

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

PRESENT: Chairman Kent Carlson and Commissioners Jim Anderson, Brandon Gustafson, Bill Sharpe and John Studer

ABSENT: Commissioners Gen McJilton and Bob Werneiwski

OTHERS PRESENT: Council Liaison Darel Gustafson, City Engineer Dave Martini and Zoning Coordinator Dale Cooney

MINUTES OF June 16, 2015

Motion by Commissioner Anderson, seconded by Commissioner Sharpe, to approve the minutes of June 16, 2015. Motion carried 5-0.

PUBLIC HEARINGS

Variance Request, Robert J. Kline, 5105 Hooper Lake Road– Request for a variance from the required R-2 side yard setbacks in conjunction with the construction of a garage addition.

Section 1302.04(3) of the zoning ordinance requires a minimum side yard setback of twenty (20) feet. The proposed north side yard setback for the garage addition is twelve (12) feet. A variance of eight (8) feet from minimum required side yard setback is being sought.

Zoning Coordinator Cooney summarized the request. He said that Robert J. Kline, architect for the Cantu household, has made application for a variance to build a third stall onto an existing two stall attached garage which, as proposed, would encroach into the minimum required side yard setback.

The applicant seeks to add on to an existing conforming attached garage. The addition would encroach eight (8) feet into the required north side yard setback of twenty (20) feet.

Section 1302.04(3) of the zoning ordinance requires a minimum side yard setback of twenty (20) feet. The applicant proposes a north side yard setback of twelve (12) feet for the proposed garage addition. **The applicant is seeking a variance of eight (8) feet from the minimum required side yard setback.**

The proposal complies with the remaining setback requirements, building coverage limitations, and height limitations outlined in Section 1302.04, the maximum permitted grade alteration permitted in Section 1312.04. The parcel is not within the Shoreland Management District and therefore hardcover restrictions would not apply. The city water engineer has also reviewed the proposal. His comments are included as an attachment to this report.

The applicant claims to meet the “practical difficulties” standard by virtue of the property being an undersized lot. The lot is zoned Residential District 2 (R-2) and the minimum required lot area is 40,000 square feet. The property at 5105 Hooper Lake Road is 31,604 square feet, or 79% of the R-2 minimum lot area.

DISCUSSION/PLANNING CONSIDERATIONS:

As mentioned above, the applicant claims to meet the “practical difficulties” standard by virtue of the property being an undersized R-2 lot. Applicant submits:

- 1) Due to being an undersized lot, R-3 setback requirements are more appropriate for this property;
- 2) As proposed the lot still meets the combined setbacks of an R-2 property (40 feet of combined setbacks).

STAFF RECOMMENDATION:

*Staff recommends **Denial** for the variance request to encroach eight feet into the minimum required twenty foot side yard setback for the proposed garage addition at 5105 Hooper Lake Road, as presented.*

FINDINGS BASED ON THE REVIEW AND APPROVAL PROCESS IN SECTION 1315 OF THE ORDINANCE:

Findings:

- (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. Those standards include adequate setbacks at property lines.

Staff is sympathetic to the fact that the proposed location for the garage expansion would be the best and most convenient option for the homeowners; however, this is not enough of a justification for granting a variance. It is staff's opinion that the goals of the homeowners could be easily achieved while also meeting the purpose and intent of the ordinance, and because of this fact a "practical difficulty" does not exist and a variance should not be granted.

The property's existing 444 foot, two-car garage allows for secure storage of vehicles. Storage of additional items such boats, riding mowers, and bikes could be achieved within existing setbacks in a means that would be less impactful to adjacent property owners.

The existing garage could be expanded towards the back yard or towards the front yard without affecting district setback requirements. Further, Section 1310.10 (1)(f) of city code allows for up to 1000 square feet for accessory structures that contain a wall or a roof. According to the survey submitted, the existing property is allowed up to an additional 788 square feet for detached accessory structures. There are a number of reasonably accessible areas throughout the property where a detached accessory structure could be constructed without encroaching into setback requirements.

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

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

The construction of an additional attached third garage stall on the property is reasonable and continues the single-family use of the property.

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

Staff does not accept the substandard lot size argument made by the applicant as a unique circumstance to the property. While the property is somewhat undersized based on the minimum lot size requirements,

it is not so narrow that the side setbacks have impinged on a reasonable use of this property. There are also a number of areas throughout the property that could accommodate a structure similar in size to the proposed addition, and those areas are reasonably accessible based upon the existing lot size and housing configuration.

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

The proposal would not alter the essential character of the locality.

Zoning Coordinator Cooney concluded the staff report. Chairman Carlson opened the public hearing.

David Cantu, owner of the property at 5105 Hooper Lake Road, spoke to the planning commission. He said that they can just get their two cars into the existing garage and that they need the extra space to securely store all of their lawn equipment and other equipment and to limit possible theft. He said that they hired an architect to help them come up with the best and most efficient solution, and that the improvements would be an upgrade to the existing home and improve the overall feel of the neighborhood.

Commissioner Sharpe asked where the location of the existing fence was along the side yard. Robert Kline of 2175 Lake Harrison Road, Chanhassen, MN 55317, the applicant, stated that the fence was currently twelve feet off of the property which would be the proposed setback for the additional garage stall.

Cantu continued that he had a conversation with his adjacent neighbor, David Mitzel, who did not have a problem with the proposal.

Robert Kline said that the design was the best design in keeping with the appearance of the home and the neighborhood. Kline said it is a better solution than what was legal. He said that practical difficulties is a subjective argument. Kline said that while the property was zoned R-2, the property was undersized and the setbacks were too restrictive. He said that the R-3 setbacks were more appropriate to the property. Kline also said that, as proposed, the existing combined setbacks were comparable to the required R-2 setbacks.

Commissioner Sharpe asked if accessory structures were subject to the same setback requirements as the primary structure. Cooney responded that structures over 120 square feet were subject to the same setback requirements as the primary structure.

Fred Simon of 19780 Excelsior Boulevard, Excelsior, 55331, said that he received mail notification. He said he was here to find out what was going on.

Chairman Carlson closed the public hearing.

Commissioner Studer mentioned that the adjacent neighbor had submitted a comment via mail opposing the variance.

Zoning Coordinator Cooney read the letter: David Mitzel of 5085 Hooper Lake Road, Deephaven, MN 55331, wrote "My property is next to 5105 Hooper Lake Road. I request that the city ordinance be upheld. I believe that the 20 ft setback is there for a good reason. I have been told by a real estate professional that this may impact my property value. There is ample room to build a third garage elsewhere. Please follow the city ordinance."

Commissioner Studer said that he was supportive of the project based on appearance and that this would be the most attractive spot for the garage expansion. He said that if the neighbor's opinion were more supportive, that might help make his opinion more favorable for the project.

David Cantu said he was surprised by the neighbor's comments.

Commissioner Anderson said that while he was sympathetic with the homeowner, but he was not supportive of the variance. He said that for a lot of this size there are other options that may not be optimal, but that would not require a variance.

Commissioner Gustafson said that he was sympathetic to the homeowner who is trying to economically modify their home to fit their changing needs. He said that this could impact the neighboring property in the future should they decide to expand or rebuild. Commissioner Gustafson said that he was concerned about the precedent this would set for other R-2 lots. He said that since it is a large lot with other areas to build, this garage expansion is not mission critical to achieving their goals.

Commissioner Sharpe said that he was not necessarily opposed to the project and that aesthetically this is probably the best solution.

Chairman Carlson said that from an aesthetic standpoint, this proposal would be the best solution. But, he said that he was not supportive of this since it establishes a precedent and he believed there to be other options for the expansion. Chairman Carlson also said that he did not want to impact the neighbors should they want to redevelop at some point in the future.

Chairman Carlson made a motion to accept staff's recommendation to deny the variance request as presented. Motion was seconded by Commissioner Gustafson. Motion carried 5-0.

OLD BUSINESS:

Discussion related to the City's impervious surface limitations—City Engineer David Martini will discuss information related to stormwater Best Management Practices (BMPs) and tiered impervious surface regulations for properties.

Chairman Carlson introduced the topic and reviewed the items submitted by Dave Martini. Zoning Coordinator Cooney mentioned the flyer enclosed in the packet about the tour of the Riley-Purgatory Bluff Creek Watershed District tour that would be a good opportunity to learn about some of the issues we have been discussing at recent Planning Commission Meetings.

Dave Martini presented the information on a number of the pros and cons of common stormwater mitigation measures. He also pointed out the City of Orono stormwater ordinance as one from a city that is much more active and restrictive about stormwater management.

Martini said that Deephaven was particularly problematic since it has very few drainage control measures, and those that are in place are often aging. Martini also said that the redevelopment within the city is trending towards larger homes with larger footprints and the water is shed to the edges of the property. He said that it is often easy to see the impacts on neighboring homes, but that what is less clear is what the more widespread impacts are within the surrounding community. Martini said that the rate and the volume of water getting to certain areas within the city is changing. Martini said that while the changes on an individual property might be incremental, taken as a whole they have a more significant impact. He said that, since the city relies primarily on overland runoff, the systems for handling this change are somewhat fragile and often struggle to convey the water. He said there is not a big picture approach to these incremental changes.

Chairman Carlson asked if the soil in Deephaven was good for water infiltration. Martini replied that there were tended to be a lot of sandy soils which are good for infiltration.

Chairman Carlson asked if the city should give full credit for stormwater mitigation systems. He also

asked how enforcement would work. Martini said that enforcement is the most challenging part. He said the systems can be made to work at installation, but that over time these systems can fail to be maintained and thus become less effective over time.

Chairman Carlson asked how the City of Orono administers their ordinance. Martini replied that Orono does not allow mitigation systems to offset hardcover requirements unless there is a variance. He said he would need to confirm that fact, but that is what he believes to be the case.

Chairman Carlson said that he is subject to a stormwater permit from the Minnehaha Creek Watershed District for a marina he owns in Greenwood. As part of enforcement, he is required to take pictures of the system on an annual basis and submit them to the MCWD. Carlson said that the burden is on him, as the owner, to provide evidence of compliance not on the MCWD to come out and inspect the system. Carlson said that he did not want to put the burden on city staff to inspect mitigation systems.

Commissioner Anderson said that he had the same question about enforcement. He said he thought the issues with this would come 15 or 20 years down the road when the staff and city officials have left. Martini said that another issue is when you have new homeowners who might be unaware of the mitigation systems or the requirements.

Chairman Carlson said that he felt that it is appropriate to ask homeowners to do mitigation if they were creating situations where the stormwater was running off of their property. Martini said that the lot coverage gets to be an issue on some of these smaller lots. Martini said that you begin to run out of room to do the grading you would like to do to direct the water where you want it to go.

Chairman Carlson asked the planning commission if there was a consensus to require mitigative strategies for those properties that exceed hardcover limits. The Planning Commission agreed that they would like this to be a requirement for exceeding hardcover.

Martini asked where the line would be drawn if a property owner wants to exceed required hardcover. Chairman Carlson said that he felt that the practical difficulties standard would be the basis for allowing a property to exceed hardcover. Carlson said that our R-3 district requirements are based on lot sizes of 20,000 square feet but that there are a significant number of lots that are well below that square footage. He said that meeting the hardcover and setback requirements on these lots can be very challenging.

Commissioner Anderson said that there are also a lot of legal nonconformities that are over hardcover.

Chairman Carlson asked if the city should broaden the hardcover restrictions to beyond the Shoreland Management District and include the entire city.

Commissioner Anderson said that he thought we should include the entire city, and that a property doesn't have to be near the lake to be impacted by stormwater issues.

Martini said that it isn't just small lots that have issues and that many large lots have very large homes that create drainage problems as well.

Zoning Coordinator Cooney asked if it would make sense to be less restrictive on hardcover allowances for some of the smaller lots in an effort to reduce non-conformities and variance requests.

Martini said that it might be valuable to look at new construction on some of the smaller lots to determine what might be considered a reasonable project for these properties.

Chairman Carlson said that this might be a reasonable strategy for a tiered system outside of the Shoreland Management District.

Council Liaison Gustafson said that that only works if we hold the line on the required hardcover. He said that people will build to the limit and then later come back and ask for additional hardcover. Councilmember Gustafson said that tighter limits mean tighter controls. He said that, by allowing more hardcover, all you have done is pushed the envelope further.

Chairman Carlson asked Martini what he thought were the most effective stormwater mitigation systems.

Martini said that a cistern was very easy to use and maintain, but the downside of a cistern is that water is unlikely to be used if there have been frequent rains and that is the time when the cistern would most likely to need to be pumped out. He said that spring thaw is also a time when the cistern is likely to be full, but unlikely to be pumped out.

Martini said that bioretention areas and raingardens redirect the water flow and allow for natural filtration and absorption of water into the ground. He said that these systems are relatively low maintenance, but once they stop working a property owner would essentially need to start over with a new raingarden. Martini said that raingardens were a little harder to monitor to determine if they are still working properly.

Martini said that pervious pavers work well, but that you cannot direct water to them without washing sand and debris towards them that could potentially clog the pavers. He said that if the pavers were not maintained with sweeping and vacuuming, they fail and the property owner would need to start over.

Martini said that he questions if people would keep up on the maintenance with both pervious pavers and raingardens. He said that when these systems fail, they essentially become hardcover.

Martini said that he did not have a preference as to the type of mitigation system, but that often the situation would dictate the appropriate solution. He said that he had mixed feelings about pervious pavers because of the maintenance requirements. Martini said that the city has a pervious trail at the beach that he doubted was being properly maintained and he said that he doubted that a homeowner would be diligent about similar maintenance needs.

Chairman Carlson asked if that was an argument for not giving 100% mitigation credit for pervious paver systems. Martini said that any mitigation system, not just pervious pavers, should only be given partial mitigation credit.

Zoning Coordinator Cooney asked if Martini had an idea of how much credit should be given for these systems. Martini said that he did not know and that a conversation with Bob Bean (water engineer for Bolton & Menk) would be able to answer that question. Martini said that the city is trying to balance the need for stormwater management with the needs of the property owners to enjoy their properties as much as possible. He said it can be difficult to be fair when trying to balance these competing needs and that there is no silver bullet.

Council Liaison Gustafson asked what would be the effective life of these systems with no maintenance. Gustafson also asked how soon a home is remodeled after receiving a variance.

Commissioner Studer asked if there were third-party companies that would verify that mitigation systems were functioning properly. Studer said that this kind of service could put the burden on the homeowner that the system has been tested and is working properly.

Commissioner Anderson asked what the burden on staff would be for filing and maintaining all the appropriate records related to the maintenance of these systems. He said verification by the homeowner is only part of the problem, and that managing all of the record keeping would fall onto staff.

Chairman Carlson said that perhaps there is an opportunity to work with the watershed district on this issue since they have several full-time staff.

Commissioner Studer said that perhaps there would be a fee involved for managing the administration. City Engineer Martini said that perhaps the application for a hardcover variance would cost more.

Commissioner Sharpe asked how many homes that already exist would be over hardcover. He asked if it would be 50, or would it be closer to 500? Chairman Carlson said that he estimated that 30 percent of all Shoreland Management District properties have a hardcover issue, and that 90 percent of the small lots (5,000 to 10,000 square feet) have a hardcover issue.

Martini said that the homes near the lake are easier to deal with since they are where the water is trying to get to. He said in those areas, it becomes more of a water quality issue. Martini said that during construction is when water quality becomes a big issue.

Chairman Carlson thanked City Engineer Martini for coming.

Carlson summarized the discussion and said that he heard consensus on creating some kind of tiered system for hardcover limits within the city. He said that he also heard consensus for broadening the scope of the regulations to include the entire city. Carlson said that he also heard consensus for allowing systems of some kind as a mitigative strategy.

Carlson said that at the next meeting we might want to have a draft ordinance to respond to. He also asked Martini to make recommendations on the partial credit that should be given to each stormwater mitigation method.

Chairman Carlson closed the discussion at this point.

LIAISON REPORT

Council Liaison Gustafson said that the last item the Planning Commission reviewed that went to the City Council was the 19300 State Highway 7 signage CUP. He said that the CUP was approved. Gustafson said that there was some discussion about buildings with multiple facades that were visible from the road. He said that the City Council wanted to distinguish between those businesses along a highway from those that are neighborhood businesses. Council Liaison Gustafson also mentioned the vacation of a portion of St. Louis Avenue had passed by a vote of 4 to 1.

ADJOURNMENT

Motion by Commissioner Carlson to adjourn the meeting, Commissioner Anderson seconded. The meeting adjourned at 8:14.

Respectfully submitted,
Dale Cooney
Zoning Coordinator