

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

PRESENT: Chairman Bob Werneiwski, Commissioners John Daly, Walter Linder, Bill Sharpe, John Studer, and Cindy Hunt Webster

ABSENT: Commissioner Melissa McNeill

OTHERS PRESENT: City Council Liaison Tony Jewett and Zoning Coordinator Dale Cooney

MINUTES OF March 21, 2017

Motion by Sharpe, seconded by Werneiwski, to approve the minutes of March 21, 2017 as written. Motion carried 5-0 with Linder abstaining.

PUBLIC HEARINGS

Variance request of Billy Rowe to encroach into the front yard setback for a home addition at 3570 Deephaven Avenue.

Chairman Werneiwski introduced the agenda item. He said that Section 1302.05(3) of the zoning ordinance requires a front yard setback of 35 feet. He said that the applicant proposes a front yard setback of 20 feet, 4 inches and is seeking a variance of 14 feet, 8 inches from the minimum required front yard setback.

Cooney presented the staff report. He said that Billy Rowe, contractor for the property owners at 3570 Deephaven Avenue, is requesting variances to build a home addition onto a legal non-conforming house. He stated that the addition creates the need for a variance from the minimum front yard setback. Cooney noted that the footprint, height and massing of the house will increase; however, with two minor exceptions explained below, the encroachments into the front setback are not being increased. He said that the property is a 14,452 square foot R-3 lot.

Cooney said that Section 1302.05(3) of the zoning ordinance requires a front yard setback of 35 feet. He said that the applicant proposes a front yard setback of 20 feet, 4 inches and **is seeking a variance of 14 feet, 8 inches from the minimum required front yard setback.** He said that the existing house is 23 feet, 10 inches off of the front property line and the house will maintain the same footprint in this area of the addition with two minor exceptions: 1) the 21 square foot cantilever proposed for the front stoop which would create an additional 3 foot, 6 inch encroachment in this area; and 2) the proposed covered porch for the new addition, which will not encroach any further than the current front of the house.

Cooney said that the overall height and massing of the house will increase, particularly in the area over the existing garage. He pointed out that other areas of the house are expanding or being added to, however those areas do not encroach into the setbacks. Cooney stated that at 26 feet, 3 inches, the height of the house is well below the 33 foot height limitation for the property.

Cooney said that the proposal complies with the remaining setback requirements, building coverage limitations, and maximum permitted grade alteration. He also pointed out that while the impervious area on the property is being reduced from existing, the property is not subject to the 25% impervious surface limitation of the Shoreland Overlay District.

Cooney said that he recommends approval of the variance request to encroach 14 feet, 8 inches into the minimum required front yard setback, for the proposed home addition at 3570 Deephaven Avenue, as presented based on the following findings:

- (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 and dimensional standards of the ordinance in order to modify a non-conforming house built in 1941, according to Hennepin County records.

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

Yes. 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 proposal puts the property to use in a reasonable manner. But for the existing non-conforming setback, the scale of the house is consistent with zoning limitations for the property.

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

Yes. The 1941 house was built prior to the city's zoning requirements. The narrow front yard setback impedes work on much of the house without requiring the need for 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 proposal is consistent with the single-family character of the neighborhood.

Cooney concluded his staff report.

Webster said that her main issue with the proposal is that the property would not have a garage. She said that this brings up an issue where the city might feel compelled to provide a variance for this property to build a garage in the future.

Sharpe said that Webster's point was well taken but that the city cannot require that this property maintain the garage.

Daly said that he would have an issue with the lack of garage since cars would constantly be parked in the street. Webster said that Deephaven Avenue is a difficult road to park on-street.

Studer said that he did not see an issue with the encroachments, but he did agree with the concerns over the garage.

Werneiwski opened the public hearing. Hearing no public comments, Werneiwski closed the public hearing.

Webster said that she wishes the applicant were here to help answer these questions and wanted to know if the planning commission could postpone the decision until next month. Cooney said that the city could request an additional 60-days to make a decision on the proposal. He said that the current timeline would not allow a return to the Planning Commission within the original 60-day requirement.

Linder said that he was loathe to vote against the request based on the structure itself, which seems reasonable, but shares the concerns regarding the garage.

Motion by Sharpe to recommend the city request an additional 60-days to get more information from the applicant. Motion was seconded by Studer. Motion carried 6-0.

Variance requests of Matt Hendricks to encroach into the minimum front and exterior side yard setbacks, to exceed the maximum permitted accessory structure footprint, and to exceed the maximum permitted accessory structure height in order to rebuild a non-conforming accessory structure at 19865 Lakeview Avenue.

Chairman Werneiwski introduced the agenda item. He said that Matt Hendricks is seeking several variances for a non-conforming accessory structure. He said that Section 1302.05(3) of the zoning ordinance requires a front yard setback of 35 feet and an exterior side yard setback of 25 feet. Section 1302.05(4) of the zoning ordinance limits the height of accessory structures to 15 feet. Section 1310.10 of the zoning ordinance limits the accessory structure footprint of R-3 properties to 700 square feet.

Cooney presented the staff report. He said that Matt Hendricks, property owner at 19865 Lakeview Avenue, is requesting several variances in order to build a new accessory structure that would replace two smaller, legal, non-conforming structures on the property. He said that the non-conforming accessory structures were recently removed from the property. Cooney noted that the proposal improves on the non-conforming setbacks from the previous structures.

Cooney said that statute allows nonconformities to be continued through repair, replacement, restoration, maintenance, improvement, but not including expansion. He said that Mr. Hendricks has the legal right to replace the structures in their current location at the same size. Cooney said that, Mr. Hendricks is proposing to resituate the structures 15 feet back from the property line, and is also requesting a slightly larger footprint for the proposed garage.

Cooney noted that Section 1302.05(3) of the zoning ordinance requires a front yard setback of 35 feet and an exterior side yard setback of 25 feet. He said the applicant proposes a front yard setback of 15 feet and an exterior side yard setback of 15 feet and that the applicant is seeking a variance of 20 feet from the minimum required front yard setback, and 10 feet from the exterior side yard setback. Cooney pointed out that the nonconforming structures were located as close as 10 inches from the lot line. He said that while still non-conforming, in both cases the setbacks have been significantly improved from previously existing conditions.

Cooney said that Section 1302.05(4) of the zoning ordinance limits the height of accessory structures to 15 feet and that the applicant is proposing an accessory structure height of 20 feet tall and is seeking a variance of 5 feet from the maximum permitted accessory structure height. He said that, since the non-conforming structures were removed last fall, staff was unable to measure the previously existing conditions. He said that based on photographs provided by the applicant and comparisons with nearby structures, staff estimates the height of the tallest previously existing accessory structure to be no taller than 20 feet. Cooney noted that the previous structure was a 1 ½ story garage which is what the applicant is proposing for the new structure.

Cooney said that Section 1310.10 of the zoning ordinance limits the accessory structure footprint of R-3 properties to 700 square feet and that the previously existing accessory structures had a square footage of 793 square feet, exceeding the 700 square foot limit within the zoning district. He said that the applicant is requesting a garage footprint of 864 square feet and is requesting a variance to exceed the maximum allowable accessory structure footprint by 164 square feet. Cooney said that the previous garage footprint would accommodate a 24 x 33 garage, and the applicant is requesting a 24 x 36 garage which would accommodate the inclusion of an interior stair to the second floor storage area.

Cooney noted that the proposal complies with the remaining setback requirements and building coverage limitations outlined in Section 1302.05, and the maximum permitted grade alteration permitted in Section 1312.04 and that no stormwater mitigation requirements are triggered by the proposal.

Cooney said that he recommends approval of the variance requests to encroach 20 feet into the minimum required front yard setback, to encroach 10 feet into the minimum required exterior side yard setback, to exceed the maximum permitted accessory structure height by 5 feet, and to exceed the maximum permitted accessory structure footprint by 164 square feet for the proposed accessory structure at 19865 Lakeview Avenue, as presented based on the following findings:

- (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 existing, legal, non-conforming structures. The proposal reduces the encroachment into the front and exterior side yard setbacks from existing conditions.

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

Yes. The request is consistent with the Comprehensive Plan which seeks to encourage re-investment in existing single family housing.

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

Yes. The replacement the nonconforming structures is comparable in size and scale to the previously existing structures while also greatly improving visibility at the intersection by setting the structure back 15 feet from the property line.

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

Yes. The property hosts two existing structures, which are considered legal non-conforming structures due to their location, size, and height.

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

No. The size of the structure is comparable to what existed on the property as well as other similar legal non-conforming structures within the community.

Cooney concluded his staff report.

Shane Hudella, representative for the applicant, said that the property owners are out of town for the NHL playoffs and apologize for not being in attendance. He said that they worked with the neighbors to come up with a scaled back proposal by removing the deck and the proposal for the man cave. He said that he would be happy to answer any questions.

Webster asked about the purpose of the additional length of the building. Hudella said that the additional footage would accommodate an interior stair well to the second floor storage area and would also allow their boat to fit within the garage.

Sharpe said that he appreciated the applicants working with the neighbors.

Daly asked why the structure was not pushed back to meet the exterior side yard setback. Hudella said that the owners will be fencing in the back yard and it would create a much smaller yard for the children.

Werneiwski opened the public hearing. Hearing no public comments, Werneiwski closed the public hearing.

Linder said that he had some reservations about the need to exceed the footprint limitations but that the proposal was appropriate for the lot and the neighborhood and that he was amenable to the request.

Webster said that the proposal was more appropriate but she still had reservations about the length and height.

Werneiwski said that he has a few reservations but is not too troubled. He said that he recognizes the legal non-conforming structures, and that the applicant is making the intersection safer. He said that he is generally in favor of the proposal and that the applicant worked with the neighbors.

Studer said he had a few concerns about the size and height, but sees the value of moving the structure back.

Daly said that the lot is unique lot in that it is an island with a road on each side of the lot. He said that moving the structure back to meet setbacks would set it in the middle of the lot and the location seems more appropriate in the corner. He said that he also appreciates the larger yard.

Motion by Sharpe to recommend approval based on the findings of staff. Motion was seconded by Studer. Motion carried 6-0.

OTHER BUSINESS

Review 2040 Comprehensive Plan Update, Section III.

Chairman Werneiwski introduced the agenda item.

Cooney summarized the staff report. He said that Section III, the Land Use section of the plan, is the most substantial section of the comprehensive plan and it contains three major sub-sections: Protection, Land Use, and Housing.

Cooney said that the protection element of the plan focuses on sensitive lands (woodlands, floodplains, natural water courses, wetlands, and steep slopes) and historic sites. He said that the Land Use element of the plan identifies major characteristics of the city's residential and commercial land uses, followed by planning recommendations and land use standards.

Cooney said that the housing element identifies the major housing characteristics within Deephaven, projects housing needs, and identifies a housing plan to address those anticipated needs. He said that the most controversial aspect of the housing plan will be how the City of Deephaven addresses the Metropolitan Council's affordable housing requirement. Cooney pointed out that the Metropolitan Council has forecast affordable housing needs for all cities and townships within the Twin Cities Metropolitan Area for the period from 2021-2030. Cooney said that based on a portion of the total housing need for the metro area, the affordable housing allocation for the City of Deephaven is calculated at 10 affordable housing units, including 5 units at 30%-50% Area Median Income (AMI) and 5 units at or below 30% AMI.

Werneiwski said that he passed along some typos and changes to Cooney before the meeting. Under the Lakes Inventory, he asked about the monitoring of use and discharge of lake water. Cooney said that he would look into this. Webster commented about the issues with street runoff. Cooney said that the city tries to keep water off of neighboring properties and direct it to the lake, which can limit infiltration opportunities. He said that the city is working with Councilmember Carlson on a raingarden at the end of Lakeview Avenue.

Under the Lakes Plan, Werneiwski asked about the city working with Woodland and Minnetonka on Shaver's Lake. Cooney said that, if the city wants to keep this in, perhaps the language could be softened.

Commissioner Sharpe left the meeting at 7:45.

Werneiwski asked about the Woodlands Plan regarding specific tree removal. Linder asked if the Planning Commission had addressed some similar aspirational language in the previous chapter. Cooney said that the group had addressed the issue, but that specific requirements on diameter and counts are not a part of city regulations.

Linder said that he loves trees but would be reluctant to create requirements on tree preservation. Webster asked about clear cutting trees on a vacant wooded lot. Cooney said that nothing in city code would prevent that. Webster said that she has an issue with that. Studer said that this less an issue in residential areas and is more of a problem for industrial projects that he is involved with. Jewett asked about trees at the lake and that he thought Greenwood had a regulation. Cooney said that they recently

removed that limitation. Studer said that discouraging tree removal is preferable, but that a specific rule would not be his preferred direction.

Linder said he did not like the language about city funds assisting with the removal of diseased trees on private property.

Under Slopes Inventory, Webster said that she did not think there was development pressure to subdivide versus teardown and rebuild. Cooney said that he believed that there are many R-2 lots that could be subdivided within the city.

In the Land Use Element under Residential Inventory/Observations, Werneiwski said that he was not sure that larger housing is out of character with the surrounding neighborhood. Cooney said that, at least in Cottagewood, the larger houses outnumber the cottage houses. Werneiwski said that the lots are not getting combined. Cooney said that people are not consolidating lots, and keeping the smaller lots.

Linder said that he did not have an issue with keeping the language on larger houses being out of scale. He said that this is an issue in Deephaven Park. Cooney said that much of the housing that residents complain about being oversized is zoning code compliant. Webster said that the city needs to be astute about how it addresses variances and that Deephaven has been seen as lenient on variances. Studer said that some of the issues on variances are for legal nonconformities. Webster said that she had issues with people asking for variances when they have purchased a small property, and that the city should be consistent on variances.

Jewett said that he was concerned about people who claim legal nonconformity for structures that have been removed. Cooney said that state law limits nonconforming rights to a year but that the city has not always been strict about this when looking at variance application with nonconformities that have been removed.

Werneiwski asked about Deephaven Woods and if there were any more units that could be built on that property. Cooney said that he did not think so but would confirm.

Cooney asked about the commercial district on Highway 101 and if the Planning Commission felt that it was more similar to the district on State Highway 7 or to the Chowen's Corner commercial area. Cooney said that he felt there were many more residential impacts in that area than he had initially understood. Studer said asked if it mattered since there was not a big difference in the commercial districts. Cooney said that they are basically the same, but that the C-2 district may evolve as more of a commercial highway district. Linder and Werneiwski said that the State Highway 7 district is of a different character. Webster agreed.

Werneiwski said that he was fine getting rid of the redundant tables in the housing section. Webster said that in the introduction to the Housing Element she would like to add some commentary about teardowns and rebuilds. She said that this will continue to be an issue.

LIAISON REPORT

Councilmember Jewett said that the deck variance for 4280 Chimo was approved.

He said that Kent Carlson and Mayor Skrede are coming up with solutions to fix the swimming beach dock that was damaged by ice. He said that the city was planning to bubble the dock once ice houses are removed from the lake.

He said that the city held its board of appeals meeting on property values and the city agreed to a few adjustments.

He said that the ice rink is going out for asphalt bids.

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Werneiwski asked about the 19365 Lake Avenue variance request. Cooney said that the homeowners asked to postpone the request until the May 4th City Council meeting.

ADJOURNMENT

Motion by Werneiwski to adjourn the meeting. Motion seconded by Studer. Motion carried 5-0. The meeting adjourned at 8:35.

Respectfully submitted,
Dale Cooney
Zoning Coordinator