

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

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

**ABSENT:** Chairman John Studer

**OTHERS PRESENT:** Zoning Coordinator Dale Cooney and City Council Liaison Kent Carlson

**MINUTES OF December 17, 2019**

Motion by Werneiwski, seconded by Nagle, to approve the minutes of December 17, 2019. Motion carried 6-0.

**PUBLIC HEARINGS**

**Consider the variance requests of David Marantz and Bari Kessler, property owners, to exceed the maximum permitted impervious surface coverage at 20425 Carson Road.**

Acting Chair Webster introduced the agenda item.

Cooney presented the staff report. He said that the property owners are building a new house and pool on the property and are seeking a variance from impervious surface area limitations. He noted that the property is currently nonconforming for impervious area at 27.82% and the property is a 22,870 square foot R-3 property.

Cooney said that the builder for the applicant approached staff about the impervious limitations for the property and that he incorrectly stated that this property was beyond the Shoreland Management zoning district. Cooney said that a portion of Carson Road is within the district and a portion is beyond the district. He said that the applicant designed their plans to meet existing impervious conditions on the property. Cooney said that at building plan submission he noticed the error and informed the applicants that a variance would be required. He said that while no formal plans were reviewed or submitted prior to catching the mistake, the applicants did design the home in good faith to attempt to meet code limitations.

Cooney said that, in spite of any staff errors, it is the responsibility of the Planning Commission to offer a recommendation on the merits of the application. He said that, per the League of Minnesota Cities: *"Error by city staff in approving plans does not entitle a person to a variance. While the result might be harsh, a municipality cannot be estopped from correctly enforcing a zoning ordinance even if the property owner relies to his or her detriment on prior city action."*

Cooney said that Section 1302.05(2) of the city ordinance limits maximum impervious surface area to 25% of the lot area and the applicants are requesting an impervious surface area of 32.18% and are seeking a variance of 7.18% from the impervious surface limitations. He noted that existing conditions on the property are 27.82%.

Cooney pointed out that the originally submitted plans showed an impervious area of 27.81%, which was a slight reduction from existing conditions. He said that, upon review of the documents, staff noted that the city has typically viewed all patio areas as impervious and that for the sake of the variance application, the applicants should consider the patio areas in the plans to be impervious unless the council determines otherwise. He said that the applicants subsequently modified their mitigation to account for the additional impervious areas.

Cooney said that the city has typically taken a pretty strict view of impervious systems, particularly permeable pavers, primarily due to longevity, maintenance concerns, and the likelihood that such a

system would be removed and replaced with an impervious system. However, Cooney said that, as conceptualized, these patio areas have significant greenspace between the stones to allow for percolation and there are not the maintenance concerns that one finds for a typical pervious patio system. In conversations with the city engineer, the engineer noted that “disconnected impervious”—where sod is 50% or more of the surface area—can be considered pervious area. Cooney said that the City Engineer’s opinion, the “sod and stone” photo in the concept plan meets or exceeds this “disconnected impervious” standard. Staff would recommend any patio areas that met this requirement be considered pervious areas.

Cooney said that the applicants are also providing 906 square feet of green roof area. He said that this has always been a part of the project concept, and was not a component intended to provide mitigation for the property. Cooney said that some consideration might be given for this system as the green roof accounts for a net reduction from impervious areas of approximately 4%. He said that the city engineer has stated that these types of systems are effective and can last indefinitely as long as there are plants growing in them and that ensuring plant growth is the primary maintenance concern.

Cooney said that, at 22,870 square feet, the property does exceed the minimum lot size for the zoning district. He noted that the applicants are making the case that due to the corner lot conditions, there is an unusually large amount of green space that is unaccounted for within the property boundaries. He said that, per the survey documents, applicants show an additional greenspace area of 4,237 square feet of pervious area.

He said that he conducted survey of aerial photography for similarly sized, zoning code compliant corner properties, and that his only conclusion was that right-of-way greenspace area is highly variable. He said that along Carson and Linden Road, most properties had between 1,900 and 2600 square feet of right-of-way area. But, Cooney said that 20425 Carson Road was not the only property in the neighborhood to have this amount of right-of-way greenspace. He said that the greenspace may be one factor for consideration, but perhaps not the primary factor.

Cooney said that, per Section 1353, the applicants are required to provide stormwater mitigation for those areas in excess of 25%. He said that, as proposed, the sizing of the French drain meets city mitigation volume requirements. Cooney noted that the green roof, accounts for 25% of the proposed roof area and a 4% reduction in impervious area.

Cooney said that existing impervious conditions are often a consideration in the granting of a variance but that the city has been more restrictive on imperious surface variances for properties that exceed the minimum lot size. He said that exclusion of the sod and stone areas that meet a 50% greenspace threshold would bring the proposal to essentially equal to (.01% less) than existing conditions. He said the green roof area would further reduce effective impervious areas by 4% and is above and beyond any required mitigation. He said that the Planning Commission may want to consider the right-of-way green space is another mitigating factor, if not truly a unique condition to this property.

Cooney listed possible findings for approval:

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

Yes. The purpose and intent of the ordinance is to allow the orderly development and redevelopment of property within the city and when the ordinance standards cannot be met, it outlines the procedures to vary from these standards. The request is in harmony with the purpose and intent of the ordinance since the applicant is proposing no net increase in impervious area while also providing significant stormwater mitigation to reduce the impacts from existing conditions.

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

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

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

Yes. The impervious surface area percentage is reasonable given the existing nonconforming conditions on the property and the effective impervious area based on the proposed green roof, mitigation, and right-of-way green space.

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

Yes. The property has existing nonconforming impervious surface area conditions as well as a significant unaccounted for pervious area within the public right of way.

(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 matches existing conditions and would reduce the effective impervious areas from existing conditions thereby improving the impacts within the locality.

Cooney listed possible findings for denial:

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

No. The purpose and intent of the ordinance is to allow the orderly development and redevelopment of property within the city and when the ordinance standards cannot be met, it outlines the procedures to vary from these standards. A new house on a conforming lot size should be able to be constructed within zoning code compliant impervious surface area standards.

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

The request is not 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, since the increased impervious areas play a role in the cumulative stormwater runoff problem that impacts the safety of the community and the natural environment.

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

Yes. A property that meets existing impervious conditions and is otherwise zoning code compliant is using the property in a reasonable manner.

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

No. The new construction on the property wipes clean any existing impervious conditions that may impact future development on the property.

(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 would reduce effective impervious from existing conditions.

Cooney concluded the staff report.

Werneiwski asked about what is being included in the impervious. Cooney said that if no credit or consideration is given for any aspect of the impervious areas, the property would be at 32.18% impervious. He said that the Planning Commission needs to decide what, if any, consideration should be given for the unique aspects of the plan.

Webster said that if all of the stormwater components are credited, the property is approximately 16% impervious.

Wilcox asked about including the right-of-way area. Cooney said that reduces the impervious area by approximately 1%. Eaton said right-of-way areas are typically not included in these calculations. Cooney said that was correct.

Daly asked about the Shoreland overlay district distance. Cooney said it is 1,000 feet from the lake and that this house is about 650 feet from the lake.

Webster opened the public hearing.

Kyle Hunt of Kyle Hunt and Partners, builder for the property owners, said that the green roof is something that is going to be built regardless of the outcome of this meeting.

Webster asked about the green roof. Hunt showed the areas of the house that include the green roof. He said that there is a tray system over flat roof areas and that the trays have 6 inches of soil.

Hunt said that, on its merits, there is a reduction from existing conditions, particularly if the spacing of the stones and the sod is considered as disconnected impervious.

Eaton said that the city does not know if the landscaper will meet the 50% greenspace threshold. Cooney said that would be an appropriate condition of approval.

Hunt said that the mitigation program with the French drain counts all patio areas as 100% impervious, regardless of how they function. Hunt said that the neighbors have not had any issues with runoff from existing conditions. He said that they can mitigate a lot more than is even necessary.

Daly asked about the retaining wall in the yard. Hunt said that there is a makeshift retaining wall in that area and that the neighbors are higher than this property. Hunt said the walls would not be higher than 4 feet.

Daly asked if retaining walls are included in impervious areas. Cooney said that the city does not include retaining walls in its impervious calculations.

Cooney said that retaining walls higher than 3.5 feet are considered a structure under the city zoning code. Hunt said that they can keep the walls under that limitation.

Webster asked about the retaining wall visibility. Hunt said that it would follow the grade and be reduced as the grade transitions lower.

Daly asked about the history of the changes. Cooney said that the plan as submitted was intended to be at 27.81% impervious, but that the patio areas on the survey raised the question of whether or not that should be counted as additional impervious since the city has not typically included patio areas of any kind as pervious. Cooney said that the plan itself has never changed.

Wilcox asked about the mitigation. Hunt said that the French drain works well and that the city engineer supports the proposal.

Eaton said that the mitigation is most important for him since landscaping can be easily changed.

Wilcox said that he likes that the mitigation meets code and that the other items are optional.

Cooney said that he wants to note that the items presented are not a menu of options for what might work best. He said it is the city's role to determine what, if any, credit should be given for other aspects of the plan that have merit in their own regards.

Hunt said that some of the other items do merit some consideration. Cooney said that putting the green roof in as part of the mitigation plan could be good for the current homeowners, but could pose a challenge to future homeowners who do not want to maintain it. Cooney said that the easiest option is to just give credit for the mitigation and the other items are nice-to-have elements.

Eaton said that he did not quite know how to deal with the sod and stone option. Wilcox said that the city could just approve 32.18% impervious and that gives enough buffer for the sod and stone to be completely impervious up to 1,000 square feet.

Webster closed the public hearing.

Eaton said that since the landscaping is somewhat vague, he'd be inclined to support Wilcox's idea of counting the property as 32.18% impervious. He said that he is comfortable with the proposal since they are mitigating more than is required taking the other items into account.

Cooney noted that 32.18% impervious treats the landscaping as if it were 1,000 square feet of concrete slab.

Daly said that he agreed with Wilcox. He said that 25% would have been preferable on a clean slate lot, and that existing conditions are 27.82%. He said now the city is looking at 32% impervious and creative ways to work around that situation. He said that is why he supports the French drain system. He said that he appreciates the green roof, but does not think that should be a part of the required mitigation. He said that he is a little uncomfortable with the 50% greenspace option.

Werneiwski said that he is uncomfortable with the green roof and the patio areas since they have not been typically counted.

Nagle said that he is skeptical as to the long-term viability of the unpaved areas near the pool. He said that he is also concerned about the long-term maintenance of the green roof. He said that he wished the lot would stick to 25%, but would prefer that the applicants not exceed existing conditions.

Webster said that she is intrigued by the green roof. She said that the proposed mitigation is quite substantial.

Wilcox made a motion to approve the request to exceed the maximum allowable impervious surface area by 7.18% as proposed based on the approval findings of staff and with the conditions that:

- a) Patio areas in excess of 27.81% impervious must be at least 50% sod.
- b) Retaining walls within the side yard setback must be less than 3.5 feet tall.
- c) The applicants complete the stormwater management improvements to meet the requirements and specifications of the city engineer.
- d) The applicants enter into a maintenance agreement with the city to ensure the long-term operation and maintenance of the stormwater management improvements. The maintenance agreement shall be executed and recorded against the parcel.

Motion was seconded by Werneiwski. Motion carried 6-0.

**Consider Ordinance 13-80 amending Deephaven zoning code Section 1321 regarding Planned Unit Developments.**

Acting Chair Webster introduced the agenda item.

Cooney presented the staff report. Cooney said that updates are required to the current PUD ordinance (Section 1321) in order to consider the request for a PUD rezoning at 5023 Vine Hill Road. He said the PUD ordinance was originally drafted limiting PUD requests to the city's Chowen's Corner and Highway 101 Commercial areas. He said that also a number of references are made to the zoning code standards in Section 1310 which have since been moved to other sections of the zoning code.

Cooney concluded his staff report.

Webster said that the ordinance would remove the locational limitations of the ordinance, but all of the other PUD requirements would remain in place.

Wilcox asked how this fits with the city's comprehensive plan. Cooney said that the comprehensive plan language is broad, and there is housing diversity language in the plan.

Eaton said that the implications of these changes are the things he is most concerned about.

Webster opened the public hearing.

Amy Naleid, 19175 Vine Ridge Court, said that she was wondering what the long-term benefit is to the city.

Cooney said that it might be helpful for the planning commission to consider if the ordinance changes are compatible with the purpose language of 1321.01.

Eaton asked about the PUD history in the past and if the current language has been a problem. Cooney said that this is a new situation for the city since there have only been two PUD's in the past and that the city knew that they were likely to be proposed well in advance.

Ted Naleid, 19175 Vine Ridge Court, said that the previous PUDs had time to have the proposals vetted and this might open the city up to a proliferation of these types of requests.

Ron Pallman, 4940 Highcrest Drive, said that he was having a hard time hearing. Wilcox said that they were just considering the ordinance changes at this point and the concept plan would be considered later in the meeting.

Gabrielle Rohde, 19400 Minnetonka Boulevard, said that most residents within Deephaven would oppose such an ordinance change.

Jim Armour, 19150 Vine Ridge Court, said that he does not see the benefit to the residents of Deephaven and putting the priorities of a commercial venture over the people who do live here is a dereliction of the city's mission.

Alan Esselman, 19450 Rosedale Avenue, asked if the planning commission's role was the representation of a business or the residents and why the city is even considering allowing this development on the property. Wilcox said that this is a broader discussion about the ordinance that governs the PUD process.

Webster closed the public hearing.

Eaton said that the planning commission exists to respond to these types of applications and is not advocating any particular position. He said that the planning commission makes a recommendation to the city council.

Wilcox said that he does not understand the need to change the ordinance at this point and that he does not see a specific benefit to the city.

Daly said that he does not have an issue with the proposed changes and that as the city changes, some flexibility is a good thing.

Eaton asked about the history of earlier PUD requests. He said that he would not want to restrict the city from considering something that it likes in the future. Cooney said that City Council Liaison Carlson might have a recollection of that history and the lead time for those projects. Eaton said that it might be easy to be against

the loosening of the ordinance for a proposal that is unpopular, but he does not want to hamstring the city in considering a proposal that might be beneficial.

Carlson said that it is better to have the appropriate ordinance in place in order to consider a development proposal. He said that this is not a city-specific ordinance and that most cities throughout the metro area have a similar ordinance. Carlson said that the ordinances are in place for one reason only and that is to allow the city to be very restrictive about any number of conditions. He said that the PUD is in place to benefit the city and its residents and not to benefit the property owner or the developer.

Werneiwski said that a PUD is a helpful tool, but that the timing is troubling.

Nagle said that it is unfortunate that this ordinance issue has come up, since the real issue is the Lake Minnetonka Care Center that has been in the City of Deephaven for decades. He said that the city denied the application at their previous location, and that a denial of this application is essentially forcing the Lake Minnetonka Care Center to leave the community. He said that he has some remorse over that. Nagle said that there are no other large available properties in Deephaven for this proposal. He said that the residents of the Lake Minnetonka Care Center have been there longer than many of the people in the room.

Motion by Daly to recommend adoption of the ordinance amendments as written. Motion was seconded by Werneiwski. Motion passed 5-1 with Wilcox voting against.

## **NEW BUSINESS**

### **Consider the Planned Unit Development (PUD) Concept Plan Review request of the Lake Minnetonka Care Center to locate a 21-bed nursing home on the property at 5023 Vine Hill Road.**

Acting Chair Webster introduced the agenda item.

Cooney presented the staff report. He said that Jeff Sprinkel, owner of the Lake Minnetonka Care Center has submitted a request for a Planned Unit Development (PUD) Concept Plan Review to assess the feasibility of locating a 21-bed nursing home on the property at 5023 Vine Hill Road. Cooney said the Lake Minnetonka Care Center (LMCC) currently operates a nursing home at 20395 Summerville Road and the owner would like to relocate the nursing home to 5023 Vine Hill Road in order to build a new, larger building. He said the existing building is substandard under current nursing home regulations, and the applicant proposes to construct the new building in order to meet those standards. Cooney said the new building would have a 7,570 square foot footprint with a total square finished square footage of 17,515.

Cooney said that, as proposed, the property would be subdivided into two lots. The lot with the existing house would be maintained as a single-family dwelling with a shared driveway to the LMCC and the remaining 2.87 acres would host the new location of the LMCC.

Cooney said that since the proposed use of 5023 Vine Hill Road as a nursing home is not a permitted or conditional use within the R-2 zoning district, the City Attorney has determined that the appropriate mechanism for the request is the PUD process. Cooney noted that the PUD process is outlined in Section 1321 of the Chapter 13 of the City Code and includes a Concept Plan Review and a Master Plan review. He said for both aspects of the proposal, the public hearings are to be held by the City Council.

Cooney stated that the purpose of the PUD is to allow flexibility in the application of setbacks, dimensional requirements and other provisions of the city code in order to encourage: 1.) Innovations in the type and design of residential developments to assist in meeting the demands for a variety of housing types and costs to meet the needs and desires of Deephaven's population. 2.) The preservation and enhancement of desirable environmental features on property such as mature trees, vegetative buffer areas, significant slopes and water-related features. 3.) Long- or short-term phased development that will

plan for the orderly arrangement and site planning of specific complementary uses on property within the City and 4.) A desirable and attractive development that would not be possible through the strict application of the zoning and subdivision regulations of the City.

Cooney said the PUD Concept Plan Review is intended to serve as a review of the general acceptability of a proposal prior to meeting all of the requirements for a Master Plan Review. He said that Section 1321.04(A) of the City Code states that *“Prior to submission of a formal application for a Master Development Plan, the applicant shall submit a concept plan for review and comment by the Planning Commission and City Council. However, comments made by the Planning Commission and City Council shall not bind the City to approve subsequent applications for development of the property.”*

Cooney said that what follows is a list of PUD Dimensional Standards found within the city ordinance. He said that, per the city attorney, strict adherence to these standards is NOT required as the purpose of the PUD process is to allow for flexible zoning.

Cooney said the ordinance states that development shall comply with the requirements set forth in Section 1310 Dimensions and Design Standards unless modified by this section of the Ordinance. He said that Section 1310.03(3)(b) permits buildings to have up to an 8,000 square foot building footprint if the property is in an R-2 District and the lot size is at least 60,000 square feet. He noted that the proposed area for the nursing home lot (excluding wetland areas) is 80,975 square feet and the proposed building footprint and canopy roof is for the property is 7,927. Cooney said the proposed optional shed would add an additional 320 square feet of building footprint and that given the scale of the property, he would be supportive of the minimal overage to allow for inclusion of the accessory structure. He said that the existing single-family house would be situated in its existing location on a smaller, zoning code compliant R-2 lot.

Cooney said the ordinance states that external building setbacks shall meet the requirements for applicable zoning district. He said that the external setback of parking areas from public streets and properties zoned for commercial uses shall be 20' and shall be 50' from any adjacent property line zone for residential uses. He noted that the property abuts residential uses on all sides and therefore any proposed parking area would need to be setback 50 feet from the adjacent property line in order to meet the stated standards. He said that, as proposed, the parking area is setback only 20 feet from the north property line.

Cooney said the ordinance states that internal setback requirements shall be as follows: 1. standards negotiated and agreed upon between the applicant and the City that are consistent with the policies of the Comprehensive Plan and the purposes of the PUD District, and 2. general compatibility of the development with the surrounding area in which it is located. He noted that the setbacks from the proposed property line adjacent to the single-family house may be reduced but that, as proposed, they meet the existing zoning standards.

Cooney said the ordinance states that accessory buildings and structures shall meet the setback requirements of principal buildings and that the proposed accessory structure complies with the setback requirements.

Cooney said the ordinance states that the maximum density shall be based upon the ability of the project to meet: 1.) the requirements of Section 1310 – Dimensions and Design Standards, 2.) the requirements of subsection 1321.03, 3. standards negotiated and agreed upon between the applicant and the City that are consistent with the policies of the Comprehensive Plan and the purposes of the PUD District, and 4. general compatibility of the development with the surrounding area in which it is located. He said the proposal meets the requirements of the underlying zoning district in terms of massing, setbacks, and building height. Cooney said that the Comprehensive Plan states in its housing policies that “the city 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.”

Cooney said the ordinance states that the maximum impervious surface of buildings and driveways, or other impervious surfaces within the total development shall be a maximum of 70%. He said that individual lots within a PUD may exceed 70% provided the overall average of all property within the PUD does not exceed 70%. Cooney noted that the applicant is proposing an overall impervious area of 25.88% as a percentage of the lot coverage and that for new construction, the zoning code requires that residential properties provide mitigation to those areas over 25%. Cooney said that the applicant will be required to adhere to the Riley Purgatory Bluff Creek Watershed District's stormwater mitigation requirements which require 1.1 inch of volume control for all new impervious areas, which is well in excess of any city requirements. He said he would recommend any conditions on mitigation be simplified to require adherence to watershed district requirements.

Cooney said the ordinance states that access to the site shall only be allowed by roadways that are designated as collectors or minor arterials in the City of Deephaven Comprehensive Plan. He said that Vine Hill Road is identified as a collector street in the Comprehensive Plan. Cooney said he has serious concerns about the access to the site given the frequency with which public safety vehicles may need to access the property.

Cooney said the ordinance states that all utilities shall be placed underground including telecommunication facilities, electricity, gas and other similar facilities.

Cooney said the ordinance states that PUD's must provide a minimum of 10% of the gross area designated for residential purposes in private recreational uses that are suited to the needs of the intended residents of the development. He noted that examples of private recreational uses include but are not limited to gardens, nature areas, playgrounds or playfields, swimming pools, trails and picnic areas. He said that while there is ample green space on the property, no such private recreational areas are designated on the plan. He noted that given the relative isolation of the property, staff would recommend some outdoor amenities for residents.

Cooney said the ordinance states that all development within a PUD shall be landscaped in accordance with the following requirements:

1. All external or internal setback areas and open areas shall be landscaped with a combination of overstory trees, understory trees, shrubs, flowers and ground cover material unless an area is designated for tree and vegetative preservation on the Master Development Plan.
2. The minimum size of all new trees to be planted within the development shall be as follows: a. overstory deciduous trees – minimum diameter of 2.5" b. coniferous trees – minimum height of 6' c. ornamental trees – minimum diameter of 1.5"
3. All site areas not covered by a hardsurface material shall be covered by sod or an equivalent ground cover to be approved by the City. This requirement shall not apply to areas is designated for tree and vegetative preservation in their natural state.
4. All parking lot areas shall be landscaped to break up expanses of paved areas. Parking lot landscaping shall be contained in raised planting beds bordered by a raised concrete curb or equivalent to be approved by the City.
5. All landscaping and related site improvements shall be maintained on a continual basis. Maintenance shall mean that lawn areas are mowed on a regular basis, that dead or dying plant material is replaced with an equivalent number and size of new planting, and that landscaped areas are free of debris and other items that are of a non-natural material.

He said that no landscaping plan has been proposed at this point. Cooney said that he would recommend that the existing vegetated tree line be maintained to the degree possible and some credit may be given for the existing canopy. He said he would recommend additional plantings focused primarily in the area adjacent to the residential property lines to the north. Cooney also noted that, per the requirements above, additional plantings would be required along the internal setback lines.

Cooney said the ordinance states that screening shall be required of any parking area or any nonresidential building that directly abuts existing residential districts and that screening shall consist of fences, walls, earth berms, hedges, natural vegetation, other landscape materials or any combination to achieve an effective but reasonable visual barrier. He pointed out that all fences and walls shall meet the requirements of Section 1310.8 – Fences and Walls, be designed to be architecturally compatible with the surrounding development and be maintained on a continuous basis. Cooney said that, as proposed, the parking area abuts an external setback and screening would be required.

Cooney said the ordinance states that exterior building materials and architectural compatibility of new buildings to be constructed within a PUD District shall be subject to final architectural review by the City Council. Cooney said that he is supportive of the exterior building cladding shown in the renderings.

Cooney said the ordinance states that signs shall be restricted to those that are permitted in a sign plan approved by the City Council and shall be regulated by permanent covenants. He said that no signage proposal has been submitted. He said he anticipates that at least one sign identifying the property home will need to be adjacent to the public right of way.

Cooney said the ordinance states that the City Council may approve subdivisions, streets, utilities and public facilities that are not in the compliance with the City of Deephaven Subdivision Ordinance requirements for property zoned PUD if it finds that strict adherence to such requirements is not required to meet the intent of this Section or to protect the health, safety or welfare of the residents of the PUD, the surrounding area, or the City as a whole.

Cooney noted that subdivision request (plat) will be required as part of this process.

Cooney said that since the proposed use is not considered in the proposed location within the city's comprehensive plan, a comprehensive plan amendment will be required. The process can be undertaken parallel to the Master Development Plan process, but at this point it is not clear if the timelines for such an amendment would align with approval of the Master Development Plan.

Cooney said that the applicant has submitted proof of development interest in the property via a purchase agreement. He said that the city attorney has deemed this sufficient for review of the concept plan, but a signed acknowledgement from the current property owner will be required as part of the Master Development Plan submission items.

Cooney said that the proposed location for the Lake Minnetonka Care Center is on one of the few properties within the city that might be suitable for this type of development. He said the size of the property itself and the location off of a collector street are compatible with the proposed use. Cooney said that some may take the position that the only appropriate location for such a use is adjacent to a highway or a commercial district, staff is of the opinion that a nursing home can be compatibly integrated into a single-family environment.

He said that the facility itself is institutional/residential in nature, similar to a multifamily apartment dwelling, albeit with 24-hour staffing and frequent public safety calls. Cooney said that the proposed density of the units may be more intense than the surrounding housing, the proposed scale of the building is zoning code compliant in terms of footprint, height, and setbacks.

But, Cooney said, there are additional impacts on the neighboring properties that need to be thoroughly considered before the project moves forward. He said those impacts include frequent public safety visits, food delivery trucks, and garbage pick-up. He said that at the existing nursing home location there have been public safety concerns raised by the neighbors and the police department, and asked what degree might the new site exacerbate or minimize those concerns. Cooney listed his questions/concerns for consideration:

- Does the Planning Commission feel that the proposed use is appropriate for the site? Please articulate a position for the City Council.
- The current access to the property is severely restricted and not appropriate for regular public safety vehicle access. Vehicle speeds on Vine Hill Road also make the approach to the property more challenging, and a wider, 90-degree entrance off of Vine Hill Road should be considered. Such an entrance could involve significant regrading.
- Food and other supply deliveries are proposed for the north side of the building. Staff anticipates that any idling trucks would be situated close to the northern property setback which could be problematic. Consideration should be given for another location for a delivery entrance.
- In anticipation of public safety vehicles, staff would recommend a high level of privacy screening on the north side of the property adjacent to the front parking area.
- The nature of the facility may require some level of property line fencing on the north and south property lines to the west of the wetland.
- Given the scale of the property, staff would expect to see some level of outdoor areas for the residents. Unlike the Cottagewood neighborhood where the current facility is located, there are no easily accessible parks or public areas for residents to walk to, so the property itself would need to provide some of those amenities. If those amenities are not provided on site, is there a greater likelihood that residents would walk through adjacent properties?
- What degree of danger does Vine Hill Road and the State Highway 7 corridor create for the current residents? If there is not monitoring of the residents' movements, does this location create more risks and should a fenced entry be considered?
- What are the impervious area impacts on the adjacent wetland? Note that nothing would prevent a single-family housing proposal from having similar impacts.
- Lighting impacts on the adjacent single-family property will need to be appropriately considered.

Cooney concluded his staff report.

Daly asked about parking. Cooney said that the city code does not address this use in its parking requirements, but that previous review of the plans by the city council felt that the proposed parking would be sufficient.

Webster noted that the residents are not driving cars and there are few visitors.

Daly asked about screening to the north versus screening to the existing residential property on the lot. Cooney said that the existing property on the lot would be owned by the LMCC owners and there would also be an awareness of the nursing home by any potential buyer. He said that the properties to the north would be dealing with a significant change to this property, so screening should be more comprehensive.

Webster asked about delivery trucks, the shared driveway, and the flexibility of the plan. Cooney said that the city has the ability to place those requirements that it thinks are necessary.

Eaton said that he thinks the design is great, but he does not see the use as appropriate for this property. He said that he was surprised to find out about the police activity at the existing location and does not see that changing at this location. Eaton said that it is a big burden for the community and thinks there are other settings that are more appropriate for this facility.

Nagle said that the grading is a big problem. He said that there are clearly property owners to the north that do not want to see this use placed here. He said that nothing would restrict a builder from subdividing the property and creating homesites. Nagle asked if the property has been sold. Cooney said that there is a purchase agreement for the property. Nagle said that he is not sure the property is suitable for the use, and that he would prefer to see it adjacent to the commercial area 1 block to the south.

Werneiwski said that this is a residential development that could work on the site. He said that there are definitely grading challenges, but it could work.

Webster said that she thinks the proposal could work, but that there are real grading challenges. She said that the design of the building is unobtrusive. She said that this is an opportunity for the community to do the kinds of things that it claims it supports. Webster said that there are a number of logistical items to be worked out, but that she thinks it could work.

Daly said that this is a large, 4-acre lot. He said that there are challenges, including working with the local watershed district. He said that he does not like the access and that grading is an issue. Daly said that this might work best with the elimination of the existing house, but that decision is up to the applicant. He said that the facility is not as big as some of the single-family houses within the city. Daly said that there are a lot of challenges ahead, but the proposal fits better on the 4-acre lot than it would at its current location.

Wilcox said that the property works better with the lot and the design is generally unobtrusive. He said that he feels bad about the situation since the residents are also Deephaven residents. Wilcox said that he thinks the applicant is attempting to do the best for his residents. Wilcox said that, in spite of that, he does not think the use is compatible with the single-family neighborhood character.

Jeff Sprinkel, applicant, said that they have a very old building that needs replacing and thought this property would be a good size for the use. He said that his residents are Deephaven residents and that he has 3 residents that have been there at least 20 years and 10 more that have been there at least 10 years. He said that the proposal fits much better than it would on the current property. Sprinkel said that his current building has been in operation for over 60 years.

Webster asked about the safety of the residents and ensuring that they do not endanger themselves on Vine Hill Road. Sprinkel said that he does not want to run a prison and wants residents to live to the best of their ability. He said that there is the capability to provide monitoring devices for residents, and that new facility would allow for more secured access.

Webster asked about keeping the existing house. Sprinkel said that he has not fully considered what to do with that house. He said that it was not for staff purposes.

Webster asked how flexible Sprinkel is on the driveway access. Sprinkel said that he is open to anything that might work.

Webster opened the meeting for public comments.

Amy Naleid, 19175 Vine Ridge Court, said that she is a mental health professional but that she is concerned about the impacts for her quality of life including the impacts from vehicles and the size of the facility. She said that she is scared about losing what she loves about Deephaven.

Ted Naleid, 19175 Vine Ridge Court, said that he has distributed a letter with over 40 signatures on it. He said the comprehensive plan shows that this area would continue to be single family residential. Naleid said that the previous PUDs were different and made Deephaven more residential. He said that he and Amy object to the size and scope of the request and that it does not fit into the residential neighborhood.

Tom Bazzare, 4960 Vine Hill Road, said that the property will be less than 4 acres once it is divided. He said that there are other properties in Deephaven, including one near St. Therese. He said he wants to protect the integrity of the community.

Amber Wilke, 19430 Vine Street, said that she was born in Deephaven and that she chose to raise her family here because of the character of Deephaven. She said that she cares about mental health, but she does not think the building is a good use for that property.

Vangie Nicklow, 4981 Vine Hill Road, said that she has worked in food service and knows the impacts of food trucks and garbage trucks. She said that she would be very unhappy if the lights from the building shine through her windows and night. She said that this is not like having a converted mansion in the neighborhood. She said it would be a facility, not a house, and it would be difficult to accept if it were to be approved.

Mike Randall, 4982 Vine Hill Road, said that he has lived in Deephaven for 31 years and the residents of the neighborhood have been here for a very long time. He said that he appreciates what Jeff Sprinkel is trying to do, but that they would like to keep the character of the residential neighborhood.

Linda Rolfes, 19475 Rosedale Avenue, said that she has lived in Deephaven for 20 years and that she recognizes the needs the facility would serve. She said that funding could change or the owner could go out of business and they would have to live with a facility that really isn't a part of the neighborhood.

Gabrielle Rohde, 19400 Minnetonka Boulevard, said that 31 years ago the city denied an expansion of the Coldwell Banker Burnett building on Vine Hill Road. She said that this action prevented commercial creep from that building and is worried that approval of the nursing home will create commercial creep. She said she also had concerns about the shared driveway and a potential expansion plan for the existing house. Gabrielle said that the development does not fit within the current code but would also add to the commercial creep from State Highway 7.

Eunjeong Moe, 19250 Rosedale Court, said that she has lived in Deephaven for 2 and ½ years. She said that she was born in Seoul, South Korea, one of the largest cities in the world, and she was surprised by the small size of the city and the city hall. She said that she now understands why it is important to keep the character of Deephaven. She said traffic is already heavy on Vine Hill Road and does not want to add more to it.

Tom Bazzare, 4960 Vine Hill Road, said that a medical emergency at the facility during morning rush hour could create serious medical care problems since there is only one route in and out of the facility.

Webster closed the public comment portion of the meeting.

Nagle said that he is not in favor of moving forward with this facility on this property. He said that he has heard the neighborhood consensus, and he also understands the traffic issues. He said that there are also access issues. He said that he would have been fine with a proposal that was along Excelsior Boulevard. He said that he feels bad for the residents of the existing facility, but he doesn't think this is the right location.

Webster said that she thinks this could work and this is only a concept plan at this point.

Daly asked if there was another similar facility to the east. Nagle said that was Sunrise Senior Living in Minnetonka.

Eaton made a motion to recommend denial of the PUD Concept Plan request. Motion was seconded by Wilcox. Motion failed 3-3 with Webster, Daly, and Werneiwski voting against.

Cooney asked that a motion in the affirmative be made, since a denial of a denial motion is not really a valid motion.

Webster made a motion to recommend approval of the PUD Concept Plan request. Motion was seconded by Werneiwski. Motion failed 3-3 with Wilcox, Nagle, and Eaton voting against.

#### **LIAISON REPORT**

Carlson presented the Liaison Report. He said that the variance request at 20100 Minnetonka Boulevard was approved. He said that impervious areas were reduced.

He said that the variance request at 20560 Summerville was approved. He said that there were discussions about the grading, retaining walls, and stormwater management for the property.

Carlson said that there was a long discussion about the ordinance to ban short-term rentals. He said that a public hearing will be held in February. Eaton asked what the opinion of the city council was on the ordinance. Carlson said that there were some members who used these types of services and didn't see the issue, but there was other discussion that raised the concerns about the compatibility with the single-family nature of the community.

Webster said that VRBO polices itself and that keg parties are not an issue. Carlson said that is why the council would like to have the public hearing.

#### **ADJOURNMENT**

Motion by Nagle to adjourn the meeting. Motion seconded by Daly. Motion carried 6-0. The meeting adjourned at 9:27.

Respectfully submitted,  
Dale Cooney  
Zoning Coordinator