

**DEEPHAVEN PLANNING COMMISSION  
TUESDAY, MAY 19, 2015  
MINUTES**

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

**PRESENT:** Commissioners Kent Carlson, Brandon Gustafson, Bob Werneiwski, Gen McJilton, John Studer, Jim Anderson, and Council Liaison Darel Gustafson

**ABSENT:** Commissioner Bill Sharpe

**OTHERS PRESENT:** Administrator Dana Young and Zoning Coordinator Dale Cooney

**Oath of Office**

Commissioner Bob Werneiwski recited the Oath of Office.

**Commission Minutes**

Motion by Commissioner Carlson to approve the March 17, 2015 and the April 21, 2015 Planning Commission minutes, as amended. Seconded by Commissioner Anderson. Motion carried 6-0.

**PUBLIC HEARINGS**

**Subdivision/Combination - Request by John McGary for a lot line adjustment between 19350 Park Avenue and 3850 Day Lane. Both lots are currently in compliance with lot area requirements.**

**Section 1200 of the city code requires the Planning Commission to review the proposed lot line adjustment and submit their recommendations to the City Council.**

Chairman Carlson asked for the staff report on the application.

Administrator Young stated that the applicant is proposing to subdivide 8,702 s.f. from a portion of 19350 Park Avenue and attach it to 3850 Day Lane. He stated that both lots meet the minimum lot area requirement of 20,000 s.f. for an R-3 Residential District.

He stated that 19350 Park Avenue is a conforming lot both in terms of lot area and setbacks. The conveyance would require the existing garage on the east side of the property to be removed. This property would continue to be a conforming lot if the conveyance were approved.

He stated that 3850 Day Lane is a conforming in terms of lot area but is currently only 6' off of the south side property line. The conveyance would increase the south side setback to 10', which is the approved side setback in an R-3 District. The property also only has a 12.5' front yard setback off of Day Lane. An argument could be made that the new setback from Park Avenue would constitute the new front yard. The applicant is proposing a new primary driveway access off of Park Avenue.

He stated that lots within the R-3 Zoning District also require a minimum street width of fifty feet. Section 1200.13(3) (a) states that all lots shall abut and have driveway access on a publicly dedicated or private street. The current street width on Day Lane is only 20 and the proposed conveyance would allow an acceptable street width of 54.4' onto Park Avenue.

He added that the properties are served by private wells and sanitary sewer is already provided by the city. Since both parcels currently have sewer connections, a sewer lateral fee would not be assessed. The proposal is not creating any additional lots so a park dedication fee would not be assessed.

He stated that Staff recommends approval of the proposed subdivision/combination as presented for 3850 Day Lane and 19350 Park Avenue with the following findings:

- 19350 Park Avenue is currently a conforming lot in all respects and would remain a conforming lot after the conveyance of 8,702 sq. ft. to 3850 Day Lane.
- 3850 Day Lane is currently a conforming lot in terms of lot area and would become a more conforming lot in terms of the south side yard lot line, the minimum street frontage, and arguably, the minimum front yard setback.
- The proposed lots will have access directly to a publicly dedicated street and both currently have sewer connections.

Chairman Carlson asked if the applicant had any comments.

John McGary (3850 Day Lane) stated that this proposal was a good use for the excessive footage and brings the Day Lane property more into compliance.

Chairman Carlson opened the public hearing for comments.

Jack Braun (29390 Park Avenue) stated that this subdivision combination is a marvelous solution. He stated that there would have been increased density without this solution.

Chris Duellman stated that his property is just east of his driveway. He stated that he use to be able to see a small portion of the lake but now the driveway will be in his line of sight. He asked if the large trees bordering his property will be removed. He stated that a driveway near his back window will not help his property value and asked if a fence will be constructed.

John McGary stated that several of the trees will be treated such that they will actually sleep to minimize the impact of the construction. He noted that a 10” diameter oak tree and 12” pine tree will have to be removed.

Further discussion was held on the proposed tree removal.

Phyllis Doman (3860 Northome Avenue) asked if the owner of the Day Lane property is intending to use the driveway for parking, such as for parties and other events.

John McGary stated that the driveway should be able to accommodate approximately 10 vehicles. He added that the installation of a fence has not been discussed with the owner.

Susan Hammel (3840 Day Lane) stated that she is in support of the proposal. She stated that it will add to the safety of the six children living on Day Lane.

Hearing no further comments, Chairman Carlson closed the public hearing and asked if the Commission had any comments for the applicant.

Commissioner McJilton asked if the Day Lane access would be shut off.

John McGary confirmed that it would be shut off.

She stated that she was concerned with the location of the driveway.

Administrator Young stated that the City does not require driveway setbacks.

Commissioner Gustafson asked who the owners of the proposed property are.

John McGary stated that Dick Putnam is the current owner of the south property and that he intends to buy him out.

Commissioner Gustafson stated that he doesn't see an issue with this request. It's a reasonable plan.

Commissioner Werneiwski stated that he thought this was a good use of the land vs. the addition of another lot. He stated that he supports the proposal.

Commissioner Studer stated that although he is concerned with the tree removal, he supports the improved safety and felt it was a good use for the property.

Chairman Carlson asked about the removal of the garage and elevation and grading impact of installing the new driveway.

John McGary stated that he intends to match the existing grade on the western side and fill in within the retaining walls and garage. He stated that he didn't see an issue with the three foot fill permit requirement.

Chairman Carlson asked about access to Day Lane.

John McGary stated that emergency vehicles will always be able to access his property from Day Lane and that Day Lane would not be used as through access to Park Avenue.

Chairman Carlson stated that he likes the plan and how the applicant addressed the setbacks at 3850 Day Lane.

**Planning Commission Action:**

Motion by Commissioner Gustafson to accept the recommendation and findings of Staff and recommend that the Council approve the application of John McGary for a subdivision combination to subdivide a portion of 19350 Park Avenue and attach 8,702 s.f. to 3850 Day Lane as required by Section 1200. Motion seconded by Commissioner Anderson. Motion carried 6-0.

**Subdivision/Combination - Request by David Mitchell Lyman Trustee and Ronald Poole for a lot line adjustment between 20550 Lakeview Avenue and 20430 Lakeview Avenue. The property at 20430 Lakeview Avenue is in compliance with lot area requirements. The property at 20550 Lakeview Avenue is currently non-conforming in lot area and the proposed lot line adjustment would not bring this property into compliance.**

**Section 1200 of the city code requires the Planning Commission to review the proposed lot line adjustment and submit their recommendations to the City Council.**

Chairman Carlson asked for the staff report on the application.

Administrator Young stated that the applicants are proposing to subdivide a portion of 20430 Lakeview Avenue and attach 630 s. f. to 20550 Lakeview Avenue. 20430 Lakeview Avenue is in compliance with both R-2 District setbacks and lot area while 20550 Lakeview Avenue is in the R-3 District and is non-conforming in terms of most setbacks and lot area. He noted that this property would become less non-conforming after the conveyance of land.

He stated that the proposed conveyance of 630 s.f. from 20430 Lakeview Avenue to 20550 Lakeview Avenue is located on the southeast corner of the property along the lakeshore. He stated that 20430 Lakeview Avenue would continue to be a conforming lot in terms of lot area and setbacks if the conveyance were approved.

He stated that 20550 Lakeview Avenue is a non-conforming lot in terms of the following requirements:

- lot area (20,000 s.f. requirement vs. 16,040 sq. ft.)
- rear yard setback (15' required setback vs. 11.5')
- front yard setback (35' required setback vs. 15')
- maximum impervious surface area (25% maximum impervious surface vs. 48.27%) and minimum lake frontage (100' requirement setback vs. 40').

He stated that the benefit of the conveyance is that it would decrease the existing maximum impervious surface area from 48.27% to 46.45% and add additional lakeshore frontage to the property.

Administrator Young added that the properties are currently served by private wells and sanitary sewer, so that a sewer lateral fee would not be assessed. In addition, the proposal is not creating any additional lots so a park dedication fee would not be assessed.

He stated that Staff recommends approval of the proposed subdivision/combination as presented for 20430 Lakeview Avenue and 20550 Lakeview Avenue with the following findings:

- 20430 Lakeview Avenue is currently a conforming lot in all respects and would remain a conforming lot after the conveyance of 630 sq. ft. to 20550 Lakeview Avenue.
- 20550 Lakeview Avenue is currently a non-conforming lot in terms of lot area and setbacks and would become a marginally more conforming lot in terms of a 1.82% decrease in its overall impervious surface.
- The proposed lots would continue to have access to a publicly dedicated street and both currently have sewer connections.

Chairman Carlson asked if there were any questions of staff or if the applicant has any comments.

John Adams, with Coldwell Banker and representing the applicants, noted that Ronald Poole's shoreline would increase from 66' to 91' under this conveyance and the shoreline along the Lyman property would decrease from 322' to 297'.

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

Chairman Carlson asked the Commission for their comments.

Commissioner Anderson stated that the proposal makes sense and squares off the property, enabling more dock area. He stated that he believes the applicant is moving in the right direction in becoming a more conforming lot.

Commissioner Werneiwski stated that he agrees with staff's comments and noted that 20430 Lakeview remains a conforming lot.

Commissioner Studer stated that he was in favor of the request.

Commissioner McJilton stated that she had no issues and was also in favor the request.

Commissioner Gustafson stated that he just wanted it noted for the record that if the applicant wanted to reduce his lot size back to 16,000 s.f. it wouldn't be allowed.

### **Planning Commission Action:**

Motion by Commissioner Carlson to accept the recommendation and findings of Staff and recommend that the Council approve the application of David Mitchell Lyman Trustee and Ronald Poole for a subdivision combination to subdivide a portion of 20430 Lakeview Avenue and attach 630 s. f. to 20550 Lakeview Avenue as required by Section 1200. Motion seconded by Commissioner Gustafson. Motion carried 6-0.

**Variance – John Kraemer & Sons, 20550 Lakeview Avenue – Request to demolish an existing deck and reconstruct a new deck in a similar footprint that will reduce the current impervious surface coverage by 1.09% from 46.45% to 45.36%. A variance to exceed the maximum impervious surface area by 20.36% is being requested.**

**Section 1350.06(2) (a) of the Shoreland Management District ordinance permits a maximum impervious surface area of 25%. The proposed impervious surface area sought by the applicant is 45.36%. A variance to exceed the maximum impervious surface area by 20.36% is being requested.**

Chairman Carlson asked for the staff report on the application.

Administrator Young stated that the applicant is proposing to remove portions of an existing deck, including the removal of an existing wood rail, and replace it with a stone wall, and install a new deck in a smaller footprint, which will reduce the current impervious surface coverage by 1.09% from 46.45% to 45.36%. The property is non-conforming in regards to the required lot area and both the house and attached deck are non-conforming in regards to most setback standards of an R-3 District. He stated that approval of the new attached deck would require variances for the front yard setback, lake yard setback, maximum building coverage, and impervious surface cover percentage.

Administrator Young stated that 20550 Lakeview Avenue is a non-conforming in regards to its lot area of 16,670 s.f. and the house and existing attached deck are non-conforming in regards to the following setbacks and standards:

- rear yard setback (15' required setback vs. 11.5' existing)
- front yard setback (35' required setback vs. 20' existing)
- maximum impervious surface area (25% maximum impervious surface vs. 46.45% existing)
- minimum lake yard setback (100' requirement vs. 35' existing)
- maximum building coverage area (4,500 s.f. requirement vs. 5,382 s.f. existing)

He stated that the construction of the new attached deck would be an overall improvement by enabling compliance with the rear yard setback, establish an additional 10' setback from the front yard setback, increase the lakeyard setback by 2'-6", reduce the maximum impervious surface area by 1.09%, and reduce the maximum building coverage area by 181 s.f.

He stated that for those reasons Staff recommends approval of the variance requests to encroach 10' into the required 35' front yard setback, to encroach 62'-6" into the required 100' lakeyard setback, to exceed the maximum impervious surface area by 20.36%, and to exceed the maximum building coverage area by 701 s.f. as presented at 20550 Lakeview Avenue with the following findings:

- The construction of the new attached deck would enable the new deck to be in compliance with the rear yard setback, establish an additional 10' setback from the front yard setback, increase the lakeyard setback by 2'-6", reduce the maximum impervious surface area by 1.09%, and reduce the maximum building coverage area by 181 s.f.

Chairman Carlson asked if there were any questions of staff or comments from the applicant regarding the staff report.

Scott Ritter, with Topo, stated that he is here with David Burke of Kraemer & Sons to represent the applicant. He stated that the intent is to try to keep the new deck within the same setbacks as the existing deck, to update the deck, and to replace the existing railing with a stone wall.

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

Chairman Carlson asked the Commission for their comments.

Commissioner McJilton stated that the applicant is moving towards compliance and while she would like to see more effort in this regard, appreciated the attempt to lessen the impervious surface. She stated that she supports the request.

Commissioner Gustafson agreed that the property is moving in the right direction.

Commissioner Anderson stated that he visited the property and noted that the deck is falling apart. He stated that he appreciates the effort of the applicant and supports the request.

Commissioner Werneiwski agreed that the deck is in need of repair and acknowledged that the property is moving in the right direction. He stated that he views this request as a maintenance project.

Commissioner Studer stated that the setbacks shown in the staff report are assuming the approval of the prior request for a subdivision combination. He stated that he understands that this is a maintenance issue and the applicant is attempting to reduce his footprint. He asked if we should require him to reduce the encroachments even further.

Chairman Carlson stated that he is in support of the request and noted that the homeowner does have the right to build on the existing footprint. He added that the subdivision combination and this request would reduce the impervious surface by 3%.

## **Planning Commission Action:**

Motion by Commissioner Carlson to accept the recommendation and findings of Staff and recommend that the Council approve the application of John Kraemer & Sons to demolish an existing deck and reconstruct a new deck in a similar footprint that will reduce the current impervious surface coverage by 1.09% from 46.45% to 45.36% and exceed the maximum impervious surface area by 20.36% as is being requested at 20550 Lakeview Avenue.

The motion for approval is based on the following findings: (a) the proposal meets the intent of the ordinance and is in harmony with the orderly development of the city. The applicant is seeking to demolish an existing non-conforming deck and replace it with a new deck in a slightly smaller footprint, which would not increase the degree of dimensional encroachment; (b) the request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the development and redevelopment of residential property within the city; (c) the proposal is a reasonable use of the property and only seeks to continue the existing use currently on the property, by replacing an existing dilapidated deck with a new deck; (d) The construction of the new attached deck would enable the new deck to be in compliance with the rear yard setback, establish an additional 10' setback from the front yard setback, increase the lakeyard setback by 2'-6", reduce the maximum impervious surface area by 1.09%, and reduce the maximum building coverage area by 181 s.f.; and (e) the proposal would not alter the essential character of the neighborhood. The proposed structure setbacks are consistent with those currently in place on the property.

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

**Variance – Charles Cudd De Novo, 19825 Cottagewood Avenue - Request for variances of the minimum permitted front yard setback, the lake yard setback and to exceed the maximum impervious surface coverage for the construction of a new single family home is being requested.**

**Section 1302.05(3) of the city ordinance requires a minimum front yard setback of thirty-five (35) feet from the front property line. The requested front yard setback for the proposed single family home is twenty-eight feet, one inch (28'-1"). A variance to encroach six feet, eleven inches (6'-11") is being sought.**

**Section 1302.05(3) of the city ordinance requires a minimum lakeshore setback of one hundred (100) feet from the Ordinary High Water Level (OHWL) of Lake Minnetonka. The requested lakeshore setback for the proposed single family home is sixty feet, four inches (60'-4"). A variance to encroach thirty-nine feet, eight inches (39'-8") into the required lakeshore setback is being sought.**

**Section 1350.06(2) (a) of the Shoreland Management District ordinance permits a maximum impervious surface area of 25%. The proposed impervious surface area sought by the applicant is 31.7%. A variance to exceed the maximum impervious surface area by 6.7% is being sought.**

Chairman Carlson asked for the staff report on the application.

Administrator Young stated that the applicant is proposing to demolish the existing non-conforming home, which currently encroaches into the minimum required northeast side yard setback and lake yard setback, and construct a new home, which would encroach into the required front yard setback, lake yard setback, and would exceed impervious surface area requirements.

He stated that the applicant first approached the Planning Commission on September 16, 2014 with a request to demolish the existing home and construct a new home that would encroach into the required front and lakeshore setback. At that time, the Planning Commission approved the request to encroach fifteen (15) feet into the minimum required thirty-five foot front yard setback and to encroach thirty-one feet, six inches (31'-6") into the minimum required one hundred foot lake yard setback.

He stated that in response to concerns regarding off street parking, the applicant has returned with an application that proposes an increased setback from the front property line that would require a variance of 6'-11" from the front yard setback requirement of 35'. With the shift of the proposed house further back from the street, the encroachment into the lakeyard setback has increased to 39'-8". And finally, the revised request also includes a variance of 6.5% from the maximum impervious surface area. The last request did not require a variance from the maximum impervious surface area.

He stated that Staff recommends approval of the variance requests to encroach 6'-11" into the required 35' front yard setback, the variance request to encroach 39'-8" into the required 100' lakeyard setback, and the variance request to exceed the maximum impervious surface standard by 6.5% as presented at 19825 Cottagewood Avenue with the following findings:

- The front yard variance of 6'-11" is necessary in order to establish sufficient off-street while maintaining a reasonable setback from the lakeshore setback requirements.
- The lakeyard setback of 39'-8", while significant, enables the applicant to maintain a rear building line that is consistent with the average building setback line of neighboring properties.
- The request to exceed the maximum impervious surface standard by 6.5% is reasonable due to the fact that the total lot area is 11,516 s.f., which equals only 58% of the minimum 20,000 s.f. lot area of an R-3 District.

Chairman Carlson asked if there were any questions of staff or if the applicant had any comments.

John Sonnek, representing Charles Cudd De Novo and the applicant, stated that the first time their application went before the Planning Commission there was concern regarding off-street parking and it was suggested that they would prefer to see the home shifted to the lakeyard and increase the front setback to add additional driveway area. He stated that the original request

pushed the home to the street in the attempt to minimize hardcover and the City Council preferred more off-street parking and a consistent rear building setback line along the lakeside. He stated that they brought the home down in size and that the additional driveway area added to the impervious surface.

He stated that the water management system that will be installed on the property is designed to mitigate 2.87" of rainfall within a 24-hour period, which is considered a two-year rainfall event. He stated that they would only be 743 s.f. over the hardcover standard and the water management system could effectively handle an 8.9" rainfall event, which is considered a 100-year event. He stated that the gutters, driveway, and sidewalk would be directed into the water retention area, where the water is cleaned and eventually drains into the lake after it percolates into the ground.

Commissioner Werneiwski stated that he was not on the Commission when this was proposed last year and asked if this water management system was proposed at that time.

John Sonnek stated that it was as they were attempting to clean the water as best as they could.

Chairman Carlson asked if a soil test had been conducted yet.

John Sonnek stated that they were waiting until they received approval. He noted that they expect granular clay condition based on what surrounding homes have dealt with.

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

Chairman Carlson asked the Commission for their comments.

Commissioner Anderson asked about the extension of the driveway into Cottagewood Road.

John Sonnek stated that the Cottagewood Road ends and they want to add a hammerhead for public safety and emergency access reasons, and it would help with parking as well. He stated that they would propose to rebuild the end of Cottagewood Road to city standards. He stated that the grade of the street is steep at the end of the road and would have the water runoff down Cottagewood Road and a portion into the drainage area.

Commissioner Anderson noted that there was a sidewalk along the property and asked if it were a city sidewalk.

Administrator Young stated that he would have to check to see if it were a city sidewalk or not.

John Sonnek stated that the stairway would remain but the power pole would be removed for underground service.

Commissioner Werneiwski noted that the plan underestimated that amount of existing hardcover at 11.6% since it did not appear to include the existing patio. He stated that the existing hardcover should actually be closer to 20%.

John Sonnek stated that they will revise their survey to accurately reflect the existing hardcover.

Commissioner Werneiwski stated that he is a little bit concerned about the increase in hardcover but generally didn't have a big problem with the request. He noted that this is a modest home that includes a stormwater mitigation system.

Commissioner Studer stated that his main concern is in regards to the storm water but understands the hardcover increase is due to pushing the house back from the front, and also noted the rear building line is comparable with the neighboring properties. He added that he would like the City Engineer to review the proposed storm water mitigation plan.

Commissioner McJilton stated that she remembered the September discussion and was concerned with the hardcover and struggles with the overall size of the house and the rationale that the excessive hardcover is acceptable because the lot is small. She stated that she appreciates the storm water management efforts and would also want the City Engineer to review the storm water plan and for the City to develop a maintenance agreement for the storm water system.

John Sonnek noted that they have been granted approval for similar storm water systems in Orono and Minnetonka and maintenance agreements are in place in both cities.

Commissioner Gustafson asked if staff had received any opposition on this request.

Administrator Young stated that he had received a general concern regarding the granting of variances for setbacks and impervious surface. For the most, the vast majority of the comments have been very positive, although most of the comments were referencing the previous application.

Commissioner Gustafson stated that he likes the proposed storm water maintenance system and is generally in support of the request since it is consistent with the neighboring properties.

Chairman Carlson noted that the City Council has directed the Planning Commission to consider standards on these storm water systems that have been recommended as methods to address impervious surface. He stated that the City has seen cisterns as the way to control runoff and which have also been used as a lawn sprinkler systems. He asked if the system proposed here could also be used as a lawn sprinkler.

John Sonnek stated that the system could be modified to pump water onto the grass although the current plan is to irrigate the lawn from the lake.

Chairman Carlson stated that the City has been comfortable with cisterns and this is a new water management system. He stated that he would like to come up with a method to measure the

reduction in impervious surface from these water management systems. He stated that the applicant has done a very good job in addressing the front setback; he would recommend that the City consider a license agreement for the proposed improvements to Cottagewood Avenue and thanked the applicants for their investment in the community.

### **Planning Commission Action:**

Motion by Commissioner Carlson to accept the recommendation and findings of Staff and recommend that the Council approve the application of Charles Cudd De Novo for variances of 6'-11" of the minimum permitted front yard setback, the lake yard setback of 39'-8", and to exceed the maximum impervious surface coverage by 6.5% for the construction of a new single family home as requested at 19825 Cottagewood Avenue, subject to the following conditions:

- Review of the storm water management plan by the City Engineer, which includes the mitigated reduction in impervious surface
- Soil boring test
- An updated survey showing the impervious surface calculations for the current structures, and
- The requirement for a storm water maintenance agreement with the City.

The motion for approval is based on the following findings: (a) the proposal meets the intent of the ordinance and is in harmony with the orderly development of the city. The applicant is seeking to demolish an existing non-conforming home and replace it with a new non-conforming home; (b) the request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the development and redevelopment of residential property within the city; (c) the proposal is a reasonable use of the property and a front yard setback of 6'-11" is necessary in order to establish adequate off-street parking while maintaining an adequate lakeyard setback, that is consistent with the average building setback line of neighboring properties; (d) the request to exceed the maximum impervious surface standard by 6.5% is reasonable due to the fact that the total lot area is 11,516 s.f., which equals only 58% of the minimum 20,000 s.f. lot area of an R-3 District; and (e) the proposal would not alter the essential character of the neighborhood.

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

### **LIAISON REPORT**

Council Liaison Gustafson provided a review of the City Council action on last month's variance requests and noted that last evening the Council approved the development of a Park & Recreation Strategic Plan and adopted an ordinance to control the storage of boats and trailers.

The Commission welcomed Dale Cooney to his new position as Deephaven Zoning Coordinator.

### **ADJOURNMENT**

Motion by Chairman Carlson to adjourn the meeting, seconded by Commissioner Gustafson.  
The meeting adjourned at 8:23 p.m.

Respectfully submitted,  
Dana Young, City Administrator