

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

PRESENT: Chairman Kent Carlson, and Commissioners Jim Anderson, Gen McJilton, Melissa McNeill, Bill Sharpe, John Studer, and Bob Werneiwski

ABSENT: None

OTHERS PRESENT: Council Liaison Darel Gustafson and Zoning Coordinator Dale Cooney

MINUTES OF June 21, 2016

Motion by Commissioner Sharpe, seconded by Commissioner McJilton, to approve the minutes of June 21, 2016 as written. Motion carried 7-0.

PUBLIC HEARINGS

Consider request of New Look Renovations for a variance from the minimum required front yard setback in order to construct a new house at 3700 Hamilton Avenue—Section 1302.05(3) of the zoning ordinance requires a front yard setback of 35 feet. Applicant is proposing a front yard setback of 24 feet.

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney summarized the staff report. He said that New Look Renovations, builder for the property owners, has applied for a variance to construct a new house at 3700 Hamilton Avenue. Cooney said that the R-3 parcel currently has a legal non-conforming house on the property and that the homeowners would like to remove the existing home, and build a new house in roughly the same footprint of the existing house.

Cooney said that Section 1302.05(3) of the zoning ordinance requires a front yard setback of 35 feet. He said that the applicants are requesting a front yard setback of 24 feet and are seeking a variance of 11 feet. Cooney noted that with a lot depth as narrow as 70 feet at the building line, and with the required setbacks and house width totaling 75 feet (35 ft. front setback, 15 ft. rear setback, 25 ft. house width), a variance would be required to build on the property, regardless of the proposal.

Cooney said that the steps off of the front porch encroach three feet and that the vast majority of the encroachment is 8 feet into the required front for the proposed front porch. Cooney noted that much of the house maintains the approximate footprint of the existing house and detached garage.

Cooney said that Section 1310.03 of the zoning ordinance requires that a single family residential dwelling must be a minimum of 25 feet wide at its narrowest dimension. Applicants are proposing a house that has a narrowest dimension of 22 feet for the area of the front entry area, with the bulk of the house having a width of 24 feet, 4 inches. Cooney noted that if the front porch is included in the calculation, the house meets the minimum width required by code. He said that in conversations with the architect, they would be happy to comply with the minimum house width requirement if necessary, but that it would not increase the functionality of the house. Cooney said that the house is otherwise zoning code compliant.

Cooney stated that, as proposed, the property would have 40.2% impervious surface area. He said that since the proposed impervious surface expansion is less than 500 square feet, the stormwater management requirements of Section 1353 are not triggered.

Cooney said that he recommends approval of the variance request of New Look Renovations to encroach 11 feet into the minimum required front yard setback for the property at 3700 Hamilton Avenue, as presented, and based on the following findings:

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

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 applicant is seeking to vary from the stated setback standards of the ordinance in order to construct a new house in roughly the same footprint of the existing non-conforming house. The lot width creates challenges for the property, but the overall design remains in harmony with the purpose and intent of the ordinance.

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

The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the redevelopment of residential property within the city.

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

The proposal puts the property to use in a reasonable manner. The use of the property would be consistent with other similar sized properties in the community. The scale of the proposal and the requested variance is reasonable in that it is typical of the character of the community and would not unduly impact any of the neighboring properties.

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

The width of the property creates difficulties in meeting the setback requirements of the ordinance. Based on the lot width, a variance is required to construct a zoning code compliant house.

(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 property is of a similar size to other single-family properties in the neighborhood. The new house is of a scale and character that will integrate well within the community.

Cooney concluded his staff report.

Commissioner Sharpe asked about the 25 foot house width. Chairman Carlson said that this was not a rule that the city had strongly adhered to in the past.

Commissioner Werneiwski asked about the images in the packet. Cooney said that they were meant to be representative of the style of the house, but not the house itself. Werneiwski said that he thought they were confusing.

Commissioner Studer asked if the applicant was proposing to save the existing trees. Dale Travis of New Look Renovations, applicant, said that they were going to save most of the existing trees.

Chairman Carlson asked about the height of the house. Travis said that it was 29 feet, 1 ¾ inches tall. Carlson requested that the plans be updated to show the height.

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

Carlson surveyed the Planning Commissioners for questions or comments. General consensus for approval was expressed by the commissioners.

Commissioner Sharpe made a motion to recommend approval of the request of New Look Renovations for a variance of 11 feet from the minimum required front yard setback in order to construct a new house at 3700 Hamilton Avenue, as presented, based on the findings of staff. Motion was seconded by McJilton. Motion carried 7-0.

Consider request of Cyclone Construction for variances from the minimum required front yard setback, and minimum required side yard setback in order to construct a house addition at 19450 Rosedale Avenue– Section 1302.04(3) of the zoning ordinance requires a front yard setback of 50 feet and a minimum side yard setback of 20 feet. Applicant is proposing a front yard setback of 42 feet, 1 inch, and a side yard setback of 18 feet, 8 inches.

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney summarized the staff report. Cooney said that Cyclone Construction, builder for the property owners, has applied for a variance to construct an addition for 19450 Rosedale Avenue. The addition would encroach into the front and side yard setbacks. He said that the property is an R-2 parcel and the existing home has slightly non-conforming front setback. He said that the proposed changes would make the front setback more non-conforming, while also creating a side yard encroachment.

Cooney said that Section 1302.04(3) of the zoning ordinance requires a front yard setback of 50 feet. Applicants are requesting a front yard setback of 42 feet, 1 inch and are seeking a variance of 7 feet, 11 inches. He said that the existing house, built in 1957, is currently 49 feet, 7 inches off of the front property line, and that both the proposed covered porch and the garage would encroach further into the front setback.

Cooney said that any addition onto the front of the house would trigger a variance. He said that the porch encroachment, while significant, is for an open porch, and is approximately one-quarter of the length of the house. He said that the garage could easily be pushed back such that it would not encroach, but the overall encroachment in this area is less than 3 feet into the setback.

Cooney said that the proposed garage would also encroach into the side yard setback. He said that Section 1302.04(3) of the zoning ordinance requires a side yard setback of 20 feet. Cooney said that the applicants are requesting a side yard setback of 18 feet, 8 inches and are seeking a variance of 1 foot, 4 inches. He said that the proposed garage would allow the applicant to convert the existing garage into living space within the existing footprint of the house. Cooney said that, in his opinion, the garage is as narrow as practical for a new two car garage, and building a new garage in this area would be difficult without some kind of encroachment.

Cooney said that the proposal allows a small, outdated 1950's rambler to be modernized and upgraded, with minimal overall impacts to the adjacent properties or the surrounding community.

Cooney stated that since the proposal expands impervious surface area by more than 10% from existing conditions, and the expansion is over 500 square feet, the stormwater management requirements of Section 1353 are triggered. He said that the applicant would be required to provide stormwater mitigation for those areas over the 25% impervious surface area limitation. He said that since this property is in a non-Shoreland area, these mitigation requirements are not part of the variance request, and will be reviewed with the building permit.

Cooney said that he recommends approval of the variance requests of Cyclone Construction to encroach 7 feet, 11 inches into the minimum required front yard setback, and to encroach 1 foot, 4 inches into the minimum required side yard setback for the property at 19450 Rosedale Avenue, as presented, and based on the following findings:

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

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 applicant is seeking to vary from the stated setback standards of the ordinance in order to build an addition onto a slightly non-conforming house. The new garage and front

porch are difficult to build without a variance, but are reasonable encroachments and are in harmony with the purpose and intent of the ordinance.

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

The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the redevelopment of residential property within the city.

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

The proposal puts the property to use in a reasonable manner. The property is a reasonable expansion and modernization of a 1957 rambler.

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

The location of the existing house creates practical difficulties for any expansion or upgrades towards the front of the lot. The width of the house and proximity to the setbacks makes it challenging to add a modern garage without some kind of encroachment.

(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 changes maintain significant setbacks, and the house will remain of a size and scale that is consistent with other updated homes in the area.

Cooney concluded his staff report.

Chairman Carlson opened the public hearing.

Wendy Kappes of 4948 Vine Hill Road asked which side of the property the garage encroachment would be on? Cooney said that the encroachment would be on the west side.

Allen Esselman, property owner at 19450 Rosedale, said that the variances are very similar to the variances granted in 2015 to 19500 Rosedale Avenue.

Hearing no more public comments, Carlson closed the public hearing.

Werneiwski asked if the tree in the front yard near the existing driveway would be removed. Ryan Seifert, owner of Cyclone Construction, said that the tree would be removed.

Carlson surveyed the Planning Commissioners for questions or comments. General consensus for approval was expressed by the commissioners. Carlson said that he was in support of the project and felt that it would be a nice addition to the neighborhood.

Commissioner Sharpe made a motion to recommend approval of the request of Cyclone Construction for a variance of 7 feet, 11 inches from the minimum required front yard setback, and variance of 1 foot, 4 inches from the minimum required side yard setback in order to construct a house addition at 19450 Rosedale Avenue, as presented, based on the findings of staff. Motion was seconded by McJilton. Motion carried 7-0.

Consider the variance request of Mitchell Shephard to exceed the maximum permitted grade alteration in conjunction with the construction of a new driveway at 19255

Cedarhurst— Section 1312.04 of the zoning ordinance requires a variance for any land alteration greater than three feet at any point. The applicant is proposing a land alteration of up to 8 feet.

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney summarized the staff report. Cooney said that Mitchell Shephard, property owner, is requesting a variance to exceed the maximum permitted grade alteration in order to construct a new driveway at 19255 Cedarhurst. He said that the driveway will serve the new house that is being built on the property.

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 a land alteration of up to 8 feet, and is seeking a variance of 5 feet from the maximum permitted land alteration.

He said that the current house on the property hosts a tuck-under two-stall garage, with driveway access on two sides of the property and that the applicants are proposing a lower-level tuck-under garage, and a main level garage. He said that both driveway accesses would remain, but the primary driveway access would now access garage stalls on the main level of the structure, creating the need for the grading variance. Cooney said that the main driveway would be separated from the lower-level garage and driveway via a retaining wall.

Cooney said that because of the relationship of the existing home's main level to the site elevation, it is challenging to expand the new house in this direction without some kind of significant land alteration. He said that the existing house is built on a high point on the property, with the grade falling away quickly, particularly to the north and east. Cooney said that while there is ample room to expand the house within the setbacks to the north and east, the grading becomes an issue. He said that the main level of the new home maintains the main level elevation of the existing home.

Cooney said that it is worth noting that one of the principal justifications for land alteration restrictions is to limit builders from cheating house height limitations by building up the grade around a property and that is not the case in this proposal.

Cooney said that Section 1310.10(2) of the city code requires that swimming pools comply with the setback standards of the zoning district in which they are located as measured to the outside edge of the pool decking and that in no instance shall the setback be less than fifteen feet.

He said that for the R-1 zoning district, the side yard setback for the pool is required to be 25 feet. Cooney said that, as proposed, the pool decking would be 15 feet from the side yard setback and would encroach 10 feet. Cooney said that the applicant would need to modify the proposal to be zoning code compliant.

Cooney said that Section 1310.03 of the zoning ordinance requires that a single family residential dwelling must be a minimum of 25 feet wide at its narrowest dimension and that portions of the proposed house would be as narrow as 18 feet wide. Cooney said that the City Council has not required firm adherence to this rule where the main body of the house has exceeded this width requirement. He said that the Planning Commission should make a recommendation on this issue.

Cooney said that the house is otherwise zoning code compliant. He did note that the survey does not show accurate setback requirements, and that the rear yard should be 30 feet, while the side yard (near the pool) should be 25 feet.

Cooney said that he recommends approval of the variance request to exceed the maximum permitted grade alteration by 5 feet for the proposed driveway at 19255 Cedarhurst, as presented, and based on the following findings:

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

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 applicant is seeking to vary from the stated land alteration requirements, to build a new house on a property with difficult grading issues. The alterations are in conformance with

the purpose and intent of the ordinance in that they maintain existing drainage patterns and are not an attempt to circumvent height restrictions.

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

The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the redevelopment of residential property within the city.

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

The driveway regrading is reasonable. The property is attempting to work with existing but challenging site grading while also expanding the footprint of the house on the lot.

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

The property has unique topography, including the existing tuck under garage area and a steep drop off in the rear yard. Expanding the house footprint is challenging without some kind of grade alteration.

(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 grade alteration would maintain the elevation of the main floor of the existing house. The property is of a scope and scale similar with other houses within the community.

Cooney concluded his staff report.

Commissioner McJilton asked how the pool issue would be handled. Cooney said that new plans showing a zoning compliant pool would be required.

Mitchell Shephard, property owner, said he will address the pool issue.

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

McJilton said that she had no issues with the narrower parts of the house.

Commissioner Anderson said that he met with the property owners and liked the proposal. He said that this proposal allowed them to save trees on the property. He said that they were also keeping the driveway location the same which is something that will reduce possible impacts for the neighbors.

Carlson said that he was also supportive of the project. He said that prior to City Council review he would like to see an updated survey showing zoning compliant pool/pool deck location, including whatever other changes are required to make this necessary, the house height revised on the elevations to reflect the height to the peak of the roof, and a visual representation of proposed retaining wall. He said that the 10 foot tall retaining wall could be impactful to neighbors and that he would like to have the city council have a visual representation of the wall.

Chairman Carlson made a motion to recommend approval of the request of Mitchell Shephard to exceed the maximum permitted grade alteration by up to 5 feet in order to construct a new driveway at 19255 Cedarhurst, as presented, based on the findings of staff. Motion was seconded by Anderson. The motion was conditioned that the applicant provides the following prior to City Council review:

(a) an updated survey showing zoning compliant pool/pool deck location, including whatever other changes are required to make this necessary, (b) the revised house height shown on the elevations to reflect the height to the peak of the roof, and (c) a visual representation of the proposed retaining wall.

Motion carried 7-0.

Consider the conditional use permit request of Stephen Petersen to operate a boutique coffee roasting business at 18305 Minnetonka Boulevard, Lower Level– Section 1302.02(2) of the zoning ordinance requires a conditional use permit to operate a catering establishment.

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney summarized the staff report. Cooney said that Stephen Petersen is the property owner at 18305 Minnetonka Boulevard, and he would like to operate a boutique coffee roasting business in the lower level of his building. He said that the roasting process would be less than 10 pounds of coffee per week, and less than 1 hour per week. Cooney said that the business will be located in the C-1 zoning district. Cooney said that, currently, coffee roasting is not listed in Section 1302.02(2) as a permitted or conditional use in the district and that the closest match staff could find for an existing conditional use under which this proposal could fit would be “catering establishment”.

Cooney said that the applicant has enclosed a narrative describing the scope and purpose of the coffee roasting business. He said that the applicant describes the roasting essentially a hobby, and that the coffee beans would be distributed to his son’s restaurant, or for personal and office use. Cooney said that the narrative states that there would be approximately 5 pounds of beans roasted each week, and that the roasting process takes less than 1 hour. He said that no walk-in retail sales are proposed, and deliveries and pick-up of the beans would be by the owner.

Cooney said that currently the C-1 district allows “catering establishments” as conditional uses within the district. Cooney said that coffee is a food product, and the applicant is preparing and delivering the product to local vendors. He said that if the Planning Commission is supportive of the use, but feels that “catering establishment” is not a justifiable category for the proposed use, an amendment to the C-1 zoning district will be required to list the new conditional use category.

Cooney said that if the Planning Commission is not supportive of the use, they can recommend denial of the application since coffee roasting does not easily fall into one of the permitted or conditional uses within the district.

Cooney said that the applicant currently has office hours of 8 AM to 4 PM, Monday through Friday and that he would recommend that any coffee roasting be limited to current office hours. Cooney said that he does not anticipate any traffic impacts from the proposed business.

Cooney said that the primary impact he expects from the roasting would be odor and smoke. He said that the roasting machine uses a gas burner, and other features are powered through a standard electrical outlet. He said that the roasting of the beans themselves takes place internally in a drum. He said that the roasting machine will be required to meet all building code requirements for venting, gas piping, and any other safety regulations.

Cooney said that, while it is hard to quantify the odor impacts from the process, based upon the proposed scale of the business, he expects the impacts would be minimal. He recommended limiting the roasting operation to 1 hour per week. He said that if the business were to expand operation beyond this limitation, further conditions may be required as part of a new conditional use permit process.

Cooney said that he recommends approval of the conditional use permit request of Stephen Petersen to operate a catering establishment at 18305 Minnetonka Boulevard, Lower Level, as presented based on the following findings:

Upon review of the application, it was determined there would be no negative impact on development of the community, the character and development of the neighborhood, the health, safety, and welfare of

occupants of surrounding lands, existing and anticipated traffic conditions, including parking facilities, on adjacent streets, and the effect on property values of the subject premises and in the surrounding area.

Cooney recommended the following conditions be placed on the business:

- (a) the business will be limited to roasting not more than 10 pounds of coffee per week, and not more than 1 hour of roasting per week
- (b) roasting will take place between the hours of 8 AM to 4 PM, Monday through Friday
- (c) installation and operation of the roasting machine must comply with all building code requirements and safety regulations for the proposed use
- (d) walk-in retail sales are prohibited
- (e) pick-up or delivery of the product is limited to single rear axle straight trucks or smaller vehicles typically used to serve office and residential areas
- (f) any expansion of the parameters of the business would require approval of a new Conditional Use Permit

Cooney concluded his staff report.

Chairman Carlson opened the public hearing.

Stephen Petersen, applicant, said that this has been a hobby for him and a way to spend time with this son. He said that the new coffee roaster would allow him to roast beans in 15 minutes in what used to take much longer.

Hearing no further public comments, Chairman Carlson closed the public hearing.

Commissioner Anderson said that he was fine with the "catering establishment" classification since the city shouldn't need to parse out every single type of use. He said he thought that the conditions of staff were good.

McJilton asked if there were any adjacent tenants. Petersen said that he operates his online business in the basement, his wife operates the dentist office on the first floor, and there is a tenant on the top floor. He said that there are no other tenants.

McNeill asked about internet sales of the coffee, and if he plans to grow the business that way. Petersen says that he sells BMW parts online, and that he will occasionally give coffee to his customers as a thank you gift, but that he has no plans to create an online coffee sales business.

Carlson said that he had some initial concerns about the proposal due to past experience with coffee roasters. He said that the small scale of the business has eased his concerns.

Motion by Chairman Carlson to recommend approval of the conditional use permit request of Stephen Petersen to operate a catering establishment at 18305 Minnetonka Boulevard, Lower Level, as presented and based on the findings and conditions of staff. Motion was seconded by Sharpe. Motion carried 7-0.

Consider the variance requests of Tom Kaul for variances from maximum accessory structure height, maximum accessory structure area, minimum required side yard setback, minimum required rear yard setback, maximum allowable impervious surface area, and maximum permitted grade alteration in order to modify an existing garage and the adjacent yard area at 3425 Northome Road– Section 1302.05(4) of the zoning ordinance limits the height of an accessory structure to 15 feet. Section 1310.10(1)(f) of the zoning ordinance limits the maximum R-3 accessory structure area to 700 square feet. Section 1302.05(3) of the zoning ordinance requires a front yard setback of 35 feet and a minimum side yard setback of 10 feet. Section 1302.05(2) of the zoning ordinance limits the maximum

impervious coverage of the property to 25%. Section 1312.04 of the zoning ordinance requires a variance for any land alteration greater than three feet at any point.

Chairman Carlson introduced the agenda item.

Cooney said that the applicant has submitted a revised request since delivery of the staff report. Carlson asked the applicant if he would like the city to only consider the revised request. Tom Kaul, the applicant, said that he would like to consider the revised request. Carlson asked Cooney to summarize based on the revised request.

Cooney said that the applicant has reduced the size of the garage to have a footprint of 697 square feet, and that a variance from the maximum accessory structure size limitations is no longer needed.

Cooney said that Section 1302.05(4) of the zoning ordinance limits the maximum accessory structure height to 15 feet. Cooney said that, based on the revised proposal, the applicant is requesting an accessory structure height of 18 feet and is seeking a variance from the maximum accessory structure height of 3 feet. He said that this height does not include the height of the railing for the green roof, which would further expand the height of the structure.

Cooney said that the applicant is requesting variances from the side yard setback and the rear yard setback. Cooney said that the existing garage encroaches into the side yard setback by 4 feet, 7 inches, and it is not possible to expand the garage without further encroachment into the setback. Cooney said that the applicant is seeking a side yard setback variance of 4 feet, 7 inches.

Cooney said that the proposed cantilevered balcony on the rear of the garage also encroaches into the rear yard setback by 3 feet, 2 inches and the existing garage encroaches by 8 inches. Section 1302.05(3) of the zoning ordinance requires a rear yard setback of 15 feet. He said that the applicant is requesting a rear yard setback of 11 feet, 2 inches and are seeking a variance of 3 feet, 10 inches.

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 did not update the survey to show impervious surface area based on the revised proposal, but it could be estimated that it would be 55 square feet less than shown on the survey. Cooney noted that existing conditions on the property are 27.5% hardcover, and the applicant is proposing to expand the impervious surface area on the 11,150 square foot lot by .3%.

Cooney said that the applicant has not submitted any stormwater mitigation as a part of this proposal. He said that the applicant claims that the green roof should account for any mitigation requirements and that the Planning Commission should make a determination on this point.

Cooney said that the zoning ordinance states that any land increase or decrease of more than three feet at any point requires a variance. He said that the applicant did not update the survey to show proposed grading, but it can be estimated to be approximately three feet lower than the original proposal. Cooney said that the applicant is proposing to alter the existing contours by up to 7 feet at the rear of the garage and is seeking a variance to exceed the maximum grade alteration by up to 4 feet in order to be able to walk onto the proposed green roof. Cooney said that a significant retaining wall is proposed to accommodate this grade change.

Cooney said that the applicant has proposed the second story as a workshop over the garage. He noted that a sewer connection would not be allowed to be installed at the garage, and an accessory dwelling unit is against city code.

Cooney said that he has significant concerns about the precedent that would be set by allowing a variance to create a second story on an accessory structure. Cooney said that, regardless of the degree of the variance, allowing a height variance for an accessory structure without showing a clear practical difficulty is problematic.

He said that any number of properties could seek the same relief to create a second story addition on accessory buildings throughout the city.

Cooney said that he cannot justify via a practical difficulty the expanded footprint of the accessory structure. He said that without clear justification for an oversized accessory structure, staff is wary of the precedent that would be set for allowing such a variance. He said that the rear encroachment of the balcony is also difficult to justify as a practical difficulty.

Cooney said that portions of the request could be justified via the practical difficulty standard, including the side yard setback and impervious surface area requests.

Cooney said that the proposed grade change is significant. He said that the principal justifications for land alteration restrictions is to limit builders from cheating height limitations by building up the grade around a property, or altering drainage patterns that would have adverse impacts, and that neither of those concerns seems to be the case here.

Cooney said that staff recommended denial of the variance requests as presented in the revised proposal:

- To exceed the maximum allowable accessory structure height by 3 feet
- To encroach 3 feet, 10 inches into the minimum required rear yard setback
- To encroach 4 feet, 7 inches into the minimum required side yard setback
- To exceed the allowable maximum impervious surface area by 2.8%
- To exceed the maximum allowable grade alteration by up to 4 feet

for the property at 3425 Northome Road, as presented.

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?

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. While modifying the existing non-conforming structure as it is currently located would meet the purpose and intent of the ordinance, exceeding the height and footprint requirements of the ordinance is not in harmony with the purpose and intent of the ordinance.

(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 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 additional height of the accessory structure exceeds the city's regulations to create a two-story accessory structure, and in the context of a variance request, is not using the property in a reasonable manner.

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

There are not unique circumstances to the property not created by the landowner. The additional height, square footage, rear yard encroachment and are not created by limitations of the property itself, but rather reflect the property owner's desire to increase storage capacity within the detached structure.

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

The proposal will alter the essential character of the locality by creating an accessory structure where the height and footprint of the structure is disproportionate in scale to other accessory structures.

Cooney concluded his staff report.

Chairman Carlson opened the public hearing.

Tom Kaul, applicant, said that he has lived in the area since 1976, and wants to work within the rules as much as possible. He apologized for switching gears late in the project. He said that he has downsized his home, but now he has no place in the house to work on projects, and that he has collected a lot of stuff over the years, and the issue is really about storage.

Sharpe asked if the garage would be torn down. Kaul said that he would keep much of the existing garage, and then build back and up. He said the retaining walls need to be fixed.

Sharpe asked if the second floor would be for storage. Kaul said that it would be for storage and a workshop. Sharpe asked if he had considered going into the hillside.

Cooney said that he does not know how to regulate underground portions of accessory structures, but it would still require a variance to exceed the 700 square foot footprint.

Kaul said that top of the garage area is the only place that gets sun to grow vegetables, and that gardens can be grown in small spaces. He said that he lowered the height to attempt to address neighbor concerns. He said that he is open to ideas. Kaul said that he wants to enter in the upper level since the garage is hard to get to in the winter, and he does think that is a hardship.

Jim Kaufman, 3405 Deephaven Avenue, said that he wrote a letter and that the letter reflects his feelings.

Michael Blum, 3455 Northome Road, said that he is supportive of the side setback request, but is concerned about the height. He said that he is also here since he is confused about the proposal since the plans have been shifting. He asked how the height is determined.

Darren Hahn, architect, 5130 Clear Spring Road, Minnetonka, MN, 55345, said that 18 feet is the height to the top of the parapet wall, which holds back the soil for the green roof. Blum said that 18 feet does not include the railing. Kaul said that he could cover that with a hedge. Kaul said that there are also skylights shown in the drawing.

Studer asked if the skylights go above the 18 feet. Kaul said that they did, similar to a chimney.

Kaufman said that, regardless of the height being 18 feet, or 18 feet 5 inches, the appearance is still significant, and there would be a house-like structure on that area of the property. He said that the garden with a 3 foot fence adds to the height and that the numbers don't tell the story about the feel of the finished product.

Carlson says that a two level accessory structure is 1,400 square feet, not 700 square feet. He said that he would like clarification from the council on if it is a limitation on the footprint, or total square footage. He said that doubling the size of the structure by going to two stories is against the intent of the ordinance. Carlson said that he did find a practical difficulty with the garage access and storage, but that the height issue is not something people are comfortable with.

Cooney said that there was nothing limiting the applicant from expanding their house to accommodate storage. He said that the structure limitation on the property is 4,500 square feet, and the house has a less than 1,200 square foot footprint. He said that Kaul could address storage needs without triggering a variety of variances.

Werneiwski said that the height issue was problematic. He said going back into the hill might be less problematic.

Studer said that he would consider the railing as part of the height restriction. McJilton said she would agree with that observation.

Carlson asked if the applicant would like the planning commission to vote on the application. Kaul said that he would withdraw his application and come back to the planning commission at a different time.

Ordinance 13-75, Amending Section 1305 regarding Temporary Family Healthcare Dwellings– Proposed changes in response to state law enacting temporary family health care dwellings requirement.

Chairman Carlson introduced the agenda item.

Cooney summarized the staff report. Cooney said that Governor Dayton signed into law a bill creating a new process for landowners to place mobile residential dwellings on their property to serve as a temporary family health care dwelling. Cooney said that the resulting legislation sets forth a short-term care alternative for a “mentally or physically impaired person,” by allowing them to stay in a “temporary dwelling” on a relative’s or caregiver’s property. He said that unless a city opts out by **September 1, 2016**, the new law will require cities to allow temporary family health care dwellings, and that an opt-out ordinance is attached for the Planning Commission’s review.

He said that nothing would prevent the city from opting in in the future, or from creating its own ordinance, or for allowing a variance for a structure of this type. But, he said that this is the only chance for the city to opt out of the state requirement.

Sharpe asked if Cooney had any more context on the state law. Cooney said that he did not have any context beyond the FAQ that was included with the staff report.

Sharpe asked what other cities were doing. Carlson said that other cities were opting out.

Carlson made a motion to recommend that the City Council adopt ordinance 13-75, an ordinance of the City of Deephaven, Minnesota amending Section 1305 regarding Temporary Family Health Care Dwellings, as written. Motion was seconded by Sharpe. Motion carried 7-0.

LIAISON REPORT

Council Liaison Gustafson said that at the July 5th meeting the City Council approved the variance requests for 20430 Lakeview Avenue, and 4260 Jefferson Street. Gustafson said that the Planning Commission should be aware of proposals that show a 1 car driveway for a two-car garage in order to meet hardcover requirements, since an expanded driveway will likely be requested in the future. Gustafson said that the preliminary plat for 19615 Manor Road was approved. Gustafson said that new floodplain ordinance language is coming to the Planning Commission at the next meeting.

He said that the city received a \$2,000 grant from CenterPoint Energy for a new defibrillator. Gustafson said that CenterPoint should be done with the gas main work on Vine Hill Road and it will now be repaved and should be done on July 29th.

Carlson asked if the City Council could provide additional information on the 700 square foot accessory structure limitation. He said that the matter may come back to the Planning Commission, and that he is not necessarily opposed to a larger accessory structure. Carlson asked how that limitation was decided. He also asked if the restriction is for the footprint, or for the total square footage of, say, a two-story structure.

Werneiwski asked about accessory structures with two stories, and mentioned a property on Deephaven Beach. Carlson said that there was a garage with a potting shed that was rebuilt. Anderson said that he was aware of a two story structure that has been there for quite some time. Gustafson said that there

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have been two-story accessory structures that have been approved by the City Council, and that the proposed garage might be an improvement over what is at 3425 Northome.

ADJOURNMENT

Motion by Chairman Carlson to adjourn the meeting. Motion seconded by Commissioner Anderson. Motion carried 7-0. The meeting adjourned at 8:25.

Respectfully submitted,
Dale Cooney
Zoning Coordinator