

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, Gen McJilton, Bill Sharpe, John Studer, and Bob Werneiwski

ABSENT: None

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

MINUTES OF August 18, 2015

Motion by Commissioner Anderson, seconded by Commissioner McJilton, to approve the minutes of August 18, 2015. Motion carried 7-0.

PUBLIC HEARINGS

Consider Variance Requests, Mitch Landis, 19055 Lake Avenue– Request for variances from the required R-3 side yard setbacks in conjunction with an addition to a non-conforming garage and a screened porch.

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney presented the staff report.

Cooney said that Mitch Landis, the purchaser, and Nancy Palesch, the current owner, have made application for variances to construct a screened porch on the existing non-conforming house, and to expand an existing non-conforming garage. The porch addition would require a variance to the east yard setback. The garage expansion would require a variance to the west yard setback. Cooney said that the project proposes a 12'x16' screened porch addition as well as the expansion of the garage 6'-6" towards the front yard and another 6'-6" towards the rear yard.

Cooney said that the existing home sits on the east property line. The proposed porch addition would align with an existing house wall that sits 2'-7" off of the property line, and would not encroach any further than the existing non-conforming house wall. Cooney said that Section 1302.05(3) of the zoning ordinance requires side yard setbacks totaling twenty-five feet, with one of the side yards being a minimum of ten feet. The applicant proposes an east side yard setback of two-feet, seven inches for the proposed screened porch. The applicant is seeking a variance of seven feet, five inches (7'-5") from the minimum required side yard setback.

Cooney explained that the existing garage is proposed to be expanded to accommodate two cars, a side entry and additional storage. The non-conforming garage currently encroaches into the side yard setbacks. The expansion will be built in alignment with the garage's existing side walls. Cooney said that Section 1302.05(3) of the zoning ordinance requires minimum side yard setbacks of twenty-five feet, with one of the side yards being a minimum of ten feet. The applicant proposes a west side yard setback of two-feet, two inches for the proposed garage expansion. The applicant is seeking a variance of twelve feet, ten inches (12'-10") from the minimum required side yard setback.

Cooney added that the proposal complies with the remaining zoning ordinance requirements.

Cooney said that staff recommended approval of the variance requests as presented 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 improve an existing non-conforming single family home constructed in 1920, per Hennepin County tax records. (b) The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the redevelopment of residential property within the city. (c) The expansion of a non-conforming single family home on the property is reasonable and continues the single family use of the property. The proposed encroachments are due to the non-conformities of the existing structures. (d) The existing home and garage were constructed in 1920, prior to the setback standards that are in place today. The current encroachments are legal non-conformities, and it is difficult to improve the property without expanding these setback encroachments. (e) The proposal would not alter the essential character of the locality. The property is in an area where these types of non-conformities are common. The proposed project is a modest expansion of existing conditions.

Cooney concluded the staff report.

Mitch Landis of 19025 Lake Avenue, the applicant, said that he is buying this house to downsize from his current location a few doors down. He said that the current garage is wide enough to be a two car garage if the entrance is moved to the side. The changes also include room for storage in the back.

Chairman Carlson opened the public hearing. Hearing no comments, Chairman Carlson made a motion to close the public hearing. The motion was seconded by Commissioner Gustafson. Motion carried 7-0.

Commissioner Sharpe asked the applicant about the fence along the side of the deck. Landis said that the fence would essentially become the side wall of the new screened porch.

Chairman Carlson surveyed the commission for any comments related to the variance requests. The Commissioners said that they were in favor of the variances. Chairman Carlson said that he looked at the property and the adjacent vacant parcel. He said that the adjacent parcel was large enough that when it is redeveloped, the proposed variances should not have an impact.

Chairman Carlson made a motion to accept staff's recommendation to approve the variance requests as submitted. Commissioner Werneiwski seconded the motion. Motion carried 7-0.

Consider Variance Requests, Patrick Melvin, 3620 Northome Avenue– Variance requests from required R-3 front yard setbacks, side yard setbacks, and impervious surface area for the construction of a new house at 3620 Northome Avenue.

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney summarized the staff report.

Cooney said that Patrick Melvin has made application for variances to construct a new house on his property. As proposed, the house would encroach into three setbacks and would also exceed the twenty-five percent maximum permitted impervious surface area. Cooney noted that the overall property size is 5,594 square feet, which is well below the 20,000 square foot minimum R-3 property size. Cooney said that the existing home encroaches into the front yard setback and that the existing property currently exceeds allowable hardcover for the Shoreland Management District.

Cooney said that the applicant is proposing a front setback of 23'-9". Section 1302.05(3) of the zoning ordinance requires minimum front yard setback of thirty-five feet. The applicant is seeking a variance of 11'-3". Cooney said that, while slightly reduced from existing conditions, the proposed front setback is consistent with the adjacent properties front yard setbacks.

Cooney said that the existing property is fifty feet wide and that the applicant is proposing reduced setbacks to accommodate a thirty-foot wide house. Cooney said that Section 1302.05(3) of the zoning ordinance requires minimum side yard setbacks totaling twenty-five feet, with one of the side yards being a minimum of ten feet. Cooney said that the applicant proposes a north side yard setback of eleven feet and is seeking a variance of four feet from the minimum required side yard setback. Cooney said that the applicant proposes a south side yard setback of nine feet and that the applicant is seeking a variance of one foot from the minimum required side yard setback. Cooney added that the setbacks, while reduced from existing conditions, would be greater than each of the neighboring houses' setbacks from the property line.

Cooney said that the property is located within the Shoreland Management District and must adhere to impervious surface requirements limiting hardcover to 25% of the lot area. Applicant is proposing hardcover of 37% for the property and is seeking a variance to exceed the maximum permitted impervious surface area by 12%. Cooney noted that the existing impervious surface area on the property is 33% and that the applicant is proposing an increase of 4% impervious surface area over existing conditions. The applicant is proposing to mitigate the stormwater increase back to existing conditions of 33% via the use of a French Drain system. Cooney said that the applicant is working with a landscape company on specifications for the design and capacity of the system, but that they have not been submitted for city review. Cooney said that he would recommend that any approval be contingent on the review and approval of the stormwater mitigation system by the city engineer.

Cooney said that the proposal complies with all other ordinance requirements.

Cooney said that he recommends approval of the variance requests with the condition that the stormwater mitigation system plans and calculations be reviewed and approved by the City Water Resources Engineer.

Cooney said that his recommendation 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 small size of the lot creates a number of challenges for the property, but the proposed single family house remains in harmony with the purpose and intent of the ordinance. (b) The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the development of residential property within the city. (c) The proposal puts the property to a reasonable use by replacing the previous single family home, constructed in 1920, with a new single family structure. (d) The square footage of the property, at 5,594 square feet, makes this one of the smallest properties within the city. The property is approximately 28% of the minimum required lot size for an R-3 property which limits the ability to construct within the required setbacks and meet the impervious surface restrictions and (e) The proposal would not alter the essential character of the locality since it would be consistent with the single-family character of the neighborhood.

Cooney concluded the staff report.

Patrick Melvin, of 4917 Vine Hill Road, the applicant, said that he has owned the property since 2000 and lived in it when he was single. He moved out once he was married and has rented out the house since then. He said that it has fallen into some disrepair since it became a rental. Melvin said that he would like to move back to that part of Deephaven if he can build a house on the lot that would accommodate his current family size.

Chairman Carlson opened the public hearing. Hearing no comments, Chairman Carlson made a motion to close the public hearing. The motion was seconded by Commissioner Gustafson. Motion carried 7-0.

Commissioner Studer said that the thought that this was a reasonable use of the property. He said that his main concern was hardcover and that he would like to see the percentage be closer to 25%. Studer said he was also concerned about the possible impacts on the neighbor to the southeast.

Melvin said that one reason why he was asking for a reduced front setback was to reduce hardcover. He said that he was meeting with the landscaper tomorrow to discuss the design of the stormwater mitigation system. Melvin also noted that there is a lot of water that runs off of Easton road onto the property and that currently infiltrates his basement.

Commissioner Anderson said that he was generally in favor of the proposal. Anderson asked why the new garage needed to be pulled forward. He said that he would prefer to push the house back a little bit more from the street. Anderson said that he was sympathetic to the property owner's water issues.

Commissioner Gustafson said that he was generally in favor of the proposal. He said that he did have some concerns about the impacts on the neighbor to the south. Gustafson said that this property would set a precedent for this area since both the property to the north and south are likely to be redeveloped. He said that we should be comfortable with whatever we allow in this application being proposed for the houses to the north and to the south. Gustafson asked why the applicant chose the 11 and 9 foot setbacks.

Melvin said that he thought the reduced setbacks were a reasonable reduction based on the lot size, and that he maintains 20 feet of side setbacks for the property.

Commissioner McJilton said that it was good to see this kind of redevelopment. She said that she did not favor moving the house any further back. She said that, to function for the family, the house needed to have a reasonably sized back yard. McJilton said that, as proposed, front setback is not far out of alignment with the neighboring houses. McJilton said that she thinks reducing to 33% would be the minimum reduction required.

Commissioner Werneiwski said that when he initially reviewed the proposal it raised a number of red flags for him, but that once he saw the property he realized what a small lot this was. Werneiwski said the applicant is doing what he can to work with the city. He said that he also prefers the larger back yard for the property. Werneiwski said that perhaps the city could put some kind of mountable curb at the edge of the roadway to help alleviate some of the runoff from Easton Road. Werneiwski asked if the Planning Commission would see the designs for the stormwater system. Zoning Coordinator Cooney said that, at this point, the Planning Commission would only see those plans after the proposal has received its approvals.

Commissioner Sharpe said that most of his questions have already been raised. He said that he agreed with Commissioner Gustafson that similar variance requests are likely to come from the adjacent neighbors, and that the city will need to treat those proposals similarly. Sharpe said that he was in favor of the requests.

Chairman Carlson said that he is also in favor of the request. He said that when he did a site visit, he saw why the 11 foot setback on the north side was important since it would allow for drainage on the property. Carlson suggested that the stormwater mitigation area be directed to the southwest corner of the back yard. He added that he does have some concerns about the neighbor to the south since there is a pretty big grade change on the lot and that he did not want to see the water running onto their property. Carlson said that removing the gravel driveway and replacing it with bituminous will increase the hardcover a little bit since gravel does infiltrate a small amount and that the applicant should do whatever possible to mitigate the stormwater issues. Carlson recommended that gutters be attached to the house and directed towards the stormwater area since that water will be relatively clean and free of debris.

Carlson asked the commissioners if they would be open to adding the requirement that the stormwater mitigation system be in the back yard. Commissioner Werneiwski said that he was not in favor of requiring that the system be in the back yard, particularly because of the water issues created from Easton Road. Werneiwski thought that the front yard might be a viable area for the stormwater management system.

Commissioner Studer asked if some of the Easton stormwater might be diverted towards Rutledge Road since there is some stormwater infrastructure in that area.

Chairman Carlson made a motion to accept staff's recommendation to approve the variance requests as submitted with the condition that the applicant mitigate stormwater runoff to the equivalent of 33% impervious or better and that the plans and specifications be approved by the City Water Resources Engineer. Commissioner Studer seconded the motion. Motion carried 7-0.

Councilmember Gustafson asked the applicant about the fact that the house was currently for sale. Applicant Melvin responded that the property had been for sale for a while and that he had not received any offers which helped him make the decision to apply for a variance to try and rebuild on the property.

OLD BUSINESS:

Discussion related to the City's impervious surface limitations

Direction and feedback from the City Council's discussion of the draft ordinance.

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney summarized the staff report and the City Council discussion. Cooney said that the discussion primarily focused on the first two policy recommendations of the Planning Commission: (1) That impervious surface regulations will be expanded to include the entire city. (2) That impervious surface regulations will incorporate a tiered system.

Cooney said that there was little discussion on the other two policy recommendations (that variances from impervious surface limitations will require stormwater mitigation, and that stormwater mitigation systems will not be credited for reducing impervious surface coverage unless approved through the variance process), but that the few comments he heard were favorable.

Cooney said that the discussion regarding expanding impervious surface regulations to the entire city met with a mostly negative reaction. He said that several council members felt that this new law might be overly regulatory and overly burdensome. Cooney said that the City Council felt that there are ongoing problems created by new houses and hardcover expansion, but they were reluctant to embrace hardcover restrictions for the currently unregulated areas of the city. Cooney said that Councilmember Kask asked about reviewing the building plans and the as-built surveys as a potentially less onerous mechanism for oversight in these issues.

Cooney said that he brought up the idea of stormwater management plan requirements as a potential alternative to hardcover limitations. He said that several cities, including Excelsior, require stormwater management plans for new construction and land disturbing activities. Cooney said that the City Council seemed receptive to this idea, at least conceptually.

Cooney asked Councilmember Gustafson if his interpretation of the conversation was similar.

Councilmember Gustafson said that he generally agreed with Cooney's summary. Gustafson said that he took some of the blame for the direction the Planning Commission took, since he pointed out there are areas that have water problems outside of the currently regulated areas. Gustafson said that it is not just

the lakeshore areas that can cause problems, and that there needs to be some kind of mechanism to enforce the good neighbor policy. He said that there needs to be a way for the city to force property owners and builders to think about the stormwater impacts on their neighbors.

Chairman Carlson asked if the recommendation was to require that any home that is built to provide some kind of plan to address water issues, and that plan may or may not require additional stormwater mitigation.

Councilmember Gustafson said that he saw it as a stormwater impact statement where the applicant addresses what stormwater impacts there will be and how they plan to address those impacts.

Carlson said that if the changes to the property did not have any impacts, the city engineers and zoning coordinators could approve the project.

Councilmember Gustafson said that he thought this strategy would gain more acceptance.

Commissioner Studer asked if this would be only for the construction phase. He asked what happens once the development is complete. Chairman Carlson said the applicant would supply that information with the packet they submit to the city. Commissioner Studer asked how that was different than what the city is already doing.

Commissioner Anderson said that the stormwater management plan is not based on a strict hardcover limit, but more on the specifics of any given proposal.

Councilmember Gustafson said that a builder could push a new house onto the far side of a lot and not affect hardcover restrictions, but they could impact stormwater. He said this gives the city the opportunity for some oversight into these issues.

Commissioner Studer said that he thought the City Engineer and the Zoning Coordinator were already reviewing proposals for these types of issues.

Zoning Coordinator Cooney said that the city does review the proposals, and within that is a basic stormwater review. Cooney said that a stormwater management plan would make stormwater management more of a priority and give the city a little more enforcement power.

Commissioner Gustafson said that the stormwater management plan could consist of guided questions to help with the understanding of stormwater impacts. He said that this could help the City Engineer make more directed comments and requirements for a project.

Studer asked if the goal of not having hardcover restrictions for the entire city was to reduce oversight. He said that he thought a stormwater management plan could increase city oversight.

Commissioner McJilton agreed saying that this could increase the city's oversight by adding a number of different requirements to a proposal. She also said that an applicant might not know up front all the requirements the city might impose. McJilton also asked about all of the potential engineering costs. She said that she was concerned that the requirements would be vague and that the applicant might not know what was expected until much later in the process.

Carlson said that the city would have to set the standard about what increases would trigger mandatory stormwater mitigation and what the mitigation requirements would be.

Carlson said that he watched the video from the meeting and he felt that the council wanted the Planning Commission to focus on new construction and significant changes. He said that what constitutes a significant change needs to be determined.

Commissioner Werneiwski said that any increase over existing standards should trigger a review.

Commissioner Studer asked if a plan is submitted, what the city would require. Commissioner Gustafson said that it would depend on the specific project and that some kind of mitigation may or may not be required. Studer asked if it was up to them to justify the reasons behind the plan. Commissioner Gustafson said that the applicant would have to submit a plan and justify the reasons. Commissioner Studer asked if the city wasn't already reviewing these things on any major new application. He asked what the result of this process was and if the city would be requiring that an applicant do something or just suggesting that they do something. Chairman Carlson said the applicant would be obligated to do something if there was a problem.

Commissioner McJilton said that this could be on any site. She said that someone could move around existing hardcover and it could impact drainage. Chairman Carlson agreed that this could affect any site depending on what was being proposed. McJilton said that the stormwater management plan isn't as much about hardcover as it is about mitigating drainage issues. McJilton said that a raingarden requirement would be in a scenario where the water could not be kept on site as proposed.

Chairman Carlson asked if there was consensus on having staff explore the details on what a stormwater management plan would be for new construction. The Planning Commission said that they were comfortable moving forward with that. Chairman Carlson asked if significant remodels should be included in stormwater management plan requirements and, if so, what would determine a significant remodel.

Zoning Coordinator Cooney said that currently the city requires surveys for home expansions of 20% or more.

Chairman Carlson asked if a house that did a second story addition but that is not changing the footprint at all would need a stormwater management plan. Councilmember Gustafson said that if the roof direction were changed, it could change the flow of water off of the lot. Chairman Carlson said that there could be an impact with minimal changes and that perhaps any building permit would trigger a stormwater management plan.

McJilton asked where the city would draw the line in requiring a stormwater management plan. She asked if the property owner just putting a small addition on the house would be required to hire an engineer for such a small project. Commissioner Sharpe asked if the applicant from earlier in the meeting who is adding a screened porch and a garage addition would need a stormwater management plan. Commissioner Werneiwski said that they would need to have a plan. Commissioner Gustafson said that seems too burdensome. Commissioner McJilton agreed that it seemed to be excessive to require a stormwater management plan with any building permit.

Commissioner Sharpe asked what the City of Excelsior would have required for the applicant who wanted to add a screened porch and garage addition. Zoning Coordinator Cooney said that the City of Excelsior requires a stormwater management plan for all applications, but that he did not know the practical implications of that requirement or if an engineer was required to produce the plan.

Chairman Carlson said that staff should do some research and contact Excelsior and perhaps another city to see what some of the specific requirements are. Carlson said that there was consensus on new construction but that more information is needed to have a consensus for other types of projects.

McJilton asked staff to find out how the City of Excelsior would address hardcover that doesn't require a building permit such as a new driveway. Councilmember Gustafson said the same issue applies to patios. Chairman Carlson said that we definitely need to address those issues.

Chairman Carlson closed the discussion at this point.

LIAISON REPORT

Council Liaison Darel Gustafson said that the City Council discussed rate increases on docks. He said that the rate increase passed 4 to 1 and that he was the dissenting vote.

ADJOURNMENT

Motion by Commissioner Carlson to adjourn the meeting, Commissioner Anderson seconded. Motion Carried 7-0. The meeting adjourned at 8:21.

Respectfully submitted,
Dale Cooney
Zoning Coordinator