

CALL TO ORDER: Vice Chair Webster called the meeting to order at 7:00 p.m.

PRESENT: Vice Chair Cindy Hunt Webster, John Daly, Jeff Eaton, Doug Nagle, Bob Werneiwski, and Josh Wilcox

ABSENT: Chairman John Studer

OTHERS PRESENT: City Council Liaison Melissa McNeill and Zoning Coordinator Dale Cooney

MINUTES OF March 19, 2019

Motion by Werneiwski, seconded by Daly, to approve the minutes of March 19, 2019 as written. Motion carried 6-0.

PUBLIC HEARINGS

Public hearing to consider variance request of William and Meghan O'Keefe, property owners, to exceed the maximum permitted impervious surface coverage in order to construct a proposed patio and deck for the property at 19120 Park Avenue.

Cooney said that the property owners have applied for a variance to build a rear yard deck and a patio for the property at 19120 Park Avenue. He said that the existing house was built in 2014 according to Hennepin County Records. Cooney said that the property is currently at 25% impervious and the applicants are proposing to expand the impervious areas on the property by 450 square feet which would bring the property to 28.9% impervious surface coverage.

Cooney noted that Section 1302.05(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25%. He said that the applicant is proposing an impervious surface area of 28.9% and is seeking a variance to exceed the maximum impervious surface area by 3.9%. Cooney noted that, at 11,474 square feet in size, the property is undersized for an R-3 lot. He said that the new construction on the property was built to the maximum allowable hardcover in 2014. He noted that currently there is a covered front porch, but there is no rear yard deck or patio which limits the rear yard functionality.

Cooney said that per Section 1353 of the zoning code, stormwater mitigation is required for the request. He said the applicants are proposing a rear yard French drain system using the attached Aquablox system and that the city engineer's opinion is that this product is acceptable for use in green areas not subject to heavy traffic loads. Cooney noted that since the product does not contain rock material, it allows for a greatly reduced footprint for the French drain. Cooney said that, per section 1353.03 of the city code, 50 cubic feet of volume retention is required, and the applicant is proposing 51 cubic feet of retention. He said that, as proposed, the size of the proposed Aquablox system meets city code requirements.

Cooney said that he recommends approval with conditions of the variance request to exceed the maximum allowable impervious surface area by 3.9% for the property at 19120 Park Avenue, as proposed.

He said that his motion is conditioned that:

- The applicants complete the stormwater management improvements to meet the requirements and specifications of the city engineer.
- The applicants enter into a maintenance agreement with the city to ensure the long-term operation and maintenance of the stormwater management improvements. The maintenance agreement shall be executed and recorded against the parcel.

Cooney said that his findings are as follows:

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

Yes. The applicant is seeking to vary from the stated impervious standards of the ordinance in build a new deck and patio on substandard lot size for the zoning district. The proposal is in harmony with the stated purpose and intent.

(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 patio and deck are a reasonable use and a modest expansion of existing conditions. The impervious surface expansion is reasonable in the context of the substandard lot size.

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

Yes. At 57% percent of the minimum lot size, the property is substandard for the zoning district creating challenges to meeting the impervious surface limitations of the ordinance.

(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 impervious surface expansion is comparable to other substandard lots within the community.

Wilcox asked if the Aquablox system has been used before. Cooney said no and that the system eliminates the rock fill to allow for more volume capacity in a smaller area.

Webster asked how effective it is. Cooney said these are low technology solutions and this would simply take place of a standard French drain which is a trench with rocks in it. He said that the system gets its structure from the block construction rather than rocks.

Daly asked how far the property was from the lake. Cooney said that the Shoreland Overlay District line runs through the back yard of the property.

Webster said that the yard is flat, but drops to the neighbor's yard.

Eaton said that it is interesting that the house was built in 2014 without a deck or patio but maxed out the hardcover. Eaton asked if there is a grade change proposed. Meghan O'Keefe, property owner, said a slight swale is proposed to direct water to the French drain.

Daly asked if any trees would be removed for the project. O'Keefe said that no tree removal is necessary for the project, but that some trees might be removed to eliminate some shade to allow grass to grow.

Wilcox asked about the city engineer comments regarding inspection and maintenance. Cooney explained the existing city process for those items.

McNeill asked about the issue of builders building to the maximum hardcover to avoid a variance and putting the onus on the homeowners to come in for a variance.

Eaton asked about calling this out when the home is built. Cooney said that the home is conforming and that he cannot require that they allocate hardcover for a deck. Cooney said that the city had this discussion when amending the stormwater mitigation code and the city chose not to include an allocation for minimum decks or patios and decided to review it on a case-by-case basis.

Eaton said that there is a lot of online discussion about variances and he was a little concerned about building a house to the maximum hardcover but leaving out key features.

Daly said that, in this case, the property is 1,000 feet from the lakeshore and that if it were 30 feet further away the city would not even be looking at the plans. He said that patios are often installed without city approval over the weekends, and that at least these people are bringing the issue to the city.

Motion by Daly to recommend approval of the request as proposed based on the recommendation and findings of staff. Motion was seconded by Eaton. Motion carried 6-0.

NEW BUSINESS

Webster said that she would like to discuss variances. She said that on social media she is seeing a lot of comments about variances and that the city has been misled by some spec home builders.

Eaton said that he does not see a distinction between a spec builder and a homeowner. He said that a homeowner could sell their house the day it is finished. Cooney said that, under the law, the rights of the spec builder and the homeowner are the same.

McNeill said that it seems like the city has been burned by spec builders.

Nagle asked about a requiring a deck or a wider driveway. McNeill said that these are not necessities.

Webster asked about variances in general. Werneiwski said that the city can only act on what is before them and cannot make assumptions about the motives of the builder.

Cooney said that the city council decisions have shown that they are not hardliners about 25% impervious coverage, partially due to the high number substandard lots in Deephaven Park and Cottagewood. McNeill said that may change.

Daly said that there are rules in place, but there are a wide variety of property sizes and shapes which constitutes a practical difficulty. He said there are also many older properties that don't meet current hardcover standards. Daly said that the city needs to make the determination on if the request is reasonable or not given the circumstances.

Webster said that she is hearing more pushback now. She said none of the big new houses on Rutledge Road needed variances, but that the perception is that variances were granted for these houses. She said there is also a perception that the city allows variances for big houses to boost city revenue.

McNeill said that the house by the beach on Lake Street is driving this conversation. Eaton said that the height and footprint are compliant and that it was only a hardcover variance. He said it was not even that big of a hardcover variance. Eaton said that people think some huge variance was granted but that current city code allows most of these houses to be built anyways. McNeill said that the builder could have reduced the size of the house and not required the variances.

Wilcox asked if the city could change the requirements that require an appropriate driveway or patio. McNeill said that the city can always change the requirements.

McNeill read a Nextdoor comment from former planning commissioner Scott Hemnick. The comment said that it was a long process that tried to take into account the large range of lot sizes that would allow neighborhoods to evolve while minimizing risk. Werneiwski said that they spent a lot of time on those amendments.

Nagle asked if something could be placed in the property file notifying buyers that they are at the maximum hardcover.

McNeill said that there are stormwater issues and flooding issues regardless of the mitigation requirements. Webster noted the house on Easton that is regularly flooded.

Eaton said that the answer to the Nextdoor critics is that the height and footprint of the house meet the zoning ordinance requirements.

Daly said that the house is unique since it has a flat roof. Webster says it looks massive. Daly said he went by it and that the criticism of it is the same as the issue in the Pines neighborhood. He said that houses look bigger when they are framed, but not finished with siding and roofing. Daly said that the Pines neighborhood is more comfortable with that house now that it is complete. McNeill said that they like the owner of the house, but maybe not the house itself.

Cooney said that the biggest complaint he receives is about new house massing, but that these houses are typically compliant. He said that when a new house replaces a 1.5 story 1920 house, it will look huge by comparison. Eaton said that this is where people think variances are granted when they are not.

Daly said that the city has been burned on people claiming to keep the first floor. Wilcox asked if the city can catch them on that. Daly said that it is legal if it is the same envelope that was approved.

Cooney said that the city should assume that the first floor is coming down. He said that keeping the foundation/excavation for a project can be a significant cost savings.

Webster said that the city might need to be more critical about these things. McNeill said that the city can always say no.

Wilcox asked if things were being built that were not approved. McNeill said that they may not be in the spirit of what was approved. She said that the city has no enforcement codes. Cooney said enforcement is through the courts which is typically expensive and time-consuming.

Daly suggested that the city could collect an escrow to ensure compliance. McNeill said that should be suggested to the city council.

LIAISON REPORT

McNeill presented the liaison report. She said that 3580 Northome Road structural coverage passed. She said that she supported it since, as a very large property, it would be a compliant property if it were subdivided. McNeill said that the structural coverage and hardcover could increase if it were subdivided.

Webster said that the homeowners for this did not come to the planning commission and that she would like a statement to strongly encourage homeowners to attend the planning commission meeting.

McNeill said that the council discussed the open house. She said that it was mostly successful but some people were upset that there was not a formal presentation to react to. Webster said that the engineer had great visuals. McNeill said that people were generally accepting of the format. She said that the road resurfacing needs to be done now, but that alternatives need to be considered for future phases.

Wilcox asked about recruiting some of the passionate critics for a task force. McNeill said that may be a consideration for future phases.

Nagle said that the rebuild is mostly in the same width and location. McNeill said that they are trying to get 12 foot drive lanes and 5 foot bike/walk shoulders.

McNeill said that the Board of Appeals and Equalization meeting was held and no one showed up to the meeting. She said that the assessor presented some interesting data.

DEEPHAVEN PLANNING COMMISSION MEETING MINUTES

TUESDAY, APRIL 16, 2019

7:00 P.M.

PAGE 5

ADJOURNMENT

Motion by Eaton to adjourn the meeting. Motion seconded by Daly. Motion carried 6-0. The meeting adjourned at 8:00.

Respectfully submitted,
Dale Cooney
Zoning Coordinator