

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

PRESENT: Chairman Bob Werneiwski, Commissioners John Daly, Doug Nagle, John Studer, and Cindy Hunt Webster.

ABSENT: Commissioners Melissa McNeill.

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

MINUTES OF MARCH 20, 2018

Motion by Werneiwski, seconded by Daly, to approve the minutes of March 20, 2018 as written. Motion carried 5-0.

PUBLIC HEARINGS

Consider the Conditional Use Permit request of Woodbury Tandem Limited Partnership to expand the parking lot on the property and to install an illuminated sign at 18315 Minnetonka Boulevard.

Werneiwski introduced the agenda item.

Cooney presented the staff report. He said that the applicant is proposing to expand the parking area on the property and install an illuminated sign. Cooney said the applicant is in the process of completing a renovation on the existing building and seeks to make these improvements as the building prepares for its new tenants.

Cooney said that Section 1310.09 (Subd. 3.) states that, "No building permit will be issued for improvements on land in a commercial district until the site plan has been reviewed by the Planning Commission and approved by the Council. The notices and procedures for such review and approval will be the same as those for consideration of an application for a Conditional Use permit." Cooney noted that this section of the ordinance is written to primarily address new commercial building construction, the parking lot expansion is regulated by this section as well. He said that the applicant is also adding a patio on the Minnetonka Boulevard side of the building.

Cooney said that the applicants are proposing to expand the parking lot to accommodate 24 vehicle parking spaces. He noted that for office space, city code requires 1 parking space per 330 feet of gross floor area of the building. Cooney said that with one floor of leasable space and a footprint of 3,445 square feet, city code requires a minimum of 10 parking spaces for the building.

Cooney noted that stormwater mitigation is required by the city only for those commercial properties that exceed 75% impervious surface area. He said that the current expansion would bring the property to 53% impervious. Cooney said that the Minnehaha Creek Watershed District has more restrictive thresholds for commercial properties, and the applicant will be required to comply with their mitigation requirements.

Cooney noted that, per the applicant, the proposed building shown on the survey is not intended for city approval, but simply to show that the property has additional room to expand within the confines of the city code. He said that any proposal for additional buildings on the site would be considered via site plan review (the CUP process) at a future date.

Regarding the proposed sign, Cooney said that Section 1115.04(2) states that no sign shall be erected, altered, reconstructed, maintained or moved in the city without first securing a Conditional Use Permit. He noted that the code further states the content of the sign shall not be reviewed or considered in determining whether to approve or deny a sign permit.

Cooney said that Section 1115.09 (a) states that “the size of a sign may not exceed 15 percent of the wall area of the front façade of the structure in which it is located and in no case exceed 100 square feet for all other types of signs.” He said that the applicant is proposing a 2-sided sign with 23.625 square feet per sign face, or 48.25 square feet total and that as proposed, the signage meets ordinance requirements. He noted that the proposal would illuminate the sign externally with a single 200 lumen led light per side.

He said that Section 1305.03(1) limits the hours a business can sell goods and services to consumers to only between the hours of 6 AM and 9:30 PM and that Section 1305.03(3) states that interior and exterior lighted signs permitted to businesses may operate during business hours only.

Cooney said that he recommends approval of the conditional use request to expand the existing parking lot and install a 48.25 square foot illuminated ground sign as proposed for the property at 18315 Minnetonka Boulevard. He said that there is a need to provide parking for and advertise the businesses and upon review of the application, it was determined that (a) the proposal will have no impact on the overall development of the community; (b) there will be no impact on the character and development of the neighborhood; (c) there will be no impact on the health, safety and welfare of the occupants of surrounding lands; (d) there will be no impact on traffic or parking conditions due to this signage; and (e) there will be no negative impact on property values on the subject property or those in the surrounding area.

Cooney said that the recommendation is made with the following conditions:

- (a) that the hours of illumination for the sign be as outlined in Section 1305.03 of the ordinance (only illuminated between the hours of 6 AM and 9:30 PM)
- (b) that the applicant comply with the mitigation requirements of the Minnehaha Creek Watershed District

Cooney concluded his staff report.

Jewett asked about the mitigation requirements of the watershed district. Cooney said that he did not know, specifically, what the requirements were other than some kind of mitigation was required.

John McGary, owner’s representative, said that no mitigation is required by the MCWD, just recommended. He said that he will be installing a 24 foot drive alley. He said that they are proposing this sign now that also leaves space for tenants to have their own signage later.

Webster said that she felt this was a lot of parking spaces and that she was concerned about the possible future building.

McGary said that the future building is only something they might consider. He said that the parking was to accommodate the four tenants and their guests.

Webster said that she has a problem with the 24 parking spaces and asked about sharing parking with the owners to the east at Deephaven Square. McGary said that they were certainly willing to look into that but that that property is currently in the process of changing ownership. Webster said that she would rather the additional parking be on that unused lot.

Werneiwski opened the public hearing.

Todd Goldwasser, representing the commercial property at 18305 Minnetonka Boulevard, said that there needs to be more cooperation between the property owners that share these parking areas.

Aaron Blechert, 3435 Montgomerie Avenue, said that they just moved into Deephaven and that they were adjacent to the proposal. Werneiwski said that he was actually a block away from the proposal and that he is

thinking about the Deephaven public lot. Blechert said that increasing parking spaces would increase traffic. He asked about fencing along the city parking lot property line. Cooney said that is not a part of this proposal, but he could contact the city about his questions.

Werneiwski closed the public hearing.

Daly said that this is a business district and that Deephaven is only about 2% commercial. He said that they are doing a nice job with the building. He said that mitigation along Minnetonka Boulevard would be a benefit for everybody. Daly said that proposal is consistent with the other business and the sign is tasteful.

Nagle said that the sign is not intrusive, and the building looks good. He said that the parking addition would not be apparent from the street. He said that he is fine with it as long as the new spaces do not impede traffic flow, but that the new spaces look a bit squeezed in.

Werneiwski said that Chowan's corner has a glut of parking, but that the property owner cannot count on other properties for their parking.

Webster said that she still has an issue with the parking. She said that she would like to see something pretty by any proposed raingarden. Jewett said mitigation is not required. McGary said that they would like to work with the city to address the drainage issues.

Motion to approve with conditions of staff by Studer. Motion was seconded by Werneiwski. Motion carried 5-0.

Consider the variance requests of Essay Holdings, LLC, property owner, to encroach into the minimum required side yard setback at 19035 Lake Avenue.

Werneiwski introduced the agenda item.

Cooney presented the staff report. He said that the property owner has applied for a variance to encroach into the minimum required side yard setback in order to build a new house on the property. He said that, at 10,069 square feet, the property is an undersized R-3 property. Cooney said that the property is 50 feet wide, and the existing house was built in 1920 according to Hennepin County records.

Cooney said that Section 1302.05(3) of the city ordinance requires combined minimum side yard setbacks of 25 feet with a minimum side yard of 10 feet. Cooney noted that the proposed west side yard setback would be 9.9 feet and applicant is seeking a variance of 5.1 feet from the minimum required side yard setback.

Cooney said that, while a fifty foot lot width is narrow, city code only requires a 25 foot house width, so a code compliant house is possible on the property without a variance. He noted, however, that the city may find that the minimum house width is less than optimal for a modern house.

Cooney said that another primary consideration is that the city has a number of 50 foot wide lots and granting variances primarily due to lot width constraints is likely to continue to generate variances in the future. He pointed out that the city has granted reduced setbacks for 50 foot wide lots in the past, and those variances have not always been based on existing nonconforming conditions.

Cooney said that if a variance were to be granted for the property, it is staff's opinion that the 10 foot side yard setback on each side is a generally favorable solution. He said that since the city's minimum side yard setback is 10 feet, the setback distance is quite common throughout Deephaven and does not unreasonably punish any particular neighbor. Cooney noted that even in a non-variance situation, one of the adjoining properties would have a 10 foot setback.

He said that while the property exceeds 25% impervious area, the property is beyond the Shoreland Management District, and therefore a mitigation proposal is not required as part of the variance request. Cooney said that the property owner will be required to submit a mitigation plan at the time of building permit to mitigate the property to the equivalent of 25% impervious or less.

Cooney said that he recommends approval of the variance request to encroach into the minimum required side yard setback by 5.1 feet for the property at 19035 Lake Avenue, as proposed, based on the following findings:

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

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 purposed 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 encourages safe, healthy and quality housing that respects the natural environment of the community.

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

Yes. 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) Are there unique circumstances to the property not created by the landowner?

Yes. The property was platted and developed prior to the city's current ordinance requirements regulating setbacks. The circumstances of the narrow lot with tend to be an issue on properties that were platted and developed prior to the adoption of the city's zoning provisions.

(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 proposed setbacks provide a reasonable setback for the construction of the home and continued maintenance of it. The proposal would be consistent with the single-family character of the neighborhood.

Cooney concluded his staff report.

Webster noted that the closest proposed encroachment is actually 9.8 feet. Cooney said that he would update the staff report to reflect that number.

Tom Osfar of Stonebay Builders, contractor for the applicant, said the existing property does not have a garage, and they wanted a garage for the house but also did not want to make the front of the house all garage with a house behind it. He said a minimum garage is 22 feet and the proposal has an eight foot entry area. He said that they will grade the property to accommodate the drainage.

Ashish Aggarwal, applicant, said that the garage is narrow by today's standards, but works for the property. He said that the new house will enhance the character of the neighborhood.

Studer asked if they tried to conform with the setbacks. Osfar said that 22 foot garage is minimum, 24 is comfortable, and 20 is too narrow. He said that if they conform to the minimum width, there would not be a front door on the house.

Aggarwal said that the house will be on the property for 100 years and that if they build a house too small, the house would not sell. He said that they tried to keep the house and hardcover to a minimum, but that at some point it will not be economically feasible to do the project.

Webster says that she is sympathetic to the 50 foot lots, but she said that the city needs to be sensitive to the neighbors so that they do not feel like they are in a tunnel. Webster said that she would like to see the variance request slightly increased so that both setbacks are 10 feet. Aggarwal said that the odd dimension would increase construction costs.

Werneiwski opened the public hearing.

Gerilyn Hausback, 19025 Lake Avenue, said that she has seen the design and it is a nice design. She said that the lots are narrow. Hausback said that the house next door should go, but said that large houses are not what everyone wants. She said they sold a large home in Eden Prairie to downsize to the smaller house.

Aggarwal said that this is not a large house, but is proportionate to the lot.

Webster asked about the concerns for the retaining wall from Hausback's letter. Aggarwal said that he absolutely would preserve the integrity of the wall, and that he has experience working on very tight lots in Minneapolis that have 5 foot setbacks. He said that he does not see a risk to the retaining wall from the construction.

Nagle asked about the lilac hedge. Hausback said she would like to preserve them for privacy. Aggarwal said that they had not considered that, but that they would try to keep them since they would be a benefit for the home buyer as well.

Nagle asked about elevation changes. Osfar said that they are not changing it much due to the narrow lot.

Werneiwski closed the public hearing.

Studer asked about the runoff. Osfar said that he is amending the grading and that there should not be a problem keeping water from the adjacent houses.

Werniewski said that he appreciates the investment in the community and that a 25 foot wide house would be hard. He said that he appreciates the design under the challenging limitations.

Daly said that 25 feet of setbacks and a 22 foot garage only leaves 3 feet for an entry. He said he would rather see a house with a front door on it. He said that he would rather see a 2 car garage than a 1 car garage where the residents have to park cars outside all of the time. He said that the land was platted for cottages and now people are trying to build modern single-family houses on them.

Studer said that the plan is nice. He said that he is sympathetic to the neighbors, but the property is a challenge.

Motion by Webster to approve the variance request as proposed. Motion was seconded by Werneiwski. Motion carried 5-0.

Consider the variance requests of Joe and Casey Bergquist, property owners, to encroach into the minimum required lake yard setback and to exceed the maximum permitted structural footprint for an accessory structure at 19094 Minnetonka Boulevard.

Werneiwski introduced the agenda item.

Cooney presented his staff report. He said that the property owners have applied for variances to encroach into the minimum required lake yard setback and to exceed the maximum permitted structural footprint in order to build an accessory structure in the lake yard of their property. He said that the property is a 53,270 square foot in size and is zoned R-2. Cooney said the structure is to be used for storage and will replace an existing, smaller structure in the lake yard.

Cooney said that Section 1302.04(3) of the city ordinance requires a minimum lake yard setback of 100 feet. He said the applicant is proposing a setback of 53 feet and applicant is seeking a variance of 47 feet from the minimum required lake yard setback. He said that he applicant would like to use the accessory structure for storage of personal property associated with the use of the lake.

Cooney stated that the property contains a bluff in the lake yard which is situated between the house and a large, usable lakeshore area. He noted that there is 38 feet of elevation change between the usable portion of the lake yard below the bluff and the rear of the house. Cooney said that the property has a small accessory structure in this area, but the applicant has stated that it is too small to be functional for their needs. He said the existing accessory structure would be removed. Cooney said that the applicant has noted that the structure will be freestanding, not be built on a foundation, and could be removed from the property at any time. Cooney said that the property currently has a tram along the hillside, but the tram is only large enough to haul 1 or 2 small items at a time.

Cooney noted that since the structure is situated over 50 feet from the Ordinary High Water Level, it does not trigger Minnesota DNR regulations regarding Water Oriented Accessory Structures. He said that the Minnesota DNR requested information but did not offer any comments on the application.

Cooney said that Section 1302.04(3) of the city ordinance limits the maximum structural footprint for the property to 6,000 square feet. Cooney said the applicant is proposing to expand the nonconforming structural footprint on the property by 144 square feet. The house was recently completed and the house and the existing shed were built to the maximum allowable footprint.

Cooney said that a 329 foot deck was built in the lake yard and approved by staff at the time of building permit for the house. He said that, at the time, staff was unsure if the 6,000 limitation was for "building coverage" or "structural coverage" since the ordinance mentions both, and that staff has since received clarification from the City Council on the matter.

Cooney said that the property is allowed 1,000 square feet for accessory structures and that the proposed shed would be the only accessory structure on the property.

Cooney said that the city should be very careful in granting variances for lake yard accessory structures, since these types of structures are both desirable and controversial. He said that, in his opinion, the 38 feet of elevation change in the lake yard coupled with the fact that an accessory structure already exists in this area creates a unique circumstance that would not necessarily set a precedent for similar requests in the future. He said that it is also fairly unique to have so much usable yard space beyond the bluff area. He said that for those properties that do contain bluffs, the bluffs typically drop directly to the lake, and very few taper into a usable backyard area beyond the bluff. Cooney pointed out that the notable exception would be the few properties directly to the north of the applicant's property that share a similar topographic layout.

Cooney said that he recommends **approval** of the variance request to encroach into the minimum required lake yard setback by 47 feet and to expand the existing nonconforming structural footprint by 144 square feet for the property at 19094 Minnetonka Boulevard, as proposed, based on the following findings:

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

Yes. The ordinance is intended to limit uncontrolled development within the shoreland areas. The proposal is a modest expansion of existing conditions and it set back as far from the lakeshore as is practical while still remaining functional.

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

The request is consistent with the Comprehensive Plan's Protection Elements of Lakes in that it exceeds Department of Natural Resources shoreline.

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

Yes. The accessory structure is a reasonable proposal for the unique conditions of the property. With the steep grade change between the house and the lake yard area below the bluff, a storage shed in this area is a reasonable request in order to keep lake-oriented personal property accessible.

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

Yes. There is 38 feet of elevation change between the rear of the house and the usable area near the lakeshore.

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

No. While accessory structures within the lake yard are rare, this property has an existing lake yard structure. The proposed structure is relatively modest in scale. Further, the accessory structure, set back 53 feet from the lakeshore, is set back as far as practical while still remaining functional.

Cooney concluded his staff report.

Jewett asked what the maximum footprint was for an R-1 property. Cooney said 8,000 square feet.

Studer asked if the existing shed was constructed with the new house. Cooney said that it existed before the new house.

Webster asked about the water down at the lake. Joe Bergquist, applicant, said that they would use water for general yard usage. He said that the water comes from the house and that the water connection exists in that current location today.

Bergquist said that they moved from Tonka Bay on a level lot and that they did not anticipate the chore of moving the items back and forth. He said that they have some expensive things like paddleboards that they would like to secure near the lake rather than leaving them unsecured or bringing them back and forth to the house. Bergquist said that the dock canopy cover weighs 250 pounds and hauling that is a problem. He said that he is lucky to live on Lake Minnetonka so that he understands that the request is not a "hardship" but rather is just a pain in the butt. He said that he would want to store winter hockey equipment as well. Bergquist said that the shed is as far back as he can get it from the lakeshore and that is it tucked behind some evergreens.

Webster asked how the shed was portable. Studer said that it doesn't have a foundation. Nate Jurmu, contractor for the property owners said that the structure does not have a foundation and is portable in one piece.

Bergquist said that they want to live in the house for the rest of their lives, and that his family and any future grandchildren can visit and continue to use the lake. He said that his intent is not to move it, but that it can be easily moved.

Webster asked if it is flat from the house to the hill. Casey Bergquist said yes, but that is also within the bluff setback.

Nagle asked if the structure would be used for anything but storage. Bergquist said perhaps a makeshift warming house for the children in winter to get out of the wind, but the storage items would remain.

Nagle said that this is an emotional issue since this is something that cannot be done on the lakeshore anymore. He said that something this large looks like a boathouse rather than a shed. Bergquist said that he thought the aesthetic qualities of the shed were a positive.

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

Webster said that this sets a precedent and that it looks and feels like a boathouse. She said that she is concerned about other similar requests.

Nagle said that he lives on the lake and that he would love to have storage by the lake.

Studer said that he understands what Webster is saying. He said that they cannot push it back any further without going to the top of the hill. He said that he would be absolutely supportive of rebuilding what is there. Bergquist said that the bluff plus the usable lakeshore makes this a very unique situation.

Studer said that this makes sense, but that there will be a lot of similar requests.

Daly said that he understands the arguments, and he has dealt professionally with boat houses and their implications. He said that this structure is 53 feet from the OHWL, and that distance makes this a shed and not a boathouse. He said that many lakeshore cities have a 50 foot structure setback from the lake. He understands that Deephaven is different, but that the distance from the lake should not trigger a lot of boathouse controversy. Daly said that this is a relatively unique lot, and that the neighboring property has a gazebo in the middle of the bluff.

Werneiwski said that a boathouse is on the water, and this is setback from the lake.

Webster worried about other requests from the 100 foot setback.

Studer estimated it was 200 feet to the top of the bluff, and that they would have to go twice as far from the OHWL if they went to the top of the bluff.

Motion by Werneiwski to approve the request as proposed. Motion was seconded by Studer. Motion carried 3 to 1 with Webster voting against and Nagle abstaining.

OTHER BUSINESS

Meet with Planning Commission applicant Jeff Eaton

Werneiwski introduced the agenda item.

Jeff Eaton said that he has 25 years of commercial real estate experience and in that position he did a lot of work with developers. He said that he has been witness to the city processes many times. Eaton said that he lives in Cedarhurst and sits on the board of the homeowners association. He said that he has lived in Deephaven for 5 years.

Daly asked if he was a full time Minnesota resident. Eaton said yes.

Jewett asked him his feelings on the previous variance request. Eaton said it was a tough call and he understands the arguments, but that for him the structure was 50 feet back from the shoreline. He said that he did not see an objection from the neighbors, which was important. Eaton said the discussion showed the uniqueness of the lot.

Webster asked Eaton's thoughts about Deephaven and its future. Eaton said that Deephaven is a unique and beautiful place that was originally developed in the early 1900's. He said that he understands the tension of wanting to build a new family home on a lot intended for a cottage. He said he is interested in preserving the character of Deephaven.

Studer said that, from the meeting, he and the mayor felt that the city would be lucky to have Jeff on the Planning Commission.

Motion by Werneiwski to recommend appointment of Jeff Eaton to the Planning Commission. Motion was seconded by Nagle. Motion carried 5-0.

LIAISON REPORT

Councilmember Jewett said that the 4395 Cottonwood Lane porch encroachment was approved. He said that the Zehnder Homes request for 197XX Manor Road was approved as well.

Jewett said that 4300 Chimo East request was tabled until the April 16th meeting in order to get approval from the HOA and the neighbor. He said that request was approved last night. Jewett pointed out that the filtration system was replaced with a French drain. He said that there was a lot of discussion about the drainage in and around that property

Jewett said that 19980 Lakeview Avenue was approved. He said that the request was changed after the Planning Commission to reduce the hardcover from 32.9% to 29.4%. Jewett said that it passed 3-2 and that he voted against it. He said that the City Council discussed the water that was impacting the rear of the house and he thought that was what helped the request get approved.

Jewett said that, short of coming back to the Planning Commission, the Planning Commission could offer comments as to what changes the commission might wish to see prior to the City Council.

Webster said that it should come back to the Planning Commission. Cooney said that the mayor noted that the Planning Commission is the first step in the process, and hearing that feedback gives the applicant time to modify the request prior to the City Council. Cooney noted that, from that perspective, the process works.

Werneiwski said that there is some threshold that the request should come back to the Planning Commission, but that he does not know what that is. Daly said that, at the end of the day, the Planning Commission only makes a recommendation.

Jewett said that the City Council voted 3-2 for no change to the commercial zoning. Jewett said that he would have preferred one district. Cooney said he heard a desire to eliminate automotive uses from Chowan's Corner, but that the City Council was uncomfortable making the existing automotive businesses legal nonconforming uses.

Regarding the Pines neighborhood rezoning, Jewett said that the council voted to keep the current zoning. He said that this was a lengthy discussion and that a few people from the neighborhood were there. Jewett said that, for him, Deephaven was already more restrictive than Minnetonka zoning to the immediate north and making it more restrictive did not make sense.

Eaton asked if there was an opportunity, with Deephaven Square being sold, to have the new property owners clean that development. Cooney said that he would ask and that he was unsure how much power the city had outside of a request that requires city action.

ADJOURNMENT

Motion by Studer to adjourn the meeting. Motion seconded by Werneiwski. Motion carried 5-0. The meeting adjourned at 8:56.

Respectfully submitted,
Dale Cooney
Zoning Coordinator