and those that don't comply with the lot area and have noted that those non-compliance lots must also adhere to the, newly defined, Side Setback Encroachment Plane.

The height section of the R3 District has been segmented to keep the existing height for compliant lots, but then creates an overall height requirement based on lot area for non-compliant lots. These numbers can be amended as the Commission sees fit.

The final change creates the definition of Side Setback Encroachment Plane in the ordinance. He used the definition currently applied by the City of Minnetonka Beach with one exception. Instead of measuring six feet above the "base" elevation, which Minnetonka Beach defines as "The highest existing ground elevation within two feet of the foundation of the Principle Use for the Principle Uses and within two feet of a Detached Garage for the Detached Garage", staff chose to use the "existing" grade. He felt using the base grade would require a change throughout the ordinance in terms of measuring the height of all structures.

The Commission discussed the proposed setbacks, more specifically allowing reduced setbacks for smaller lot. The Commission was supportive of allowing more flexibility for non-conforming lots, which included a sliding scale setback, permitting a non-conforming lot to have a side yard setback equal to twenty-five feet, provided one side yard had a minimum side yard of ten feet.

Zoning Coordinator Karpas said he was more comfortable with establishing a defined setback. He felt averaging anything always creates loopholes. Commissioner Hemink said the current amendment would permit a twelve foot side yard setback. He feels this would not reduce the number of variance requests.

The Commission discussed the proposed height amendments. Zoning Coordinator Karpas noted that Commissioner McGary, who could not attend the meeting, submitted a comment suggesting the height be measured from the top of foundation block. Karpas informed the Commission that, per code, that would add eighteen inches from grade to the height of a structure.

The Commission discussed various methods of measuring height including from the existing grade, top of foundation block and street elevation. Zoning Coordinator Karpas said the city currently measures from the existing grade. The Commission was supportive of maintaining the existing standard using the existing grade and creating an overall height for non-conforming lots.

Council Liaison Gustafson said there was no clear guidance given by the Council, but he feels there should be a maximum height established for all zoning districts and just do away with the averaging provision. The Planning Commission agreed. Zoning Coordinator Karpas reminded the Commission that the height they establish in the R3 for complying lots would also be the height applied in the Shoreland District, as it is now.

The Commission agreed to amend the height for all zoning districts to an overall height, including for conforming lots, establishing a maximum height of forty-two feet for the R2 and R1 Districts. Properties will still be permitted the ten foot grade allowance for walk-out structures. The Commission directed staff to amend the table to reconfigure the lot categories within the R3 and change the permitted heights for the categories as they pertained to non-conforming lots.

The Commission agreed that non-conforming lots should be given a setback based on a sliding scale as previously discussed and that the definition of Side Setback Encroachment Plane be expanded to include a reference to a 30 degree plane.

Motion by Commissioner Hemink that staff schedule a public hearing for Ordinance 13-, as amended, to be held at the Planning Commission's June 18th meeting. Commissioner McJilton seconded the motion. Motion carried 6-0.

NEW BUSINESS

Discuss – Rezone of 18545 Lake Avenue – discuss request to rezone 18545 Lake Avenue from R2 Single Family Residential to R3 Single Family Residential.

Zoning Coordinator Karpas said he was approached by Ken and Maggie Corens, 18545 Lake Avenue about rezoning their property. At the time he said they would need to discuss the situation with their neighbor since it would create a contiguous piece of land to be rezoned. Once they did that, they would initially bring the request to the Council to get their feedback since rezoning requests are very rare.

The Corens approached the Council, and even though their neighbor does not want to join in the rezoning, the Council asked the Commission to review the request. The Council asked the Commission to conduct some research to ascertain the number of R2 lots abutting existing R3 lots which could be subdivided to gauge the potential impact. Karpas said the Corens have already submitted this information along with maps showing the locations of the lots they reference in their submittal information.

Zoning Coordinator Karpas discussed the information submitted by the Corens. He thanked them for their hard work, but said there are some flaws. The Corens list the total number of lots and separate those out that are not sub-dividable in their view. Unfortunately, one of the criteria they use in their determination was the location of the existing home on a lot, which is a moot point when it comes to subdividing a parcel. Given the ability to create two lots out of one and the value that provides to a property, existing homes tend to disappear quite quickly.

Another issue Karpas discussed was that fact that subdivision of property is not the only issue. Those lots that are not sub-dividable due to their size, but still zoned R2 could argue that they are being “punished” by being required to comply with zoning requirements meant for 40,000 square foot lots. This could especially become an issue if the city is rezoning properties that are all of a sudden becoming eligible to subdivide.

He said he spoke with the City Attorney who said rezoning just the Coren property would not necessarily be “spot zoning,” but he questioned the practicality of such a move and asked where the city stops. Karpas expanded that by reiterating the question. Once you rezone one tier, what happens when the next row of properties ask for the same treatment? Karpas said he isn’t necessarily against rezoning the property, he just feels the city has to be careful not to create a situation that gets out of hand.

Chairman Carlson has always felt the density around the park was intended to create a transitional space, with housing becoming denser as you moved farther from the park.

Commissioner Gustafson said he lives in the neighborhood and spoke about the clear development differences between the Coren’s property and their neighbor to the west. He said the neighboring property has their structure right in the middle of their lot, while the Corens built to the side, almost with the intention of a future subdivision.

Commissioner Brandt feels it would be unfair to change the rules when existing residents bought into a neighborhood believing it would exist as it does. Permitting additional homes would be a game changer and they wouldn’t expect the city to allow that.

Zoning Coordinator Karpas discussed the accuracy of the lot area calculations provided by Hennepin County. It was noted the neighbor’s property didn’t have enough to subdivide if it was rezoned. Karpas said he has a certified survey in the neighbor’s file that says different. He said he would review the information submitted by the Corens and double check the lot areas and provide the information to the Commission at their next meeting.

Commissioner Hemink said his only concern is the issue of spot zoning which is the feeling he gets when he looks at this request.

Commissioner Gustafson asked about the feasibility of creating another zoning district to address the issues associated with small lots. He said his research has found most of the lots in the R3 District don't comply with the minimum required lot area. Zoning Coordinator Karpas agreed but said the problem was making sure those lots were in significant enough grouping otherwise you have an issue with your zoning map.

LIAISON REPORT

Council Liaison Gustafson said the Council discussed the construction regulations ordinance adopted by the Planning Commission. He said the Council had some concerns, the first being exactly what issue is the city trying to solve with the ordinance. The Council also sought clarity on some of the definitions, such as grading. What constitutes three feet and when does a homeowner doing work around their yard trigger the need for city review or even a variance. The last issue was the cost for the required surveys included in the ordinance. There was a feeling the ordinance was putting a financial burden on those residents with small projects. He feels there should to be some threshold like a dollar amount attached to a permit that requires that review.

ADJOURNMENT

Motion by Hemink to adjourn the meeting at 9:25. Commissioner Onstad seconded. Motion carried 6-0.

Respectfully submitted,
Gus Karpas
Zoning Coordinator