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

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

ABSENT: None

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

MINUTES OF NOVEMBER 15, 2018
Motion by Werneiwski, seconded by Webster, to approve the minutes of November 15, 2018. Motion carried 6-0.

PUBLIC HEARINGS

Consider variance request of Peter and Wendy Lee, property owners, to exceed the maximum permitted impervious surface coverage in order to construct a home addition for the property at 3275 Robinsons Bay Road.

Werneiwski introduced the agenda item.

Cooney presented the staff report. Cooney said the property owners have applied for a variance to expand portions of their house at 3275 Robinsons Bay Road. He said the existing house was built in 1972 according to Hennepin County Records. Cooney said that the property is currently at 34.5% impervious and the applicants are proposing an impervious surface area of 33.9%. He noted that in 2008, the property was approved for a variance to be at 33.8% impervious.

Cooney said that, while no imperious expansion is proposed, a variance is required to alter the impervious footprint. He said the nonconformity is only considered legal in its current footprint and reconfiguring the impervious area requires triggers a variance. Cooney stated that several small areas of the property will be covered by the new additions, while patio and walkway areas will be removed to reduce the overall hardcover from existing conditions.

Cooney said that the city should consider if stormwater mitigation should be required for this property as part of this request. He said that staff would recommend against requiring stormwater mitigation since the applicants are primarily working within the existing, legal nonconforming conditions of the property. He noted that the applicants also own the adjacent property at 3203 Robinsons Bay Road, but since it is a separate PID that may also likely a buildable property, the city cannot give the applicants credit for those pervious areas.

Cooney said that the southeast side of the house currently has a nonconforming setback that is not impacted by the proposed additions.

Cooney said that he recommends approval of the variance requests of Peter and Wendy Lee to exceed the maximum allowable impervious surface area by 8.9 for the property at 3275 Robinsons Bay Road, as proposed. 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 requested excess impervious surface area is comparable to the approved variance request from 2008. The impervious areas are simply being reconfigured and not expanded.

(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 maintain and/or improve older homes which will help promote diversity of housing in Deephaven.

(c) Does the proposal put property to use in a reasonable manner?
Yes. The manner of use is reasonable and essentially the same manner of use as that which was approved byt the city in 2008.

(d) Are there unique circumstances to the property not created by the landowner?
Yes. The property requires a long access driveway which elevates the impervious areas for the property. The property is already legal nonconforming in this regard.

(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 impervious conditions are less than exist today and comparable to what was approved via variance in 2008.

Cooney concluded his staff report.

Studer asked about the impervious calculations on the survey versus the staff report. Cooney said that there is a difference due to the applicant including the walls in the calculations, but also the proposal is reducing hardcover from existing conditions but there is a slight increase from the variance granted in 2008. He said that the request would authorize the slight increase.

Werneiwski opened the public hearing.

Tom Henjum of Boyer Construction, contractor for the property owner, said that the hardcover was essentially no net increase from the project.

Nagle asked about the new structural areas. Henjum showed the commissioner Nagle the areas of the new additions as well as the areas of hardcover being removed.

Werneiwski closed the public hearing.

Motion by Webster to recommend approval of the variance request as proposed based on the recommendation and findings of staff. Motion was seconded by Nagle. Motion carried 6-0.

Consider the variance requests of Mark and Patricia Goodburn, property owners, to exceed the maximum permitted impervious surface coverage, exceed the maximum permitted structural coverage, and to encroach into the minimum required lake yard setback in conjunction with home additions at 20050 Lakeview Avenue.

Werneiwski introduced the agenda item. Daly recused himself and moved from the dais to the audience.

Cooney presented the staff report. Cooney said the he property owners are building additions to the existing house which triggers several variance requests. He said that the variances requested are to exceed the maximum permitted impervious surface coverage, to exceed the maximum permitted structural coverage, and to encroach into the minimum required lake yard setback. Cooney said that overall hardcover will be reduced from existing conditions and a nonconforming detached garage will be removed as part of the project. He said that the property is a 27,487 square foot R-3 property.

Cooney said that Section 1302.05(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 27.55% and is seeking a variance to exceed the maximum impervious surface area by 2.55%. Cooney noted that, currently, the property is at 35.72% impervious area. He said that the overall impervious areas are being significantly reduced by reducing the size of the driveway and removing plastic landscaping materials.

Regarding building coverage, Cooney said that Section 1302.05(2) of the zoning ordinance limits the maximum building coverage to 4,500 square feet. He said the applicant is proposing a building coverage of 5,702 square feet and is seeking a variance to exceed the maximum building coverage by 1,202 square feet. Cooney noted that, at 5,064 square feet of existing building coverage, the property is legal nonconforming. He said a number of additions are proposed for the home including a lake yard covered deck, an attached garage stall, additions on both the east and west side of the house, and an expansion of the front entry area. He said the house footprint is expanding from 3,896 square feet to 4,954 square feet, and the deck area is expanding from 587 square feet to 748 square feet. Cooney said that a 581 square foot, nonconforming detached garage is being removed. He said that the city approved a deck expansion to the current extent in 2013 but the structural coverage issue was not raised at that time.

Cooney said that he does not have an issue with removing the existing garage and reallocating that structural coverage elsewhere on the property, but he had difficulty justifying a further expansion of the already nonconforming house footprint. Cooney said that, at 27,487 square feet in size, the property is somewhat larger than the R-3 minimum lot size of 20,000. He said that, if the city code regulated building footprint proportionally by lot size, the property would need to be 36,000 square feet in size to accommodate the proposed building footprint. He noted that, as proposed, the house footprint would be 95% of the maximum allowable within the R-2 zoning district (minimum 40,000 square foot lot size).

Regarding the lake yard setback, Cooney said that Section 1302.05(3) of the city ordinance requires a minimum lake yard setback of 100 feet. He said the applicant is proposing to modify an existing nonconforming house with expansions that include numerous lake yard encroachments. He said much of the existing house beyond the garage is within the lake yard setback. Cooney noted that, due to the configuration of the shoreline, the maximum encroachment would remain the same even as the additions change the overall total encroachment for the property. He said that the closest new encroachment (the proposed covered deck) would be setback 44 feet from the shoreline.

Cooney said that, if the total building footprint were not an issue, he could justify supporting the house additions that are beyond the furthest lake yard encroachment. But he said he is not supportive of the covered deck expansion. He said the existing deck already quite generous and the covered porch would expand the depth of the deck from 11.33 feet deep to 15.7 feet deep. He noted that it is not merely the deck footprint that is expanding, since the proposal is for a large covered deck over a portion of the existing deck footprint. He said that the addition would amount to 1.5 story, 300 square foot addition within the lake yard setback.

Cooney said that he is generally supportive of the removal of the nonconforming garage and reallocating that structural footprint elsewhere. He said that the reduced impervious area is a benefit to the city and staff is supportive of that as well. Cooney said that, due to the building footprint and lake yard encroachment issues, staff does not support the remainder of the proposal. He said the house footprint already exceeds zoning district maximums and the impacts from the new covered deck area would be significant. Cooney said that since it is difficult to separate one aspect of the proposal from another, staff recommends denial of the entirety of the request.

Cooney said that he recommends denial of the variance request to exceed the maximum allowable impervious surface area by 2.6%, to exceed the maximum permitted building footprint by 1,202 square feet, and to encroach into the minimum required lake yard setback by 61 feet for the property at 20050 Lakeview Avenue, as proposed, based on the following findings:

(a) Is the variance in harmony with the purpose and intent of the ordinance?
No. The purpose and intent of the ordinance is to maintain a structural footprint proportional to the property size and to set reasonable limits on the development within the lake yard setback. The proposed expansion would be out of scale with similar properties in this zoning district and create several further encroachments into an already overbuilt lake yard.

(b) Is the variance consistent with the comprehensive plan?
No. The request is not consistent with the Comprehensive Plan's Housing Elements Goals and Policies which encourages housing that respects the natural environment of the community and maintains or exceed Department of Natural Resources shoreline standards.

(c) Does the proposal put property to use in a reasonable manner?
Yes. The deck is a reasonable use and a minor expansion of existing conditions. The impervious surface expansion is reasonable in the context of the substandard lot size.

(d) Are there unique circumstances to the property not created by the landowner?
Yes. The existing house is built within the lake yard setback and is currently nonconforming for structural coverage. Altering the footprint of the home is challenging to do without a variance. However, the applicant is proposing expansions of existing nonconformities, further exacerbating the nonconforming conditions.

(e) Will the variance, if granted, alter the essential character of the locality?
Yes. The proposal would be a significant expansion of an already nonconforming structural footprint, and would create further encroachments towards the shoreline on a property that is already heavily built up within the lake yard setback.

Cooney concluded his staff report.

Webster asked about the house which was built in 1992 and what the zoning was at that time and if there were variances for the existing house. Cooney said that he would have to verify, but that he believes the setback from the lake was the same in 1992. He said that he did not look into which variances were granted to build the house in 1992, only the more recent variances.

Webster asked if the deck was added in 2013. Cooney said yes. Daly said that the deck was there in 2013, but that the deck changed as a part of the variance. Webster asked what work was done in 2013. Daly said that it was remodeled at that time. Nagle said that the remodel was substantial and that the house was gutted.

Werneiwski opened the public hearing.

Peter Eskuche, applicant, showed renderings existing and proposed massing from the street view. He said that they were attempting to reduce the massing even though the structural footprint is expanding.

Daly said that the applicants were not the owners in 2013 and are trying to make the property a full-time residence. He said that the city benefits from the detached garage being removed. Daly said that the intention is to try to square off the house, and that the current house has some strange angles. He said that the deck encroachment towards the lake is not the closest encroachment.

Webster said that the property is not homesteaded and if the property owner plans to homestead the property. Patricia Goodburn, property owner, said that they would make it a year-round dwelling if they are able to make it fit their needs. She said that they have been assessing how they use the house since they bought it. She said that they live on the main floor, but that there is no stairway to the lake from the deck.

Werneiwski closed the public hearing.

Studer said that it is a nice design and that he likes to see moving towards conformity on the impervious areas. He said that he has difficulty justifying making the footprint larger. He said that he does have an issue with the continued encroachment into the 100 foot setback and with the expanded structural coverage on the lot. He said that it is turning into a very large structure on the lot. He said that the

massing from the street looks better, but that the massing on the lakeside looks as if it is increasing. Eskuche said that the lot is 37% larger than the lot minimum for the zoning district.

Eaton said that he agrees and that the city is cautious about encroaching further in the lakeside.

Werneiwski said that the hardcover is a win, but the structural coverage is not as good. He said that he leans in favor of the reduced hardcover due to the environment benefit from the reduced hardcover. Werneiwski said that he hasn't completely made up his mind and would like to hear what others have to say.

Webster said that the house is already an egregious encroachment into the lake setback. She said that she is happy to see the garage removed. Webster said that she is 100% against the additional lake encroachment. She said that the deck is massive and that the city does not need to give any more on the lake side.

Nagle said that there is a lot going on in the proposal. He said that he likes the old garage in the front and laments the fact that it would get torn down but said he understands that it is not very usable. Nagle referenced the letter from the neighbors at 4250 Water Street. He said that he would have liked to see the owners build up instead of out. Nagle said that he has the most difficulty with the lake yard encroachment and that the covered porch is a significant issue.

Eaton said that he agreed and that he did not see a practical difficulty such that this was the only way to achieve the property owner's goals.

Webster agreed that she did not see the necessity of the request.

Eaton asked if there was a design solution that was explored that could meet the owner's goals with compromising on the covered porch.

McNeill asked if the commissioners would be okay with the request if the lake yard porch were not part of it. Webster said that she might be in favor if there were not a change on the lake side. Studer said that he would want to see the same or less footprint since the house is already a good bit over the structural limit.

Webster said that the other proposed additions are within the setback. Nagle said that, since so much is within the setback, he does not want to see expansions beyond the footprint. He said that he would like to see the house go up and not out. Eskuche said that they are already proposing expansions on the upper level. Nagle said that it was a lot of square feet to add to the house.

Motion by Webster to recommend denial of the variance requests as proposed based on the recommendation and findings of staff. Motion was seconded by Eaton. Motion carried 4-1 with Werneiwski voting against.

Werneiwski said that they can go before the City Council on February 4 and hear what they have to say, but that if they deny the application the applicant would have to wait 6 months to reapply. Cooney said that they can withdraw the application at any time before the City Council votes on the application.

LIAISON REPORT

McNeill said that she was not the liaison at the time of the December meeting and could not comment on the outcomes of those meetings.

Cooney said that the CUP for Deephaven Court passed and followed much of the Planning Commission's recommendations. He said that the City Council limited the hours of operation for a restaurant to 11:00 PM.

Eaton asked if the applicant for Deephaven Court had closed on the properties. Cooney said that he was not sure, but he did get a call last Friday requesting documentation and that the closing was happening at that time.

McNeill said that Police Chief Johnson said that there have been a number of thefts from car break-ins. McNeill said that Johnson suggested that a locking mailbox is also a good idea.

ADJOURNMENT
Motion by Werneiwski to adjourn the meeting. Motion seconded by Webster. Motion carried 6-0. The meeting adjourned at 7:50.

Respectfully submitted,
Dale Cooney
Zoning Coordinator