

**DEEPHAVEN PLANNING COMMISSION MEETING MINUTES  
FEBRUARY 18, 2020  
7:00 p.m.**

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

**PRESENT:** Commissioners John Studer, John Daly, Jeff Eaton, Doug Nagle, and Bob Werneiwski

**ABSENT:** Cindy Hunt Webster and Josh Wilcox

**OTHERS PRESENT:** Interim Zoning Coordinator Dana Young and City Council Liaison Kent Carlson

**1. MINUTES OF January 21, 2020**

Motion by Bob Werneiwski to approve the minutes of January 21, 2020. Seconded by Jeff Eaton. Motion carried 4-0.

**2. PUBLIC HEARINGS**

**Public Hearing to consider the variance request of Lawrence and Rebecca Parkhurst to encroach into the front yard setback in conjunction with a garage addition at 4015**

**Heathcote Road.**—Section 1302.04(3) of the zoning ordinance requires a front yard setback of 50 feet. The applicants are seeking a variance of 1.7 feet from the minimum required front yard setback.

Chairman John Studer introduced the agenda item.

Young presented the staff report. He said that the property owners are requesting a variance to build a garage addition on their property. The proposal would replace the existing attached 2-car garage with an attached 3-car garage. The property is a 48,579 square foot R-2 lot. He stated that the was constructed in 1961 according to Hennepin County Records. The existing closest front encroachment of the house is 42 feet and the proposed garage addition would be 48.3 feet from the front property line. Section 1302.04(3) of the zoning ordinance requires a front yard setback of 50 feet. The applicants are seeking a variance of 1.7 feet from the minimum required front yard setback.

The location of the proposed garage is set further back than the front face of the house and the alignment of the garage is reasonable given the existing location of the house on the property. There is also a sanitary sewer easement that runs through the property just behind the proposed addition. The encroachment is a minor change from existing conditions and staff is supportive of the request.

Young stated that Staff recommends **approval** of the variance request of Lawrence and Rebecca Parkhurst to encroach 1.7 feet into the minimum required front yard setback in conjunction with the construction of an attached garage at 4015 Heathcote Road, as proposed.

Young listed the possible findings for approval:

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

Yes. The applicant is seeking to vary from the stated setback standards of the ordinance to improve an existing non-conforming house constructed in 1961, per Hennepin County tax records. The expanded conditions are minor and remain in harmony with the purpose and intent of the ordinance.

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

The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which encourage residents to maintain and/or improve older homes which will promote diversity of housing in Deephaven.

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

The minor encroachment of the garage addition is reasonable and is setback further than the front façade of the existing house.

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

Yes. The existing house was constructed in 1961, and the front yard setback is nonconforming. There is also a sewer easement to the rear of the proposed expansion. Expanding the garage that aligns with the house and does not interfere with the sewer easement is difficult without a variance.

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

The proposal would not alter the essential character of the locality. The proposed project is of a scope and scale comparable to the existing conditions on the property, while the area of proposed encroachment is minor.

Young concluded his staff report.

Abby Seba (134 9<sup>th</sup> Avenue, Hopkins) was present to represent the property owners. She stated that they had originally proposed a detached garage but the sanitary sewer easement didn't allow this expansion to occur. She stated that they are keeping the side entrance into the garage and are intending to keep the new garage low and in character with the neighborhood.

Discussion was held regarding the additional impervious surface caused by the construction of the new garage. John Studer noted that it would only add 309 s.f.

Chairman John Studer closed the public hearing at 7:06 p.m.

Motion by Commissioner Werneiwski to accept the recommendation and findings of staff and recommend the City Council **approve** the variance request of Lawrence and Rebecca Parkhurst to encroach 1.7 feet into the minimum required front yard setback in conjunction with the

construction of an attached garage at 4015 Heathcote Road, as proposed. Seconded by Commissioner Studer. Motion carried 4-0.

**Public Hearing to consider the variance request of Rodney and Kristen McCormick to encroach into the side yard setback in conjunction with a garage addition at 4224**

**Heathcote Road.**—Section 1302.04(3) of the zoning ordinance requires a side yard setback of 20 feet and the applicants are seeking a variance of 5.7 feet from the minimum required side yard setback.

Chairman John Studer introduced the agenda item.

Young presented the staff report. He stated that the property owners are requesting a variance to build a house addition on their property. The proposal would replace the existing attached single-story, 2-car garage with an addition that includes attached 3-car garage, mudroom, and living space above the garage. The property is a 44,899 square foot R-2 lot. The house was constructed in 1965 according to Hennepin County Records.

The house sits 38.5 feet off of the east property line, and the applicants are proposing an addition that would be as close as 14.3 feet from this lot line. Section 1302.04(3) of the zoning ordinance requires a side yard setback of 20 feet and the applicants are **seeking a variance of 5.7 feet from the minimum required side yard setback.**

He stated that the existing 22x24 foot garage is small by modern 2-car garage standards and the applicants are proposing a 3-car garage with living space above as well as a mudroom area. While the property has ample space to the west, the configuration of the house makes the addition to the east a logical choice. The proposed 3-car garage width is reasonable at 12 feet wide per stall. It is the addition of the mudroom that staff views as the feature of the addition that could be modified if the city felt that the encroachment was problematic. However, staff appreciates the desires of the property owners to have a mudroom area rather than a direct entry from the garage to the kitchen.

Taken as a whole, the proposed house would be modestly sized for the property, and it is simply the positioning of the house on the lot that is creating issues for the property owners. The neighboring house to the east is approximately 45 feet off of the shared property line, and the proposed addition would be less than 24 feet tall. In the opinion of staff, the impacts to the neighbor to the east would be relatively modest and staff is generally supportive of the request.

Young stated that Staff recommends **approval** of the variance request of Rodney and Kristen McCormick to encroach 5.7 feet into the minimum required side yard setback in conjunction with the construction of an attached garage at 4224 Heathcote Road, as proposed.

Young listed the possible findings for approval:

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

Yes. The applicant is seeking to vary from the stated setback standards of the ordinance to improve an existing house constructed in 1965, per Hennepin County tax records. The expanded conditions

remain in harmony with the purpose and intent of the ordinance in that they generally seek to maintain appropriate separation distances between the houses given the existing constraints.

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

The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which encourage residents to maintain and/or improve older homes which will promote diversity of housing in Deephaven.

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

Given the position of the house and the overall size of the house relative to the lot size, the request is reasonable. The overall scale of the house is modest relative to the property size and other houses within the neighborhood, and the addition is an appropriate modernization of an existing house.

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

Yes. The existing house was constructed in 1965, and is positioned within the southeast quadrant of the property. The existing configuration of the house and the positioning of the house in the property create unique circumstances that limit the options to expand the house without encroaching into the side yard setback.

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

The proposal would not alter the essential character of the locality. The proposed project is of a scope and scale comparable to the neighboring properties and, as proposed, there would be approximately 60 feet of separation between the adjacent houses.

Kristen McCormick, 4224 Heathcote Road, was present to discuss their request with the Commission. She stated that their current garage just isn't large enough and their proposed three-car garage would also allow for additional storage space. She stated that they are also proposing a mudroom between the garage and kitchen as a huge benefit to accommodate their hockey playing kids.

Jeff Eaton asked if the garage could be repositioned.

Kristen McCormick stated that there are elevation problems behind their house and existing garage.

Kristen McCormick noted that the nearest neighbor, Cheryl & Eric Wilson, have provided written support of their variance request.

Chairman Studer closed the public hearing at 7:15 p.m.

Jeff Eaton was pleased that there was no objection from the neighbor as he didn't typically like to approve a variance request that was so close to the lot line.

Bob Werneiwski stated that he thought the request sounded reasonable.

Motion by Commissioner Studer to accept the recommendation and findings of staff and recommend the City Council **approve** the variance request of Rodney and Kristen McCormick to encroach 5.7 feet into the minimum required side yard setback in conjunction with the construction of a home addition at 4224 Heathcote Road, as proposed. Seconded by Jeff Eaton. Motion carried 4-0.

**Consider the variance request of Karen Schreiber, property owner, to exceed the maximum permitted impervious surface coverage, exceed the maximum permitted grade alteration, and to regrade within a bluff impact zone at 19745 Lakeview Avenue.**— Section 1302.05(2) of the zoning ordinance limits maximum impervious surface area to 25% and the applicants are requesting an impervious surface area of 34.5% which is a reduction of 35.6% 1312.04 of the city ordinance limits the maximum grade alteration to 3 feet and the applicants are requesting to alter the existing grade by up to 5 feet in some areas. Sections 1345.67 and 1350 of the city ordinance restrict grading within steep slope and bluff areas. The existing and proposed stairway is located within a bluff.

John Daly enters at 7:20 p.m.

Chairman John Studer introduced the agenda item.

Young presented the staff report. He stated that the property owner is building a stairway to the lake which will require re-grading of the bluff area to accommodate retaining walls. The stairway is slightly different than the existing stairway and is within a bluff impact zone. The property is currently nonconforming for impervious area at 35.6%. The property is a 19,420 square foot R-3 property.

He stated that Section 1302.05(2) of the city ordinance limits maximum impervious surface area to 25% of the lot area and the applicants are requesting an impervious surface area of 34.5%. Existing conditions on the property are 35.6%. The city does not typically county retaining walls in impervious calculations and removing these from the calculations gives an existing impervious area of 34.4% and a proposed impervious area of 31.9%. The proposal is a reduction from existing conditions.

Technically, the impervious surface area variance would require mitigation to 25% impervious. In this case, however, the applicant is simply reconfiguring and reducing existing at-grade impervious areas and staff is recommending that mitigation not be required for the property.

He stated that Section 1312.04 of the zoning ordinance requires a variance for any grade alteration greater than three feet at any point. The applicant is proposing grade alteration of up to 4 feet, **and is seeking a variance of 1 foot from the maximum permitted grade alteration.** The proposed stairs are supported by a series of retaining walls. Two of the twenty walls have heights of 4 feet. Given the slope change, staff sees this as a minor and unavoidable situation and is supportive of this aspect of the request.

**Bluff impact zone:** Section 1345.67 of the zoning code states: “*Slopes Prone to Severe Erosion*” means slopes having an average slope of 30 percent or more as measured over a

*horizontal distance of fifty feet or more. No structure, including driveways, retaining walls and support systems shall be allowed on slopes prone to severe erosion. These slopes shall be maintained in a natural state with additional vegetative cover as needed to minimize erosion.*

He stated that Section 1345.04 of the city code defines “Bluff Impact Zone” as a bluff and land located within 20 feet from the top of a bluff. Section 1350 of the city code regulates grading within the bluff and bluff impact zone. The stairs themselves meet the requirements of Section 1350 which outlines the limitations of stairways, lifts, and landings.

He stated that the city engineer reviewed the proposal and requested the following: that erosion control measures should be indicated on the plan, and that disturbed green areas should be restored with plantings, staked sod, or seed and erosion control blanket with 7 days of completing construction.

He stated that Staff is supportive of this aspect of the proposal since it generally maintains the footprint of the existing stairway without disturbing other areas of the bluff impact zone.

He stated that Staff recommends **approval with conditions** of the variance requests to exceed the maximum permitted impervious surface area by 6.9%, exceed the maximum permitted grade alteration by up to 1 foot, and to regrade within the bluff impact zone for the property at 19745 Lakeview Avenue Road, as proposed.

The recommendation is conditioned that the applicants meet the requirements and specifications of the city engineer.

Young listed the possible findings for approval:

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

Yes. 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 project is attempting to replace a stairway within a bluff area. The proposal is in harmony with the purpose and intent of the ordinance since it is generally replacing the stairway within the existing footprint and avoiding additional grading and impervious impacts.

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

The request is consistent with the Comprehensive Plan’s Protection Elements Goals and Policies which seeks to maintain natural features and major assets such as lakes, woodlands, drainage ways, slopes and wetlands.

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

Yes. A stairway to the lake is reasonable and legal request. The grading impacts are in support of a stairway that is generally a replacement of existing conditions and the impervious area is a reduction from existing conditions.

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

Yes. The property has an existing stairway and deck in the same general area of the bluff. The impervious conditions are existing conditions to the property. The stairway is in bluff area and meets the “slopes prone to severe erosion criteria” and creating an at-grade stairway is difficult without exceeding the grading limitations.

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

No. The proposal would not alter the essential character of the locality. The proposal is similar in scope and scale to the existing stairway on the property.

John Daly asked if we received a survey showing the existing conditions and whether the impervious surface calculations included the wooden walkway provided by the Grandview Point Homeowners Association.

Dana Young stated that we didn't receive anything showing existing conditions and was unsure if the impervious surface calculations included the wooden walkway.

Bob Renaud, MN Green, was present to represent the property owner. He stated that the existing stairs are deteriorating, which is why they are proposing to move towards stone steps. He stated that retaining walls will be needed to support the stairs, which are from 18” – 24” in size. He stated that they are rebuilding the stairs in the same footprint as the existing stairs.

John Daly asked how they are planning to reduce the impact from the construction.

Bob Renaud stated that they are going to work from the bottom up using silt fencing. He stated that they will adjust the grade for the new retaining walls.

Jeff Eaton asked if he had any concerns regarding the engineer's recommendation that the disturbed green areas need to be restored with plantings, staked sod, or seed and erosion control blanket within 7 days of completing construction.

Bob Renaud stated that he doesn't have any concerns regarding the 7 day timeline unless there are poor weather conditions. He stated it would be to everyone's benefit to have silt fences, silt logs and the erosion blankets in place.

A question was asked regarding the height of the retention walls. Bob Renaud stated that the tallest retaining wall would be 4' and all of the retaining walls would be between 2'-4' in height.

John Studer asked if the other timber walls would be replaced.

Bob Renaud stated that they would be replaced with rock walls.

Jeff Eaton asked if they have considered any mitigation.

Bob Renaud stated that they were told that they didn't need mitigation. He stated that a rain garden would only cause more construction.

Chairman Studer closed the public hearing at 7:30 p.m.

John Daly stated that he is concerned with the lack of information on existing conditions. He stated that he is working on a similar project and was required to get soil engineering for the project. He stated that he would like additional information to ensure the hill doesn't give way.

John Studer stated that his initial concern is that this construction is occurring in a bluff. He stated that he would like to see the existing conditions as well. He stated that he is concerned about slope stability.

Karen Schreiber, 19745 Lakeview Avenue, stated that she has lived at her home for 40 years. She noted that both the timber and concrete are slowly giving way and the stairs are becoming increasingly dangerous to use. She noted that the proposed pathway is exactly the same as the current pathway. She noted that the timber walls along the neighboring property will remain untouched.

Dana Young noted that he received a call from Tony Sugalski, the neighboring property owner at 19725 Lakeview Avenue, voicing his support for the project.

Chairman Studer closed the public hearing at 7:38 p.m.

John Studer stated that he agreed with staff's recommendations regarding the impervious issue and stated that he was not concerned with the proposed grading of only one foot over the three-foot requirement. He stated that in regards to the bluff impact, he wouldn't be supportive of any new construction but agreed with staff that this is maintenance of existing stairs and retaining walls.

Bob Werneiwski agreed with John Daly that he would like to see a survey of existing conditions but is fine with the request.

Doug Nagle stated that he is struck by the lack of existing information and is concerned with the overall extent of the project.

Karen Schreiber noted that she hasn't done anything with the property to add hardcover.

Jeff Eaton recommended that the applicant provide photos or a drawing of the existing conditions.

John Daly stated that this is a unique property and would like further clarification on the hardcover impact, particularly with the Grandview walking path included in the calculation.

Motion by Commissioner Studer to accept the recommendation, findings, and conditions of staff and recommend that the City Council **approve with conditions** the variance requests to exceed the maximum permitted impervious surface area by 6.9%, and exceed the maximum permitted grade alteration by up to 1 foot, and to regrade within the bluff impact zone for the property at

19745 Lakeview Avenue Road, as proposed. Seconded by Commissioner Eaton. Motion carried 5-0

The recommendation is conditioned that the applicants meet the requirements and specifications of the city engineer.

**Public Hearing to consider Ordinance 13-80 amending Deephaven zoning code Section 1310.03 regarding Short Term Rental.**

Chairman John Studer introduced the agenda item.

Young stated that the City Council reviewed the draft ordinance at their January 6<sup>th</sup> meeting. There was a great deal of discussion on the ordinance and a variety of opinions expressed about its merits. (See attached meeting minutes.) Ultimately, the City Council felt that the best course of action was to hold a public hearing on the ordinance revisions.

There was a little confusion at the city council level about the intent of the ordinance. From staff's perspective, the ordinance is intended to be a ban on short-term rentals. While there are exceptions listed in the ordinance itself (rentals of less than 30 consecutive calendar days or to more than 2 tenant occupant groups in any 12-month period are prohibited) these were meant to provide definition and clarity for enforcement.

The 30-day minimum has become the standard for these types of ordinances. If the minimum length of stay were shorter, it would create a bigger loophole. But, the minimum stay could theoretically be longer (3 months, 6 months, etc.).

The 2 tenant occupant group's exception was not meant to be a loophole as much as it was meant to be an acknowledgement that you could have a legitimate long-term rental property in the city that has 2 tenant occupant groups during a 12-month window. If the city prefers to have more restrictive language (i.e. 1 tenant group) the rental window could be narrowed (3 months, 6 months, etc.). Staff does, however, like the fact that one-off rentals for major events (Super Bowl, Ryder Cup, etc.) are excluded from the ordinance limitations and that the city would not be called on to enforce such rentals.

Lynn Blakeway, 20040 Minnetonka Blvd, stated that she attended both the Planning Commission and City Council meetings on this ordinance. She noted that people have commented on how enjoyable it is to stay in an AirBnB and that the rental period would only be for a 4-month period. She stated that she is concerned with the constant flow of strangers, which occurs not just for a 4-month period but year round. She stated that Police Chief Johnson reported that the AirBnB had 122 reviews. She noted that only around one-third of renters actually submit a comment, which means a potential client base of over 350 renters. She stated that they bought their property as a single family home and wants it returned to that.

Jim Blakeway, 20040 Minnetonka Blvd, read a letter from an immediate neighbor, who expressed her concern that this is a residential area and didn't enjoy having strangers next door. He cited an article on the adverse impact of short term rental properties occurring in Lake Placid. He concluded by stating that it is a lot easier to nip this problem in the bud now.

Chairman Studer closed the public hearing at 7:50 p.m.

John Studer stated that the ordinance allows the occasional renter for a regatta as it would allow two renters within a 12-month period.

Jeff Eaton stated that he views AirBnB's as a commercial operation. He stated that he would not like to live this way.

Discussion was held on potential enforcement action, which would include enforcement action by the Deephaven Police Department and the City Attorney.

Jeff Eaton noted that we don't have many people here arguing against the ordinance. He stated that he thought it was a good idea to enforce this now. He stated that the City could move towards licensing rental properties in the future if more people supported this type of use.

Doug Nagle stated that the chief attraction is lake properties. He stated that he had seen people partying at this location and noted that properties around the lake get pretty quiet by 10:00 p.m. He stated that he would prefer to get in front of this issue.

Bob Werneiwski stated that he doesn't support the ordinance. He stated that the ordinance is finding a solution for a problem we don't have.

Motion by Commissioner Daley to recommend that the City Council adopt Ordinance 13-80 regarding Short Term Rentals as written. Seconded by Commissioner Nagle. Commissioner Werneiwski opposed. Motion carried 4-1.

### 3. NEW BUSINESS

#### **Planning Commission Terms – Discuss Planning Commission term expirations for John Studer, John Daly, and Doug Nagle.**

John Studer stated that he has been asked by the Mayor to stay on for another three years to assist with continuity due to the recent resignation of Zoning Coordinator Dale Cooney.

Jeff Eaton stated that it is highly valuable to have John Studer and John Daly on the Planning Commission. He stated that they provide great insight as contractors.

John Daly stated that he struggles with being involved with some projects due to potential conflict of interest.

Jeff Eaton stated that you have always discussed if there was a potential conflict of interest prior to discussing a project and always provide valuable insight.

John Studer stated that he agrees with Jeff. As a builder in Deephaven, you may have an involvement with one of the projects presented before the Commission.

John Daly stated that he is interested in staying. He noted that he hoped that we could step up our level of professionalism.

Jeff Eaton agreed but didn't know how to do it.

John Daly stated that the City of Tonka Bay had seven variances to consider with one request and voted separately on each variance. He stated that we may need a more formal process and to control the environment better.

Doug Nagle suggested that the City could pass out copies of Roberts Rule of Order.

Jeff Eaton stated that Deephaven is a small town and likely going to be less formal.

Kent Carlson noted that the League of MN Cities provides Planning Commission guidelines, which might be helpful.

Doug Nagle stated that he gets frustrated by what he sees as a disconnect between the City and Planning Commission, particularly with requests that are denied unanimously by the Planning Commission yet are approved by the City Council.

Bob Werneiwski stated that we are a small town and some Planning Commission members are much stricter on the enforcement of the City Code than others. He stated that Deephaven is more much stringent on hardcover standards than other cities. He added that we are only a recommending body to the City Council.

Doug Nagle stated that he would also be willing to stay on the Planning Commission.

Kent Carlson stated that the City Council wants to encourage a vibrant community through redevelopment. He stated that we have strict standards on hardcover and lake yard setbacks and focus on storm water management because we don't have a storm water infrastructure.

Motion by Bob Werneiwski to recommend the reappointment of John Studer, John Daly, and Doug Nagle to the Planning Commission for three-year terms of office effective until April 2023. Seconded by Jeff Eaton. Motion carried 5-0.

#### **4. OLD BUSINESS**

There was no Old Business this evening.

#### **5. LIAISON REPORT**

Carlson presented the Liaison Report. He stated that the City Council unanimously approved the variance request of David Marantz and Barl Kessler, at 20425 Carson Road.

He stated that the City has two existing PUD's, one along Hwy 101 for the Valley View townhomes and one at St. Therese for Deephaven Woods. Both of these PUD's were identified early on in the City's comprehensive plan. He stated that the Council denied the proposed PUD ordinance for the LMCC due to the Council's and resident's concerns regarding the sweeping nature of the ordinance. For that reason, there was no reason to review the LMCC concept plan.

## **6. ADJOURNMENT**

Motion by Jeff Eaton to adjourn the meeting. Seconded by John Studer. Motion carried 5-0.  
The meeting adjourned at 8:31 p.m.

Respectfully submitted,  
Dana Young  
Interim Zoning Coordinator