

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

**PRESENT:** Chairman Kent Carlson and Commissioners Jim Anderson, Brandon Gustafson, Gen McJilton, Bill Sharpe, and Bob Werneiwski

**ABSENT:** Commissioner John Studer

**OTHERS PRESENT:** Zoning Coordinator Dale Cooney, Council Liaison Darel Gustafson

### **MINUTES OF October 20, 2015**

Motion by Commissioner Sharpe, seconded by Commissioner McJilton, to approve the minutes of October 20, 2015. Motion carried 6-0.

### **PUBLIC HEARINGS**

**Consider Variance Requests, Jeffrey and Michelle Hinck for 19550 Cedarhurst Avenue**— Request for variance from the required R-1 maximum building coverage limitation in conjunction with the construction of a shed, and variance from the lake yard setback in conjunction with the construction of an in-ground swimming pool within an existing non-conforming footprint.

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney presented the staff report.

Cooney said that Jeff and Michelle Hinck have made application for variances to build a 500 square foot shed, and to construct a new swimming pool. Cooney stated that the shed would require a variance from the maximum building coverage limitation, and that the pool, which is being built within the footprint of a non-conforming sport court, would require a variance from the lake yard setback.

Regarding the 500 square foot shed, Cooney said that Section 1302.03(2) of the zoning ordinance limits the maximum allowable building coverage to 8,000 square feet for an R-1 property. The applicant is seeking a variance to exceed the maximum allowable building coverage restriction by 428 square feet.

Cooney said that, as proposed, the shed would be under the 1,000 square foot accessory structure limit for R-1 properties. He added that while there are a number of accessory buildings on the property, the zoning code does not limit the number of accessory buildings, simply the total square footage of the buildings. He said that the proposal complies with the remaining setback requirements, impervious surface limitations, height limitations outlined in Section 1302.03, and the maximum permitted grade alteration permitted in Section 1312.04.

Cooney said that applicants are claiming to meet the practical difficulty standard to exceed the 8,000 square foot limit based on the single-story construction of their house. He stated that the house, constructed in 1957, was built in a contemporary architectural style common to that era that favored larger, single-story residential footprints instead of more compact, multi-story home footprints. He said that while the house has a large footprint, the overall massing of the home on the property is less impactful than the footprint would indicate, and would remain relatively modest compared with other lakeshore properties. Cooney stated that if a variance were to be granted, nothing would prevent the homeowner from adding a second story to the house and increasing the massing.

Cooney said that the applicants' property size is 125,000 square feet, which is more than double the 60,000 square foot minimum lot size for R-1 properties. Cooney noted that the maximum building coverage limitation is an effort to keep properties proportionate to their lot size. He said that, in this case,

because of the larger lot size, an argument could be made that, even with the variance, the overall footprint of the structures remain proportionate to the property.

Regarding the proposed pool, Cooney said that the applicants are proposing to build a new in-ground swimming pool within the footprint of a non-conforming tennis court. He said that state law allows non-conformities to be continued through repair, replacement, restoration, maintenance, improvement, but not including expansion. Cooney said that once the nature of the non-conforming use is changed, the non-conformity loses its legal status. He said that, therefore, to construct the pool, the applicant would need a variance of the lake yard setback.

Cooney stated that Section 1310.10(2)(a) of the zoning ordinance requires that all swimming pools, spas and hot tubs comply with the setback standards of the zoning district in which they are located as measured to the outside edge of the pool decking.

Cooney said that Section 1302.03(3) of the zoning ordinance requires a lake yard setback from the OHW of Lake Minnetonka of 100 feet. He said that the applicant proposes a lake yard setback of 52 feet for the proposed pool and that the applicant is seeking a variance of 48 feet from the minimum required lake yard setback.

Cooney said that the proposed pool would continue the recreational nature of the previous non-conformity. He also noted that, as proposed, applicant would bring the impervious surfaces into zoning compliance and eliminate the side setback encroachment. He said that the pool would be 46 feet further from the lot line than the sport court. Cooney said that the impacts of a pool could be greater than those of a sport court, particularly noise. Cooney said that a pool is a more invasive use of the land, requiring excavation, below-grade utility connections, etc.

Cooney stated that the submitted survey shows an existing pool near the rear of the house, but that pool is actually a water feature with fountains and is not meant for swimming.

He said that the proposal complies with the remaining setback requirements, impervious surface limitations, and height limitations outlined in Section 1302.03, and the maximum permitted grade alteration permitted in Section 1312.04.

Cooney said that he recommends approval of the variance requests of Jeff and Michelle Hinck to exceed the maximum building coverage limitation by 428 square feet for the construction of a detached shed, and to encroach 48 feet into the minimum required lake yard setback for the construction of an in-ground pool within the existing non-conforming footprint of a sport court at 19550 Cedarhurst, as presented, based on the following findings:

a) The variance is in harmony with the purpose and intent of the ordinance, since 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 maximum building coverage limitation and accessory structure setback requirements. The maximum building coverage variance is in harmony with the purpose and intent of the ordinance since the purpose of the ordinance is to ensure that the buildings on a property are of a scope and scale proportionate to the overall lot. In this case, due to the single-story nature of the construction and the large lot size, the proposal would be in harmony with the intent of the ordinance.

The proposed pool would be placed within the footprint of an existing non-conforming sport court. In the process, the applicant is eliminating the impervious surface and side yard setback non-conformities. The new non-conforming use will still be of a recreational nature.

b) The variance is consistent with the comprehensive plan since the Comprehensive Plan's Housing Elements Goals and Policies promote the redevelopment of residential property within the city.

c) The proposal puts the property to use in a reasonable manner. The building of the shed accessory structure that does not exceed the accessory structure footprint limitations is reasonable and continues the single family use of the property. The proposed in-ground pool is a reasonable use for a residential structure and continues the recreational nature of the existing non-conformity.

d) There are unique circumstances to the property not created by the landowner. The existing one-level home was built in 1957 in an architectural style that favored a large, sprawling foundation footprint. The home itself remains relatively modest in its overall massing on the property. The pool is to be built within the existing footprint of a legal, non-conforming sport court.

e) The variance, if granted, will not alter the essential character of the locality. The additional shed structure is of a reasonable size, while the overall massing on the property is at a scope and scale consistent with neighboring properties. The proposed pool is also of a size and scale that is compatible with the character of the locality.

Cooney concluded the staff report.

Commissioner Sharpe asked how old the sport court was. Cooney said that he did not know the age of the sport court. Chairman Carlson asked if the shelter near the pool was existing. Cooney said that it was.

Commissioner Gustafson asked about the depth of the pool and how that might impact the water table. Cooney said that he would have to ask the City Engineer and get more information.

Chairman Carlson opened the public hearing.

Jeff Hinck, the applicant, said that they were trying to redevelop the existing home instead of replacing it. He said that he was trying to minimize the impacts of the changes and reduce or eliminate the non-conformities.

Chairman Carlson closed the public hearing. Carlson asked the Planning Commissioners if they had any comments about the application. Commissioner McJilton said that she was in favor of the proposal, and that she would agree with the City Engineer's comments to have the full pool plan submitted before final approval. She said that knowing the elevation for the bottom of the pool would be important information.

Chairman Carlson said that he was in favor of the proposal and that he was happy that the applicant was keeping the existing home.

Chairman Carlson made a motion to accept staff's recommendation and to approve the variance requests as submitted based on the findings of staff, subject to the City Engineer's review and approval of the final construction plans for the pool. Commissioner McJilton seconded the motion. Motion carried 6-0.

**Ordinance 13-69, Amending Section 1350 – Shoreland Management District** – Ordinance amendment adding language related to impervious surface variance requirements including stormwater mitigation and maintenance agreements.

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney summarized the staff report. He said that the City of Deephaven, in considering variances from the impervious surface limitations required by Section 1350 of the Deephaven Code, is proposing to begin requiring stormwater mitigation practices to be installed as a condition of approval. He said that maintenance plan for the required stormwater mitigation practices will also be a condition of approval. Cooney said that this variance language would only apply to Shoreland

Management District properties since there are no impervious surface limitations on properties outside of the Shoreland Management District. Cooney said that most of the recently granted variance requests to exceed impervious surface limitations have been conditioned on meeting these requirements and that this amendment will codify that practice.

Cooney concluded his staff report.

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

Chairman Carlson requested one change to a typo within the ordinance. Carlson said that Section 1350.06, Subdivision 2 (b) should be changed from "7 percent of the total lot area" to read "75 percent of the total lot area."

Chairman Carlson asked Cooney if the city had a draft maintenance agreement it would be using. Cooney said that there is an existing maintenance agreement from previously required stormwater management systems that the city would use as a template.

Chairman Carlson asked the commissioners if they had any other comments or questions. Hearing none, Chairman Carlson closed the discussion at this point.

Chairman Carlson made a motion to adopt ordinance 13-69, an ordinance of the City of Deephaven, Minnesota amending Deephaven Ordinance Code Chapter 13 regarding Section 1350: Shoreland Management District, as amended. Commissioner Werneiwski seconded the motion. Motion carried 6-0.

**Ordinance 13-70, Creating Section 1353 – Stormwater Management** – Ordinance amendment creating stormwater mitigation requirements for impervious surface expansions that exceed certain defined thresholds.

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney summarized the staff report. He said that Planning Commission reviewed the draft ordinance at their October meeting and recommended one change. Cooney said that the City Council reviewed the draft ordinance at their November 4 meeting. He said that a majority of the City Council expressed a general willingness to support the draft ordinance as proposed and that no changes to the draft ordinance were suggested by the City Council.

Cooney said that the ordinance was intended to allow unlimited impervious surface expansion, while also requiring corresponding stormwater mitigation, and with exceptions for smaller projects. Cooney said that it would be possible to expand incrementally, over time without triggering stormwater mitigation requirements. Cooney said that the policy outline of the ordinance included the following items:

- 1) There will not be a hard cap on impervious surface area restrictions for the currently unregulated areas within the city.
- 2) Only new construction projects and major hardcover expansions would be subject to a stormwater management plan requirement.
- 3) Stormwater mitigation would be required for properties that exceed defined thresholds.
- 4) Stormwater mitigation proposals and approval would occur at the administrative level.
- 5) Stormwater mitigation requirements may be waived by the City Engineer/City Staff if it is determined that the proposal would not generate negative stormwater impacts.
- 6) All stormwater mitigation systems will be credited at 75% of actual mitigation.

7) Maintenance agreements will be required for all stormwater management systems.

Cooney concluded his staff report.

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

Chairman Carlson asked the commissioners if they had any comments or questions. Hearing none, Chairman Carlson closed the discussion at this point.

Chairman Carlson made a motion to adopt ordinance 13-70, an ordinance of the City of Deephaven, Minnesota amending Deephaven Ordinance Code Chapter 13 by adding Section 1353: Stormwater Management, as written. Commissioner Anderson seconded the motion. Motion carried 6-0.

#### **NEW BUSINESS:**

##### **Consider Request of Dyke Williams for an Ordinance Regulating the Obstruction of Views.**

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney summarized the staff report. Mr. Williams submitted a request to the city asking the city to consider an ordinance that would regulate the obstruction of lake views. Mr. Williams' comments, received by City Administrator Dana Young via e-mail, are attached. Cooney pointed out that the two tree planting incidents mentioned in Mr. Williams' e-mail were near his property. Cooney also said that the ordinance that was considered by the City of Orono, mentioned by Mr. Williams in his e-mail, did not pass.

Cooney said that a formal action is not required, but that a consensus opinion in the meeting minutes would be helpful for the City Council.

Chairman Carlson said that his personal belief is that he would rather have this be an issue that neighbors work out between themselves.

Commissioner Werneiwski said that it would be difficult to draw a line between what views are protected and what are not. He asked if it would just be Lake Minnetonka or would Shaver's Lake be included. Werneiwski asked who would have priority and at what distance would someone not have a right to have a view protected.

The Planning Commission expressed a consensus opinion that an ordinance regulating the obstruction of views is not something they would recommend considering at this time.

##### **Draft Ordinance, Amending Section 1310 to Add Language Related to Non-Encroachments –**

Review draft ordinance language on allowable yard setback encroachments.

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney summarized the staff report. He said that he regularly receives calls from builders and residents about allowable building encroachments into yard setbacks. Cooney stated that the city code only mentions roof overhangs as allowed encroachments. Cooney said that he feels uncomfortable administering this aspect zoning code without more guidance, and that this ordinance would remove much of the guesswork for him, for residents, and for builders and architects.

Regarding decorative elements the exterior of a home such as sills, cornices, and window boxes, Cooney said that he felt most decorative elements should be allowed to encroach into yard setbacks. He said that these ornaments tend to lack mass and therefore have minimal impact on the neighboring properties. He said that he feels that allowing them complies with the overall intent of the existing ordinances.

Regarding chimneys, flues, and chases, Cooney said that these elements do have mass, and are impactful, but that he believes that they are reasonable encroachments. He said that the alternative is that houses with chimneys and flues would need to move the entire wall of a home away from the lot line to accommodate these elements, which can significantly reduce available living space.

Cooney said that he recommends that steps that lead directly into the main level of a primary structure should be allowed encroachments since they are both required, and could reduce the buildable footprint if not allowed.

Cooney said that egress window wells are required by building and fire code and are close to ground level, and that he felt that these are reasonable encroachments.

Regarding exterior cladding and insulation, Cooney said that there is an increased emphasis on energy efficiency, particularly among high-end home builders, and that heavily insulated houses are becoming more common. He said that some building best practices call for insulation on the outside of a home's sheathing, but beneath the exterior cladding. Cooney said that this can create the possibility that a house wall could overhang a foundation wall by several inches. Cooney stated that he would like to make a certain allowance for this type of construction, but that houses that are proposing extensive exterior insulation would need to reduce the overall footprint of the house.

Regarding cantilevered finished living spaces and bay windows, Cooney said that, in the past, city staff has allowed certain cantilevered living spaces as long as they did not extend beyond the roof eaves. He said that these types of cantilevers, while welcome architecturally, tend to benefit the homeowners at the expense of the neighboring properties. He said that since these types of bumpouts are a.) optional b.) add significant massing, and c.) add to the overall living space of the home, he would not recommend allowing these types of encroachments. Cooney noted that these types of cantilevers can be very controversial, particularly in the R-3 zoning district where side setbacks can be as narrow as 10 feet.

Cooney concluded his staff report.

Commissioner Sharpe asked if there were calls to staff about encroachments on a weekly basis. Cooney said that he received inquiries about it weekly during the summer months.

Commissioner Gustafson asked if people were worried about new construction being close. Cooney said that residents were often concerned about new construction, particularly in the R-3 district where the houses tended to be larger than the house before it, and where construction often goes right up to the setbacks. He said that the issue of window wells comes up a lot since they are often part of the foundation.

Chairman Carlson asked how deep window wells were required to be. Commissioner Gustafson said that window wells were required to be at least three feet deep.

Commissioner Anderson said that, by allowing window well encroachments, you allow people to add living space. He said this allowed him to expand his livable area significantly by finishing the basement of his Cottagewood home.

Chairman Carlson said that he would like to add window boxes to the list of decorative items. He said that there should be limits on some of the items as such as oversized fireplaces.

Commissioner Gustafson asked about two chimneys on the same wall. Cooney said that he could include a one chimney limit in the ordinance. Commissioner Anderson said that he has heard of faux chimneys. Cooney said that the chimney would have to be functional to qualify for the encroachments.

Cooney said that the ordinance would come before the Planning Commission in January for a public hearing.

Chairman Carlson closed the discussion on this agenda item.

#### **LIAISON REPORT**

Council Liaison Darel Gustafson said that at the November 2<sup>nd</sup> City Council meeting the new Zoning Coordinator, Dale Cooney, was taken off of his initial six month work probation. Gustafson mentioned a special City Council meeting at which the City Council discussed roads and road maintenance items with the City Engineer.

Gustafson said that Hennepin County Sherriff Rich Stanek made a presentation at the November 16<sup>th</sup> meeting. Gustafson said that at the meeting, Stanek mentioned that there were drop off locations to dispose of unused prescription drugs. Gustafson said that Stanek also pointed out that the Hennepin County Sherriff's office was offering its office as a safe place to complete transactions from websites such as Craig's List. Gustafson mentioned that Tour de Tonka bike ride was approved, as was a sewer fee increase of \$10 per quarter.

Gustafson said that the December 7<sup>th</sup> City Council meeting was a truth in taxation meeting. He said that at that meeting the city approved a levy of 4.45%, with 3% going into the Capital Improvement Fund and the remaining 1.45% going into the General Fund. Gustafson said that Deephaven has very little other funding sources other than residential property taxes. He noted that Deephaven does not have much of a commercial district, and therefore tax increases are typically borne by the residential properties.

#### **ADJOURNMENT**

Motion by Chairman Carlson to adjourn the meeting. Motion seconded by Commissioner Sharpe. Motion Carried 6-0. The meeting adjourned at 7:38.

Respectfully submitted,  
Dale Cooney  
Zoning Coordinator