

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, John Studer, Cindy Hunt Webster, and Bob Werneiwski

ABSENT: Bill Sharpe

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

OATH OF OFFICE:

Zoning Coordinator Cooney administered the Oath of Office to Cindy Hunt Webster.

MINUTES OF November 15, 2016

Motion by Werneiwski, seconded by McNeill, to approve the minutes of November 15, 2016 as written. Motion carried 6-0.

PUBLIC HEARINGS

Consider the variance requests of Scott and Sue Augustine from the minimum lake yard setback, maximum permitted impervious area, and a reduction from the minimum required principal structure separation for an accessory structure at 4530 Linwood Lane

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney summarized the staff report. Cooney said that Scott and Sue Augustine have constructed a small (84 square feet) accessory structure in their side yard at 4530 Linwood Lane. He said that the property is zoned R-3 and the structure is being used as a garden shed. Cooney said that he received a complaint about the structure from a neighbor and after looking into the matter he determined that, even though the structure is in the side yard, it also encroaches into the lake yard setback. Cooney said that the principal structure is set back 71.1 feet from the lake. He said that he informed the property owners that, since the city is aware of the issue, they would need to either apply for a variance or remove the structure.

Cooney said that Section 1302.05(3) of the zoning ordinance requires a lake yard setback of 100 feet and that the applicant proposes a lake yard setback of 86 feet. He said the applicants are seeking a variance of 14 feet from the minimum required lake yard setback.

Cooney said that within the R-3 zoning district, accessory structures less than 120 square feet are permitted to be as close as 4 feet from a side yard setback and that the structure complies with this regulation. He also said that Section 1310.10 (1) (b) states that no accessory structure may be closer to any principal structure than a distance equal to the height of the accessory structure. Cooney noted that the structure is 10 feet tall, and as constructed, a portion of the accessory structure is 7 feet, 3 inches from the house. Cooney said that the applicants are seeking a variance of 2 feet 9 inches from the minimum required principal structure separation. He said that measurements of all setbacks were confirmed on-site by staff.

Cooney said that, prior to the addition of the accessory structure, the property was at 28.06% impervious area and that the addition of the accessory structure brings the property to 28.6% impervious area. He said that Section 1302.05(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25%. Cooney said that, with the exception of the new accessory structure, staff considers existing impervious area as a legal non-conformity. He said that the applicants are proposing an impervious surface area of 28.6% and are seeking a variance to exceed the maximum allowable impervious surface area by 0.54%.

Cooney noted that city code requires mitigation for the expanded hardcover. He said that he did not request a stormwater mitigation proposal from the applicants at the time of application. However, he confirmed with the City Engineer that city code would require the equivalent of 9.3 cubic feet of stormwater mitigation. Cooney said that in this particular case— because the impervious expansion is small and the property drains directly to the lake—the Planning Commission may also wish to consider waiving the mitigation requirements.

Cooney said that, as mentioned above, this issue was brought to the attention of staff by a neighbor complaint. He said that this is the type of zoning code issue that might regularly go unnoticed, and is likely a common violation throughout the city. He said that once staff becomes aware of the issue, the city is required to enforce the violation. In this case, Cooney said, he became aware of the issue in the early summer and met with the residents on site. He said that, at the time, he informed the owners that a variance would be required. Cooney said that after not hearing back from them for several weeks, he sent letters to the homeowners. Cooney said that he did not hear back by the deadlines noted in the letters and was left with no choice but to pass the issue along to the City Prosecutor, Steve Tallen. Cooney said that only after receiving notice from the City Prosecutor and requiring a hearing in District Court did the property owners respond to city staff. Cooney said that the City of Deephaven agreed to drop the charges if a variance application was submitted.

Cooney said that he recommends approval of the variance requests to encroach 14 feet into the minimum required lake yard setback, for a reduction of 2 feet 9 inches from the minimum required principal structure separation, and to exceed the maximum allowable impervious surface area by 0.54% for the accessory structure at 4530 Linwood Lane, as presented, based on the following findings:

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

Yes. The applicant is seeking to vary from the stated setback standards of the ordinance in order to have a small accessory structure in the side yard. The house is situated such that much of the side yard is also within the lake yard setback. The structure is well behind the non-conforming rear face of the house.

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

The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the redevelopment of residential property within the city.

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

The small accessory structure is reasonable, and the property has no other accessory structures.

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

There are very few locations available for the structure. The location in the side yard is the most practical location, however the side yard locations either require variances or the removal of trees. Placing the structure in the front yard would be an overly conspicuous location.

(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 structure is a small detached accessory structure.

The approval is conditioned that:

- The applicants provide stormwater mitigation plans that 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 concluded his staff report.

Webster asked if a building permit was required for the shed. Cooney said that a permit is not required for structures with footprints less than 200 square feet. Webster said that her concern was that the owners did not move ahead until threatened with legal action. Cooney said that, in speaking with Sue Augustine, she said that there was a misunderstanding. Cooney said that he was trying to be accommodating and when he spoke to the family he said that they should apply for a variance for the shed, but that it was not urgent that they do so. Cooney said he expected an application within several weeks, where Mrs. Augustine expressed that she thought she had several months.

Scott Augustine, applicant, said that the shed is a garden shed and that it is not 100 feet back, but that doing so would block the neighbor's windows. He said that it is hidden in the bushes in the side yard. He said that the neighbor's house is too close to their side yard. Augustine said that Cooney had told them that they did not need to stop work on the project, and that they would need to get a variance before they sold the house. He said once the legal action came through, that got their attention, and they applied for a variance. Augustine said that there was a flagstone walk on the south side of the house that was never built, and that they would still be under on hardcover. Augustine said that their neighbor's house is too big for their lot, and they park their boat lift within 2 feet of his property all winter long. He said that there is not a cordial relationship with the neighbor. Augustine said that when the neighbors returned from Arizona they were upset about the shed.

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

Anderson asked about why an updated survey was not provided. Cooney said that it was his decision not to request an updated survey since this was a small shed and that a new \$1500 survey seemed disproportionate to the issue at hand. He said that if the Planning Commission felt that a survey was necessary, we can request it prior to the City Council meeting.

Studer said that he did not think a survey should be required for something this small. Studer asked what information there is for residents to know where they can put small sheds that do not otherwise require building permits. Cooney said that there is a one-page setback reference online. Cooney said that he gets a number of these types of calls, but that he is certain that there are a number of people who do not even attempt to determine the regulations. Studer said that it is unfortunate that the neighbors don't get along, but that the location seems reasonable.

Werneiwski said that he met with the applicants and discussed the issues about the survey, enforcement and the location and determined that it seems like a good place for the shed. He said that if he had seen the application before it was built, he would have supported it as well.

McNeill said that she would have supported it if it had come before it was built. She said that she would have preferred an updated survey. She said that it is in the best place for the site.

Webster asked if the neighbors can see the shed. Augustine said that they mostly cannot, and that this is more a matter of principle for the neighbors.

Carlson said that he had been to the property many times. He said that he thinks the location is the best location. Carlson said that he would prefer an updated survey to resolve the discrepancy about the setback and the hardcover. Augustine said that they are considering additional improvements for the house and would need a survey at that time, but they would prefer not to update the survey for the small shed. He said that, as an aside, the people who previously owned the house moved because of the neighbors.

Carlson asked Gustafson about an updated survey. Gustafson said that he did not think the council would be supportive of requiring an expensive survey that would exceed the cost of the shed itself. But, he said that the impervious area would be 28.6 percent based on the submitted survey.

Motion to approve by Werneiwski based on the findings of staff, but waiving the city's stormwater mitigation requirements. Motion was seconded by McNeill. Motion carried 6-0.

Consider the variance request of Sharratt Design to exceed the maximum permitted grade alteration in conjunction with the construction of a new house at 20400 Lakeview Avenue.

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney summarized the staff report. Cooney said that Sharratt Design, architect for property owners Matt and Clancy Carle, is requesting a variance to exceed the maximum permitted grade alteration in conjunction with the construction a new house at 20400 Lakeview Avenue. He noted that Section 1312.04 of the zoning ordinance requires a variance for any land alteration greater than three feet at any point. Cooney said that he applicant is proposing land alteration of up to 6 feet, and is seeking a variance of 3 feet from the maximum permitted land alteration.

Cooney said that there are several areas on the property that will alter the grade by more than three feet including: near the front of the house by the proposed driveway and entry, in the sunken pool area of the existing home, and in the rear of the property where a new partial walkout area will be created.

Cooney said that the applicant states that the proposed grading, while significant, will restore portions of the grading to what appears to be closer to the original topography of the lot. Cooney said that the lot does offer some topographic challenges with the steep grades in the south and west areas of the property, and the bluff area on the lake side. He said that he existing pool area also provides challenges to the buildable area on the lot. Cooney said that the City Engineer did not raise any concerns about the proposed grading and his formal comments are attached to this staff report. Cooney said that in phone conversations with the City Engineer he stated that, in his opinion, he felt that the proposed grading was well designed and fit the land well.

Cooney said that the principal justifications for land alteration restrictions are to limit properties from circumventing the house height limitations by building up the grade around a property, or altering overall drainage patterns in a significant or detrimental way. He said that neither of these concerns are the case in this proposal.

Cooney said that existing conditions on the property slightly exceed the 25% impervious surface area limitation and that, as proposed, the property would be brought from 25.3% impervious down to 17.8% impervious.

Cooney said that the Minnehaha Creek Watershed District has stated that there is a *potential* wetland area in the southern corner of the property that *may* be part of the lagoon. Cooney said that the MCWD stated that the grading and proposed construction improvements would not impact the area and had no concerns about the proposal.

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 noted that portions of the house will be as narrow as 18 feet wide. Cooney said that the City Council has not required firm adherence to this rule where the main body of the house has exceeded this width requirement. Cooney said that the proposed house is otherwise zoning code compliant.

Cooney said that he recommends approval of the variance request to exceed the maximum permitted grade alteration by 3 feet, and a reduction of 7 feet from the minimum house width for the property at 20400 Lakeveiw Avenue, as presented, 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 limit properties from circumventing the house height limitations by building up the grade around a property or altering overall drainage patterns in a significant or detrimental way, neither of which is the case in this proposal.

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

The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the redevelopment of residential property within the city.

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

The proposed house and grading are reasonable for the property, and are comparable in scope and scale to what exists today.

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

The property has unique topographic challenges, including steep grades on the south and west side of the property. The existing pool area also creates some unique, pre-existing circumstances for the buildable area on the eastern portion of the lot.

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

The proposed grading alterations would not alter the essential character of the locality. The overall proposal is of a scope and scale similar to what exists today.

Cooney concluded his staff report.

Webster asked if the pool would be removed. Cooney said that the pool will be removed and filled in.

Mike Sharratt of Sharratt Design, applicant, said that they were trying to be responsible with the zoning requirements, and that they meet all requirements except the grading. He said that the existing home greatly modified some areas of the natural grading, and that they are restoring areas closer to the original grading. He said that the existing home has a tuck-under garage and that the family would like to make the new home as accessible as possible with the garage and main living area on the same level.

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

Werneiwski said that he had no issues with the proposal.

Webster said that her one concern was the new fill that would be in the driveway area and asked what would be holding that in place. Sharratt said that there was a retaining wall, less than 4 feet tall, that would be part of that area.

Anderson said that he thinks the proposal makes sense and that the fill in the pool area is coming to the top of the old retaining wall.

Carlson said that he also thinks the proposal makes sense. He said that the ordinance is designed to protect the neighbors from impactful grading decisions. Carlson said that the main floor is a foot lower than the current main floor. He said that the applicant will need to import about 600 cubic yards of soil which will likely catch the attention of the neighbors and that they should be prepared for that circumstance.

Motion to approve by Carlson based on the findings of staff. Motion was seconded by Anderson. Motion carried 6-0.

OTHER BUSINESS

Interview Walter Linder for Planning Commission Vacancy

Carlson said that there will be a vacancy due to his election to the City Council, and that Walter Linder has submitted a volunteer application for that vacancy.

Linder said that he has lived in the Walden area for 27 years and that he has a high-school aged son. He said that he has an interest in this community. He said that he is a patent lawyer, and that while he does not have planning experience, he spends a lot of time reading and understanding contracts. Linder said that he had previously served on the Planning Commission for two terms. He said that, at the time, there were a number of bigger issues in front of the city including the Saint Therese Senior Center and house massing issues.

Werneiwski said that he has worked with Walt Before and that he would be happy to have him return.

Motion by Carlson to recommend Walter Linder to the Planning Commission. Motion was seconded by Werneiwski. Motion carried 6-0.

Elect Planning Commission Chair and Vice Chair

Carlson said that because of the recent vacancies, the Planning Commission will need to elect a new chair and vice chair. Carlson said that Commissioner Werneiwski has chaired the commission before. Anderson said that he would recommend Werneiwski for the chairmanship. Werneiwski said that he would be willing to serve if elected. Motion by Carlson to elect Bob Werneiwski as Chairman of the Planning Commission. Motion was seconded by Studer. Motion carried 6-0.

Carlson said that he thinks Commissioner Anderson would make a good vice chair. Anderson thanked Carlson and said that he would accept the nomination. Motion by Carlson to elect Commissioner Jim Anderson as the Vice Chair of the Planning Commission. Motion was seconded by McNeill. Motion carried 6-0.

4210 Water Street Changes

Cooney said that the Planning Commission approved a front setback and hardcover variance in June for the property at 4210 Water Street. Cooney said that the property has sold and that the new builder is proposing some modifications. He said that the changes do not impact the variances that were approved, and that the footprint of the house would remain the same. Cooney distributed elevations of the new front façade of the home, and said that he was bringing it to the attention of the Planning Commission to ensure that they did not think the changes would require a renewed variance request.

Carlson said that none of the variances are impacted, and the house is actually being reduced in its massing. He said that this was more of an architectural change he did not think this required any additional city approvals. The other commissioners agreed. Gustafson asked about the angle of the roof line and if that impacts runoff, but he said he was not sure that the angle of the roofline was even changing.

McNeill asked about stormwater mitigation. Cooney said that those plans were submitted and approved.

LIAISON REPORT

Gustafson said that the Saint Therese sign was approved and that there was a gentleman's agreement that the sign would not be too bright. He said that the lighting should not impact the residential neighborhood.

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He said that this is his last meeting as Planning Commission liaison and that Councilmember Tony Jewett would be the new liaison and that he brings real estate experience to the position. Gustafson said that the issues that came up tonight brought up the importance of this Planning Commission's work. He said that it is important to consider the neighbors as much as you consider the applicant and that the variances that are approved will impact the standards for the future of Deephaven.

McNeill said that she has been grateful for the guidance and leadership provided by Carlson and Gustafson.

Carlson said that he has enjoyed his time on the Planning Commission very much, and that he appreciates the time and energy put forward by the other commissioners.

ADJOURNMENT

Motion by Chairman Carlson to adjourn the meeting. Motion seconded by Commissioner Werneiwski. Motion carried 6-0. The meeting adjourned at 7:54.

Respectfully submitted,
Dale Cooney
Zoning Coordinator