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

PRESENT: Chairman Bob Werneiwski, Commissioners John Daly, Melissa McNeill, Doug Nagle, Bill Sharpe (arrived at 7:04), John Studer and Cindy Hunt Webster.

ABSENT: None.

OTHERS PRESENT: City Council Liaison Tony Jewett and Zoning Coordinator Dale Cooney

MINUTES OF DECEMBER 19, 2017
Motion by McNeill, seconded by Studer, to approve the minutes of December 19, 2017 as written. Motion carried 6-0.

PUBLIC HEARINGS

Variance requests of Rudy Dan Luther, property owner, to exceed the maximum permitted impervious surface coverage and for a reduction to the lowest floor elevation in order to construct a new house on the property at 3244 Robinsons Bay Road.

Werneiwski introduced the agenda item.

Cooney presented his staff report. He said that the property owner has applied for variances to construct a new house on the R-2 property at 3244 Robinsons Bay Road. Cooney noted that at 47,027 square feet, the property exceeds the minimum lot size for the zoning district. He said that the existing non-conforming house, built in 1932, will be removed. Cooney said that the property is at low elevation relative to Lake Minnetonka, and therefore, a full basement cannot be constructed for the house. He said that to compensate for the low elevation, the building pad for the new house will be approximately 3 feet higher than the existing house which will allow for a crawl space and a proposed mechanical pit.

Cooney said that Section 1350.04, Subd. 10 of the zoning ordinance requires placing the lowest floor of a house (including basements and crawlspaces) at a level three feet above the ordinary high water level (OHWL) of the lake. He said that the applicant proposes to have the mechanicals for the house in the basement level and is requesting relief from this requirement for a “mechanical pit” area that would sit 1.35 feet above the OWHL and is seeking a variance of 1.65 feet from the minimum required low floor elevation. Cooney noted that the existing home has a 2,700 square foot finished basement that sits at an elevation 2.2 feet below the OWHL of the lake.

Cooney said that he City of Minnetonka Building Inspections Department has stated that they would be comfortable approving the mechanical area at the proposed elevation, as long as the equipment itself is situated above the floodplain elevation of 931. He said that the builder for the applicant has stated that they are able to comply with this condition.

Cooney said that Section 1302.04(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25%. He said that the applicant is proposing an impervious surface area of 27.9% and is seeking a variance to exceed the maximum impervious surface area by 2.9%. Currently, the property is at 29.5% impervious area.

Cooney noted that impervious surface variances for an R-2 property that exceeds the minimum lot size are rare. He said that, in 2016, the city did grant a variance to for 27.6% hardcover to allow a pool to be built at 20650 Bayview Court. Cooney noted that in that case, the steep grade necessitating a long driveway was considered a unique circumstance. He said that the property was 40,163 square feet in size.

Cooney also pointed out that city has also recognized the practical difficulty of not being able to build a finished basement due to low property elevations. He said that the undersized R-2 property at 20760 Linwood Road successfully argued that the footprint of the 5,296 square foot house was created larger in order to accommodate those areas that are typically are housed within the basement. He said that the vacant 32,161 square foot parcel was granted a variance to bring the property to 29.45% impervious.

Cooney said that, unlike the above examples, the existing property is already nonconforming in hardcover, and the proposal would reduce the nonconformity by 770 square feet. He said that the lack of a full basement creates a circumstance that would justify a larger above-ground house footprint, and the property is proposed to be at the maximum allowable structural coverage of 6,000 square feet. He said that the excess hardcover is primarily due to the expanded house foot print as the non-structural hardcover for the property is being reduced by 2,284 square feet. Cooney said that the applicant has stated that the excess hardcover is necessary to accommodate guest parking on the property that would be difficult to accommodate on the narrow Robinsons Bay Road.

Cooney said that the applicant is required to provide 136.2 cubic feet of mitigation volume. He said that the applicant is proposing to mitigate 145.2 cubic feet of stormwater mitigation via two raingardens. Cooney said that the city engineer has reviewed the mitigation plans and the stated that the proposed volume meets the requirements of the city code, but that there needs to be additional grading refinements before the engineer would sign off on the mitigation proposal.

Cooney said that Section 1312.04 of the zoning ordinance requires a variance for any land alteration greater than three feet at any point. He said that the applicant is proposing land alteration of up to 4 feet, and is seeking a variance of 1 foot from the maximum permitted land alteration. Cooney noted 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 noted that neither of these concerns are the case in this proposal.

Cooney said that the property contains a legal nonconforming garage with an accessory dwelling unit on the second floor. He said that the proposal would renovate the structure and slightly reduce the footprint. State law permits the ongoing maintenance, repair, or replacement of legal nonconforming structures.

Cooney said that he recommends approval with conditions of the variance requests of Rudy Dan Luther to exceed the maximum allowable impervious surface area by 2.9%, to exceed the maximum permitted grade alteration by 1 foot, and for a reduction of 1.65 feet from the minimum required low floor elevation for the property at 3244 Robinsons Bay Road, as proposed, with the following conditions:

A. That all mechanical systems be installed at an elevation higher than the 931 foot floodplain elevation.
B. Contours should be revised to direct an adequate drainage area to rain garden #1 and roof drains should be directed toward the proposed rain gardens to the maximum extent practical.
C. The property owner enter into a stormwater maintenance agreement with the city and that the agreement be recorded against the property.

Cooney 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 low floor elevation would limit the exposure to only unfinished areas of the home, and the mechanical systems would be situated above the flood elevation. The requested excess impervious surface area reduces impervious conditions from existing while also providing required mitigation. The grading changes are not to circumventing the house height limitations and do not alter the overall drainage patterns in a significant or detrimental way.

(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. A single family home, consistent with the building limitations is reasonable. The basement elevation and grading are reasonable responses to the low elevation of the property, while the impervious areas are improvements from existing conditions.

(d) Are there unique circumstances to the property not created by the landowner?
Yes. The property sits at a low elevation that impacts the ability to create a basement, and creates the need to alter the grade to properly situate the house. Lack of a basement requires more of the house to be situated above grade, expanding the house footprint and hardcover.

(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 of a similar size to other legal, conforming single-family houses within in the neighborhood, while the impervious areas are reductions from existing conditions.

Cooney concluded his staff report.

Webster asked if the garage is legal. Cooney said that it is a legal nonconforming structure, unless there is documentation to the contrary. Webster asked if there was a variance for the existing hardcover footprint. Cooney said that he did not find one but that he would double check the file.

Gary Aulik, of Aulik and Associates, builder for the property owner, said that they are attempting to reduce the impervious area on the property. He said that the proposed home is smaller than the existing home on the property. He said that the mitigation is better for the lake and that the soils on the property are favorable. Aulik said that they wanted to provide off-street parking and that on-street parking on Robinson's Bay Road is a challenge. He said that he believed that it is a reasonable request given the difficulties of the lot.

Sharpe asked if there was any existing mitigation on site. Aulik said no. He said that the only variance the house has received was for a living space over the attached garage on the house.

Werneiwski asked if they expect significant parking issues. Aulik said no, but that it would help keep cars out of the circular driveway.

Webster asked about slightly reducing the footprint of the accessory structure. Aulik said that a small bumpout was being removed and that the stairs were being brought to the interior of the structure.

Webster asked if moving the driveway reduced hardcover. Aulik said that they looked at that, but that it actually increased impervious area and made for difficult parking for the garage.

Werneiwski opened the public hearing.

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

Webster said that this is the perfect opportunity to conform to the 25% hardcover limitation. She said that the off street parking is unnecessary and that parking on one side Robinsons Bay Road is not an issue. She said that the city is being too lenient with their hardcover variances. Webster said that she did not have an issue with the mechanical area or the grading.

McNeill asked about the ceiling height in the mechanical area. Aulik said that it would be about 7 feet tall and that they just need minimal headroom. He said that it would not be habitable space and that there

would not be egress windows. He said that the floor level is at the level where they start to see saturated soils. He said that having the mechanicals in the lower level helps keep the massing small.

McNeill asked about all of the trees that would be coming down. Aulik said that the center driveway would add privacy and that there would be a planting area in that area of the yard.

Daly asked about the 4 foot grade change areas. Aulik said that those areas were primarily around the garage. He said that they raised the garage in an effort to make a handicap accessible connection between the house and garage. He said that the owner does not require the accessibility, but that it is an aging-in-place feature of the house. Aulik said raising the grade is also advantageous for the home itself. He said that it is difficult to get the water to drain off of the property at the existing grades.

Studer said that he had no issues with the grade change, but said that he did not understand the practical difficulty and thought that there would be ample space for parking.

Nagle asked if the grass would come up to the edge of the driveway. Aulik said yes and said that they think mitigating is a nice tradeoff and bringing the water away from the lake is a good idea. Daly said that mitigation is good at the front-end but may be a maintenance issue moving forward.

Webster said that she does not see the practical difficulty and that the issue is self-created. Nagle agreed.

Aulik said that the mitigation is better for the lake. Werneiwski said that he is not a fan of mitigation because of the long-term maintenance issues. Aulik said that the sandy soils are very favorable on the property, regardless of maintenance.

Daly said that he wanted to look into the low floor elevation issue a little bit since he remembers a FEMA-related requirement. Daly asked about the garage renovation. Aulik said that it was being made to look more like the house. Cooney said that he had seen the plans and that he determined that the structure was not being expanded. Cooney said that some changes were being made to match the style of the structure to the house, such as modifying the style of the gable roof. Cooney said that he is pretty strict about nonconforming structure renovations.

McNeill asked about the nonconforming garage and how we determine if it is legal. Cooney said that the burden of proof would be on the city to demonstrate the structure was illegal. He also said that he did not think that the height restriction and dwelling restriction for accessory structures pre-dated the construction of the accessory structure, but that he would double check the ordinance records to confirm.

Aulik asked about a grass pave system. Cooney said that he was familiar, but that any system would have to be approved by the City Council, particularly in a variance situation.

Werneiwski made a motion to deny the request based on the excess impervious area. Cooney said that the Planning Commission does not need to deny the entire application if they favor portions of the proposal. Studer suggested an approval motion with the condition that the property meets the 25% impervious surface requirement. Werneiwski modified his motion to an approval motion with the condition that the property meets the 25% impervious surface requirement. Motion was seconded by Webster.

Daly said that he would like to make a friendly amendment to the motion. He said that he came across an issue with a similar low floor proposal and that he recalls a FEMA-related form that may be necessary to absolve the city of responsibility. He said that he would propose that compliance with such a process also be a condition of approval.

Werneiwski agreed to the friendly amendment. Motion was seconded by Webster. Motion carried 6 to 1 with Sharpe voting against.

Ordinance 13-78, Amending Zoning Code Chapter 13 regarding Building Coverage, Land Alteration Permits, and definitions of Finished Grade and Structure

Werneiwski introduced the agenda item.

Cooney presented his staff report. He said that proposed changes are an attempt to update certain ordinance sections that may have become obsolete or contradictory to the current zoning code.

Cooney said that Section 1310.03 Subd 3 allows for R-3 properties to have a maximum structural footprint equal to that of R-2 properties if they meet or exceed the minimum lot size for the R-2 zoning district. He said that it also allows for R-2 properties to have a maximum structural footprint of R-1properties if they meet or exceed the minimum lot size for the R-1 zoning district.

Cooney said that this exception currently requires city council approval and that he proposes to streamline the language and allow administrative approval.

Cooney stated that he was not sure a circumstance exists under which such an exception would be given to one qualified property, but not given to another qualified property. He said that, if there are circumstances that merit excluding certain qualified properties from this exception, it should be administered as a variance or a conditional use permit and the city should follow the appropriate public hearing notice requirements. Cooney noted that the exception was at least partially envisioned as a stormwater management ordinance which is administered elsewhere in the zoning code.

Regarding Section 1312.04 Land Alteration Permits, Cooney said that the code is proposed to be modified to reflect current practices. He said city does not have a formal grading permit and does not require volume/rate calculations for grading projects. Cooney noted that the survey with existing and proposed contours and drainage patterns is currently all that is requested for review purposes.

Regarding Section 1345.26 Finished Grade, Cooney said that this definition reflects the old requirements under city code.

Regarding Section 1345.71 “Structure”, Cooney said that the definition is modified to reflect current practice. He said that regardless of width, driveways, at grade stairs/landings, and sidewalks are not regulated as structures and are permitted to encroach within structural setbacks. He said that these exceptions were originally created as a way to regulate impervious areas and are now addressed elsewhere in the zoning code.

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

Motion to recommend approval as written by McNeill and seconded by Sharpe. Motion carried 7-0.

OTHER BUSINESS

Ordinance 11-10 amending section 1105.03 regarding Changeable Copy Signs

Werneiwski introduced the agenda item.

Cooney presented the staff report. Cooney said that the amendment of the sign ordinance is intended to make the ordinance consistent with how the city has been regulating Changeable Copy Signs by allowing these signs to change not more than twice in a 24-hour period.

Motion to recommend approval as written by Daly and seconded by Sharpe. Motion carried 7-0.

Review 2040 Comprehensive Plan Update, Sections IV and V

Werneiwski introduced the agenda item.

Cooney presented the staff report. Cooney said that Section IV, the Public Facilities section of the addresses plan elements related to utilities, transportation, and parks and open space. He said that Section V of the plan addresses plan implementation.

He said that he has marked up these sections of the plan with proposed changes. He said that Dana Young, who works closely with the Public Works Department and oversees the Capital Improvement Plan, has provided much of the updated information in Section IV of the Comprehensive Plan.

Werneiwski asked if the drainage issues need to be listed in the plan. Cooney said that they were not required to be, but that they have historically been and are appropriate from a comprehensive planning standpoint.

Motion by McNeill to accept the Comprehensive Plan draft as written. Motion was seconded by Werneiwski. Motion carried 7-0.

LIAISON REPORT

Councilmember Jewett said that at their January meeting the City Council approved the St. Therese sign conditional use permit.

He said that the city reviewed and approved a wetland determination for the property at 18702 Heathcote Dive. He said that, during that review, the question was raised whether or not the city wanted to be the Local Government Unit for these types of applications or if that should be offloaded to the Riley Purgatory Watershed District. Jewett said that the city has not come to a decision on that issue and will be reviewing it again at a later date.

Regarding the discussion on 3244 Robinsons Bay Road, Jewett said that, while he does not know what will happen with the application, in his experience on the City Council the city has ruled in favor of projects that bring properties closer to compliance even if they do not achieve compliance.

Jewett said that, in the recent past, the Planning Commission had also recommended approval for projects that improved conditions even if they did not achieve compliance. He said that, if the Planning Commission wants to hold the line on the 25% hardcover issue, there needs to be some kind of shift in how the city rules on these issues. He said that the city spent a lot of time on the stormwater ordinance in order to provide a solution to the issue. He also said that, legally, the applicant can build on the existing hardcover footprint and the city does not have the ability to say no.

Jewett says that he does have some concerns about maintenance for mitigation, but time will tell how effective that will be.

Webster said that if the applicant starts from scratch on a property, they should have to comply with the 25% hardcover. Jewett said that there are rights that a property owner has to have the hardcover on the existing footprint. Webster said that they should then be required to build on the existing footprint.

Jewett said that the Planning Commission should make a recommendation to the City Council that holding the line to 25% hardcover for new construction is the right approach. He said that there has been a precedent set that improving a property from existing conditions has usually been enough for variance approval.

Studer said that, in this case, they are going from at 3,500 square foot footprint to a 6,000 square foot footprint which is comparing apples and oranges. Jewett said that partly the City Council does not want to design the property and that the focus should be on the hardcover percentage, not mixing and matching the design components.

Nagle said that there is nothing similar about the proposed house and the existing house, and asked why, if they have a clean slate, they designed it with a need for a variance. Jewett said that the proposal is better than existing conditions in both hardcover and house location. Webster said that they are not entitled to the hardcover unless they build on the existing footprint.

Webster said that she took issue with the creation of more hardcover for parking. Jewett said that is a design issue that the city tries to stay out of. Webster said additional paved areas for guest parking is silly.

Studer said that he feels many of the variances are warranted, particularly for substandard lots. But he said that in a large lot situation, starting from scratch is the last opportunity the city will see for compliance. He said that he sees this project as more of an exception than the typical hardcover variances.

Cooney said that he understands why this is controversial since in this case there is a conforming R-2 parcel which rarely comes before the city for hardcover variances.

Jewett said that the Planning Commission tends to rule that a teardown should come into compliance, and that the City Council tends to rule in favor of improving from existing conditions.

Kent and Lois Norby of 19990 Minnetonka Boulevard said that they were happy that the Planning Commission was having this discussion. Kent said that it is his opinion that more variances are being granted and that they are easy to get.

Webster said that she thinks the Planning Commission looks ineffective if it is constantly overruled. Jewett said that on this particular issue there is a strong precedent.

Daly said part of the Planning Commission role is the vetting of the applications. Cooney said that there are many outcomes influenced by the Planning Commission including recently 20720 Linwood where changes were made based on Planning Commission input. Daly said that he would not be surprised if additional changes were made to this application as well.

Studer said that he understands the need for consistency and precedent, but that in this particular case he sees the proposal as an exception since it exceeds the minimum lot size, that it is a large lot, and the house footprint is being greatly expanded.

Werneiwski said that he appreciated Jewett's comments.

ADJOURNMENT
Motion by Werneiwski to adjourn the meeting. Motion seconded by Sharpe. Motion carried 7-0. The meeting adjourned at 8:45.

Respectfully submitted,
Dale Cooney
Zoning Coordinator