

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

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

ABSENT: Commissioner Josh Wilcox, and City Council Liaison Melissa McNeill

OTHERS PRESENT: Zoning Coordinator Dale Cooney, Mayor Paul Skrede

Studer made a motion to move the new business agenda item to after the public hearings. Motion was seconded by Webster. Motion carried 6-0.

MINUTES OF June 18, 2019

Motion by Studer, seconded by Eaton, to approve the minutes of June 18, 2019 as written. Motion carried 6-0.

PUBLIC HEARINGS

Consider the variance requests of Craig and Kristi Weinstock, property owners, to encroach into the minimum required side yard setbacks in conjunction with a home addition at 20620 Linwood Road.

Chairman Studer introduced the agenda item.

Cooney presented the staff report. He said that the property owners are proposing two additions to the existing house, including a four car garage, both of which would encroach into the side yard setbacks. He said that while neither addition would encroach further than the closest encroachment of the existing house, the garage addition would add a significant additional footprint area into the side yard setback. Cooney said that the property is a 50,536 square foot R-2 property and that the existing house was built in 1960 according to Hennepin County records.

Cooney noted that Section 1302.04(3) of the zoning ordinance requires a side yard setback of 20 feet. He said that, as proposed, the smaller west addition would be 10.2 feet off of the side property line and the applicant is seeking a variance to encroach 9.8 feet into the west side yard setback. He said portions of the existing house on this side of the property are as close as 8.5 feet from the lot line. Cooney noted that the addition follows the existing line of the house on this side and gradually moves away from the property line with the south corner being 11.1 feet off of the property line. He said that, due to the fact that the addition is small and follows the existing building line of the house, he is supportive of this aspect of the request.

Cooney stated that, as proposed, the garage addition to the east would be as close as 8.4 feet off of the east side property line and the applicant is seeking a variance to encroach 11.6 feet into the east side yard setback. He said that portions of the existing house on this side of the property are as close as 8.4 feet from the lot line. Cooney pointed out that the proposed four-car garage does add significant additional footprint area into the side yard setback.

Cooney said the property is currently served by a 2-car garage which would be converted to living space. He said that, based on the current layout of the house, it would be difficult to meet the setback standards without essentially cutting off the front entry of the house. But, he said, given the scale of the new encroachment he does have some concerns about the proposed narrow setback. Cooney said the garage is setback 12.5 feet at the northeast corner, but gradually moves to 8.4 feet at the southeast corner. He said that while he is generally supportive of the request, it is his preference that the proposed garage maintains the 12.5 foot side yard setback from the property line. Cooney said that maintaining this

setback distance may also help alleviate neighbor concerns about grading, drainage, and the integrity of a retaining wall on their property.

Cooney also noted the city engineer comments that suggested additional swales along the property line, or possibly mitigation, to help alleviate the runoff issues that may occur to the neighboring property.

Cooney said that he recommends approval with conditions of the variance request to encroach 9.8 feet into the west side yard setback, and to encroach 7.5 feet into the east side yard setback for the house additions at 20620 Linwood Road, as proposed with the condition that the rear face of the proposed garage maintains a 12.5 foot setback from the east property line. He said that his recommendation is based on the following findings:

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

Yes. 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. In this case, the applicant is seeking to vary from the stated setback standards in order to construct additions for a house, built prior to the current zoning limitations, that encroaches into both side yard setbacks.

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

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?

Yes. The proposed additions meet other zoning requirements apart from the setback standards. The request is reasonable due to the fact that the encroachments are not greater than the existing encroachments and that, given the configuration of the house, it is not practical to meet the setback standards for the additions.

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

Yes. The nonconforming house, build in 1960 currently encroaches into both side yard setbacks. The layout of the house is wide such that adding the additions, particularly the garage addition, is difficult without encroaching into the side yard setbacks. The angled front entry also creates challenges in meeting setback requirements while still maintaining appropriate access to the front of the house.

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

No. The expanded house is relatively modest relative to the locality. The proposed encroachments are set back from the adjacent houses which will minimize the impacts to the adjacent neighbors.

Cooney concluded his staff report.

Daly said that he was involved in this project and recused himself for this agenda item.

Craig Weinstock, applicant, said that there are two issues he is trying to solve: a small garage and water issues with the current garage foundation. He said that their redesign would also allow them to have a master suite that would look at the lake. He said that he has extended family that stay at the house and that the extra garage stalls will manage that situation.

Studer asked about the water issues. Weinstock said that there is a seam in the foundation that causes problems and extending the front of the house in this area will address that.

Webster asked about building the garage at an angle rather than parallel to the lot line. Daly said that this was to help with garage entrance and exit so that the property owners don't back out towards the front entrance of the property.

Webster asked about grading near the berm. Weinstock said that the grade would dig in about 1 foot into the berm.

Webster asked about future drainage issues for the neighbor. Daly said that they are proposing downspouts and draitile that outlet into the middle of the Weinstock's yard to direct it away from the neighbors. He said the rest of the roof will dump out towards the middle of the property in the front. Webster asked about water pooling in the middle of the property. He said that new hardcover is not significant relative to the existing hardcover and that a portion of the existing driveway is being removed which will help. Weinstock said that it will be directed around the other side of the house.

Studer said that there could be more detail about gutter and draitile. He said that water issues are the biggest concern here.

Studer opened the public hearing.

Lynn Jewett, 4290 Cottonwood Lane, said that she submitted a letter to document her concerns and the conversations she has had. She said that the survey does not show how the property grades towards their lot. Jewett said that they have water issues now, and they intend to address those, but they don't want them to be worsened with this project. She said that she also had concerns for emergency access on the 8 foot setback. She noted that there are accessibility issues with the berm and retaining wall on their property near the addition.

Studer closed the public hearing.

Eaton said that he had some concerns about maintaining the integrity of the retaining wall.

Nagle said that he was wondering about water pooling in the center of the property and what a contingency plan might be.

Werneiwski said that he was generally in agreement with the staff report. He said that he is an engineer and that the drainage issues can be managed and even addressed after-the-fact in many cases if necessary.

Webster said that she is leery about approving things without enough details to make a determination. She said that she had concerns about drainage and that the narrow setback could create more problems.

Studer said that drainage is the biggest issue. He said that he would like to see the garage addition maintain the 12.5 foot setback and that the 4 foot change would not impact the aesthetic that much. He said that the plan should show how that would be managed.

Cooney said that the city engineer felt that a swale further towards the lake and away from the neighboring property would be his priority change to the drainage plan. He said mitigation would be only if necessary.

Motion by Studer to recommend approval of the request with the condition that the garage addition maintain a 12.5 foot setback and that the applicant provide an engineering solution suitable to address the drainage issue. Motion was seconded by Webster. Motion carried 5-0.

Consider the variance requests of Ellen Michelson, property owner, to exceed the maximum permitted impervious surface coverage, exceed the maximum permitted grade alteration, and to encroach into the minimum required lake yard setback in conjunction with a new house at 19680 Lakeview Avenue.

Studer introduced the agenda item.

Cooney presented the staff report. He said the property owner is building a new house on the property which triggers impervious area, grading, and setback variance requests. He said that, currently, there is a legal nonconforming house on the property. He noted that there are lakeshore setbacks on two sides of the property, and the setbacks overlap such that there is no buildable area beyond the setbacks. Cooney said that the property is also currently nonconforming for impervious area and that the impervious area will be reconfigured and reduced as part of this proposal. He said the property is an 18,133 square foot R-3 property.

Cooney stated that Section 1302.05(3) of the city ordinance requires a minimum lake yard setback of 100 feet. He said that portions of the proposed house are as close as 26 feet and the entire house is located within the lake yard setback and that the applicant is seeking a variance to encroach as much as 74 feet into the lake yard setback. He said the property was granted a variance to expand to the existing house footprint in 2008. Cooney noted that the new house generally maintains the location on the property of the existing house, with the footprint pushed slightly south on the property. He said the footprint of the new house/decks/porches is comparable to existing with an overall expansion of 390 square feet from existing conditions.

Cooney said that the proposed house will encroach into the front setback on the property as well. He noted that Section 1302.05(3) of the city ordinance requires a minimum front yard setback of 35 feet. He said the proposed house would be 28 feet from the front property boundary (as measured from the closest point of the adjoining road) and the applicant is seeking a variance to encroach 7 feet into the front yard setback. Cooney said that the existing house is situated 33 feet from the front property boundary, so the new footprint will be 5 feet closer.

Cooney said that he is generally supportive of the setback requests since the property has no buildable footprint area and is the last house on the street. He said the proposed lake setbacks are comparable to existing conditions and the overall impact from additional lake yard encroachments is negligible. Cooney said the front yard setback is similar to that of adjacent neighbors, and as the last house on the street would be much less impactful than those of neighboring houses.

Cooney stated 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 33.3% and is seeking a variance to exceed the maximum impervious surface area by 8.3%. Cooney noted that the property is currently at 36.6% impervious area. He said the property hosts 887 square feet of walkway easements for the neighborhood association, and while the new property owner would certainly benefit from these amenities, in his opinion it would be punitive to not give at least some credit for these walkway easements.

Cooney noted the property is 90% of the minimum lot size for an R-3 property, so it is only slightly undersized. He said a 20,000 square foot R-3 property in the shoreland district would be allowed 5,000 square feet of impervious area, and that a 5,000 square foot impervious footprint for this property would equal 27.6%. He stated that if the entirety of the walkway easements were added to that impervious area, the property would be at 32.5% impervious. He said that the applicant is requesting 0.8% (159 square feet) of additional impervious area above those two thresholds.

Cooney said that the property was granted an impervious surface coverage variance in 2008 to go up to 30.6% and since that time, it appears that there was a landscaping project that illegally expanded hardcover to its current extent. He said that expansion project included stone steps, a patio, and stone steps down to the lake. Cooney said that while the existing property is proposing reductions from existing conditions, those existing conditions were not legally granted.

Cooney said that, based on the excess impervious areas, Section 1353 of the zoning code requires a mitigation volume of 168 cubic feet, and the applicant is proposing 362 cubic feet of mitigation volume. He said that the water will be collected primarily in catch basins around the house. He noted that the applicants are limiting gutters and downspouts to a few critical areas, such as the front door and the garage. Cooney said the proposed mitigation system will grade other areas so that roof run off is collected at low points in the lawn or flower bed catch basins, which then is piped to the underground filtration system on the lower north lawn or the upper system at the driveway.

Cooney said that Section 1312.04 of the zoning ordinance requires a variance for any grade alteration greater than three feet at any point. He said the applicant is proposing grade alteration of up to 5 feet, and is seeking a variance of 2 feet from the maximum permitted grade alteration. Cooney noted that the applicant is proposing to regrade areas of the yard to accommodate reconfigured steps and an expanded flat yard area. He stated that portions of the grade adjacent to the retaining wall for the steps would be altered by up to 5 feet.

Regarding the entry gate and pillars, Cooney said that he has typically regulated entry pillars and gates under the fences/walls regulations which are not subject to setback requirements of structures as long as they are compliant with the height and setbacks required for fences/walls. He said that he would condition any approval on compliance with these regulations.

Cooney said that he recommends approval with conditions of the variance request to encroach into the lake yard setback by up to 74 feet, encroach into the front yard setback by 7 feet, exceed the maximum allowable impervious surface area by 8.3%, and exceed the maximum permitted grade alteration by up to 2 feet, for the property at 19680 Lakeview Avenue, as proposed. He said that his motion is conditioned that:

- Entry monuments and gate comply with the fence/wall regulations in city code Section 1310.08, notably as they relate to height and setback requirements.
- 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 the motion is based on the following findings:

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

Yes. Strict adherence to the ordinance would render the property unbuildable, and therefore reasonable accommodations need to be made for lake yard setbacks in order to replace the legal nonconforming house. The grade changes will have no impact on drainage to the neighboring properties. The impervious areas excess is proportionate to the lot size if taking into account existing walkway easements for the homeowner's association.

(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. A single family home, consistent with the building limitations is reasonable. The proposed setbacks are reasonable given the limitations of the property and the location of the lot on a narrow peninsula. The grading proposal is modest overall and is a reasonable response to the grades of the property. The impervious areas are slight reductions from existing conditions with significant mitigation provided.

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

Yes. The legal nonconforming house is built on a peninsula with a lakeshore setback on two sides of the property. The setbacks overlap such that there is no buildable area within the lake yard setbacks. The property is slightly undersized for an R-3 property and contains walkway easements, with both factors contributing to additional impervious area percentages on the property. The topography on the property creates challenges for meeting the ordinance limitations on a project of this size, and the overall topographic changes triggering the variance are in a small area between the house and the landscaped stairway.

(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 proposal is of a size and scale that would be compatible with the locality and is comparable to existing conditions on the property today.

Cooney concluded his staff report.

Webster asked about the location of the grade alteration. Cooney noted the attached exhibit and said that the variance was required only in the location by the proposed exterior stairway.

Ellen Michaelson, applicant, said that she is new to Deephaven and moved back to Minnesota after 42 years. She said that she is excited about the project and feels that she can improve upon the property for the community. She said that she is cognizant on how it affects the community, and always tries to do the very best. She said that she is trying to bring the look back to a 1930's cottage style house.

Studer asked about how much of the roof uses gutters. Petra Schwartz, of TEA2 architects, architect for the project, said that they are limiting downspouts and gutters to the garage and front entry. She said that, otherwise, they have graded the project to direct water to the catch basins, one on the upper level of the property and one on the lower level of the property. Tim Setala, of Pierce Pini & Associates, engineer for the project said that on the northwest side, grading will direct water to the catch basins.

Studer asked if the overhangs go beyond the catch basins. Setala said they did not. Setala said that on the other side of the house, the garage and entry would be directed by downspouts, while the rest would be graded to collect the water. He said that the entire roof area would be captured by the downspouts.

Studer said that it looks like more of the water is going to the smaller collection area, and less water is going to the large area. Setala said the driveway is going to the upper area, as well as one-fourth of the roof.

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

Eaton said that it is a very extensive water mitigation plan. He said that his concerns were similar to other concerns had been raised already.

Nagle agreed about the water mitigation plan. He asked about the proposed bumpout on the southwest site of the house. Schwartz said it was a window well. Nagle said that he did have issues with using the illegal impervious area as a baseline for this project.

Daly said that the difference between the past and the proposed is 489 square feet, and the new numbers include the boardwalk as well as mitigation.

Werneiwski said that he was supportive of the request.

Webster said that she agreed with Nagle. She said she has concerns about creeping hardcover and said that the proposed house is pretty large and that some things could have been reduced. She said that she understands the setback issues.

Studer said that the proposal will be a better state than there is now. He said that he is less concerned about runoff since this house is at the end of the line. Studer said that he is supportive. He asked about maintenance of the system and if that would be from the manhole. Setala said yes.

Daly said that the previous plan did not make sense from a remodeling standpoint. He said the mitigation plan looks great. Daly said that the house footprint is understandable given the location of the property.

Webster said that scraping the site begs the question of why not address the hardcover, and that she is not in favor of this based on size.

Motion by Studer to recommend approval based on staff's findings and conditions. Motion was seconded by Werneiwski. Motion carried 4-2 with Nagle and Webster voting against.

Consider Ordinance 13-79 amending Deephaven zoning code section 1310.08 regarding fences and walls.

Studer introduced the agenda item.

Cooney said that the proposed changes are intended to restrict fences within the lake yard setbacks and that current city code is written in such a way that seems to allow fences up to 3 ½ feet within a lake yard. Cooney concluded his staff report.

Daly asked about fencing requirements for pools. Cooney said that we don't require fencing for pools.

Studer opened the public hearing. Hearing no public comments Studer closed the public hearing.

Motion by Eaton to recommend approval the Ordinance 13-79 as written. Motion was seconded by Studer. Motion carried 6-0.

NEW BUSINESS

Presentation from resident James Blakeway advocating for regulations on short-term rental property.

Blakeway, of 20040 Minnetonka Boulevard, brought copies of ordinances and articles from other communities and distributed them. He said that he bought his house 6 years ago and 3 years ago his neighbor, who he considers a friend, opened an Airbnb. He said he did not have an understanding of the impacts until he lived next to one for a while. He said that there were over 200 nights that the property was reserved. He said that he does not have safety concerns, but that there are new people staying there every night. Blakeway said that this is a hotel. He said that the neighbor's house looks like a single family home but functions like a hotel.

Blakeway said that it is frustrating and that there are no tax penalties for the owner and no tax credits for him for living next to the Airbnb. He said it is a big deal across the country. He said that it is just like a resort. He said that the neighbors are usually there, but not always there when the renters are present. He said that his neighbors have also expressed concerns about the property. Blakeway said that a nearby house sold about a month ago and that the new owners are planning to make a new Airbnb. He said that many cities have a 30-day minimum stay requirement.

Webster asked if there were police calls or problems. Blakeway said that noise is an issue. Webster said he could call the police for noise issues. Webster said that she has a cabin she rents as an Airbnb and that she uses Airbnb regularly. She said that this is not a problem, and that Blakeway may not like it but that people have a right to use their property in this way. She said that she is not in favor of putting in restrictions to be proactive when the city is not getting complaints about the issue. Blakeway said that he will bring the impacted neighbors to the next meeting. He said that this is essentially a hotel.

Daly said that the community is a single family community that is surrounded by the huge attraction of Lake Minnetonka. He said that he feels there is a benefit to having licensing to help monitor the situation.

Studer said that the issue becomes enforcement. He thanked Blakeway and said that they will have to review the information and have the discussion again at another meeting.

Nagle said that there is no hotel on the lake. He said that people live in this community as a single family community and that he understands Blakeway's issue about having a revolving door at the neighbor's house. He said that people move here to get away from some of these things and that it is not cheap to live here. Nagle said that he can see and hear from across the bay what goes on at that house and that it is unique to the bay. He said that he does not like the short-term rental situation, but that he doesn't know yet what to do about it.

Studer thanked Blakeway.

LIAISON REPORT

Mayor Skrede presented the liaison report. Said that there were not planning items at the last meeting. He said that the road project has been a big undertaking. He said that a culvert on Minnetonka Boulevard has collapsed during the project. Skrede said that Northern Road and Easton Road were upcoming paving projects for the city.

Skrede said that the city was working on the budget and that there would be a 7.5% increase in the general fund and 9.8% increase in bonded debt.

Skrede said that the tennis court bids for Shuck Park came in more than 2 times the budget. He said that the scope of work was probably too big for the project.

Nagle said that he and about a dozen neighbors were at a neighborhood meeting regarding the park. He said that the public input from the meeting was not heard and that the tennis courts were not a priority for the neighborhood.

Councilmember Jewett, who was in the audience, said that they were uncertain about which playground structures would be best. He said that made playground equipment phase 2 of the project, and phase 1 was resurfacing. Nagle said that no one at the meeting felt that the tennis courts were a priority improvement.

Skrede said that sometimes meeting follow-up could be better. Nagle said that he was just surprised that the tennis courts were the outcome of the meeting.

ADJOURNMENT

Motion by Studer to adjourn the meeting. Motion seconded by Nagle. Motion carried 6-0. The meeting adjourned at 8:32.

Respectfully submitted,
Dale Cooney
Zoning Coordinator