

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

PRESENT: Chairman Kent Carlson, and Commissioners Jim Anderson, Brandon Gustafson, Gen McJilton.

ABSENT: Commissioners John Studer, Bill Sharpe, and Bob Werneiwski.

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

MINUTES OF FEBRUARY 16, 2016

Motion by Chairman Carlson, seconded by Commissioner Gustafson, to approve the minutes of February 16, 2016. Motion carried 4-0.

PUBLIC HEARINGS

Consider the conditional use permit request of Rumble Boy Kickboxing Club to operate a physical fitness establishment/martial arts facility/studio at 18202 Minnetonka Boulevard, Suite LL1-
Section 1302.01, Subd. 2 of the zoning ordinance lists physical fitness establishment/martial arts facility/studio as a conditional use within the C-1 zoning district. The applicant is required to acquire a conditional use permit before the business can be legally conducted within the C-1 zoning district.

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney summarized the staff report. He said that Rick Lee Anderson is in the process of leasing space at 18202 Minnetonka Boulevard, Suite LL1. The business would be a kickboxing club, with a retail and office component. Cooney said that the business will be located in the C-1 (Commercial District 1) zoning district and that retail and office uses are permitted uses within the zoning district, while physical fitness/establishments/martial arts facility/studios are regulated as conditional uses.

Cooney said that that conditional uses may be allowed in a district by special permit and under limitation imposed by the council when appropriate because of unusual characteristics of the use or the service provided to the public by the use. Cooney said that the League of Minnesota Cities notes that *"A city can revoke a conditional use permit if there is not substantial compliance with conditions, so long as the revocation is based upon factual evidence, after appropriate notice and hearing."*

Cooney said that Section 1305.03(1) of the city code limits the hours a business can sell goods and services to consumers to only between the hours of 6 AM and 9:30 PM and that this restriction does not apply to office hours. Cooney said that the applicant proposes the hours of 6 AM to 9:00 PM, Monday through Friday, 9 AM to 5 PM on Saturday, and closed Sunday. He added that the applicant also proposes keypad access for clients during operating hours.

Cooney said that Section 1310.04 regulates off-street parking requirements. He said that required parking for office space is 1 space for each 330 feet of gross floor area, and that required parking for retail is 1 space for each 150 feet of gross floor area. Cooney said that, currently, physical fitness establishments are not specifically regulated by off-street parking requirements, and would fall within the "other commercial" category which requires 1 space for each 300 square feet of parking. Cooney said that based on floor plans, he estimates there is 15,000 square feet of leasable space, and 52 parking spaces at 18202 Minnetonka Boulevard, which equals 1 parking space per 288 square feet of leasable space.

Cooney said that he did not request from the applicant a square footage allocation of the different uses in order to determine parking requirements for three reasons: 1) the proposed retail component of the

business is unlikely to generate walk-in traffic, 2) there is not an active list of current occupants of the building that would allow a calculation based on the parking required by code, and 3) parking has not been an issue at the commercial development. Cooney said that, in his visits to the building, he has not seen the parking lot close to being full.

Cooney said that he recommends approval of the conditional use permit request of Rumble Boy Kickboxing Club to operate a physical fitness establishment/martial arts facility/studio at 18202 Minnetonka Boulevard, Suite LL1, as presented based on the review and approval process in section 1320 of the ordinance. Cooney said that he recommends the following conditions be placed on the business: (a) the use of the physical fitness component of the facility is for training, sparring, and physical fitness only, and fights or bouts will be prohibited from taking place on-site, and (b) keypad access for clients and customers will be limited to business hours.

Applicant Rick Lee Anderson said that he is available to answer questions. He said that the retail pro shop will not be high traffic since it will be primarily people who are already at the facility for training. He said that the total square footage of the space he is leasing is 2,950 square feet. He said that he would expect that at busy times there would be 5 to 7 people in the studio, but that it would typically be 2 to 3 people. He said that he has been in the parking lot a number of times and has never seen more than six cars parked there.

Chairman Carlson opened the public hearing. Hearing no public comments, Carlson closed the public hearing.

Carlson asked if the entry to the facility would be around the back. Lee said that, yes, the parking would be around the back and the facility is on the lower level. He said that this is intentional since he wants clients to have to seek him out.

Commissioner Anderson asked about the existing parking for the property. Cooney said that he counted 52 spaces for the property.

Carlson said that up to 15 students a few times a week would not cause parking problems, but that 25 to 30 students might begin to create parking issues. Lee said that any larger events would be offsite. Carlson asked Lee if it would work for his business that the CUP limit class sizes to 25 or less? Lee said that he would not have any problem with that limitation.

Carlson made a motion to recommend approval of the conditional use permit request of Rick Lee Anderson to operate a physical fitness establishment/martial arts facility/studio at 18202 Minnetonka Boulevard, Suite LL1, and based on the findings of staff. The recommended approval would place the following conditions on the business: (a) the use of the physical fitness component of the facility is for training, sparring, and physical fitness only, and fights or bouts will be prohibited from taking place on-site, (b) keypad access for clients and customers will be limited to business hours, and (c) class sizes be limited to 25 clients or less at any one time. Motion was seconded by McJilton. Motion carried 4-0.

Public hearing to consider the request of Brian Stephenson for a variance from the minimum lake yard setback to expand an existing non-conforming deck at 19760 Lakeview Avenue –

Section 1302.05(3) of the zoning ordinance requires a lake yard setback from the OHWL of Lake Minnetonka of 100 feet. The applicant proposes a lake yard setback of 70 feet, 8 inches for the proposed deck expansion.

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney presented his staff report. He said that Brian Stephenson, builder for the property owner, has applied for a variance to expand a non-conforming deck that would further encroach into the required 100 foot lake yard setback. The existing deck encroaches 26 feet into the setback, and

the applicant is requesting that the deck be extended an additional 3 feet, 4 inches into the lake yard setback.

Cooney said that Section 1302.05(3) of the zoning ordinance requires a lake yard setback from the OHWL of Lake Minnetonka of 100 feet and that the applicant proposes a lake yard setback of 70 feet, 8 inches for the proposed deck expansion. He said the applicant is seeking a variance of 29 feet, 4 inches into the minimum required lake yard setback.

Cooney said that the existing home has a cantilever that encroaches 29 feet into the lake yard setback and that the proposed request would encroach slightly further than the furthest existing encroachment. Cooney noted that, overall, the proposed deck would add 122 square feet of lake yard encroachment.

Cooney said that on the one hand, the overall additional encroachment is relatively minor, expanding the deck would not be possible without a variance, and that a portion of the house already encroaches nearly as far as the proposed deck. Cooney said that, on the other hand, the property already has a 320 square foot non-conforming deck. He said that the city has given credit for non-conforming footprints in the past, but that is not the same as grandfathering the full width of the furthest encroachment. Cooney said that since a lake yard encroachment is the most desirable, the city must be careful in granting these types of variances, particularly for requests of a less essential nature.

Cooney said that he is sympathetic to the desires of the owners to create a more convenient and livable outdoor deck, but that desire does not meet the practical difficulty standard. Because of this, Cooney said, that he has recommended denial of the variance application.

Cooney said that his findings, based on the review and approval process in Section 1315 of the ordinance, were as follows:

(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 the 100 foot setbacks from the OHWL of Lake Minnetonka. Encroachments into the lake yard setbacks are the most desirable encroachments, and the city faces ongoing pressure to continually expand those encroachments. Granting an additional encroachment for a non-essential expansion of an already generously sized, non-conforming lakeside deck would not be in harmony with the purpose and intent of the ordinance.

(b) Is the variance consistent with the comprehensive plan? No. Under the Comprehensive Plan's Protection Element section for Lakes, the stated policy of the city is to continue to maintain or exceed Department of Natural Resources shoreline standards through locally adopted shoreland ordinance requirements. The city has adopted a Shoreland Management Ordinance that exceeds the minimum requirements of the DNR's Shoreland Regulations, in terms of minimum required lake setback. Allowing further encroachments within the lake yard setback would run counter to the policy objectives that led to the adoption of these standards.

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

(d) Are there unique circumstances to the property not created by the landowner? While it is true that any expansion of the existing deck would require a variance since the rear of the home is within the lake yard setback, there is already a substantial non-conforming deck on the property. The unique circumstances standard should not allow for using existing encroachments to justify yet more encroachments.

(d) Will the variance, if granted, alter the essential character of the locality? The proposal would not alter the essential character of the locality.

Cooney concluded his staff report.

Commissioner McJilton said that, since the proposed deck would extend over an existing at-grade deck, the hardcover on the property would not be increasing. She said that, because of this, she does not have a problem with the variance request.

Commissioner Gustafson said that his only concern was the possibility of enclosing the deck in the future. He said that otherwise, he is not opposed to the deck expansion.

Commissioner Anderson said that he was in favor of the variance. He said that, from the neighbor's sight-line, the expansion is a non-issue.

Carlson said that he is also in favor of the request. He said that the property is not adding any hardcover and that he feels the request is reasonable. He said that the house to the south has a similar setback. He said that there are several houses in this area that were built around the same time that are set closer to the lake and that all would need variances to expand.

Anderson made a motion to recommend approving the variance request as presented. Gustafson seconded the motion and made a friendly amendment to the motion that the deck would not be allowed to be converted to an enclosed space in the future. Motion carried 4-0.

Public Hearing for Ordinance 13-74, Amending Section 1310.03 regarding Building Coverage

Chairman Carlson introduced the agenda item.

Cooney said that the ordinance was reviewed at the February 16 Planning Commission meeting. At the meeting, the Planning Commission determined that the building coverage restriction would apply only to those structural elements that have a permanent roof. This would include items such as covered entryways, covered porches, covered decks, gazebos, and sheds but it would exclude elements such as uncovered decks, uncovered porches, pergolas, arbors, walls, monuments, and areas beneath temporary or retractable awnings.

Cooney said that he is also proposing to delete item No. 4 under Subd. 3(b) Exceptions since this type of broad-based exception seems more appropriately demonstrated via a variance request subject to the practical difficulty standard.

Chairman Carlson said that the language in item No. 4 is now addressed in other parts of the city code. Carlson made a motion recommend adoption of the ordinance as written. Motion was seconded by Anderson. Motion carried 4-0.

OTHER BUSINESS

Planning Commission Reappointments; Planning Commission Vacancies

Chairman Carlson introduced the agenda item.

Carlson said that both his and commissioner McJilton's terms are expiring. He said that he has expressed his desire to serve on the Planning Commission for an additional one-year term in an effort to help stagger the Planning Commission vacancies. Carlson said that McJilton has expressed her desire to serve another three year term on the Planning Commission. Carlson said that Commissioner Gustafson has indicated that he will be stepping down at the end of his term.

Gustafson said that he has enjoyed his time on the Planning Commission and that he might like to come back at some point in the future.

Commissioner Anderson made a motion to recommend the reappointment of Kent Carlson for an additional one-year term expiring on April 1, 2017, and recommended reappointing Gen McJilton to a second three-year term on the commission expiring on April 1, 2019. Commissioner Gustafson seconded the motion. Motion carried 4-0.

Chairman Carlson said that the Planning Commission will also need to recommend a Chair and a Vice Chair for the next year. Carlson asked if anyone was interested in serving as the Planning Commission Chair and that he would be happy to step down. Hearing no volunteers, Carlson said that he was open to serving as the Chair for the next year.

Commissioner Gustafson made a motion to recommend that Kent Carlson serve as the Chair of the Planning Commission. Motion was seconded by McJilton. Motion carried 4-0.

Carlson asked if anyone was interested in serving as the Vice Chair. Commissioner McJilton said that she would be willing to serve as the Vice Chair. Carlson made a motion to recommend that Gen McJilton serve as the Vice Chair of the Planning Commission. Motion was seconded by Gustafson. Motion carried 4-0.

Carlson said that the City of Deephaven received an application from a resident who has expressed interest in serving on the Planning Commission and that applicant may meet with the Planning Commission at the April 19 meeting.

LIAISON REPORT

Council Liaison Gustafson said that his report was based on the items that were on the March 7 City Council Agenda.

He said that \$5,000,000 in financing was approved for a new hockey arena near Minnetonka High School. Gustafson said that the city's role is simply to make the financing tax-free, and that the city would not be responsible for paying back the debt. He said that the city would get ½ point fee for the transaction.

Gustafson said that the stairway variance request at 19940 Lakeview was approved.

He said that Ordinance 13-71 regarding non-encroachments was approved, and that it was amended to state that an encroachment cannot come closer than three feet from the property line.

Gustafson said that Ordinance 13-72 was approved allowing physical fitness establishments/martial arts facility/studio as a conditional use within the commercial districts.

He said that Ordinance 13-73 was approved adding Riley Purgatory Watershed District to section 1370 of the zoning code as it relates to applications and permits.

Gustafson said that Ordinance No. 10-08 regarding Illicit Discharge Detection Elimination was approved.

Gustafson said that the City Council authorized a job title change from Police Sergeant to Police Lieutenant. He said that the officer was handling all of the duties of a Lieutenant. He said that the job title of Sergeant would be kept for future officers whose experience would fit that title.

He said that the City Council authorized a 30-day extension for the property owners at 18707 Heathcote to submit an appeal to the Board of Water and Soil Resources for their wetland application that was denied.

Anderson asked about the appeal process. Cooney said that it would go to the state, either through BWSR and if there was legal action, the State of Minnesota would handle the appeal. Gustafson said that the support of the state is probably to encourage cities to enforce the wetland law without fear of a lawsuit.

Carlson asked if the wetland request was controversial. Gustafson said that there was a healthy discussion about the issue, and that the council was sympathetic to the plight of the applicants, but that the final vote to deny was 5-0. He said the law was pretty clear on the issue and did not allow for much leeway.

ADJOURNMENT

Motion by Chairman Carlson to adjourn the meeting. Motion seconded by Commissioner Anderson. Motion carried 4-0. The meeting adjourned at 7:46.

Respectfully submitted,
Dale Cooney
Zoning Coordinator