

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

PRESENT: Chairman Kent Carlson, and Commissioners Jim Anderson, Melissa McNeill, and John Studer

ABSENT: Gen McJilton, Bill Sharpe, and Bob Werneiwski

OTHERS PRESENT: Council Liaison Darel Gustafson and Zoning Coordinator Dale Cooney

MINUTES OF July 19, 2016

Motion by Commissioner Anderson, seconded by Commissioner McNeill, to approve the minutes of July 19, 2016 as written. Motion carried 4-0.

PUBLIC HEARINGS

Public hearing to consider variance requests of Tracy Thie for lake yard setback, north and south side yard setbacks, exceeding maximum impervious surface coverage, and minimum house width in order to construct a new house at 20205 Cottagewood Avenue

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney summarized the staff report. He said that Tracy Thie, the property owner, has applied for a variance to construct a new house on the R-3 parcel at 20205 Cottagewood Avenue. Cooney said that there is currently has a legal non-conforming house on the property and that the lot is long and narrow, which creates a number of challenges for both setbacks and hardcover. Cooney said that to construct the new house, the applicant is requesting variances from side yard setbacks, the lake yard setback, the maximum impervious surface coverage, and minimum house width requirement.

Cooney said that Section 1302.05(3) of the zoning ordinance requires a lake yard setback of 100 feet, and that the applicant is requesting a lake yard setback of 92 feet, 2 inches and is seeking a variance of 7 feet, 10 inches. Cooney noted that the angle of the lot greatly reduces the actual distance to the lakeshore, and that the property owner's house would be over 140 feet from the portion of the lakeshore that they own. He said that the deck on the existing house encroaches 22 feet, 7 inches into the lake yard setback. He said that while this is less than what is proposed, the applicant is proposing a covered screen porch for the closest encroachment, which has more visual mass than a deck would have.

Cooney said that the applicant is proposing reduced side yard setbacks for the house and garage. He said that the property is 50 feet, 2 inches wide at the front setback line, and 42 feet wide at the lake setback line and that the narrowness of the property makes it very challenging to build a conforming house on the lot. Cooney said that the current house on the property is 813 square feet in size, and 22 feet, 5 inches wide. He said that both the existing house and the existing detached garage encroach into the north side yard setback.

Cooney said that the applicant is proposing a south side yard setback of 8 feet, 7 inches, and a north side yard setback of 8 feet 11 inches. He said that section 1302.05(3) of the zoning ordinance requires side yard setbacks totaling 25 feet, with a narrowest setback of no less than 10 feet. Cooney said that the applicant is seeking a variance of 1 foot, 5 inches from the south side yard setback, and is seeking a variance of 6 feet, 1 inch from the north side yard setback.

Cooney said that the applicant is proposing a narrow house in order to attempt to meet the setback requirement, and some level of encroachment would be required to build all but the smallest house on this property. He said that the combined setbacks for the existing house are 19 feet, 10 inches, and that the combined setbacks for the main body of the house are comparable at approximately 19 feet. Cooney

said that the neighbors to the south will feel the greatest impact from the proposal since the house will be almost 2 feet closer to their lot line and that he would prefer to see the main body of the house centered to reduce the impact on the neighbors to the south. Cooney said that this would also make some sense since the neighbors to the north are set back further from the property line.

Cooney said that as part of this proposal, the applicant is requesting a 3-car garage, which increases the overall amount of encroachment in this area. He said that the existing combined setbacks for the detached garage are 20 feet, 11 inches and that the proposed combined setbacks for the new garage equal 17 feet, 6 inches, increasing the combined encroachment by 3 feet, 5 inches in this area. He said that he struggles with the fact that this is the widest part of the lot and also the area for the greatest expansion of encroachment. Cooney said that he would recommend that the garage width be reduced such that the proposed combined setbacks do not exceed current combined setbacks in this area.

Cooney said 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 29.8% and is seeking a variance to exceed the maximum impervious surface area by 4.8%. Cooney stated that this is a slight reduction from existing conditions. He said that the applicant has proposed an infiltration area in the lake yard in order to offset the excess hardcover and that as of this writing, the city engineer has requested more information about the infiltration area in order to determine if the volume is adequate. Cooney said that comments from the city engineer are included as an attachment to this staff report and that the infiltration area will need to be revised to meet the requirements of the city engineer.

Cooney said that Section 1310.03 of the zoning ordinance requires that a single family residential dwelling must be a minimum of 25 feet wide at its narrowest dimension. He said that the applicant is proposing a house that has a narrowest dimension of 16 feet for the area of the mudroom and office area and seek a variance of 9 feet from the minimum required house width. He said that the narrowness of the house is partially a product of the narrowness of the lot. Cooney noted that the main body of the house ranges in width from 22 feet wide to 25 feet wide.

Cooney stated that, as shown on the plans, the eaves encroach into the proposed setbacks by a distance greater than three feet, which exceeds zoning code requirements. He said that the roof eaves should be modified accordingly.

Cooney said that he recommends approval with conditions of the variance requests and conditioned that...

- The house be moved 1 foot further away from the south lot line.
- The garage encroachments be reduced to equal a combined setback total of 20 feet, 11 inches.
- The proposed infiltration area be updated per the city engineer's comments.
- The applicants complete the required 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 recommendation was 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 applicant is seeking to vary from the stated setback, and dimensional standards of the ordinance in order to construct a new house on a narrow, undersized lot. The shape creates a number of challenges for the property, but the overall design remains in harmony with the purpose and intent of the ordinance.

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

The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which 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?

The proposal puts the property to use in a reasonable manner. The use of the property would be consistent with other similar sized properties in the community with similar lot constraints. The scale of the house is comparable to each of the two neighboring houses.

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

The property is a long, narrow lot which creates difficulties in meeting both the dimensional standards of the ordinance, and also meeting the hardcover restrictions of the ordinance.

(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 property is of a similar size to other single-family properties in the neighborhood. The new house is of a scale and character that will integrate well within the community.

Cooney concluded his staff report.

Carlson asked Cooney if modifying the roof eaves should be added to the conditions. Cooney said that it should be.

Kim Thie, property owner at 20205 Cottagewood Avenue, said that they have three children and that they bought the house as a cabin. She said that they did not expect to enjoy the area as much as they have. She said that they like the flat lot, and that other properties they looked at did not meet their needs. She said that they hired a very good architect in Ben Nelson who was able to design a house that met most of their needs, but also meets most of the city parameters. She said that the 3 stall garage was needed since they have 5 drivers in the house and that cars would be parked in the driveway otherwise. She also said that the three stall garage impacts the price point of the house and the potential resale value. This said that the current garage is 2.5 stalls, and by simply adding a few extra feet, they could get a third stall for the garage. She said that it was not her intention to upset the neighbors and that she had not spoken to them directly. She said that this was not the original plan for the property, but now they want to build an attractive new house that fits in with the community.

Ron Regan, of 20225 Cottagewood Avenue, said that he has lived at his property for 17 years. He said that the applicants have 15 to 30 guests every weekend and that this was a party house. He asked why the city has regulations if they are simply going to allow variances. He said that he already has drainage problems and has to replace his sod. He said that having the house closer to the lake will obstruct the view. He said that the bigger the house is, the more issues there will be. He said that he does not want them coming closer to his property line and does not want to see a big box on the lot.

Hugh Jaeger, 20185 Cottagewood Avenue, said that 4 variances is too many variances. He said that the property owners should build on the existing footprint, but that instead they are adding on. Jaeger said that moving the house closer towards the lake would require consultation with the LMCD. He said that this is a party house in the summer, an animal house, and that the variances are out of line.

Hearing no more public comments, Chairman Carlson closed the public hearing.

Carlson said that, in response to some of the comments made, that the LMCD jurisdiction ends at the high water level of Lake Minnetonka and that the variance decision is solely the responsibility of the City of Deephaven. He said that the current house does not meet city requirements, and if they built on the same footprint, a similar number of variances would be required. He said that, because of the lot size and the ordinance requirements, variances would be required no matter what design was proposed. He said

that the applicants are not requesting a variance for the height of the building. Carlson said that, regarding drainage, the water would be directed towards the lake. He also said that the city requires stormwater mitigation, and that the proposed infiltration area will actually help improve the stormwater issues.

Commissioner Anderson said that the screened porch extends about 7 feet further towards the lake than the existing house. He said that this is more impactful than a deck, and he would not want to see the screened porch extend closer than the existing rear of the house. He said that the driveway width at the street is too narrow and that it is predictable that the city would see a variance to add more hardcover for the driveway at a later date. He said that he would prefer a full width driveway for the length of the driveway.

Council Liaison Gustafson said that, similar to the 4260 Jefferson hardcover variance, the Planning Commission should point these issues out at the front end. He said that the mitigation should be expanded to accommodate the additional driveway area.

Anderson said that the screened porch is not appropriate encroachment in this area, and that an open deck would be better. He said that he agreed with staff and did not support the additional garage width and would like to see the house more centered on the lot. He said that he was disappointed to hear the neighbors to the north comments since their house is similar in size to what is being proposed.

Commissioner Studer said that he thought the swales would not be enough to handle the drainage and that the new rooflines would cause problems since the house is so close to the property line. He said that he would like to see gutters on the house. He said that he agreed with Anderson's screened porch comment, and that the proposal should move the house towards a more conforming house, not a less conforming house. Studer said that he does not think the stormwater will be managed simply by going overland, and that something would need to direct the runoff to the infiltration area. He said that he would like the city engineer to offer input and make some design recommendations. Studer said that while the total hardcover is similar, the kind of hardcover is much different, and that may cause problems.

Regan asked about having gutters 4 or 5 feet from his property. He asked what the point of having regulations was if the city was just going to grant large variances.

Carlson said that, while the city has standards, many lots within Deephaven are unable to meet those standards without variances. He said that the city has become more restrictive over time, particularly with stormwater management. Carlson said that there are also property rights. He said that these older houses met the needs of the families in the 1930's and 1940's, but that the needs of families are not the same as they were then. He said that it is difficult, since it impacts the neighbors. Carlson said that he is a Cottagewood resident and that he appreciated when families invested in the area, and that he wants to see improvements that will continue to attract families to the community.

Commissioner Anderson made a motion to recommend approval of the requests of Tracy Thie for variances to construct a new house at 20205 Cottagewood, based on the findings and conditions of staff, with the additional conditions that:

The roof eaves are modified to meet the requirements of the city code;
The proposed rear face of the house, including any screened in porches, encroach no further into the lake yard setback than the current rear face of the house;
That gutters be installed on the house in order to direct stormwater away from adjacent properties and towards the infiltration area;
The driveway is enlarged to be a full width driveway all the way to the street, and that the infiltration area is enlarged to accommodate any additional impervious surface area; and
The City Engineer provides design recommendations to manage the stormwater on the property.

Motion was seconded by Studer. Motion carried 4-0.

Public Hearing for Ordinance 13-76: Mandatory Update Amending Section 1360: Floodplain Ordinance

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney summarized the staff report. He said that FEMA had updated their Flood Insurance Rate Maps for Hennepin County and that as a part of this update, FEMA is requiring that cities update their Floodplain Ordinance to be in compliance with new federal language. He said that the new ordinance is required to be updated by November 4, 2016. Cooney said that FEMA has stated that “without exception” a community that has not adopted new language will be suspended from the National Flood Insurance Program.

Cooney said that the Minnesota DNR is the state agency in charge of administering the National Flood Insurance Program at the state level and has created a model ordinance for cities to adopt. He said that the DNR requested that cities submit a draft ordinance to them by August 4, 2016. Cooney said that staff prepared a draft ordinance for the City Council, which was reviewed at their July 5th meeting, and the draft ordinance was then submitted to the DNR for their review and comments. He said that those comments are enclosed and have been incorporated into this most recent version of the ordinance.

Cooney noted that, as recommended by the City Council, and approved by the DNR, the ordinance contains only the mandatory floodplain language, with all optional language removed.

Cooney concluded his staff report.

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

Carlson made a motion to recommend that the City Council adopt ordinance 13-76, an ordinance of the City of Deephaven, Minnesota an ordinance amending Section 1360 regarding floodplain regulations, as written. Motion was seconded by Studer. Motion carried 4-0.

Discussion related to C-1 Uses, including Retail Services: Planning Commission discussion related to proposed nail salon at 18202 Minnetonka Boulevard, and the definition of “retail services”.

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney summarized the staff report. He said that Phong Tran has signed a lease agreement for space at 18202 Minnetonka Boulevard in order to operate Lakeside Nails and Spa. He said that the business will be located in the C-1 (Commercial District 1) zoning district and would be limited to manicures, pedicures, and artificial nails.

Cooney noted that the C-1 zoning district allows “Retail Goods and Services” as permitted uses within the district. He said that there are a number of salon/spa establishments currently in operation within the C-1 district and, in staff’s opinion, Lakeside Nails and Spa would be in a similar category to those businesses. Cooney said that in reviewing the property files for those salon/spa businesses (Fusion Lifespa at 18142 Minnetonka Boulevard, and Primp Hair Salon at 18300 Minnetonka Boulevard) staff was unable to find any Conditional Use Permit documentation and that he assumes that these businesses were allowed as permitted uses under the “Retail Service” business category.

Cooney said that he is bringing this matter to the Planning Commission to get their opinion on what constitutes a “Retail Service” business and, further, if Lakeside Nails and Spa would fit under that interpretation.

Cooney said that if the Planning Commission does not feel that "Retail Service" encompasses a nail salon, the Planning Commission should make a recommendation regarding adding this broad use category to the conditional use list for the commercial districts.

Cooney Concluded his staff report.

Chairman Carlson said that he believes the use fits within the permitted use ordinance. He asked the applicant if the business was simply going to be nail-related services, and that no massages or other spa-like services are proposed.

Phong Tran, business owner, said that the business would be strictly nail-related services.

Studer asked about parking for the property. Cooney said that the property is parked at approximately 1 space for every 300 square feet of building space.

Carlson asked the business owner what is the amount of square footage they were leasing. Tran said it would be 1800 square feet. Carlson said that there seems to be the right amount of parking for the use.

Carlson surveyed the other commissioners to see if they had any issues with the use. The consensus was that the commissioners were comfortable with the use as a permitted use.

Carlson said that perhaps the ordinance might be made clear that these types of uses are permitted uses, but that was an issue for a later time. Carlson asked Cooney if any action was needed. Cooney said that no formal action was required, and that the minutes would capture the discussion and consensus opinion.

Gustafson said that he would mention the item at the City Council meeting, but that in his opinion, the precedent was that the nail salon is a permitted use.

LIAISON REPORT

Council Liaison Gustafson said that at the last council meeting there was discussion on a new nuisance code amendment related to equipment noise and chainsaws. He said that stacked wood would be limited to approximately 3 chords of wood per property.

OTHER BUSINESS

Studer asked if the city had considered a massing ordinance. He said that the proposed house on 20205 Cottagewood Avenue was pretty tall for the narrowness of the lot, and that he did understand the neighbors' concerns about not wanting to live next to a wall. He said it does feel like the city is getting houses that are starting to feel like row houses.

Gustafson said that this was considered 2 or 3 years ago when the city revised the height ordinance. He said that the adjusted height for smaller properties came out of that ordinance discussion.

Studer noted that this is a 32 foot tall house plus a walkout on a 40 foot wide lot. He said the trend is towards getting as much square footage on as small of a piece of property as possible.

Carlson said that the height of the home is based on the square footage of the lot. Gustafson said that massing was traded for the variable height.

Cooney said that, even though the lot is narrow, the square footage allowed a 32 foot height for the house. Studer said that he was just bringing it up since he had heard some complaints about it.

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Carlson said that the city dismissed the idea of an architectural review committee. Gustafson said that the city could say no to these requests. He said that the house on Easton road goes straight up, and that the focus is bigger houses and more garages.

Carlson said that the city did a lot of research into massing ordinances in other cities and chose not to move in that direction.

ADJOURNMENT

Motion by Chairman Carlson to adjourn the meeting. Motion seconded by Commissioner Anderson.
Motion carried 4-0. The meeting adjourned at 8:10.

Respectfully submitted,
Dale Cooney
Zoning Coordinator