

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

PRESENT: Chairman Werneiwski, Jeff Eaton, Doug Nagle, John Studer, and Cindy Hunt Webster.

ABSENT: Commissioner John Daly and City Council Liaison Melissa McNeill

OTHERS PRESENT: Mayor Paul Skrede and Zoning Coordinator Dale Cooney

MINUTES OF JANUARY 15, 2019

Motion by Werneiwski, seconded by Eaton, to approve the minutes of January 15, 2019. Motion carried 5-0.

PUBLIC HEARINGS

Consider the Conditional Use Permit request of Hughes Dental to install an externally illuminated monument sign at 18305 Minnetonka Boulevard.

Werneiwski introduced the agenda item.

Cooney presented the staff report. He said that the applicant is proposing to install an externally illuminated monument sign for their business. He said the business currently has a sign located on the Deephaven Court property at 18279 Minnetonka Boulevard. Cooney said that city code Section 1115.04(2) states that no sign shall be erected, altered, reconstructed, maintained or moved in the city without first securing a Conditional Use Permit. He said that the code further states the content of the sign shall not be reviewed or considered in determining whether to approve or deny a sign permit.

Cooney said that city code Section 1115.09 (a) states that "the size of a sign may not exceed 15 percent of the wall area of the front façade of the structure in which it is located and in no case exceed 100 square feet for all other types of signs." He said that the applicant is proposing a 2-sided sign with 45 square feet per sign face. He noted that the base of the sign is 30 inches tall and includes the property address. Cooney said the 90 square feet of signage are within the limits of the above criteria for site signage.

Cooney said that city code Section 1115.09 (a) states that "Monument signs shall not exceed one hundred (100) total square feet of display area and shall not exceed eight (8) feet in height as measured from grade five (5) feet from the base of the monument or V-shaped sign. The total permitted square foot display area includes all faces of a monument or V-shaped sign." He said the sign meets the above criteria.

He stated that city code Section 1115.03(22) defines Illuminated Sign as "Any sign, whether exterior or interior, which contains an element designed to emanate artificial light internally or externally." Cooney noted that the proposal would illuminate the sign externally with not more than two ground mounted lights per side. Cooney said that Section 1305.03 limits the hours a business can sell goods and services to consumers to only between the hours of 6 AM and 9:30 PM and states that interior and exterior lighted signs permitted to businesses may operate during business hours only.

Cooney said that, as drawn, the sign would encroach into a public drainage and utility easement. He said that he would recommend that the sign be placed beyond that easement. Cooney noted that the business currently has a sign located on the Deephaven Court property which will need to be removed as a condition of this request.

Cooney said that he recommends approval of the conditional use request to install a 90 square foot externally illuminated monument sign as proposed for the property at 18305 Minnetonka Boulevard. He

said that there is a need to advertise the businesses and upon review of the application, it was determined that (a) the proposal will have no impact on the overall development of the community; (b) there will be no impact on the character and development of the neighborhood; (c) there will be no impact on the health, safety and welfare of the occupants of surrounding lands; (d) there will be no impact on traffic or parking conditions due to this signage; and (e) there will be no negative impact on property values on the subject property or those in the surrounding area.

Cooney said that the recommendation is made with the following conditions:

- a) that the hours of illumination for the sign be as outlined in Section 1305.03 of the ordinance (only illuminated between the hours of 6 AM and 9:30 PM)
- b) that the location of the sign be placed beyond the utility and drainage easement.
- c) the Hughes Dental sign located on the Deephaven Court property at 18279 Minnetonka Boulevard shall be removed as a condition of this request.

Webster asked about the existing and proposed location of the sign. Cooney said that the red line is the proposed location, and that it is shown within the utility easement. Webster asked about potential sidewalks. Cooney said that the existing sidewalks are shown, and those encroach into the property. He said that any new sidewalks would need to be within the public right-of-way, and certainly could not encroach further than existing.

Eaton asked if this was the only business in the building and if there would be any other sign requests for this property. Rich Hughes, owner of the property, said that he talked to the tenants and they did not want signage. Eaton said that he was concerned about lack of signage for other tenants. Werneiwski said that there is only 10 more square feet available.

Eaton asked about the lighting since there are no office hours for Hughes Dental at night. Amy Hughes, applicant, said that it was for visibility and marketing.

Studer asked about the sign in the utility easement. Amy Hughes said that moving it out of the easement is not a problem.

Werneiwski opened the public hearing.

Gary Peterson, property owner at 18148 Minnetonka Boulevard, asked about normal size for signage. He said that there are a lot of variances and that he has adhered to the ordinances for 70 years. Werneiwski said that this is not a variance but a conditional use permit that is required new signs. Peterson said that he was unaware that you could have an illuminated sign unless it was on the building. Werneiwski said that it is permitted and that St. Therese Church is one example.

Werneiwski closed the public hearing.

Motion by Webster to recommend approval of the request as proposed based on the recommendation and findings of staff. Motion was seconded by Nagle. Motion carried 5-0.

Consider the variance request of Paul and Kathy Asao to exceed the maximum permitted accessory structure height in conjunction with the construction of a new garage/accessory dwelling unit at 4748 Vine Hill Road.

Werneiwski introduced the agenda item.

Cooney presented the staff report. He said that Paul and Kathy Asao, property owners, are requesting a variance to exceed the maximum permitted accessory structure height to build a new garage with an accessory dwelling unit on the second level. He said that the applicants have an adult son with autism and are seeking a semi-independent living arrangement for him. Cooney said the property is zoned R-2

and is 26,432 square feet in size. He stated that Section 1302.04(4) of the zoning ordinance limits accessory structure height to 15 feet. The applicants are proposing an accessory structure height of 26 feet.

Cooney noted that accessory dwelling units are prohibited by city code, therefore the height variance is only one of a several aspects of this request that would require city approval. He said that the city council would also need to authorize a sewer connection to the accessory structure. He stated that Per Section 1005.10 of the city code, "not more than one house or building may be supplied from one sewer connection, except through the action of the Deephaven City Council."

Cooney said that accessory dwelling units are not a permitted use for accessory structures. He noted that Section 1310.10(1)(h) states that no detached accessory structure shall be used for human habitation. He also noted that, per Section 1315.02, granting an exception to this regulation is beyond the scope of a variance request. He said the only way to permit the request would be to amend the city code to permit accessory dwelling units by some mechanism such as a conditional use permit or an interim use permit. Cooney said that, if the city wanted to go in that direction, the city attorney has offered input into this request and has recommended interim use permits as the best mechanism for this particular purpose.

Cooney said that if the city were to allow accessory dwelling units via some city code mechanism, the accessory structure height variance may be granted via the practical difficulty standard. He stated that Section 1302.04(4) of the zoning ordinance limits accessory structure height to 15 feet. He said the applicants are proposing an accessory structure height of 26 feet and are seeking a variance of 11 feet from the maximum permitted accessory structure height.

Cooney said that the granting of the accessory structure height variance request is based wholly on the city's willingness to allow accessory dwelling units under certain circumstances. Cooney said that he did not make a recommendation on this issue, but rather presents possible findings for or against the request depending on which path the city would prefer to take:

Cooney said that if the city were to choose to amend the code to incorporate a CUP or IUP for accessory dwelling units, possible findings for approval based on the review and approval process in section 1315 of the ordinance are as follows:

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

Yes. The purpose and intent of the ordinance is to limit excessive accessory structure height on a property to prevent accessory structures that may be overly large relative to the principal structure. The proposed structure is proportionate to the scale of the principal structure while also allowing for living space above the detached garage.

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

Yes. The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which states that "The City of Deephaven may adopt land use regulations that allow the development of a variety of housing types and costs and that allow flexibility in design and site planning."

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

Yes. While the accessory structure is taller than permitted, the house is not served by an attached garage. The proposed height is a reasonable height to accommodate both an attached garage and an accessory dwelling unit.

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

Yes. The house is served only by a detached garage and it is not practical to provide garage space and accessory dwelling unit space under the current accessory structure limitations.

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

The proposed alterations would not alter the essential character of the locality. The existing garage is relatively large. The proposed structure would not be a significant change from existing conditions, and the location of the structure is well screened from adjacent properties.

Cooney said that if the city is not willing to consider a CUP or IUP for accessory dwelling units, possible findings for denial based on the review and approval process in section 1315 of the ordinance are as follows:

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

No. The purpose and intent of the ordinance is to limit excessive accessory structure height on a property to prevent accessory structures that may be overly large relative to the principal structure and to help prevent the creation of illegal accessory dwelling units. The proposed structure is to be used as an accessory dwelling unit.

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

Yes. The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which states that "The City of Deephaven may adopt land use regulations that allow the development of a variety of housing types and costs and that allow flexibility in design and site planning."

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

No. Accessory dwelling units are prohibited by city code. Since the height variance request is made solely to further the objectives of creating an accessory dwelling unit, the request is not reasonable.

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

No. The request is strictly made to serve the purposes of the landowner and his family and is not related to the specific circumstances of the property.

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

Yes. Accessory dwelling units are prohibited by city code and creating an accessory dwelling unit would alter the essential single-family character of the locality.

Cooney concluded his staff report.

Werneiwski said that this was an interesting request, since they need a variance for a height restriction but that the city code would also need to be amended to allow accessory dwellings. He said that it sounds like the right thing to do, but that he is struggling with the precedent and the possible sunset provisions.

Webster asked how the sunset might be enforced if the property were sold. Cooney said that the interim use permit would specify the limitations or sunset provisions, and that it could be recorded against the property.

Eaton asked what could be done at that time. Studer said that the sewer would be disconnected, but that the structure would be a nonconforming use.

Webster said that she completely understands and wants to help make it work, but she said she would be more willing to allow variances for the principal structure. She said that she struggles more with the accessory dwelling unit and the possible proliferation of accessory dwellings.

Eaton said that the city laws could make very limited, specific circumstances for allowing such a use.

Studer asked if the structure were connected to the house, could it then not be considered an accessory structure. Cooney said that there are code requirements on the length and width of the connection, but that it could be done in that manner. Studer said that he understands the idea of having a separate dwelling, but is also worried about more of these.

Nagle said that he understands the emotional component of the issue, but has issues with the height and the secondary dwelling unit. He said that the applicants are planning a house expansion, which is also a significant project. Nagle said that seems like an opportunity to make an adjustment to the plans and attach the garage to the house. He said that would not require a variance.

Paul Asao said that their son is graduating from his current program and that this is the time to allow him to try to live as independently as he can. They thought this would be the best solution for him and this is preferential to a group home. Kathy Asao says that they have been told they need to create the least restrictive, most independent environment for their son, and that there are psychological barriers when a parent is just down the hall.

Webster asked if there could be a separate entrance for the attached unit that is comparable to an apartment. Werneiwski said that it is not the city's role to design the solution. Webster said that she understands but that she is looking for a solution and is not in favor of a separate dwelling unit.

Kathy Asao said that special needs are becoming more of an issue and that this will not be the last similar application for the city. Eaton said that the city would need to amend the code to make an allowance for this.

Asao asked Cooney if there were other cities that made accommodations for this type of situation. Cooney said that many cities allow accessory dwelling units as conditional uses. He said that the city's goal is to limit the proliferation of rental units within the city. Cooney said he understands that is not her intention, but it is hard to know what future owners might want to do with the property.

Eaton asked what is proposed for the addition. Paul Asao said that he would like to bump out the house on the back to allow for a larger area for entertaining.

Werneiwski said that the city code has regulations about the width and length of the connection, but then no variance would be needed. Studer said that there does not need to be a door between the structures, but only a shared wall.

Webster said that she would be very interested to see the garage attached to the house.

Werneiwski opened the public hearing. Hearing no other public comments, Werneiwski closed the public hearing.

Kathy Asao asked, if they did what the city was proposing, what would prevent someone from renting out that unit. Studer said it would be similar to renting a room in a house, but he said that the biggest issue is the secondary sewer connection.

Paul Asao said that Minneapolis has allowed the laws to help people with special needs. Eaton said that is a very different community. Asao said that he sees a lot of houses with these detached units within Deephaven. Eaton said that they are detached garages or sheds, but they are not dwelling units. Asao said that there is one right across the street from Deephaven Elementary. Nagle said that is grandfathered and could not be built today.

Asao asked if there was no way this could get done as a detached structure. Werneiwski said the variance needs to be approved, the code needs to be amended and the sewer connection needs to be approved.

Studer clarified that the Planning Commission only makes a recommendation and that the City Council will make the final decision.

Webster said that she believes there is a way to have the separate space.

Werneiwski said that the Planning Commission will vote but that the applicants can continue on to the City Council to hear their comments. He said that they can withdraw at any time before the council actually votes, but if the city denies the request there would be a 6 month wait period to reapply. He said that there was little risk in taking this along to the City Council.

Motion by Eaton to recommend denial of the variance request as proposed based on the denial findings found in the staff report. Motion was seconded by Nagle. Motion carried 5-0.

Planning Commission Vacancy

Interview candidate Josh Wilcox to fill vacancy on the Planning Commission.

Werneiwski introduced the agenda item.

Wilcox introduced himself and said he lives at 3360 Hill Lane. He said that he has lived in the Twin Cities for 15 years and has lived in Deephaven for a year and a half. He said that he has extended family in Deephaven and grew up coming to Deephaven to visit family. He said that he has known that he wanted to live in Deephaven for a long time.

He said he has three children, one of whom has spina bifida. Wilcox said that it was good to hear the thought process tonight regarding the accessory dwelling unit for the adult child with autism. He said that he Deephaven's character is special and being a Planning Commissioner is a great way to get involved.

Eaton asked about Wilcox's job. Wilcox said that he handles commercial real estate investment as well as residential investment products.

Webster asked about his statement on his application regarding achievable and strategic development initiatives. He mentioned Chowan's corner retail development and the commercial mix in that area. He said that there will be a new wave of owners likely to come through and what can the city do to help make that a successful area.

Webster asked about the typical variances. Wilcox said that he wants to keep Deephaven as it is since he loves the character.

Nagle asked if he ever does projects in Deephaven. Wilcox said that his company does not invest in Deephaven projects, and is generally out of state, but has some investments in-state including a small portion of the old Ford site in Saint Paul.

Wilcox asked how active the debate on the Planning Commission usually is. Eaton said that there are some flash points in the city, particularly as they relate to the lake. Skrede said that is why the public hearing is held at the Planning Commission level in order to allow candor and debate while not in front of the cameras.

Motion by Eaton to recommend appointment of Josh Wilcox to the Planning Commission for a three-year term expiring on April 1, 2022. Motion was seconded by Studer. Motion carried 5-0.

Planning Commission Reappointments and 2019 Planning Commission Chair & Vice-Chair

Werneiwski introduced the agenda item and motioned to recommend Cindy Hunt Webster for reappointment to a second three-year term expiring on April 1, 2022. Motion was seconded by Nagle. Motion carried 5-0.

Werneiwski said that he was happy to step aside as Planning Commission chair or stay on as chair as needed. Studer said that he would be interested in serving as chair for his final year on the Planning Commission. Webster said that she was interested in serving as vice-chair.

Motion by Werneiwski to recommend John Studer to serve as Planning Commission chair and Cindy Hunt Webster to serve as Planning Commission vice-chair. Motion was seconded by Eaton. Motion carried 5-0.

LIAISON REPORT

Mayor Skrede presented the liaison report. He said that the variance request at 3275 Robinsons Bay Road was approved 5-0. He said that the variance requests at 20050 Lakeview Avenue were approved 3-2.

Skrede gave an update about the Minnetonka Boulevard project and said that there would be an open house on the project on April 4 at St. Therese Church.

ADJOURNMENT

Motion by Werneiwski to adjourn the meeting. Motion seconded by Eaton. Motion carried 5 -0. The meeting adjourned at 8:32.

Respectfully submitted,
Dale Cooney
Zoning Coordinator