

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, John McGary, Gen McJilton and Pete Onstad

ABSENT: Commissioner Hemink

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

MINUTES OF July 16th, August 20th and September 17th 2013

Motion by Chairman Carlson, seconded by Commissioner Onstad, to approve the minutes of July 16, 2013 as amended. Motion carried 4-0-2. Commissioners Brandt and McJilton abstained.

Motion by Chairman Carlson, seconded by Commissioner Gustafson, to approve the minutes of August 20, 2013 as amended. Motion carried 5-0-1. Commissioner McGary abstained.

Motion by Commissioner John McGary, seconded by Commissioner Onstad, to approve the minutes of September 17, 2013 as amended. Motion carried 4-0-2. Commissioner Brandt and McJilton.

PUBLIC HEARINGS

Conditional Use Permit Request - GoMango, 18128 Minnetonka Boulevard - Request to install an eighteen square foot business identification sign which will have illuminated lettering.

Section 1150.04 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.

Zoning Coordinator Karpas summarized the request. GoMango will be leasing the structure located at 18128 Minnetonka Boulevard which was previously occupied by the Cottage Chicks. The business is requesting a Conditional Use Permit to construct an eighteen square foot illuminated business identification sign that would be attached to the structure. He said he recommended approval for the request and outlined his findings.

Chairman Carlson opened the public hearing.

Zoning Coordinator Karpas said he received a call from Richard Salmela, 18177 Minnetonka Boulevard, who lives across from the subject property. Mr. Salmela said he was opposed to the request because residential properties would be directly impacted and he also felt this would encourage other commercial properties to seek similar signs.

Ann Crist, 3365 Shaver's Lake Road, said she's not necessarily opposed to the sign but is concerned about the proposed lighting of the sign which is not typical of the other signs in the commercial area and more suited for the businesses in Minnetonka. She said the proposal impacts the small town character of Deephaven and will impact her property, much like the other lit signs do, especially during leaf off conditions.

Freemont Gruss, 3360 Shaver's Lake Road, said his home is approximately eighty feet from the commercial structure. His main concern is about the light shining directly on his property. He understands the light is not fluorescent or neon and will shine to the south, but believes he could still be

impacted. He questioned if the light could be cantered away from his property to help cast the light to the west.

Hearing no further public comment, the hearing was closed. Carlson asked for Commissioner input.

Commissioner Gustafson said it is an issue of quantity and quality of light. He appreciates the issue raised about the potential precedent set with the nature of the proposed lighting. He asked about limitation on the hours of lighting. Zoning Coordinator Karpas said the ordinance regulates business hours and the Planning Commission can place a condition on a motion for approval that a timer be placed on the light to ensure that it adheres to those hours.

Commissioner Onstad asked if the sign would be placed under the eaves as shown on the plan. Sharon Mathison, Sign Source, said it would. Onstad noted that would provide some protection to the adjacent properties and focus the light to the south. He said it would be nice to know the intensity of the light.

Commissioner McGary asked about the specifics of the light. Ms. Mathison described the design of the sign and the lighting elements, but said she wasn't familiar enough with the other signs in town to make a comparison with this sign. McGary asked about the depth of the eave. Commissioner Onstad said it was about eighteen inches deep.

Commissioner Brandt confirmed the sign would only be lettering and not the gray background shown on the plan. Ms. Mathison said it would only be the lettering and the background was used for illustration purposes only. Brandt agreed the sign should be on a timer.

Commissioner McJilton asked if a dimmer could be placed on the sign. Ms. Mathison said yes. McJilton asked if that could be added as a condition. Zoning Coordinator Karpas said it could.

Chairman Carlson suggested a light meter reading taken at the east and south property lines be provided to the Council.

Commissioner Onstad commented the building is set back from the road which, he believes, creates a need for a lighted sign to show the business's presence and the fact the sign is tucked under the eave, he feels the request is reasonable.

Planning Commission Action:

Motion by Chairman Carlson to recommend the council accept the recommendation of staff to approve the Conditional Use Permit request to install an eighteen square foot illuminated business identification sign that will be attached to the structure to advertise the business at 18128 Minnetonka Boulevard with the following conditions; (a) that the applicant provide light intensity readings at the east and south property lines; and (b) the sign be placed on a timer so to be illuminated only during permitted business hours.

The motion is based on the following findings: (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.

Motion seconded by Commissioner McJilton. Motion carried 6-0.

Variance Request - Jay Constable, 3520 Deephaven Avenue - Variance of the minimum required exterior north side yard setback to demolish an existing non-conforming detached garage and construct a

new non-conforming attached garage in its place. The proposed garage would decrease the existing encroachment.

Section 1310.02 of the Zoning Ordinance requires an exterior north yard setback of twenty-five feet. The proposed alteration is setback ten feet from the north property line. A variance of fifteen feet of the required exterior north side yard setback is being sought.

Zoning Coordinator Karpas summarized the request. Jay Constable seeks to remove an existing non-conforming detached garage that encroaches sixteen feet, five inches (16'-5") into the required twenty-five (25) foot exterior north side yard setback and replace it with a new non-conforming attached garage that would encroach fifteen (15) feet into the required exterior north side yard setback.

The proposed alteration would be constructed along an unimproved portion of the platted Parkway right-of-way. Though the right-of-way is not improved, the property is still considered a corner lot and must maintain an exterior side yard setback. The proposed alteration will decrease the existing exterior north side yard encroachment. He said he recommended approval for the request and outlined his findings.

Chairman Carlson opened the public hearing. Hearing no public comment, the hearing was closed.

Commissioner Brandt noted the property was previously granted a variance and the request was reducing the non-conformity, she is supportive of the request. Commissioner McJilton was supportive of the request.

Commissioner Gustafson noted the request is typical of what the city is looking for; a reduction in existing non-conformities. He was supportive of the request. Commissioner Onstad supported the request since the non-conformity was reduced.

Commissioner McGary and Chairman Carlson were supportive of the request.

Planning Commission Action

Motion by Chairman Carlson to recommend the City Council accept the recommendation of Staff to approve the variance request to encroach fifteen (15) feet into the minimum required twenty-five foot exterior north side yard setback for the proposed garage addition at 3520 Deephaven Avenue, as presented.

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. The applicant is seeking to vary from the stated setback standards of the ordinance to remove a non-conforming detached garage, the location of which was approved by variance and constructed in 1977; (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 construction of an attached garage on the property is reasonable and continues the single family use of the property. The proposed location of the garage decreases the non-conformity that was originally granted by the city; (d) The lot is uniquely shaped and located adjacent to an undeveloped, platted right of way, limiting the development options available to the landowner; and (e) The proposal would not alter the essential character of the locality since the garage would slightly increase the existing setback and there are no adjacent neighbors that would be adversely impacted by the garage's location.

Motion seconded by Commissioner Gustafson. Motion carried 6-0.

Variance Requests - Jacob and Allison Wert, 19005 Highland Avenue – Variance requests of the minimum required front yard setback to construct a partial second story addition and open front entryway on an existing non-conforming single family home. The proposed second story addition will maintain the

existing encroachment while the proposed open front entryway will increase the encroachment by two feet.

Section 1310.02 of the Zoning Ordinance requires a front yard setback of thirty-five feet. The proposed second story addition is setback twenty-one feet from the front property line. A variance of fourteen feet of the required front yard setback is being sought. The proposed open entryway is setback nineteen feet from the front property line. A variance of sixteen feet of the required front yard setback is being sought.

Zoning Coordinator Karpas summarized the request. Jacob and Allison Wert have made application for variances to construct a partial second story addition and open front entryway on an existing non-conforming single family home. The proposed second story addition will maintain the existing encroachment while the proposed open front entryway will increase the encroachment by two feet.

The property was granted a sixteen foot variance of the required front yard setback to build a partial second story addition on an existing non-conforming footprint in July 2004. The applicant is seeking to extend the second story over the remaining footprint and would not be increasing the footprint of the structure which was originally established in 1920. He said he recommended approval for the request and outlined his findings.

Chairman Carlson opened the public hearing. Hearing no public comment, the hearing was closed. Carlson asked for Commissioner input.

Commissioner Gustafson said he generally in support of the request but he disagreed with the applicant's inference that the small size of the lot was injurious and created a hardship. He feels the applicant has done a good job in accomplishing the goal of obtaining additional living space without impacting the lot.

Mike Sharratt, Sharratt Design, said the applicant was not referring to the size of the lot as being a hardship; rather the placement of the home in its current location prior to the existing ordinance creates a hardship.

Commissioner Onstad asked about the existing number of bedrooms. Mr. Sharratt said he believed there are currently three and the addition would create four. Onstad said he has no problem with the request. He noted there have been concerns about massing as structures have been built up, but doesn't feel this is an issue with this request. The proposal maintains the existing encroachment which is consistent with the other homes in the area.

Commissioner McGary noted the only further encroachment is the extension of the eave, which is reasonable.

Commissioner McJilton feels the request is in line with the request from 2004 and noted the proposed front entry expansion would be constructed over existing landscaping area. She believes the proposal makes sense.

Commissioner Brandt said the second story addition would create more mass, but it would not be distinguishable from what is already in existence. She is supportive of the request.

Chairman Carlson asked if the design of the new ridge was higher or lower than the existing roofline. Mr. Sharratt said it would be lower. Carlson said he was in favor in the request.

Planning Commission Action:

Motion by Commissioner McGary to recommend the City Council accept the recommendation of Staff to approve the variance requests to encroach fourteen (14) feet into the required thirty-five (35) foot front yard setback for the proposed second story addition over the existing non-conforming footprint and to

encroach sixteen (16) feet into the required thirty-five (35) foot front yard setback for the proposed open entryway at 19005 Highland Avenue, as presented.

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 of the ordinance; (b) the request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promote the development of residential property within the city; (c) the alteration of the non-conforming structure is a reasonable use of the property. It permits the continued use of a home that has existed on the property since 1920. The proposal seeks to complete the modification that began in 2004. The structural footprint remains the same with the proposed second story contained within that footprint. The proposed front entryway provides a protected entryway to the home and will not have a negative visual impact since it only extends the roof line an additional two feet; (d) the placement of the home predates the existing Zoning thus any structural alterations requires the issuance of a variance. The existing partial second story location was approved by variance in 2004. The requested expansion is a logical means of gaining needed living area while maintaining green space on the subject property; and (e) the proposal would not alter the essential character of the locality since there would be no additional visual impact created by the extension of the second story addition and the placement of an open entryway. The addition of living space above the existing footprint limits the impact on adjacent neighbors by maintaining the size of the existing structure footprint on the property.

Motion seconded by Commissioner McJilton. Motion carried 6-0.

Variance Requests - Kevin and Katy Stanek, 20165 Cottagewood Avenue – Variance requests of the minimum required exterior east and west side and lake yard setbacks in conjunction with the construction of a new single family home.

Section 1310.02 of the Zoning Ordinance requires a minimum exterior east side yard setback of twenty-five feet. The proposed single family home would be setback fifteen feet from the exterior east side property line. A variance of ten feet of the required exterior east side yard setback is being sought.

Section 1310.02 of the Zoning Ordinance requires a minimum west side yard setback of fifteen feet. The proposed single family home would be setback ten feet from the west side property line. A variance of five feet of the required west side yard setback is being sought.

Section 1310.02 of the Zoning Ordinance requires a minimum lake yard setback of one hundred feet as measured from the Ordinary High Water Level (OHWL). The proposed single family home would be setback seventy-six feet, nine inches from the OHWL. A variance of twenty-three feet, three inches of the required lake yard setback is being sought.

Zoning Coordinator Karpas summarized the request. He said the Staneks seek to remove an existing non-conforming single family home that encroaches one foot, five inches (1'-5") into the required twenty-five (25) foot exterior east side yard setback and forty feet, nine inches (40'-9") into the required one hundred (100) foot lake yard setback and replace it with a new non-conforming single family home that would encroach ten (10) feet into the required twenty-five (25) foot exterior east side yard setback, encroach five (5) feet into the required fifteen (15) west side yard setback and twenty-three feet, three inches (23'-3") into the required one hundred (100) foot lake yard setback. In addition, the proposal would remove a 447 square foot detached garage and 96 square foot shed located in the front yard. There are no accessory structures included in the current proposal. He said he recommended approval for the request and outlined his findings.

Kevin Stanek said the intent was to remove an outdate home and replace it with a home that was in keeping with the spirit of Cottagewood.

Chairman Carlson opened the public hearing.

Nancy Nagle, 20145 Cottagewood Avenue, said the Staneks have worked closely with her throughout the process and she's happy with the end result. She has no issues with the proposal and is very supportive.

Zoning Coordinator Karpas read an email into the request from Jim and Betsy Anderson, 20125 Cottagewood Avenue into the record expressing their support for the request.

Hearing no further public comment, the hearing was closed. Carlson asked the Commissioners for their comments.

Commissioner Brandt asked about grade alteration. Adam Barrington, Eskuche Design, said there would be a slight increase to level off the lower floor elevation, but it would be within the code regulations. Brandt discussed unimproved right-of-ways and questioned why the city would allow encroachments, especially on those that could serve a public purpose such as access to the lake.

Commissioner McJilton said it appeared the applicant could comply with the required lake setback and asked why the variance was necessary. Mr. Barrington said the proposed setback was an average of the neighboring setbacks.

Commissioner Gustafson asked why structures had to adhere to a one hundred foot setback on the lake. Zoning Coordinator Karpas explained the creation of the Shoreland Management requirements and the options given to the cities at the time they were drafting their individual ordinances. He said the City of Deephaven chose to have a setback of one hundred feet from the Ordinary High Water Level.

Commissioner Gustafson said he wasn't greatly concerned about the proposed setbacks but was confused as to why a structure could not fit on a lot this size and meet the required setbacks.

Chairman Carlson said the city has historically tried to place homes in a manner in which they did not impact their views or the views of their neighbors. Mr. Barrington reiterated that is what led to the placement of the home in its proposed location. Commissioner Gustafson noted the home is located on a point, and that being the case, it could be moved back and not have its views impeded. Gustafson also noted the same structure could be constructed in compliance with the lake setback with no impact on its views.

Commissioner McGary said the home could be moved back, but that's not what is being requested. He said the request is an improvement over what currently exists. The home abuts city property platted for a road which will never be developed as a road, so the traditional side yard setback should not be applied.

Chairman Carlson discussed similar requests in the past were properties abutted undeveloped right-of-ways. He said the only thought he had was to move the home to the east, further into the required twenty-five foot setback, to comply with the required west side yard setback, which would pull it further from the home on the adjacent lot. Commissioner Onstad discussed the past use of city right-of-ways as fire lanes and agrees that sliding the home to the east would be a good idea to create separation between structures. Mr. Barrington said the applicants would be open to the suggestion of moving the home to the east to create a greater setback along the west property line.

Chairman Carlson appreciates the steps taken by the applicant to remove the driveway from the city property and in removing the two detached accessory structures to maintain compliance with the impervious surface standards.

Commissioner Brandt questioned why the city was not holding the applicant to the required side yard setbacks. Chairman Carlson said the typical R-3 setbacks of fifteen and ten feet are being met, but the

property is being hurt by the fact it has to meet a more restrictive side yard setback because it is deemed a corner lot due to the undeveloped right-of-way.

Commissioner Onstad said his view is once the existing home is removed, the applicant is starting with an empty lot and they should design within the ordinance requirements if possible.

Commissioner McGary asked about grading. Mr. Barrington said the grade would not be raised. Commissioner McJilton asked if there would be an issue if the home were moved back from the lake. McGary noted if the home were moved back, it would require fill to the point where a variance to exceed the maximum permitted grade alteration would be required.

Chairman Carlson noted the applicant has made an attempt to move the home further from the lake that the existing home and have worked with the neighbors to preserve the views. Commissioner Onstad feels the home could have been moved another ten feet further from the lake.

Planning Commission Action:

Motion by Chairman Carlson to recommend the City Council accept the recommendation of Staff to approve the variance requests to encroach ten (10) feet into the required twenty-five (25) foot exterior east side yard setback, five (5) feet into the required fifteen (15) west side yard setback and twenty-three feet, three inches (23'-3") into the required one hundred (100) foot lake yard setback for the proposed single family home at 20165 Cottagewood Avenue with the following conditions; (a) the applicant provide information regarding sightlines of adjacent properties and (b) the applicant provide information about the impact on grading if the home were to meet the required lake setback. Carlson also suggested that Council concern permitted the applicant shifting the home further to the east to permit greater separation between the proposed home and the adjacent structure.

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. The applicant is seeking to vary from the stated setback standards of the ordinance to remove a non-conforming home which was constructed in 1942 and construct a larger, modern home on the property; (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 construction of a single family home on the property is reasonable and continues the single family use of the property. The proposed location increases the lake yard setback, thus decreasing the existing lake setback non-conformity. The applicant has increased the non-conformities into the required side yard setbacks, but has designed the home to maintain the typical required R-3 setbacks; (d) the lot is uniquely shaped with the buildable area of the lot pushed further from the lake. The applicants are seeking to use a similar footprint location to that of the previous home which was constructed in 1942 to maintain the existing views; and (e) the proposal would not alter the essential character of the locality since the home would be pulled back from the lake. The encroachments into the required side yard setbacks would not impact the adjacent properties since there would be a twenty foot separation between the structure located to the west and fifty-eight foot separation from the structure to the east. The existing lake views of the adjacent properties would not be impacted.

Motion seconded by Commissioner McGary.

Commissioner Gustafson expressed concern that approving the location of the home would set a precedent since the home is located in front of neighboring homes. Zoning Coordinator Karpas said the city does not have an ordinance that requires an average of setbacks and by holding one applicant to that standard; the city could be setting a precedent that all applicants be held to that standard.

Mr. Barrington said the location of the footprint worked with the neighborhood. Kevin Stanek said the location also permits them to protect some mature trees on the street side of the home.

Commissioner Brandt noted the applicant already has the right to construct on the existing footprint and what is being proposed lessen the current lakeside non-conformity.

Commissioner McGary believes the applicant has shown the average setback and he's still supportive of the request.

Commissioner Gustafson believes the goal is to have residents meet the ordinance if they are able and if the applicant cannot due to the creation of a variance cause by a need to fill that is understandable. His issue is that information should have been provided to the Commission. Commissioner McJilton agreed.

Kevin Stanek said they went through a whole range of designs including remodeling the existing structure and building within the existing footprint but all feel short of what they believed to be the "Cottagewood" standard. They tried to accommodate this project without a variance.

Chairman Carlson called the question on a motion to approve. Motion carried 5-1. Commissioner Onstad voted nay.

OLD BUSINESS

None

LIAISON REPORT

Zoning Coordinator Karpas said the Council discussed two items raised by Councilmember Gustafson's in his absence. The first was how technical should the Planning Commission be when reviewing requests and determinations

The Council was reluctant to have the Planning Commission do any technical evaluations since they don't have any expertise. They felt their job was to look at request and base their decisions on the provisions and intent of the ordinance.

Zoning Coordinator Karpas said the second point of discussion what whether the Planning Commission meetings should be taped.

The Council didn't mind the meetings being taped, but saw no reason to have the tapes held in perpetuity. If the intent is to keep them for a couple of months, there isn't a problem.

ADJOURNMENT

Motion by Commissioner Brand to adjourn the meeting, Commissioner McJilton seconded. The meeting adjourned at 9:08.

Respectfully submitted,
Gus Karpas
Zoning Coordinator