

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

**PRESENT:** Chairman Bob Werneiwski, Commissioners Walter Linder, Melissa McNeill, John Studer, and Cindy Hunt Webster

**ABSENT:** Commissioner Bill Sharpe, City Council Liaison Tony Jewett

**OTHERS PRESENT:** Mayor Paul Skrede and Zoning Coordinator Dale Cooney

**MINUTES OF January 17, 2017**

Motion by Werneiwski, seconded by Webster, to approve the minutes of January 17, 2017 as written. Motion carried 5-0.

**PUBLIC HEARINGS**

**Conditional Use Permit request of Lakeside Nails and Spa to install illuminated and non-illuminated commercial signage at 18202 Minnetonka Blvd, Suite 101B**

Chairman Werneiwski introduced the agenda item. He said that the applicant is requesting a Conditional Use Permit to install a 16 square foot illuminated business identification sign and 7.9 square feet of window signage.

Zoning Coordinator Cooney summarized the staff report. He said that Lakeside Nails and Spa recently opened for business at 18202 Minnetonka Boulevard, Suite 101B and installed new signage without first getting a Conditional Use permit. He said that the business owner, Phong Tran, has been working with staff to get the required permit. Cooney said that the business is requesting a Conditional Use Permit to construct a 16 square foot illuminated business identification sign that would be attached to the structure and window graphics totaling 7.9 square feet. He said that the business, located in the C-1 (Commercial District 1) zoning district, is a permitted use within the zoning district. Cooney said that the image on page three of this staff report shows the existing signage on the property including the illuminated sign, the window graphics, and the temporary banner for the grand opening of the business.

Cooney said that the zoning ordinance 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 it further states the content of the sign shall not be reviewed or considered in determining whether to approve or deny a sign permit.

Cooney noted that the 8 foot x 2 foot illuminated business identification sign is lit internally with an LED light. He said that the size of the sign is the same as the sign approved in 2016 for Innate Health Chiropractic in the same building. Cooney said that Section 1305.03(1) limits the hours a business can sell goods and services to consumers to only between the hours of 6 AM and 9:30 PM. He said that Section 1305.03(3) states that interior and exterior lighted signs permitted to businesses may operate during business hours only and that the business hours listed on Lakeside's website were: Monday through Friday 9:30 a.m. to 7:30 p.m.; Saturday 9:30 a.m. to 6 p.m.; Sunday: 11 a.m. to 6 p.m.

Cooney said that 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 front facade of this portion of the building totals 392 square feet. Cooney noted that the proposed sign area of the window graphics and illuminated sign total 23.9 square feet, which equals 6.1% of the front façade area.

Cooney said that he recommends approval of the conditional use request to install 23.9 square feet of commercial signage, including a 16 square foot illuminated sign. He said that there is a need to advertise

the business and upon review of the application, it was determined there would no negative impact on the development of the community, the character of the community or on the health, safety and general welfare of the occupants of surrounding lands. Cooney said that the proposal would not impact traffic conditions or impact property values. He said that the recommendation is conditioned that the hours of illumination be as outlined in Section 1305.03 of the ordinance.

Cooney concluded his staff report.

Linder asked if the proposal was only to operate the sign during business hours which are limited by the ordinance. Cooney said that was correct.

Chairman Werneiwski opened the public hearing. Hearing no public comments, Werneiwski closed the public hearing. Werneiwski surveyed the commissioners for comments. The commissioners expressed support of the project.

Motion to recommend approval by Werneiwski based on the findings and conditions of staff. Motion was seconded by Webster. Motion carried 5-0.

**Variance request of Stinson Builders to exceed the maximum permitted grade alteration in conjunction with the construction of a new house at 3675 Northome Road**

Chairman Werneiwski introduced the agenda item. He said that Section 1312.04 of the zoning ordinance requires a variance for any land alteration greater than 3 feet at any point, and that the applicant is proposing land alteration of up to 6 feet in some areas.

Zoning Coordinator Cooney summarized the staff report. He said that Stinson Builders, builder for property owners, is requesting a variance to exceed the maximum permitted grade alteration in conjunction with the construction a new house at 3675 Northome Road. Cooney said that the 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 noted that city records do not indicate that the property has ever had a house on it. He said that while a significant portion of the lot will need to be regraded to accommodate the house and the driveway, only those areas on the walkout/lakeside portion of the property trigger the need for a variance.

Cooney said that the applicant has stated that their principal reason for requesting the variance is to allow wheelchair accessible egress from the lower level. Cooney said that the home is designed to be accessible, and will include an elevator. He noted that the applicant states that much of the property will remain in its natural state, with areas outside the immediate vicinity of the house remaining wooded and unaltered.

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 noted that a portion of the property contains a wetland which will not be impacted by the building area. He said that the Minnehaha Creek Watershed District will review the survey and issue permits at the building permitting phase.

Cooney noted that the property was assessed \$2,400 for a sewer lateral and \$2,460 for sewer trunk fees when the sewer system was originally installed. He said that, for those properties that were originally assessed, but upon which a home was not built, it is the policy of the city to charge an additional \$2,400 at the time of building permit to account for ongoing maintenance to the system during that time.

Cooney said that he recommends approval of the variance request to exceed the maximum permitted grade alteration by 3 feet for the property at 3675 Northome Road, as presented. He said that his recommendation is based on the following findings:

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

Yes. The purpose and intent of the ordinance is to 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?

Yes. The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which encourage 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 proposed house and grading are reasonable for the property, and are comparable in scope and scale to surrounding properties.

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

Yes. The property has never had a house on it before, and therefore additional regrading is required to create the appropriate buildable area.

(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.

Werneiwski asked about a wetland survey. Cooney said that there had been a violation about a year ago, but that was resolved with the watershed district. Webster asked, if there was not a house, how had there been a violation. Cooney said that there was some encroachment into the wetlands for a path leading down to the lake. Webster said that the path still exists. Cooney said that was correct.

Edward Bergmark, property owner, said that he put an offer on the lot with the condition that the previous owner demonstrate that the improvements on the lakeside have been done legally. He said that the previous owners had to settle the issues and make modifications. Webster said that she would like to see that information. Cooney said that, as part of the process, the watershed district provides permits and also notes any concerns.

Chairman Werneiwski opened the public hearing. Hearing no public comments, Werneiwski closed the public hearing. Werneiwski surveyed the commissioners for comments.

Studer said that he did not have an issue with the proposal and that the additional hardcover will drain towards the wetland. Werneiwski agreed.

Webster said that, in general, she disagreed with the variance request for a new lot. She said that the property owners should not design a new house knowing that it would need variances.

McNeill says that she understands Webster's point but that she also appreciates the need for accessibility. She said that it is a small portion of the property that is requesting the variance.

Linder asked how much surface area would be impacted by the variance request. Cooney said that he did not do that calculation, but that it was the walkout area by the patio. Jason Stinson, applicant and architect,

showed Linder the impacted area. Linder said that he was reluctant to vote on the proposal since he was unsure of what he was voting on.

Skrede suggested that the variance surface area be highlighted for the city council and that the watershed district information be provided.

Motion to recommend approval by McNeill based on the findings of staff, with the conditions that the variance areas are highlighted and that Minnehaha Creek Watershed District wetland information was also provided for the City Council. Motion was seconded by Webster. Motion carried 4-0 with Linder abstaining.

**Variance request of the minimum front yard setback for the expansion of an attached garage at 3965 Walden Road**

Chairman Werneiwski introduced the agenda item. He said that Section 1302.04(3) of the zoning ordinance requires a front yard setback of 50 feet. He said that the applicant proposes a front yard setback of 31 feet, 1 inch to expand an existing attached 2 car garage into a 3 car garage.

Zoning Coordinator Cooney summarized the staff report. He said that Matt and Lisa Keithly, property owners, are requesting a variance to expand an existing attached 2 car garage into a 3 car garage. He said that the expansion would require a variance of the front yard setback. Cooney said that the property is a triangular shaped, undersized R-2 property and at 18,832 square feet in size, it is 47% of the minimum lot size for an R-2 property.

Cooney said that the project proposes a 14' x 24'-2" garage addition which would sit 31'-1" off of the front property line. He said that the proposed addition maintains the existing line of the garage, but because of the triangular nature of the property, the addition is closer to the front property line by approximately 4 feet.

Cooney said that the zoning ordinance requires a front yard setback of 50 feet and that the applicant proposes a front yard setback of 31 feet, 1 inch. He said that the applicant is seeking a variance of 18 feet, 11 inches from the minimum required front yard setback.

He said that the house's setbacks are reversed, since the front of the house, which is oriented towards Walden Road has a shallower setback than the rear yard, which faces Walden Lane. Cooney said that the city has considered the "front" yard as the yard that hosts the driveway. He said that in this case, the driveway clearly enters via the back of the house. He noted that if the Planning Commission determines that the "front" is actually the yard that hosts the driveway; the requested variance would become a front yard encroachment of 9 feet, 5 inches.

Cooney noted that the requested encroachment is caused by the existing non-conforming setback coupled with the triangular shape of the lot, both of which are conditions unique to the property and not created by the homeowner. He said that he proposal complies with the remaining setback requirements, building coverage limitations, and height limitations outlined in Section 1302.04, and the maximum permitted grade alteration permitted in Section 1312.04. He said that no stormwater mitigation requirements are triggered by the expansion.

Cooney said that he recommends approval of the variance request to encroach 18 feet, 11 inches into the minimum required front yard setback for the proposed expansion of the principal structure at 3965 Walden Road, as presented. He said that his recommendation was 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 to improve an existing non-conforming house constructed in 1958, per Hennepin County tax records.

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

The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which encourage residents to maintain and/or improve older homes which will promote diversity of housing in Deephaven.

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

The expansion of the non-conforming footprint of the house is reasonable, and the additions remain within the scope and scale of surrounding properties.

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

Yes. The existing house was constructed in 1958 and has legal non-conforming setbacks. The proposed encroachments are due to the both non-conformities of the existing structures and the triangular shape of the lot.

(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 proposed project is a modest expansion of existing conditions.

Cooney concluded his staff report.

Werneiwski said that Walden Road is being considered the front, but that usually the driveway entrance is considered the front which is Walden Lane. Cooney said that it is not a hard and fast rule, and that in this case the front door of the house and the address are both Walden Road. He said it was academic since it would only change the yard for which the variance is requested.

Studer said that he did not have any issues with the proposal.

McNeill asked if the height of the garage addition would exceed the height of the existing garage. Cooney said that it would not.

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

Matt Keithly, homeowner, said that there is currently a driveway pad where the garage addition would be. He said that they would carry the existing garage roofline for the garage addition. He said that it is an unusual situation with the triangular nature of the property.

Werneiwski closed the public hearing.

Linder said that he lives in the neighborhood and that he thinks this is a relatively minor change.

McNeill said that she looked at the property when she was house hunting and is familiar with the home and the challenges. She said that she was supportive of the request.

Motion to recommend approval by McNeill based on the findings of staff. Motion was seconded by Studer. Motion carried 5-0.

**Variance requests of Matt Hendricks to encroach into the minimum front and exterior side yard setbacks, to exceed the maximum permitted accessory structure footprint, and to exceed the maximum permitted accessory structure height in order to rebuild a non-conforming accessory structure at 19865 Lakeview Avenue**

Chairman Werneiwski introduced the agenda item. He said Matt Hendricks is requesting to encroach into the minimum front and exterior side yard setbacks, to exceed the maximum permitted accessory structure footprint, and to exceed the maximum permitted accessory structure height in order to rebuild a non-conforming accessory structure at 19865 Lakeview Avenue

Zoning Coordinator Cooney summarized the staff report. He said that Matt Hendricks, property owner at 19865 Lakeview Avenue, is requesting several variances in order to build a new accessory structure that would replace two smaller, legal, non-conforming structures on the property. Cooney said that the non-conforming accessory structures were recently removed from the property. He said that the proposal improves on the non-conforming setbacks from the previous structures. Cooney said that the proposed garage is also taller, larger, and includes a wrap-around deck, all of which exceed zoning code limitations.

Cooney said that the zoning ordinance requires a front yard setback of 35 feet and an exterior side yard setback of 25 feet and that the applicant proposes a front yard setback of 15 feet and an exterior side yard setback of 15 feet. He said that the applicant is seeking a variance of 20 feet from the minimum required front yard setback, and 10 feet from the exterior side yard setback. While still non-conforming, in both cases the setbacks have been significantly improved from previously existing conditions.

Cooney said that the zoning ordinance limits the height of accessory structures to 15 feet. He said that the applicant is proposing an accessory structure height of 26 feet, 7 inches tall and is seeking a variance of 11 feet, seven inches from the maximum permitted accessory structure height. He said that since the non-conforming structures were removed last fall, staff was unable to measure the previously existing conditions. Cooney said that, based on photographs provided by the applicant and comparisons with nearby structures, staff estimates the height of the tallest previously existing accessory structure to be no taller than 20 feet. He said that the previous structure was a 1 ½ story garage and that the applicant is requesting 2 full stories.

Cooney said that the previously existing accessory structures had a square footage of 793 square feet, exceeding the 700 square foot limit within the zoning district. He said that the applicant is requesting a garage footprint of 864 square feet and a deck footprint of 616 square feet, for a total accessory structure footprint of 1,480 square feet. He said that the applicant is requesting a variance to exceed the maximum allowable accessory structure footprint by 780 square feet.

Cooney noted that the building plans show a wet bar on the second level of the accessory structure. He said that city code does not permit sewer connections to accessory structures, which would prohibit the inclusion of running water in this area. Cooney pointed out that there is no limitation on the use of the space as a bar area which may include appliances or other non-sewered amenities.

He said that the proposal complies with the remaining setback requirements and building coverage limitations outlined in Section 1302.05, and the maximum permitted grade alteration permitted in Section 1312.04. Cooney noted that no stormwater mitigation requirements are triggered by the expansion.

Cooney said that state law allows that legal nonconformities may be continued through repair, replacement, restoration, maintenance, improvement, but not including expansion. He said that since the structure is not being rebuilt as it previously existed; it is not a legal nonconformity. However, Cooney noted that the city has typically recognized existing conditions when considering variance approvals. Cooney said that in this case, there are two significant expansions of previously existing conditions: the accessory structure footprint, and the accessory structure height and that he has concerns with both.

He said that the height of the building is expanding by approximately 6 feet, 7 inches and while this enhances the usable space of the second floor, it also exceeds the city's height restrictions for accessory structures by over 11 feet. Cooney said that he does not feel that such an expansion is warranted. He

said that he also has concerns about the visual impact from the increased massing caused by converting a 1 ½ story, 20 foot tall structure into 2 full stories at the increased height.

Cooney said that he appreciates the desire of the applicant to create a more modern sized garage. And improving the setbacks may merit some expansion in size of the garage. He said that the previous garage footprint would accommodate a 24 x 33 garage, and the applicant is asking for a 24 x 36 garage, which the city might find reasonable. However, Cooney said that the 616 square foot deck greatly expands the footprint of the structure in a way that far exceeds existing conditions.

Cooney stated that the deck not only expands the footprint, it also fundamentally changes how the structure might be used. Instead of a second-story workshop or den, it now becomes a 1,480 indoor/outdoor entertainment space with a lake view. He said that such a significant change in function for the structure could cause ongoing issues within the neighborhood, if not by this homeowner then by a future homeowner. He said that he believes that the proposed use is inconsistent with the purpose and intent of the zoning ordinance.

Cooney said that since the property itself has none of the typical limitations (size, slope, shape) found in variance requests, the sole consideration of the “practical difficulty” standard in this case is the previously existing nonconforming conditions. He said that the applicant is proposing improved setbacks in exchange for an expansion/modernization of the overall structure and that while some expansion may be warranted, he believes the request goes too far and recommends denial of the application.

Cooney said that he recommends denial of the variance requests as presented based on the following findings:

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

No. While rebuilding a nonconforming structure is permitted by state law, the expansion in the size and fundamental change of use of the accessory structure is not compatible with the purpose and intent of the ordinance.

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

Yes. The request is consistent with the Comprehensive Plan which seeks to encourage re-investment in single family housing.

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

No. The replacement of nonconforming structures is reasonable, but the proposed expansion in size and use that would greatly exceed zoning maximums and make the proposal unreasonable.

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

Yes. The property hosts two existing nonconforming structures which became part of the property when two properties were combined into one.

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

Yes. The expansion of both height and footprint from previously existing conditions would be out of scale with the locality.

Cooney said that he discussed his concerns with Matt Hendricks, the property owner, last week and that Mr. Hendricks wanted to work with the city and the neighbors and was willing to make modifications to the proposal.

Cooney concluded his staff report.

Linder asked for confirmation that the attached deck is subject to the accessory structure footprint limitation. Cooney said that was correct.

Chairman Werneiwski opened the public hearing.

Shane Hudella, a family friend of the Hendricks, introduced himself and Kim Hendricks who is the property owner. Cooney said that Hudella has served as the liaison for the application since Mr. Hendricks travels frequently for work. Kim Hendricks said that they live in Edmonton during the hockey season. Hudella said that they wanted to conform to the norms of the neighborhood and that the owners were new to the neighborhood.

Jill Gardiner of 19895 Cottagewood Avenue said that she knows the neighbors, and that they are great people, and knows that they are flexible and willing to work with the community.

Tom Kenyon of 19835 Cottagewood Avenue says that he has a long history in the neighborhood. He said that the Hendricks should invite the neighbors over to discuss what is going on. Kenyon said that he wants to be reasonable, but that the structure would be as tall as his house.

Studer says he sees the need to reconstruct the old structure, but he does not think the applicant was working within the bounds of the current ordinance. He said that height and size would be a concern.

Hudella asked if it would be best to resubmit as a 24 x 36 standard height garage in the proposed footprint. Studer said that he would like to see the structure move toward conformity.

Webster asked the function of the garage. Kim Hendricks said the function would be boat and ATV storage. Webster said that she has a problem with the proposal. She said that she thinks the setbacks would still be a hazard, and that she would be opposed to the idea of a deck. She said that the structure is too big and unnecessary.

Werneiwski said that he agreed, and he has concerns about the use of the second floor. Webster said that she would not want to see an expansion of the garage size to 24 x 36.

McNeill said that the location before was awkward. She said the proposal is too tall and too large. McNeill said that she could support something more akin to the size and height of the existing structures.

Werneiwski said that he would prefer that the footprint not be enlarged, and that the height be restricted to 15 feet. Webster agreed.

Hudella said that they would like to withdraw the application and resubmit with a similar footprint, but only one story. He said that they would still request variance for the setbacks since the structure would be in the middle of the yard otherwise. Webster said that she would have a problem with the setbacks. Studer said that he would likely support the setback variances.

Kim Hendricks and Shane Hudella withdrew the application.

## **NEW BUSINESS**

### **Planning Commission Terms**

Werneiwski said that Commissioner John Studer's term expires in April and that Mr. Studer has expressed his desire to remain on the Planning Commission for a second term. Motion by Werneiwski to recommend Commissioner Studer for a second term. Motion was seconded by McNeill. Motion carried 5-0.

### **Interview John Daly for Planning Commission Vacancy**

Werneiwski introduced the agenda item.

John Daly of 18855 Park Avenue said that he moved to Deephaven in 2008, near John Studer on Azure. He said that he currently owns two Deephaven properties. He said that he is a residential home builder and renovator. Daly said that his job requires that he work on zoning issues with several different cities including Deephaven. He said that one of his biggest frustrations is putting in all of the required time and effort into a zoning request and not having the planning commission know much about the proposal that they are voting on.

Webster asked Daly the name of his company. He said his company name is Revision.

McNeill asked if he has any concerns about conflicts of interests. Daly said that of all the issues that is his biggest concern. He says that there are a number of jobs that he might bid on, but not be hired to work on. He said that those types of properties would likely come before the planning commission.

Webster asked if he has dealt a lot with variances. Daly said that he has probably had 7 to 12 variance requests over the last 12 months and that it is about 25% of his job.

Cooney asked if he will have difficulty with the schedule commitment because of other evening meetings. Daly said that he would not.

Linder asked if Daly would be able to say no to fellow developers. Daly said that his role on the Planning Commission would be as a citizen and resident and look out for the best interests of the city. He said that the reason he chose to live in Deephaven because of its unique character and its history, and he wants to carry on that legacy.

McNeill said that he would have to recuse himself from his companies' projects. Daly acknowledged that he understood this.

Studer said that he believes that Daly's knowledge of the process will be valuable.

Skrede said that he talked to Daly when they met at Beanhaven. He said that he was impressed with Daly's ideas. Skrede said that as a builder, he was impressed that he was willing to look favorably on an escrow policy to ensure the completion of construction. Daly said that the money could be used for corrections that the city has to undertake, or to hire consultants.

Linder asked about the escrow requirements. Daly said that Orono requires \$2,500 escrow for new construction and variance requests. He said that Edina charges \$10,000. Studer asked about people who are doing a small addition and said that escrow would be punitive for them. Skrede said that there could be a sliding scale.

Skrede said that Daly's experiences with other cities would be valuable.

McNeill made a motion to recommend John Daly for the Deephaven Planning Commission. Motion was seconded by Studer. Motion carried 5-0.

#### **Elect Planning Commission Vice Chair**

Werneiwski said that the Planning Commission needs to elect a new vice chair. McNeill nominated John Studer. Studer said that he would be happy to serve as the vice chair. Motion by Werneiwski to recommend that John Studer serve as vice chair of the Planning Commission. Motion was seconded by Linder. Motion carried 5-0.

#### **LIAISON REPORT**

Skrede said that the sign for the Wabi Sabi shop was approved. He said that he appreciated how the Planning Commission worked with the concerned residents at the public hearing.

Skrede said that the City Council reviewed the first portion of the City of Deephaven's Comprehensive Plan. He said that he appreciated the work of the Planning Commission on the document. Skrede said that there were some issues with the projections from the Metropolitan Council. He said that he agreed that it was helpful to keep some elements in the plan even if there are not specific ordinances. He said that the comprehensive plan language has helped in past court cases. Skrede recounted a developer's proposal that was in violation with comprehensive plan language related to steep slopes and it was the comprehensive plan language that led to a favorable decision for the city. Skrede said that the document is more than just a homework piece and has some benefit to it.

**ADJOURNMENT**

Motion by Chairman Werneiwski to adjourn the meeting. Motion seconded by Commissioner Studer. Motion carried 5-0. The meeting adjourned at 8:46.

Respectfully submitted,  
Dale Cooney  
Zoning Coordinator