CALL TO ORDER: Chairman Bob Werneiwski called the meeting to order at 7:02 p.m.

PRESENT: Chairman Bob Werneiwski and Commissioners Walter Linder, Melissa McNeill, and John Studer

ABSENT: John Daly, Bill Sharpe, and Cindy Hunt Webster

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

MINUTES OF May 16, 2017
Motion by Linder, seconded by McNeill, to approve the minutes of May 16, 2017 as amended. Motion carried 3-0 with Werneiwski abstaining.

PUBLIC HEARINGS

Conditional use permit request of Minnetonka Glass and Mirror to operate a glass and mirror replacement and sales business and to install illuminated commercial signage at 3644 County Road 101.

Werneiwski introduced the agenda item.

Zoning Coordinator Cooney presented the staff report. Cooney said that Andy Puchner, owner of Minnetonka Glass and Mirror located at 3644 County Road 101 is requesting a Conditional Use Permit to operate a glass and mirror replacement and sales business and to install a 53.5 square foot illuminated business identification sign that would be attached to the structure. He said that the business, located in the C-2 zoning district, is allowed as a conditional use within the zoning district with the acquisition of a conditional use permit and that the business would share the building with Jerry's Automotive.

Cooney said that Minnetonka Glass and Mirror has operated for over 24 years within the City of Deephaven. He said the business was previously located at 19330 State Highway 7 (adjacent to Midas). Cooney noted that the business inherited a CUP from the previous glass business at that location, and had never applied for a CUP from the city before. He said that conditional use permits stay with the property and not the business. Cooney said that, for those reasons, the business owner was unaware that a CUP would be required to relocate the business within the city. He said that it was only when the request for signage was submitted that the owner and staff became aware of the omission.

Cooney stated that Section 1302.02, Subd. 2u lists the following under conditional uses: Limited auto and home glass replacement and sales, and/or home window and door replacement, repair and cleaning services, with no outside storage of materials or refuse by the tenant.

He said that conditional uses may be allowed in a district by special permit and under limitation imposed by the Council when appropriate because of unusual characteristics of the use. Cooney noted that the League of Minnesota Cities provides the following direction regarding conditional uses, "*The city must grant the conditional use permit (CUP) if the applicant satisfies all the conditions. Conditional uses remain in effect indefinitely as long as the use complies with the conditions. Once issued, a CUP's conditions may not be unilaterally altered by the city, unless a violation of the CUP has occurred. It is important to stress that conditional uses, like permitted uses, must be allowed if the applicant can prove that the application meets all of the conditions and requirements of the city's ordinance and will not be detrimental to the health, safety, and welfare of the public.*"

Cooney stated that Section 1305.03(1) limits the hours a business can sell goods and services to consumers to only between the hours of 6 p.m. and 9:30 a.m. He said that this restriction does not apply

to office hours. Cooney noted that, currently, the website for the business lists the business hours as Monday-Thursday, 8:30 a.m. to 4:30 p.m.; Friday, 8:30 a.m. to 4:00 p.m.; and Saturday by appointment.

Cooney said that Section 1310.04 regulates off-street parking requirements, requiring different parking amounts for different types of uses based on square footage. He said that the 2,700 square foot space is comprised of several different types of uses including office, warehouse, and retail and that, based on the city parking requirements, the required parking for the property is 7 parking spaces. He said that the existing property, which shares space with Jerry's Automotive, currently has 26 parking spaces which is more than adequate to handle both commercial uses. Cooney said that Jerry's services 6 vehicles a day and has 4 employees and 1 tow truck.

Cooney said that Section 1115.04(2) states that no sign shall be erected, altered, reconstructed, maintained or moved in the city without first securing a Conditional Use Permit. He noted that it further states the content of the sign shall not be reviewed or considered in determining whether to approve or deny a sign permit.

Cooney said that the proposed sign would be lit internally with LED lighting. He noted that Section 1305.03(3) states that interior and exterior lighted signs permitted to businesses may operate during business hours only.

Cooney noted that Section 1115.09(a) states that the size of a sign may not exceed 15 percent of the wall area of the front façade of the structure in which it is located and in no case exceed 100 square feet for all other types of signs. He said that the façade of the applicant's suite is approximately 1,100 square feet (55 feet wide x 20 feet tall) and that the proposed sign area of 53.5 square feet equals 4.8% of the front façade area. He said that Jerry's Automotive canopy sign has a sign area of 99 square feet and that, combined, the two signs occupy 5.4% of the 2,800 square foot façade.)

Cooney stated that the applicant has an additional 19.9 feet of signage for the property including the window sign, illuminated open sign, and monument sign. He said that the total signage for the business is well below any city code limitations. Cooney noted that the window and open sign are small enough (less than six square feet) to be exempted from CUP requirements. He said that the small sign on the monument sign is non-illuminated and replaces an existing sign at the same size and same location and is therefore not subject to a Conditional Use Permit. Cooney said that total combined signage for the property is 191 square feet including 152.5 square feet of illuminated wall signage, and 38.5 square feet for other types of signage.

Cooney said that there is one residential property that would face the proposed sign, however the residential property is screened by two fences and several dense layers of foliage such that there would be no impacts from the signage.

Cooney said that he recommends approval of the conditional use permit request of Minnetonka Glass and Mirror to operate a limited auto and home glass replacement and sales business and to install a 53.5 square foot illuminated sign at 3644 County Road 101, as presented and with the following conditions: (a) the hours of illumination be as outlined in Section 1305.03 of the ordinance; (b) that there be no outside storage of materials or refuse; and (c) business hours be restricted to between 6 AM and 9:30 PM

He said that his findings were based on the review and approval process in Section 1320 of the ordinance: 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 concluded his staff report.

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

Linder asked if the signage on the monument sign required a CUP. Cooney said that since it was replacing existing signage of the same size in the same location it did not need to be part of the CUP.

Werneiwski asked the planning commissioners for comments and they expressed their support of the application.

Motion by Werneiwski to recommend City Council approve the conditional use permit request based on the recommendation, conditions, and findings of staff. Motion was seconded by Studer. Motion carried 4-0.

Conditional use permit request of Peter Carroll to operate an off-sale liquor store called Great Bottle of Wine at 18281-G Minnetonka Boulevard.

Werneiwski introduced the agenda item.

Cooney presented the staff report. He said that Peter Carroll will be leasing space at 18281-G Minnetonka Boulevard (Deephaven Court) and he would like to operate a boutique wine selling business. Cooney said that the business will be located in the C-1 zoning district and per Section 1302.01(Subd. 2) "off-sale liquor store" is allowed as a conditional use within the district.

Cooney said that the applicant has enclosed a narrative describing the scope and purpose of the business. Cooney noted that, as proposed, the business would occupy a 600 square feet space which would have limited hours with additional hours by appointment only. Cooney said that the applicant states that a principal focus of the business will be online sales, and that the retail space will be primarily a showroom with limited inventory. He noted that the applicant has stated that there may be walk-in customers, but that will not be the bulk of their sales.

Cooney said that conditional uses may be allowed in a district by special permit and under limitation imposed by the Council when appropriate because of unusual characteristics of the use. He said that the League of Minnesota Cities provides the following direction regarding conditional uses, *"The city must grant the conditional use permit (CUP) if the applicant satisfies all the conditions. Conditional uses remain in effect indefinitely as long as the use complies with the conditions. Once issued, a CUP's conditions may not be unilaterally altered by the city, unless a violation of the CUP has occurred. It is important to stress that conditional uses, like permitted uses, must be allowed if the applicant can prove that the application meets all of the conditions and requirements of the city's ordinance and will not be detrimental to the health, safety, and welfare of the public."*

Cooney noted that Section 1305.03(1) limits the hours a business can sell goods and services to consumers to only between the hours of 6 a.m. and 9:30 p.m. and that this restriction does not apply to office hours. He said the applicant has suggested the limited hours of operation of 11:00 a.m. to 3:00 p.m. with additional hours by appointment only. Cooney said that he would recommend that any appointments be restricted to the limitations imposed by Section 1305.03(1) to only between the hours of 6 a.m. and 9:30 p.m.

Cooney stated that Section 1310.04 regulates off-street parking requirements. He said that for off sale liquor stores, city code requires 1 space of parking for every three hundred square feet of floor area, which amounts to 2 required parking spaces for the business. He said that Deephaven Court hosts several other low-traffic businesses and the parking lot has 93 parking spaces. He said that he does not anticipate any traffic impacts from the proposed business.

Cooney said that the applicant is proposing minimal signage (less than 6 square feet) for the business and would not be subject to a Conditional Use Permit for the signage.

Cooney said that one of the primary impacts he expects from the business would be delivery traffic. He pointed out that the applicant has stated that deliveries would be minimal with direct delivery to the purchasers. Cooney said that he would recommend that shipments and delivery of products occur only in single rear axle straight trucks or smaller vehicles.

Cooney said that he recommends approval of the conditional use permit request of Peter Carroll to operate an off-sale liquor store at 18281-G Minnetonka Boulevard, as presented with the following conditions:

Staff recommends the following conditions be placed on the business: (a) any appointments with customers be restricted to the limitations imposed by Section 1305.03(1) to only between the hours of 6 a.m. and 9:30 p.m.; (b) 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; (c) applicant complies with all state and local licensing requirements for the business.

Cooney said that his findings are based on the review and approval process in section 1320 of the ordinance: 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 concluded his staff report.

Werneiwski opened the public hearing.

Joe Boyer, of 18885 Northome Boulevard, asked which building the business would be in. Peter Carroll, applicant said that it was the suite in the southeast corner of Deephaven Court. Carroll said that this would not be a typical liquor store and would be a wine boutique.

Boyer said that he was concerned about liquor sales in Deephaven and if that was the best use for that area. He asked if it would set a precedent for other types uses such as a cigar store. Cooney said that an off-sale liquor store is a conditional use and that if the applicant can meet the conditions of the city, the use would be approved. He said that tobacco sales are not currently listed as a permitted use and would not be permitted unless the city code was modified.

Carroll said that his customer base is not the type that would shop at Total Wine. He said that he is not having rows and racks of wines for sale. He said that he will not keep a large inventory, and will not buy wine until it is sold and then he will deliver it to the consumer. He said that he could be very flexible on the hours.

Werneiwski closed the public hearing.

Werneiwski asked about signage. Cooney said that the limited signage proposed would not require a CUP, nor would replacing non-illuminated signage of the same size and same location as existing signage.

Studer asked if the CUP was specifically for wine sales and no other spirits. Carroll said that he would not be selling other spirits or beer. Cooney said that would need to be included as a condition of the CUP. Studer said that he would not want to see a property that has this type of CUP change hands and become something significantly different.

Linder said that he would like to see other conditions to ensure that if the scope of the business changed that the CUP would need to come back before the city.

Studer asked if the space expanded to 3000 square feet, would they need to come back before the city. Cooney said that is how he would interpret it since the scope of the business had changed.

Studer asked if the use changed back to office could it then later become another liquor store in the future? Cooney said that he believed that a change of use might impact the validity of the CUP, but that he would need to verify that. He said that Deephaven would require a liquor license for the new business owner.

Linder asked if the property was one of the limited places that an off-sale liquor store would be permitted. Cooney said that off-sale liquor stores are allowed as conditional uses for any commercial property in Deephaven. He said that restaurants with alcohol sales are more limited in their locations.

Studer said that Deephaven could have a dozen liquor stores. Cooney said that they would need to be licensed through the city, but that in theory, yes. Studer said that the city could not say no to other liquor store proposals if they met the city's conditions. Cooney said that was correct, but that a proliferation of liquor stores might encourage the city to change its ordinance if the need arose.

Werneiwski said that the ordinance has been in place for a few years and it has not come up much. Studer said that it would be hard to stop new requests.

Linder said that he was comfortable with the proposal as long as it is limited to wine and the hours are limited. Studer said that he would like the CUP to be as narrow as possible but that works for the applicant.

Werneiwski asked if there are state liquor store hour restrictions. Carroll said that every city has different hours.

(STAFF NOTE: Minnesota Statute 340A.504, subdivision 4 limits off-sale hours to: (1) Sundays, between the hours of 11:00 a.m. and 6:00 p.m.; (2) 8:00 a.m. until 10:00 p.m. on Monday through Saturday; (3) cannot be open on Thanksgiving Day; (4) cannot be open on Christmas Day, December 25; or (5) after 8:00 p.m. on Christmas Eve, December 24.)

Jewett asked Carroll about a similar business that he had mentioned. Carroll said that he had a friend that operates brightwines.com.

Werneiwski said that he did not have a problem with the proposal. He asked if Carroll was comfortable with the vehicle delivery condition. Carroll said that he was.

Linder suggested limiting hours to less than code currently allows and suggested maximum hours of 10 AM to 6 PM. McNeill said that she felt those hours were fair. Linder suggested more limited hours on Saturday. McNeill proposed 11 AM to 3 PM, and closed on Sunday. Werneiwski said that appointments should be limited to between these hours as well.

Jewett asked if Carroll had planned on doing wine tastings. Carroll said that he would want his customers to be able to taste the wine, which is part of the sales process.

McNeill suggested that, to allow for wine tastings, the Saturday hours could be from 10 AM to 6 PM as well.

Werneiwski asked if the CUP could be limited to only Mr. Carroll as the business owner. Cooney said that the conditions would apply to any future off-sale business at this location and that the city could prevent a new business owner from running a similar business in the space.

Werneiwski made a motion to recommend approval of the conditional use permit request based on the findings of staff and with the following conditions:

(a) the business be limited to the sale of wine only
(b) business hours, including customer appointments, be limited to between 10 AM and 6PM, Monday through Saturday; closed Sunday.
(c) 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
(d) applicant complies with all state and local licensing requirements for the business

Motion was seconded by McNeill. Motion carried 4-0.

OTHER BUSINESS

Discussion related to proposed new house at 3542 Leroy Street

Werneiwski introduced the agenda item.

Coordinator Cooney presented the staff report. He said that at the July 6 City Council meeting about 30 residents of “the Pines” neighborhood showed up to the Matters from the Floor portion of the meeting to protest the construction of a new house at 3542 Leroy Street. He pointed out that the Pines neighborhood, which straddles Deephaven and Minnetonka (east of St. Therese church), is characterized by ramblers build in the 1940’s and 1950’s. The area is zoned R-3.

Cooney said that the neighborhood’s primary complaint was the scale of the house and they were concerned about “supersizing” the neighborhood. He noted that the scale of the proposed house is larger than the surrounding area but, as proposed, is zoning code compliant. Cooney said that the neighbors requested that the city consider creating a unique zoning district for this area. The city council agreed to look into a variety of scenarios, but did not recommend any particular direction at the meeting.

Cooney noted that the area is relatively unique in the uniform nature of the housing stock. The properties are typically between 13,000 and 21,000 square feet in size. He said that a primary issue with preserving the unique character of this area via zoning changes is that the neighborhood is within two cities—Deephaven and Minnetonka. (3542 Leroy shares a north property line with a City of Minnetonka property.) Cooney pointed out that any zoning changes by Deephaven would only help preserve those areas within Deephaven. He said that he researched the zoning for the Minnetonka properties, and found the zoning to be similar to that of Deephaven: Per Minnetonka ordinance, the properties are zoned R-1 Low Density Residential; he required setbacks are 35 feet (front), 30 feet (combined side yard, minimum 10 feet), and 40 foot rear; height limitation is 35 feet (to roof midpoint).

Cooney said that much of the area to the east of Minnetonka Boulevard was developed during 1940’s through the 1970’s and is dominated by rambler style housing. He said that if the city were to create a fourth zoning district in this area, it could be comparable to the existing R-3 district but with a lower height limitation. He noted that a range of other options are also possible for this area including a resident-lead HOA, restrictive covenants on individual properties, an overlay district, an opt-in conservation easement.

Cooney concluded his staff report.

Studer said he did not think that zoning changes were necessary and that the properties in that area are 70 and 80 years old and would need to be expanded or redone. He said that families with more than one child typically want more space.

Werneiwski said that he agreed with Studer but said that the city could not prevent a homeowners association. Studer asked how that would work if residents do not want to join. Cooney said that the residents would opt-in and that those houses that did not opt-in would not be restricted by the HOA.

Linder said that the city went through a long process several years ago to address massing issues and did not think that anything further was warranted.

McNeill asked about the outcome of the massing issue. Linder said that the heights were lowered which was the primary change. Werneiwski said that they explored many options that did not make it into the ordinance.

Cooney said that massing is restricted by height and footprint. He asked if there was a desire to scale the allowable footprint based on lot size similar to how height is restricted based on lot size. Cooney said that the single biggest complaint he receives is the scale of new housing.

Studer said that he did not want any kind of architectural review.

McNeill said that she would be open to review of massing. Linder said that they thoroughly vetted and struggled with the issue previously.

Jewett asked if there was any discussion at the meeting on the impacts to property values if the height of the house is restricted. Cooney said that he could not remember if that comment was made at the meeting.

Cooney said that the 25% impervious limitation within the shoreland area and the variance requirements that accompany that restriction sometimes serve as a brake on the massing in shoreland areas.

Werneiwski said that he was not compelled to recommend changes. Studer agreed and said he was concerned about capping the value of a property. Linder agreed.

McNeill said that she thought that something more could be done and it was worth exploring.

Linder said that he is very sympathetic to the neighbors' concerns and perhaps even agrees with them, but he said that having been through the ordinance process on this before he would not recommend further changes.

Jewett mentioned the idea of future possible state or county affordable housing mandates and how that might impact the city moving forward. He said that it is difficult to predict requirements in the future, but that it was something that was on his mind as the city reworks the comprehensive plan. He said it is tough to balance the desires of the neighborhood and market forces.

Werneiwski said that if that neighborhood were labeled "affordable housing" he could see the same residents turning against that concept.

LIAISON REPORT

Councilmember Jewett said that at the June 5 City Council meeting the variance application for 4960 Highcrest was approved.

He said that the application for 20720 Linwood Road was also approved, but that the plan was significantly modified from what the Planning Commission reviewed. He said that the Planning

Commission's input was important in getting the applicant to make the revisions that were ultimately passed by the City Council and that the revisions were much stronger in terms of stormwater management. Jewett said that McNeill and Webster were able to meet the builder on site and were much more receptive to the revised plans.

He said that the garage at 19865 Lakeview was reviewed for a slight modification of the proposal and that the City Council was comfortable with the changes.

Jewett said that the City Council reviewed easement and encroachment agreements for the property at 4325 Cottonwood. He said that the city happens to own a sliver of property that is the driveway for the residence and that the city granted an easement to the property.

ADJOURNMENT
Motion by Werneiwski to adjourn the meeting. Motion seconded by McNeill. Motion carried 4-0. The meeting adjourned at 8:02.

Respectfully submitted,
Dale Cooney
Zoning Coordinator