

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

PRESENT: Acting Chairman Brandon Gustafson, Chairman Kent Carlson (arrived at 7:10), Commissioners Jim Anderson, John Studer, and Bob Werneiwski

ABSENT: Commissioners Gen McJilton and Bill Sharpe.

OTHERS PRESENT: Council Liaison Darel Gustafson and Zoning Coordinator Dale Cooney

BUSINESS NOT ON THE AGENDA

Mayor Skrede made a brief presentation thanking Commissioner Brandon Gustafson for his service to the city and gave Gustafson a framed resolution stating the same.

MINUTES OF MARCH 15, 2016

Motion by Commissioner Anderson, seconded by Commissioner Studer, to approve the minutes of March 15, 2016. Motion carried 4-0.

PUBLIC HEARINGS

Consider the conditional use permit request of Hendrickson Enterprises, Inc. to replace and add commercial signage on their property at 19300 State Highway 7 – Section 1115.04 of the Deephaven Sign Ordinance states that no sign shall be erected, altered, reconstructed, maintained or moved in the city without first securing a Conditional Use Permit from the city in accordance with Section 1320 of the City's Ordinances. The content of the sign shall not be reviewed or considered in determining whether to approve or deny a sign permit.

Acting Chairman Gustafson introduced the agenda item.

Zoning Coordinator Cooney summarized the staff report. He said that Hendrickson Enterprises, Inc. has submitted an application for a Conditional Use Permit to replace and add several signs on their property at 19300 State Highway 7. Cooney said that the previous tenant, Minnetonka Glass, has moved out and the existing space will be repurposed as Midas Office Space. Cooney noted that Hendrickson Enterprises owns and operates the existing Midas auto shop on the adjacent parcel at 19340 State Highway 7. Cooney said that the property is located in the C-1 zoning district and the proposed office space is a permitted use within the zoning district.

Cooney said that the applicant was granted a CUP for the new Spee Dee signage at the July 6, 2015 City Council meeting, and that, in the opinion of staff, the Spee Dee business and signage has improved the overall look of the property.

Cooney said that the applicant is proposing to add two illuminated Midas signs totaling 39 square feet. He said the signs will replace two illuminated Minnetonka Glass signs totaling 59.44 square feet for a reduction of 20.44 square feet of signage.

Cooney said that Section 1115.04 of the Deephaven Sign Ordinance states that no sign shall be erected, altered, reconstructed, maintained or moved in the city without first securing a Conditional Use Permit from the city in accordance with Section 1320 of the City's Ordinances. He said that the content of the sign shall not be reviewed or considered in determining whether to approve or deny a sign permit.

Cooney said that Section 1115.09(a) Deephaven Sign Ordinance states that the size of a sign may not exceed 15 percent of the wall area of the front façade of the structure in which it is located and in no case exceed 100 square feet for all other types of signs. Cooney noted that, at the granting of the most recent

CUP for the property, the City Council determined that, due to their visibility, three facades on the building could be considered the front façade and that the 15% limitation would apply to all three facades.

Cooney said that, as proposed, Façade B and Façade C would meet the required 15% limitation. He said Façade D—which contains three suspended vinyl banner signs which were not approved as part of the most recent CUP—is not in compliance with the 15% limitation since it is currently at 17.31%. Cooney stated that, taken as a whole, all three facades combined are under the 15% limitation with a total signage of 12.64%.

Cooney said that he would like to include these vinyl banner signs in this CUP to bring them into compliance. He said that the Planning Commission should determine if they will require that the signs be reduced in size to become compliant with the 15% rule for façade D, or if the Planning Commission will accept the signs as they are since, if the three front facades are combined, the total signage is less than 15%.

Cooney stated that Section 1305.03 regulates business hours. Section 1305.03(1) limits the hours a business can sell goods and services to consumers to only between the hours of 6 AM and 9:30 PM. He said that Section 1305.03(3) states that interior and exterior lighted signs permitted to businesses may operate during business hours only.

Cooney said that he has concerns about additional signage on the property that is outside of the scope of the existing CUP. He said that two 14 square-foot flag signs are in the public right of way. He said that there are also wrapped stacks of tires that are used as promotional signage that add an additional 11.25 square feet of signage.

Cooney said that Section 1115.09(a) Deephaven Sign Ordinance states that the size of a sign may not exceed 15 percent of the wall area of the front façade of the structure in which it is located **and in no case exceed 100 square feet for all other types of signs.** He noted that the existing approved site signage from the most recent CUP totals 126.28 square feet of signage and that this amount was approved since it was considered legal non-conforming, and reduced the signage from existing conditions. However, Cooney said that the additional promotional signage further exceeds the 100 square foot limitation by an additional 39.25 square feet. Cooney noted that the flag signs are typically placed within the State Highway 7 right-of-way, which the sign ordinance prohibits. He said he recommends removal of these signs as a condition of approval.

Cooney says that he recommends **conditional approval** of the Conditional Use Permit of Hendrickson Enterprises, Inc. to replace and add commercial signage at 19300 State Highway 7.

He said that upon review of the application, staff concluded that (a) the proposal will have no impact on the overall development of the community; (b) there will be no impact on the character and development of the neighborhood; (c) there will be no impact on the health, safety and welfare of the occupants of surrounding lands; (d) there will be no impact on traffic or parking conditions due to this signage; and (e) there will be no negative impact on property values on the subject property or those in the surrounding area.

He said that his recommendation is conditioned that: a) the hours of illumination be as outlined in Section 1305.03 of the ordinance; b) the promotional flag signage and tire signage be removed; and c) the vinyl banner signs on the east façade are included as a part of this conditional use permit.

Cooney concluded his staff report.

Commissioner Studer asked if the inclusion of the flag and tire signs would still result in a net reduction of signage. Cooney said that it would not.

Commissioner Werneiwski said that he was generally in favor of the proposal, but that he shared staff concerns about the extra signs on the property.

Commissioner Studer asked when the flag signs were installed. Sandy Hendrickson, the applicant, said that the flag signs were installed after the fact. He said that they could easily be removed. Commissioner Studer said that he was generally in support of the proposal conditioned that the flags be taken down. He said the proposed signs looked nice.

Commissioner Anderson asked Zoning Coordinator Cooney if it made a difference, as stated in the staff report, that a sign is promotional versus informational. Cooney said that for the purposes of the CUP the distinction did not matter. Commissioner Anderson said that he was disappointed and concerned that the property had expanded beyond the signage that was approved via the last conditional use permit. He said that the city requires approval before a sign is installed and the applicant is aware of the ordinance. He said that it puts the city in the position of having to be the enforcer with applicants. Anderson that it is reasonable to expect that the applicant abide by the ordinance requirements and the conditional use permit. He said that for those reasons he was on the fence about recommending approval.

Chairman Carlson said that he was in favor of the new Midas signage as shown but shared the concerns about the overall signage on the property. He said that there needs to be constraints on the other signage.

Acting Chairman Gustafson said that he agrees with the comments of the other commissioners. He said that he likes the core request, but echoes Commissioner Anderson's comments.

Anderson said that he is concerned about compliance and that it puts an undue burden on the city. He said the city goes out of their way to work with property owners and business owners, and that the excess signage is against that kind of collaborative spirit.

Hendrickson said that he has responded quickly when Cooney has raised concerns. Hendrickson said that he has cleaned up the property and has also demonstrated a willingness to comply. He said that the signage proposed would be a net reduction from the Minnetonka Glass signage and would be a cleaner look.

Chairman Carlson asked about including the condition of removing some of the signage at the Midas property as part of the CUP approval. Cooney said that, while the Midas property is owned by the same owner, it is a different parcel and not part of this request.

Hendrickson said that he would like to keep the banners at the Midas property, but that he would like to clean all the window signage for that property.

Gustafson said that, while it would not be a part of the motion, as a sign of goodwill, the applicant could agree to remove the window signage at the Midas property.

Chairman Carlson made a motion to recommend conditional approval of the conditional use permit request of Hendrickson Enterprises, Inc. to replace and add commercial signage at 19300 State Highway 7 based on the findings of staff. The recommended approval would place the following conditions on the business: a) the hours of illumination be as outlined in Section 1305.03 of the ordinance; b) the promotional flag signage and tire signage be removed; and c) the vinyl banner signs on the east façade are included as a part of this conditional use permit. Motion was seconded by Anderson. Motion carried 5-0.

Consider requests of Rick and Nancy Kotovic for variances from lot size, front setback, exterior side yard setback, exceeding maximum impervious surface coverage, and minimum house width to construct a new house on a vacant R-3 lot at 19915 Lakeview Avenue – Section 1310.01(2) of the

zoning ordinance states that a structure may be built on any lot or tract of land of a size less than that required by this Section if such lot or tract of land is included in a plat or registered land survey filed for record after May 4, 1960 in accordance with all applicable laws, ordinances and regulations, and if there is compliance with all of the other dimensional requirements. If a new structure is to be built on any other lot or tract of land of a size less than that required by this Section, a variance must first be obtained in accordance with this Section.

Section 1302.05(3) of the zoning ordinance requires a front yard setback of 35 feet and an exterior side yard setback of 25 feet. Section 1302.05(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25%. Section 1310.03 of the zoning ordinance requires that a single family residential dwelling must be a minimum of 25 feet wide at its narrowest dimension.

Acting Chairman Gustafson introduced the agenda item.

Zoning Coordinator Cooney presented his staff report. Cooney said that Rick and Nancy Kotovic, the property owners, have applied for a variance to construct a new house on the currently vacant R-3 parcel at 19915 Lakeview Avenue. Cooney said that because the property is vacant, and to the best of staff's knowledge, it has never had a house on it, the city has not yet made the determination that this is a buildable lot under the current ordinance. Also, Cooney said, due to the substandard lot size and other factors, the Kotovics are asking for several other variances including a variance to exceed the maximum allowable impervious surface coverage, to encroach into the required front yard setback, to encroach into the required side yard setback, and to have a house width below the minimum required by city code.

Cooney said that Section 1310.01(2) of the zoning ordinance states *"A structure may be built on any lot or tract of land of a size less than that required by this Section if such lot or tract of land is included in a plat or registered land survey filed for record after May 4, 1960 in accordance with all applicable laws, ordinances and regulations, and if there is compliance with all of the other dimensional requirements. If a new structure is to be built on any other lot or tract of land of a size less than that required by this Section, a variance must first be obtained in accordance with this Section."*

He said that 19915 Lakeview Avenue is an R-3 lot and that Section 1302.05(2) requires R-3 lots to be at least 20,000 square feet in size. Cooney said that since there has never been a home on the undersized lot, the lot has not yet been determined to be a buildable lot, and a variance is required. He said that the applicants are proposing to build on an 8,630 square foot lot and are asking for a lot size variance of 11,370 square feet. Cooney said that the property, located in the Cottagewood neighborhood, is typical of many of the undersized lots in this community, and that the properties immediately to the south, southwest, and west of 19915 Lakeview are all smaller in size and all currently have houses on them. He said that in his opinion, granting the lot size variance would be consistent with the character of the existing community, and constructing a single family house on this parcel would be an appropriate use of the property.

Cooney noted that since the property has not had a house on it before, it will be required to connect to the public sewer system. He said that the City of Deephaven sewer connection fee is \$2,400.

Cooney said that the applicants are requesting variances from the front yard setback and the exterior side yard setback. He said that Section 1302.05(3) of the zoning ordinance requires a front yard setback of 35 feet. He said that the applicants are requesting a front yard setback of 20 feet and are seeking a variance of 15 feet. Cooney said that with a lot depth of 71.5 feet, and with the required setbacks and house width totaling 75 feet (35 ft. front setback, 15 ft. rear setback, 25 ft. house width), a variance would be required to build on the property regardless of the proposal.

Cooney said that due to the fact that the house to the south is 4 feet, 1 inch off of the lot line, the applicants are proposing to increase the rear yard setback. He noted that the property owners are also proposing a 32 foot wide house at its widest dimension.

Cooney said that the submitted survey shows that the property immediately to the east has a front setback of 26 feet, 2 inches and that the properties across the street on Lakeview Avenue have front setbacks of 22 feet 1 inches and 5 feet, 5 inches.

Zoning Coordinator Cooney said that Section 1302.05(3) of the zoning ordinance requires an exterior side yard setback of 25 feet. He said that the applicants are requesting a side yard setback of 15 feet and are seeking a variance of 10 feet. Cooney noted that while the closest point of the house to the property line is 15 feet, the lot is angled in such a way that the front corner of the house is 28 feet from the property line. He said that moving the house away from the lot line would also increase the required hardcover for the driveway.

Cooney said that Section 1302.05(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25%. He said that the applicants are proposing an impervious surface area of 32.3% and are seeking a variance to exceed the maximum impervious surface area by 7.3%. Cooney said that lots of similar sizes have been granted variances for comparable hardcover, however those lots have typically used existing conditions as a benchmark for determining how much non-conforming excess hardcover might be reasonable. He said that, in this case, the property currently has 0% hardcover, which makes determining the reasonableness of the proposal more difficult.

He said that the applicant has proposed a rain garden in order to offset the excess hardcover, but that as proposed, the raingarden would be too close to the well of the property to the south. Cooney said that the Minnesota Department of Health requires a minimum setback distance of 35 feet from a stormwater infiltration system to a well not used for public water supply.

Cooney said that Section 1310.03 of the zoning ordinance requires that a single family residential dwelling must be a minimum of 25 feet wide at its narrowest dimension and that the applicants are proposing a house that has a narrowest dimension of 21 feet for the area of the Great Room and Master Bedroom. He said that while the existing house plan could be modified to meet this requirement, doing so would expand the footprint of the home thereby increasing the hardcover.

Cooney said that, as currently shown on the plans, the house is 30 feet, 11 inches tall but that the height limit for an R-3 properties up to 10,000 square feet is 30 feet. He said the applicants have stated that they will reduce the roof height to become zoning code compliant.

Cooney said that he has concerns about the overall number of variances requested, and he believes that a reasonable plan could be developed that eliminated at least a couple of the requested variances. However, Cooney said, taken separately, he does not feel that any one of the variances requested is unreasonable. He noted that the practical difficulty standard does not pose the question if a request could be made yet more reasonable, but only asks if the request is reasonable as presented.

Cooney said that he recommends approval with conditions of the variance requests of Rick and Nancy Kotovic:

- For a lot size variance of 11,370 square feet
- To encroach 15 feet into the minimum required front yard setback
- To encroach 10 feet into the minimum required side yard setback
- To exceed the allowable maximum impervious surface area by 7.3%
- For a variance from the minimum required house width of 4 feet

for the property at 19915 Lakeview Avenue, as presented.

He said that he recommends the following conditions:

- The height of the house is reduced to be zoning code compliant.
- The applicant pays the City of Deephaven sewer connection fee of \$2,400.

- The proposed stormwater management improvements comply with the Minnesota Department of Health's well setback regulations.
- The applicants complete the required stormwater management improvements to meet the requirements and specifications of the city engineer.
- The applicants enter into a maintenance agreement with the city to ensure the long-term operation and maintenance of the stormwater management improvements. The maintenance agreement shall be executed and recorded against the parcel.

Cooney stated his findings based on the review and approval process in Section 1315 of the ordinance:

(a) Is the variance in harmony with the purpose and intent of the ordinance?

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. The applicant is seeking to vary from the stated lot size, setback, and dimensional standards of the ordinance in order to construct a new house on a currently vacant undersized lot. The lot size and shape create a number of challenges for the property, but the overall design remains in harmony with the purpose and intent of the ordinance.

(b) Is the variance consistent with the comprehensive plan?

The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which encourages safe, healthy and quality housing that respects the natural environment of the community.

(c) Does the proposal put property to use in a reasonable manner?

The proposal puts the property to use in a reasonable manner. The use of the property would be consistent with other similar sized properties in the community that have single family homes on undersized lots. The scale of the proposal and the requested variances are reasonable in that they are typical of the character of the community and would not unduly impact any of the neighboring properties.

(d) Are there unique circumstances to the property not created by the landowner?

The property is an undersized lot, but of a size that is consistent with other single-family properties in the neighborhood. The undersized property creates difficulties in meeting both the dimensional standards of the ordinance, and also meeting the hardcover restrictions of the ordinance. The proximity to the lot line of the neighboring house to the south, as well as the shape of the subject property create other difficulties in meeting the setback requirements of the ordinance.

(e) Will the variance, if granted, alter the essential character of the locality?

The proposal would not alter the essential character of the locality. The property is of a similar size to other single-family properties in the neighborhood. The new house is of a scale and character that will integrate well within the community.

Cooney concluded his staff report.

Rick Kotovic, applicant, said that they currently live at 5025 Hooper Lake Road in Deephaven. He said that they had previously rented the property at 19940 Lakeview Avenue for four years so that they are very familiar with the area. Kotovic distributed sketches of the property.

Nancy Kotovic said that they have designed the house to look as though it has been there a long time. She said that she wants the house to blend in and not infringe on the neighbors. She said that they will work with the neighbors to make a house that addresses concerns they might have.

David Tubman of 19920 Cottagewood Avenue said that he was in favor of the proposal.

Commissioner Anderson said that the lots in Cottagewood are small and can be challenging. He said that the corner lot adds to the difficulty for the property. He said that it seems like a reasonable sized property

to build on and that it can be difficult to do that without several variances. Anderson said that his biggest challenge in reviewing the proposal was the hardcover issue and positioning the rain garden so that it meets the state health department requirements. He said he is generally in favor of the proposal.

Commissioner Studer said that he thought it was a nice design and that it is a challenge to get a house that would fit on the property, but also that the house not look too big on the site. He said that the stormwater issue was the biggest issue for him, but that the applicants are meeting the city requirements. Studer said that having the support of the neighbors to the south is important. He said he is supportive.

Commissioner Werneiwski asked if it has been determined where the raingarden would be placed. Rick Kotovic said that the city engineer and the surveyor had exchanged e-mails and are working on an alternate location. Werneiwski said that he appreciates the work the applicants have done to make the house fit within the character of the neighborhood. He said that meeting the hardcover restriction is important to him.

Chairman Carlson said that he is generally supportive of the proposal. He said that Bay Street has a dip in it, so the applicants will be picking up some of the street runoff as well. Carlson said anything the applicants can do to have the raingarden be as large as practical would be welcome. He thanked the applicants for investing in the City of Deephaven and the Cottagewood community.

Acting Chairman Gustafson said that he echoes the sentiments of the rest of the Planning Commission. He said that it seems like a reasonable application.

Anderson made a motion to recommend approving with conditions the variance requests of Rick and Nancy Kotovic for the property at 19915 Lakeview Avenue, as presented based on the findings and conditions of staff. Motion was seconded by Studer. Motion carried 5-0.

OTHER BUSINESS

Planning Commission Vacancy

Interview candidate Melissa McNeill to fill vacancy on the Planning Commission.

Acting Chairman Gustafson introduced the agenda item.

Melissa McNeill of 1885 Park Avenue said that while she does not have a lot of direct experience with planning and zoning, she has family members in the field and she does have twenty-plus years of experience in finance, legal, and compliance issues, and experience in dealing with and solving complex issues. She said that as a native Texan she did not imagine that she would fall in love with Minnesota, but that she has become very passionate about the Deephaven community. She said that it is important to balance individual property rights with the long term needs of the community.

Commissioner Anderson asked how long McNeill had been in Deephaven. McNeill said that in October, she will have lived in Deephaven for five years. She said that originally they were only supposed to be in Minnesota eighteen months, but that they have rearranged their careers to stay here permanently.

Anderson asked McNeill what she means about being passionate for Deephaven. She said that she has gotten involved in the community and made a number of close friends that way. She said that there is a unique look and feel to Deephaven, and a character that she wants to help preserve.

Anderson asked if she, as a renter, was looking to buy a home in the city. McNeill said that they have an agreement with their neighbor who is anticipating moving and once that happens they hope to buy the neighbor's house.

Chairman Carlson asked for McNeill's thoughts on tonight's planning items. McNeill said that she had wanted to ask questions during the meeting. Carlson asked if she thought there were questions that should have been asked. McNeill said no, but that she was temporarily a little confused about the two parcel issue related to the Midas discussion.

Commissioner Werneiwski asked if there were any specific things she was concerned about for Deephaven. McNeill said that she does not have an agenda. She said she wants to be involved in the community she lives in.

Studer asked if she has served on other commissions. McNeill said that she has served on a number of non-profit boards.

Acting Chairman Gustafson made a motion to recommend the appointment of Melissa McNeill to serve on the City of Deephaven Planning Commission. Chairman Carlson seconded the motion. Motion Carried 5-0.

LIAISON REPORT

Council Liaison Gustafson said that his report was based on the items that were on the April 4 City Council Agenda. He said that the Rumble Box Kickboxing CUP was approved as was the deck variance for the property at 19760 Lakeview.

Cooney asked Gustafson if he had any details on the discussion related to the building coverage ordinance. Gustafson said that he could not remember the specifics of the discussion.

ADJOURNMENT

Motion by Commissioner Anderson to adjourn the meeting. Motion seconded by Chairman Carlson. Motion carried 5-0. The meeting adjourned at 7:50.

Respectfully submitted,
Dale Cooney
Zoning Coordinator