

**CALL TO ORDER:** Acting Chair Cindy Hunt Webster called the meeting to order at 7:00 p.m.

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

**ABSENT:** Chairman John Studer

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

**MINUTES OF November 19, 2019**

Motion by Nagle, seconded by Eaton, to approve the minutes of November 19, 2019. Motion carried 6-0.

**PUBLIC HEARINGS**

**Consider the variance requests of Kip and Heather Keller, property owners, to exceed the maximum permitted impervious surface coverage, encroach into the minimum required front yard setback, and encroach into the minimum required lake yard setback in conjunction with the renovation of the house at 20100 Minnetonka Boulevard.**

Acting Chair Webster introduced the agenda item.

Cooney presented the staff report. He said that the property owners are doing a significant renovation of the existing house on the property and that the building footprint will stay the same, but massing will be increased in several areas. Cooney said that the property depth is 71 feet, creating a highly nonconforming lake and front yard setback situation. He said that, at 14,775 square feet the property is undersized for an R-3 property. Cooney noted the house was built in 1966 according to Hennepin County records.

Cooney said that Section 1302.05(3) of the city ordinance requires a minimum lake yard setback of 100 feet from the OHW. He said that the existing deck is as close as 12.2 feet and the house is as close as 23.7 feet from the OHW.

Cooney said that on the lakeside the applicants are proposing the conversion of a deck into a screened porch with a deck above. Cooney noted that additional balconies are proposed for the lake side as well. He said that the house height will not exceed the currently existing highest ridge, but the ridge will be expanded and dormers added on the lake side. Cooney pointed out that the building height remains zoning code compliant.

Cooney said that he is generally supportive of the fact that the applicant is attempting to renovate and, to some degree, maximize on an existing non-conforming footprint. However, he said that due to the close proximity to the lake, he is not supportive of additional lake yard massing increases for the proposed screened porch and balconies. Cooney stated that a previously approved variance for a screened porch from 1988 has already been transformed into a fully-enclosed portion of the house.

Cooney said that Section 1302.05(3) of the city ordinance requires a minimum front yard setback of 35 feet. He said that the existing house is as close as 15.7 feet from the front property line. Cooney said that, similar to the lake yard, the massing on the house is growing to encompass the full height of the highest ridge and includes the addition of dormers. He said that he is supportive of this aspect of the request.

Cooney said that Section 1302.05(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25%. He said the applicant is proposing an impervious surface area of 36.7% and is seeking a variance to exceed the maximum impervious surface area by 11.7%. Cooney noted that the

property is currently at 37% impervious area and that the proposed impervious surface is a slight reduction from existing conditions.

Cooney stated that, technically, the impervious surface area variance would require mitigation to 25% impervious. He said that, in this case, however, the applicant is simply reconfiguring existing at-grade impervious areas and staff is recommending that mitigation not be required for the property.

Cooney said that the applicant has presented two design options, including a preferred option (Option B). He said that he has no preference for either option and is supportive (with conditions) of the applicant's preferred option.

Cooney said that he recommends approval of the variance requests to encroach into the lake yard setback by 76.3 feet, encroach into the front yard setback by 19.3 feet, and exceed the maximum permitted impervious surface area by 11.7%, for the property at 20100 Minnetonka Boulevard, as proposed.

He said that the recommendation is conditioned that:

- No further expansion of the lake yard deck (including the upward expansion of the proposed screened porch) or balcony areas be permitted.

Cooney 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. The applicant is attempting to renovate and existing nonconforming house within the existing house footprint on a shallow (71 foot) lot which is 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?

Yes. Aspects of the request put the property to use in a reasonable manner. The applicant is attempting to renovate and, to some degree, maximize on an existing non-conforming footprint on a shallow lot. However, due to the close proximity to the lake, the additional lake yard massing increases for the proposed screened porch and balconies are not reasonable. The reconfiguration of nonconforming impervious areas is a reasonable reallocation of the nonconforming impervious surface for the property.

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

Yes. The property depth at its shallowest point is only 71 feet. The required setbacks overlap leaving no buildable area. The applicant is maintaining the existing building footprint and expanding the house upward.

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 similar in scope and scale to other properties within the community.

Cooney concluded the staff report.

Wilcox asked about the nonconforming requirement for the deck. Cooney said that since it is going up, it is considered an expansion of a nonconformity, which requires a variance.

Daly asked about previous variances asked if there was a record of the previous impervious area. Cooney said that he did not review that information specifically, but it might be in the file. Daly said that he was curious if the hardcover had grown.

Wilcox asked about option A and B and what the city is voting on. Cooney said that the applicant's preferred option is option B.

Webster said that she would like to discuss reducing the impervious area.

Jeff Konen, builder and representative for the applicants, said that option B would be to elevate the basement ceiling height beneath the kitchen and dining area. He said that the applicants would really like to add the lakeside patio and would be willing to look at removing additional impervious areas.

Webster said that she was concerned about the intensification of the lakeside with the patio.

Konen said that eliminating the balcony above the current screened porch would also be a consideration.

Daly asked if the circle driveway was necessary and if impervious could be removed that way. Konen said that it was not essential and could be removed.

Wilcox asked if the property owners would rent out the house. Konen said that he didn't know for sure, but didn't think so.

Webster said that she is concerned about not having a plan to remove additional impervious.

Nagle asked about the difference between the patio and the deck in terms of city regulations. Cooney said that at-grade hardcover is allowed within the setback, but structures are not. He said that 25% is usually the limiting factor.

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

Wilcox said that he is generally fine with the request as proposed, but that he would like to see impervious area be reduced.

Eaton said that it is difficult to react to the plan without knowing what additional impervious is being removed. Werneiwski said that the plan in front of the commission is the plan to react to.

Cooney noted that a denial of the impervious request would simply require that the applicant keep the impervious in the existing footprint. Nagle said that it would not allow them to have patio on the lakeside. Cooney said that was correct.

Nagle said that they need to compromise if they want to get the lakeside screened porch.

Konen said that 25% impervious is an aggressive reduction. Eaton said that the request is a further reduction from what was proposed, not compliance with 25%. Daly said that mitigation is also an option.

Webster said that the lot is challenging, but that the proposal is a large increase in massing and something more could be done.

Daly said that the lot is completely nonconforming. He said that there are options for impervious area. He said that he does not have an issue with the massing changes for the house but does struggle with increasing the massing closer to the lake with the screened porch.

Werneiwski said that he is in favor of the application as proposed.

Nagle said that he does not see a side elevation showing the impacts of the proposed screened porch. Konen discussed the plans with Nagle. Webster said that it is hard to tell with only the lake yard elevation.

Webster asked if the commissioners feel they have what they need to decide. Nagle said that he would like to see a side view. Eaton said that he would like to see proposed additional hardcover removal.

Daly said that the proposed hardcover is presented and the builder noted that they could remove more impervious based on Planning Commission comments. He said that he would like to see the side elevation.

Werneiwski said that the council needs to vote on what is shown.

Nagle made a motion to approve the request for setback variances as proposed based on the recommendation and findings of staff. Motion was seconded by Eaton. Motion carried 4-2 with Werneiwski and Daly voting against.

Nagle made a motion to deny the impervious surface variance request as proposed based on the findings that the greater lake yard impervious surface area impacts were not reasonable without a further reduction in the impervious areas for the overall property. Motion was seconded by Eaton. Motion carried 4-2 with Werneiwski and Daly voting against.

Nagle asked Daly about his no vote. Daly said that he was opposed to the deck expansion, but not as concerned about the impervious areas.

**Consider the variance requests of Jacob and Allison Wert, property owners, to exceed the maximum permitted impervious surface coverage and to encroach into the minimum required lake and side yard setbacks in conjunction with construction of a new house at 20560 Summerville Road.**

Acting Chair Webster introduced the agenda item.

Cooney presented the staff report. He said that the property owners are building a new house on the property and that the design of the house is such that there are proposed encroachments into the lake yard and side yard setbacks. He said that the applicant is also seeking a variance from impervious surface area and noted that the property is 14,944 square foot R-3 property.

Cooney said that Section 1302.05(3) of the city ordinance requires a minimum lake yard setback of 100 feet from the OHW. He said portions of the proposed house are as close as 89.5 feet from the OHW. Cooney noted that the existing house on the property has a closest encroachment of 82 feet and, the footprint area within the lake yard setback for the proposed house would be reduced from existing conditions.

Cooney said that Section 1302.05(3) of the city ordinance requires total combined side yard setbacks of 25 feet with a minimum side yard setback of 10 feet. He stated that the applicant is proposing a south side yard setback of 5.7 feet and north side yard setback of 5.2 feet. Cooney said that the existing setbacks are 5.5 feet (for the shed) on the north side and 10.4 on the south side, and the proposed combined setbacks are a slight improvement from existing conditions.

Cooney noted that retaining walls over 3.5 feet must meet structure setback requirements. He said portions of the proposed retaining walls on the south side exceed 3.5 feet and are 1 foot off of the property line. He stated that the applicant is seeking a variance of 9 feet from the south side yard setback for the proposed retaining walls.

Cooney pointed out that the property is pie shaped, and it widens from 50 feet at the front of the buildable area to as wide as 75 feet in the lake yard. He said that at the proposed lake yard setback, the property is 66 feet wide. He said that, due to the shape of the lot and the lot width at the front setback, some kind of variance seems reasonable to provide appropriate driveway access and garage area. He said the main body of the house is 45 feet wide, and is built parallel to the south lot line, while the property widens out along the north property line. He said that the setback along the north property line becomes more favorable to the neighboring property to the north as it approaches the lake yard.

Cooney said that he is generally supportive of the side yard setback requests due to the pie shaped nature of the lot and the fact that the encroachments are respectful of the neighbor to the north. He said that the most problematic encroachments (including the retaining walls) face the city fire lane, further minimizing adjacent neighbor impacts.

Cooney said that Section 1302.05(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25% and that the applicant is proposing an impervious surface area of 35.2%. Cooney noted that the property is currently at 36.9% impervious area.

He said that at 14,944 square feet, it is not necessarily a small lot. Cooney said that the proposed impervious area exceeds the 5,000 square feet which would be allowed on a zoning code compliant 20,000 square foot R-3 lot. Cooney said that the proposal reduces impervious area from existing conditions and provides significant stormwater mitigation for the property. He said that the benefits provided by the proposed mitigation more than account for any impacts that a marginal reduction in impervious area (1% or 2%) would provide.

Cooney stated that the runoff from the proposed house will be collected by a series of catch basins and directed to a mitigation area below the driveway. He said that the mitigation system would overflow into the city storm sewer. Cooney noted that the city engineer reviewed the proposal and determined that the mitigation exceeded city requirements. He stated that the city engineer thought that the drainage proposal was good overall, but that details would need to be coordinated with the city.

Cooney said that the applicant is proposing to install items within the public right-of-way including portions of a trench drain and a hard connection to the city storm sewer that leads to the lake. He said that an agreement waiving the city from any liability for damage from these improvements would be required. Cooney said that the city would need to review and approve the agreement prior to the start of construction.

Cooney said that he recommends approval of the variance requests to encroach into the lake yard setback by 10.5 feet, encroach into the north side yard setback by 4.8 feet, encroach into the south side yard setback by 5.1 feet for the proposed house and 9 feet for the proposed retaining walls, and exceed the maximum permitted impervious surface area by 10.2% for the property at 20560 Summerville Road, as proposed.

He said that the recommendation is conditioned that:

- The applicant provides an agreement, subject to the city's review and approval, waiving the city from any liability for damage to the applicant's right-of-way improvements
- 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.

He said that the 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. The request is in harmony with the purpose and intent of the ordinance since the applicant is proposing to remove a nonconforming house and build a house with a comparable nonconforming footprint on a substandard, pie-shaped lot.

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

The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which encourages safe, healthy and quality housing that respects the natural environment of the community.

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

Yes. The setbacks are reasonable given the lot configuration and the existing nonconforming conditions on the property. The impervious surface area percentage is reasonable given the substandard lot size, and the existing nonconforming conditions on the property.

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

Yes. The property is pie shaped, and it widens from 50 feet at the front of the buildable area to as wide as 75 feet in the lake yard. At the proposed lake yard setback, the property is 66 feet wide. The lot width and shape create challenges to meet the setback standards for the house, particularly as it relates to the driveway access and garage. The lot sized is substandard which creates challenges for meeting impervious surface requirements. The property also has nonconforming conditions with the existing lake and north yard setbacks, and impervious surface area.

(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 similar in scope and scale to other properties within the community.

Cooney concluded his staff report.

Webster asked if there is existing drainage in the fire lane. Cooney said there is a storm drain to the lake.

Daly asked about the front setback. Cooney said that he considers the front setback from the point adjacent to Summerville Road since the neighboring property wraps around the applicant's property.

Webster asked about the city improvements. Cooney said that the various parties need to coordinate.

Wilcox said he was nervous about coordinating the work with two neighbors and the city. Cooney said that the builder is the same for both properties, so that might help.

Jacob and Allison Wert, property owners, said that they were available for questions. They said that they have lived in Deephaven since 2005.

Chad Healy of Peterssen Keller Architecture, architect for the property owners, made a visual presentation for the Planning Commission. He showed existing conditions for the property. He said that they designed the garage to be as shallow as possible and it is buried slightly into the slope. He said that the driveway courtyard is to allow a turnaround for cars on the property and not on the street.

Wilcox asked about the garage elevation. Daly said it is coming up three feet.

Webster asked about the south side yard setback. Daly noted that the retaining wall is 1 foot from the property line. Cooney noted that the house is 4.9 feet from the south property line.

Healy said that the grade was pulled back to allow for lower level windows.

Travis Van Liere, landscape architect for the applicants, said that 20580 and 20560 Summerville Road are being designed in concert to work with each other and changes to one property affect the other property. He said that the main floor of the house is close to what is there now, and that the garage is brought up three feet. Van Liere said that the goal is to keep the house and the house to the south from flooding and to direct water into the storm sewer. He said that they were trying to preserve the large trees on the lake side. He said that the impervious area is being reduced by just under 2% and that the roof water would be managed on the property.

Webster asked about removal of the shed. Van Liere said that it was going to remain. Nagle asked what the plans for the shed were. Jacob Wert said that they were not sure yet.

Eaton said that he was grateful that the three property owners were helping to fix the issues on Summerville Road.

Daly said that they are close to the property lines in some areas and asked how they came up with the design. Healy said that they were matching the 25-foot house-to-house setback spacing. He said that making the house longer impacts the lake yard setback, so they tried to keep the main living area more square.

Daly asked about a front-loading garage. Healy said that would be difficult to get in and out and that it would be a lot of mass at the front of the house.

Webster said that this is a new house that could have been more conforming. Healy said that it was difficult to fit it all on the property and meet the needs of the property owners. Webster said that she had an issue with the retaining wall so close to the property line.

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

Eaton said that he supported staff's recommendation.

Nagle said that he likes the design, but that he is concerned that the house is being pushed in all directions and that they are still encroaching into the lake yard. He said that he would have liked to have seen the lake yard shed removed as a compromise.

Werneiwski said that he supports staff recommendation.

Webster said that she has difficulty with the side yard setback. She said that she could have seen more done to push it out of the lake yard.

Daly said that he struggles with the side yard setbacks, and that they are only requesting 10.1 feet of setbacks. He said he understands the pie shaped nature, but that the closest point of encroachment is at the widest point of the lot by the lake yard.

Wilcox said that he thinks it looks good overall. He said that he struggles with the impervious area but is happy to see the mitigation reduce it to below 25% of the lot area. He said that the side yard setbacks are concerning.

Motion by Werneiwski to recommend approval based on the recommendation and findings of staff. Motion was seconded by Wilcox. Motion failed 3-3 with Nagle, Webster, and Daly voting against.

## **OLD BUSINESS**

### **Review draft ordinance regarding short-term rentals.**

Acting Chair Webster introduced the agenda item.

Cooney presented the staff report. He said that at the October Planning Commission meeting, the Planning Commission recommended that staff draft an ordinance prohibiting short term rentals. The draft ordinance is attached for review which limits rentals to not less than 30 days and not more than two tenants per year.

Cooney said that while there are ongoing concerns about enforcement, the Planning Commission felt that it was better to have an ordinance in place, since without such an ordinance, the city would have much narrower enforcement options.

Jim Blakeway of 20040 Minnetonka Boulevard, said that he is thrilled that this is being proposed.

Lois Norby of 19990 Minnetonka Boulevard, said that she is supportive of the ordinance as written.

Webster said that she is completely against this ordinance and their needs to be provisions for special events. Wilcox said that they could have 2 renters a year that would accommodate those events. Webster said that the ordinance is too strict.

Werneiwski said he agreed with Webster.

Wilcox asked about the downside. Webster said it is a solution chasing a problem and that there are not police complaints and that the city has only heard from a couple of neighbors.

Norby asked if the ordinance is consistent with surrounding communities. Cooney said that the 30-day limit is pretty standard, but that the two tenant groups is fairly unique. He said that some communities allow short-term rentals with licensing, but that is not the direction he was given.

Webster said that she would like to see licensing instead. McNeill said that there is not staffing for that.

Wilcox recommended submitting the draft ordinance to the City Council for review. Motion was seconded by Daly. Motion carried 4-2 with Webster and Werneiwski voting against.

#### **LIAISON REPORT**

McNeill said that the Lake Minnetonka Care Center withdrew their application after the end of the discussion. She said that conversations are continuing about other options within the city.

McNeill said that 3216 Robinsons Bay Road tried to ask for their request to be tabled but that the city requested that they withdraw the application.

McNeill said that 20580 Summerville Road was approved and that the property owners have been working with the city a lot on the issues in this area. She said that the lake yard setback was approved, including the pool. She said that she was the dissenting vote on the request.

McNeill said that the city approved conduit bonding for Eagle Ridge Academy. She said that the warming house is not open yet due to city liability issues until the ice reaches 6 inches in depth.

#### **ADJOURNMENT**

Motion by Eaton to adjourn the meeting. Motion seconded by Nagle. Motion carried 6-0. The meeting adjourned at 9:02.

Respectfully submitted,  
Dale Cooney  
Zoning Coordinator