

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

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

ABSENT: None.

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

MINUTES OF JUNE 19, 2018

Motion by McNeill, seconded by Eaton, to approve the minutes of June 19th, 2018. Motion carried 7-0.

OLD BUSINESS

Variance requests of Joe and Tracy Ryan, property owners, to encroach into the minimum required lake yard setback and exceed the maximum permitted grade alteration in order to build an accessory structure at 20430 Lakeview Avenue.

Werneiwski introduced the agenda item. He said that there was a motion for denial and the motion was for denial and the motion failed, which did not constitute a recommendation to the city council. He said that the city needs to fix the mistake. Werneiwski said that this would not be a public hearing.

McNeill said that, before the vote, she wanted to quote portions of the code. She said that Section 1345.75 of the code states “ ‘Variance’ means any modification or variation of official controls where it is determined that because of hardship, strict enforcement of official controls is impractical.”

Werneiwski asked for a motion.

Webster said that she would like to discuss the matter further. She said that she saw the property from the lakeside and that she thinks the proposal is egregious. She said that, regardless of how good the design is, the request to have this structure 19 feet from the shoreline is ridiculous. She said that the house is already 65 feet from the lake. She said that if the request is approved, she is not sure why the planning commission is even here. She said it was an outrageous and egregious request.

McNeill said that the required setback for the structure is 100 feet, the house is already less than that at 65 feet, and they are asking for 20 feet.

Cooney said that this matter is before the planning commission again because we screwed up the vote. He said that he cannot tell the planning commission how to vote, but that he would not like to punish the applicant for a planning commission procedural error. He said that it would be his preference to preserve the integrity of the original June vote. Cooney said that the City Council has read the minutes of the June meeting and is aware of the discussion and vote.

Nagle said that he agreed with Webster and that the precedent set would be far-reaching. He said that he felt the June vote was taken somewhat lightly. He said that he has heard criticisms from his community on why the city would reverse a policy in place for decades. He said he is strongly opposed.

Eaton said that part of the role of the commission is to make judgements. He said if all of the issues were black and white there would be no need for a planning commission. He said that each circumstance is different and the only precedent is when circumstances are identical.

Werneiwski said that he personally does not have a problem with the proposal. He said that, in considering it since then, he is more concerned with the precedent. He said that this time he would have

to vote against it. He said it is a fine idea and he does not see a lot of impact, but he was worried about the unintended consequences of future proposals. He said that he is changing his thinking.

Studer said that there is an existing structure of the deck and the applicant is removing that and adding storage below. He said that the zero elevation is also in the applicant's favor. He said that since the house is where it is, they could not put the structure 100 feet away without being on the other side of the house.

Webster asked if Studer saw a problem with the spirit of the ordinance and approaching the lakeshore by less than 20 feet and the structure is not a necessity. She said that the commissioners need to look at why the regulation exists.

McNeill quoted Section 1350.04 of the city code which states "The following standards shall apply to all shoreland of the protected waters within the City of Deephaven. Where the requirements of the underlying zoning district as shown on the official zoning map are more restrictive than set forth herein, the more restrictive standard shall apply."

Studer said that Deephaven has a lot of nonconforming properties.

Webster asked Studer how it was meeting any of the city code requirements. Studer said that the applicant is replacing the deck with the structure with a zero elevation and that there is not an opportunity to put the structure 100 feet from the lake.

Webster said that at the last meeting, the applicant was asked what they would use it for and stated that they would probably put a sauna in the structure. Studer said that he appreciated the honesty of the response.

Werneiwski said that the rendering does show the structure coming out from the embankment, so that it is not actually a zero elevation building. Studer said that the structure is not coming above the existing grade of the yard.

Daly said that he agreed with Cooney that this was a procedural error and that the planning commission should stay committed to what they agreed to in June and let the application go to the city council and let them make the decision.

McNeill made a motion to recommend denial of the variance request based on the recommendation and findings of staff. Motion was seconded by Nagle. Motion carried 4 to 3 with Studer, Daly, and Eaton voting against.

Joe Ryan, applicant, asked for clarification on what happened tonight versus what happened last time. Werneiwski said that the vote was 4 to 3 to recommend denial of the request whereas in June he voted in favor and the vote to recommend denial failed 3 to 4.

Joe Ryan thanked those who supported his application. He said that he did not appreciate the disrespect he and his wife received from Webster. He said that was terrible.

Webster said this session has ended and thanked Ryan for his time. Ryan said that it has not ended because he is a citizen and she was disrespectful and there are the minutes do document it. Webster said great, she also has the minutes.

PUBLIC HEARINGS

Variance request of Mike Herbst, property owner, to encroach into the front yard setback for a covered porch at 20545 Carson Road.

Werneiwski introduced the agenda item.

Cooney presented the staff report. He said that Mike Herbst, property owner, is requesting a variance to build a covered porch for his house. Cooney noted that Section 1302.05(3) of the zoning ordinance requires a front yard setback of 35 feet. He said that the applicant proposes a front yard setback of 24.1 feet and is seeking a variance of 10.9 feet from the minimum required front yard setback.

Cooney said that the proposal would expand an already nonconforming front entryway which currently encroaches 8 feet into the front setback. He said that the house, built in 1950, has nonconforming front and exterior side yard setbacks. Cooney said that the applicant will build a 9 foot x 17 foot covered porch around the existing nonconforming 4.75 foot x 8.1 foot entry area. He said that the applicant has stated that the purpose of the covered porch is to provide shelter from the elements that the current entry area does not provide.

Cooney stated that the property is a corner lot with a large curved property line. He said that the curvature of the property line creates a situation where a portion of the proposed expansion encroaches into the front setback, but the setback quickly becomes compliant as it reaches the front yard. Cooney said that the city right-of-way also claims a large portion of the corner yard of the property, but the road is set back substantially from the property line.

Cooney said that he recommends approval of the variance request to encroach 10.9 feet into the minimum required front yard setback for the proposed front porch at 20545 Carson Road, as proposed, based on the following findings:

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

Yes. The applicant is seeking to vary from the stated setback standards of the ordinance to improve an existing non-conforming house constructed in 1950, per Hennepin County tax records.

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

The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which encourage 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 minor expansion of the non-conforming footprint of the house is reasonable, and the additions remain within the scope and scale of surrounding properties.

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

Yes. The existing house was constructed in 1950 and has a legal non-conforming front and exterior side yard setback. The proposed encroachments are also due to the uniquely curved property line.

(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 project is a very minor expansion of existing conditions.

Cooney concluded his staff report.

Werneiwski closed the public hearing.

Mike Herbst, applicant, said that a primary purpose of the project is to replace a defective concrete slab that is coming apart from the house and is not viable. He said that the porch would provide an overhang and a step up to the door. Herbst noted that Carson Road has many encroaching houses.

Werneiwski closed the public hearing.

McNeill asked if the porch would be enclosed. Herbst said that it would not be enclosed.

Daly said that the proposal was very reasonable based on the curvature of the lot. The remaining planning commissioners expressed a consensus support of the project.

Motion by Webster to approve the request based on the recommendation and findings of staff. Motion was seconded by McNeill. Motion carried 7-0.

Variance requests of HP Holdings, LLC, property owner, to exceed the maximum permitted principal structure height, to exceed the maximum permitted grade alteration, to encroach into the front yard setback, and to exceed the maximum allowable impervious area in conjunction with the construction of a new house at 19370 Lake Avenue.

Werneiwski introduced the agenda item.

Cooney presented his staff report. He said that HP Holdings, LLC, property owner at 19370 Lake Avenue, is requesting variances to build a new house to replace the existing nonconforming house on the property. He said that, as proposed, the property would exceed the maximum permitted principal structure height, exceed the maximum permitted grade alteration, exceed the maximum allowable impervious area, and encroach into the minimum required front yard setback. Cooney noted that the property is a 9,467 square foot R-3 lot, which is 47% of the minimum lot size for the zoning district.

Cooney said that Section 1312.04 of the zoning ordinance requires a variance for any grade alteration greater than three feet at any point. He said the applicants are proposing land alteration of up to 7 feet, and are seeking a variance of 4 feet from the maximum permitted grade alteration. Cooney said that much of the front yard and the west side yard towards the front of the house will exceed the maximum allowable grade alteration.

Cooney said that the site has negative drainage, meaning that the existing grades drain towards the house which has the tendency to create water issues. He said new construction sites are typically graded such that the house is elevated and the water drains away from the house. Cooney noted that current conditions have the front of the house as much as 6 feet lower than the street grade, and since the applicants cannot lower the street they must elevate the grade of the property. He said the applicants appear to be elevating the property to the minimum extent required to create positive drainage from the house to the street. Cooney stated that much of the front yard, particularly in the driveway area, will be elevated by up to 7 feet. He said that the applicant has also stated that they have reached out to the property owner at 19380 Lake Avenue to ensure that the grades on the west side of the property appropriately tie into the grades for that property.

Cooney said that Section 1302.05(4) of the zoning ordinance limits the height to 30 feet for properties up to 10,000 square feet in size. He said properties with a lookout or walkout level are allowed an extra 5 feet on the walkout side from the lowest adjoining grade (so long as the highest adjoining grade is still under the 30 foot limitation). Cooney said that the applicant proposes a walkout elevation of 38.8 feet and is seeking a variance of 3.8 feet from the maximum allowable principal structure height.

He said that, while the applicant has stated verbally that their preference is to build a gabled roof house, the applicant has provided a flat roof alternative in order to demonstrate that they are willing to meet the code requirements should the city feel that a height variance is not warranted by the circumstances.

Cooney said that it is staff's opinion that the lot topography does merit some kind of relief from the house height restrictions on the walkout side.

He said that the grading issue and the height issue are closely linked since the elevation at the street level is 946, and the elevation in the existing rear yard is 932—14 feet lower than street level. He said that, for a gabled roof home, avoiding a variance would require that the proposed height of the home at street level not exceed 21 feet, which would limit the height of the house to 1-story. Cooney said that the applicants are proposing street side elevation of 27.2 feet. He said the street level height is reasonable, and the walkout proposal works with the elevation change on the property.

Cooney said that Section 1302.05(3) of the zoning ordinance requires a front yard setback of 35 feet. He said the applicant proposes a front yard setback of 20 feet and is seeking a variance of 15 feet from the minimum required front yard setback. Cooney said that the existing house sits 19.2 feet from the front property line and proposed setback is comparable to the adjacent properties.

He said the applicant had originally proposed a zoning code compliant 35 foot front yard setback but that the neighbors to the east expressed concerns that the proposed setback would impact their view. Cooney said the applicant has attempted to address these concerns by moving the house closer to the existing front setback. Cooney noted that the the 20 foot setback helps to minimize impervious areas and the amount of fill required to create positive drainage for the front yard.

Cooney said that Section 1302.05(2) of the zoning ordinance limits the maximum allowable impervious surface area on the property to 25%. He said that the applicants propose an impervious surface area of 27.96% and are seeking a variance of 2.96% from the maximum allowable impervious surface area. Cooney said the property is 47% of the minimum lot size and the total hardcover footprint is 2,648 square feet, which he said, in his opinion, is quite reasonable for a property of this size.

Cooney pointed out that the variance triggers the city's stormwater mitigation requirements. He said the property will be required to provide mitigation to the equivalent of 25% impervious surface area and that the applicants are proposing a rear yard drainage trench. Cooney said the City Engineer has reviewed the proposed mitigation plans and determined that the proposed mitigation meets city requirements. He said the property owner will be required to enter into a stormwater maintenance agreement which will be recorded against the property.

Cooney said that he recommends approval with conditions of the variance requests to exceed the maximum permitted grade alteration by 4 feet, to exceed the maximum allowable principal structure height by 3.8 feet, to encroach into the front yard setback by 15 feet, and to exceed the maximum allowable impervious surface area by 2.96% for the property at 19370 Lake Avenue, as proposed. He said that his motion is conditioned that:

- (a) The applicants complete the stormwater management improvements to meet the requirements and specifications of the city engineer.
- (b) 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.

Cooney said that his recommendation is 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 grading and building height standards in order regrade a property with significant both grading issues and elevation change from the street to the rear yard.

They are requesting a variance from impervious standards of the ordinance in build a new home on a significantly substandard lot size for the zoning district. They are seeking to vary from the front setback requirements in order to align the house with the adjacent properties. All of these objectives 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 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?

The proposal puts the property to use in a reasonable manner. The scale of the single-family house is consistent with zoning limitations for the property. The grading and walkout height are reasonable based on the challenging topography for the lot. The expanded hardcover is reasonable relative to the substandard size of the property. The front setback is reasonable based on the neighboring properties as well as reducing the need for importing fill on the property.

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

Yes. The property is steeply graded, with negative drainage towards the existing house, and resolving this problem impacts the walkout elevation for the house. At 9,467 square feet, the property is only 47% of the minimum lot size for the zoning district, which creates challenges to meeting the impervious surface limitations. The front setback of the existing house is 19.1 feet and comparable to that of adjacent properties. All of these are existing conditions for the property.

(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 proposal is consistent with the single-family character of the neighborhood, is of a similar size and scale to other houses within the area.

Cooney said that the applicant has reached out to the neighbors on this property and held a meeting at city hall last Wednesday. Cooney also said that the project manager, Tom, who was here last time, has a meeting in Edina and sent his apologies.

Cooney concluded his staff report.

Cole Harrison, representative for the applicant, said that he wanted to present some visuals for the project. He showed the previous and updated survey showing that the house has been pushed forward, moved towards the west and reduced in size. He said the new location would help them more easily tie in the grades with the property to the west. Harrison also showed the gabled roof version of the proposed house and the flat roof alternate version.

Jim Shipstad of 19230 Azure asked if the flat roof design lowered the height of the house. Harrison said that the flat roof would lower the height to 35 feet.

Werneiwski asked how far the rear of the house came forward. Harrison said 25 feet since the house was moved forward 15 feet and reduced in length by 10 feet.

Nagle asked about the alignment of this house to adjacent houses. Cooney said they were comparable front setbacks at about 20 feet.

Webster asked about stormwater from the old plan. Daly said that the old plan had front yard retaining walls.

Nagle asked about tying into the neighboring grades. Harrison pointed out how the property would connect to adjacent grades on the west side.

Webster asked if the city engineer looked at the mitigation. Cooney said yes, and it is the same size but with less hardcover to mitigate.

Studer asked about getting the water to the mitigation. Cooney said that could be a condition of approval.

Werneiwski opened the public hearing.

Shipstad said that he is familiar with the property and that he is concerned with big houses on small lots in Deephaven Park. He said that he would like to stick to the rules. He said he was concerned about the proposed height, but was not in favor of a flat roof. He said dormers are better than full second stories. He said that Lake Street has a significant ditch coming down the hill, which currently comes into the existing house via the driveway. He wanted to make sure that issue was addressed.

Nagle said that both 19380 and 19370 Lake would have the same drainage impacts. Shipstad said that he is concerned since he has had drainage issues.

Shipstad said that the setback matching adjacent houses makes sense. He said that he remembers telling a realtor that the only way that house would sell would be to fill the front yard.

Jeff Underhill of 19360 Lake Avenue said that the proposal is better with a bigger setback on his side of the property. He said that he did not think a practical difficulty has been established for the height since the code establishes rules for the height of buildings on smaller lots. He said that he did come and meet with the builder last week.

Steve Brandt of 19350 Lake Avenue said that he appreciates the changes. He said that he was not sure the flat roof house was a legitimate proposal by the applicant. He said that he thinks the water coming off the street from this property should try and stay in the ditch.

Nagle asked about the Lake Street drainage. Cooney said that the city was looking at the drainage in the rear of these properties. Jewett said that this would be addressed when the street is redone.

John Woelffer, 4275 Jefferson Street, says that he owns the property at 19365 Azure. He said that with a small lot, you would expect to see a small house. Woelffer said that the houses are becoming large houses on small lots. He said that he is not losing a view, but the neighbors would be. Woelffer asked what are the implications for the neighborhood once the builder is gone and the first owner moves out two years later. He said that he is not crazy about the flat roof design. He said that water is an issue through these back yards and that this should be fixed. He said that the city might get some blame for future water issues for these property owners since the city approved these projects. Woelffer said that the alley is a raceway for water through that area and he has attempted to fix the issue on his property but the alley will always be a problem.

Shipstad asked about redoing Lake Avenue. Jewett said that he does not know when that would happen. Shipstad said that the Azure Road drainage improvements worked for his street, and that he would suggest a similar solution for Lake Avenue.

Tom Madden of 19260 Lake Avenue asked about the square footage of the current house versus the proposed house. Cooney said that the footprint of the existing house is 1,251 square feet and the new house is 1,752 square feet. He asked about existing and new height. Studer said that the proposed height on the front is about 27 feet tall but the existing height of the house is unknown.

Eaton said that there is a stormwater mitigation plan for the new house that is not currently on the property.

Madden asked if the new width of the house would prevent water from getting to the back yard. Werneiwski said that the front yard is being raised so a lot of the water wouldn't make it to the back yard at all but would be directed to the street.

Daly said that, as far as this request is concerned, the only issue that is being mitigated is the water generated by this property, not all of the water coming down the street at this property.

Werneiwski closed the public hearing.

McNeill said that she would prefer the flat roof to stay under the building height. She said that she appreciates the changes that were made since last time.

Studer said that he would prefer the gabled roof plan. He said that there is 13 feet of drop from the street to the back yard. He said that that the elevation change is making the back exceed zoning requirements. He said he walks by the house all the time and would prefer not to look at a flat roof.

Daly said that from the street side, the house is a 1.5 story house with a 9 foot main level and an 8 foot upper level. He said that the lower level is driving the height at 11.7 feet. He said that the raising the grade in the rear yard by a couple of feet would remove the height issue. He said that there may or may not be a benefit to do it that way.

Jewett asked about the below-garage storage and if it counted against the height. Daly said that the height is only considered from the grade of the property.

Cooney said that the rear grade would need change nearly 4 feet. He said that this starts to get comparable to the elevation of the yard to the east.

Daly said that the height issue should be a non-issue if the grading in the rear works as proposed versus raising the rear grade.

Studer said that he wants to require a physical connection to the roof downspout.

Werneiwski said that he likes the improvements that were made. He said he does not have an opinion on the roof.

Eaton said that the roof would not make that much of a difference for the adjacent property.

Nagle said that there is a 13 foot drop from the front to the back. He suggested that a possible compromise would be to step the roof down towards the back.

McNeill agreed that explicit conditions should be made for the stormwater connection from the roof. Webster asked if the city could require gutters. Cooney said it could be a condition.

Daly said that he wants to make sure the gutters are installed before the building permit is closed. Daly said that he was concerned about the 10 foot driveway entry that he thought would grow over time.

Webster motioned to recommend approval of the request as proposed based on the findings, recommendation and conditions of staff with the additional conditions that 1) gutters are installed on the property, 2) a physical connection is made between the downspouts and the mitigation system, and 3) the driveway remains in its current configuration with the 10 foot entry. Motion was seconded by McNeill. Motion carried 7-0.

NEW BUSINESS

Discuss "minor variance" concept

Werneiwski introduced the agenda item.

Cooney presented his staff report. Cooney said that there are certain types of variances that tend to be small and generally uncontroversial and he was wondering if there was a way to minimize the city process for these types of requests. He said that the cost and the time delay and cost in going through the variance process on a smaller project is often disproportionate to the request. Cooney said that the city's fee is \$450 and the cost of a survey is typically \$1,000 or more. He said that the variance process itself delays a project by approximately 2-months.

Cooney said that a streamlined process for some degree of minor variances could include process revisions such as: 1) No survey requirement, only a site plan, 2) \$100 application fee, and 3) review by City Council only.

Cooney said that certain state law requirements cannot be omitted such as published notification, mailing to neighboring properties within 350 feet at 10 days prior to the meeting.

Cooney said that he the trickiest part would be determining what constitutes a minor variance. He said that the process could be quite restrictive (less than 10 square feet of new encroachment), or somewhat more broad (less than 100 square feet of new encroachment).

He said that he would be interested in the planning commission's feedback as to whether or not this would be a valuable process, or if it would not be worth the additional complexity.

Studer said that reducing costs and streamlining the process is a win.

Daly said that other cities have resident and non-resident fees. Studer asked if that would be non-homestead since someone always owns the property.

Daly said that Minneapolis has an administrative variance that could be done via planning staff. He said that Edina has some variances only go to planning commission.

Webster said that the Herbst variance could have been a planning commission only review. Werneiwski said it could have been an administrative variance.

Webster said that the city would have to be very specific about administrative variances.

Nagle said that perhaps unanimous decisions by the planning commission would not need council approval.

McNeill asked how to define minor variances.

Daly asked if all building permits need a survey anyway. Cooney said that additions increasing the existing footprint of a structure less than 20% do not require a survey. Studer said that could be the threshold. He said if it is not required for a building permit it should not be required for a variance.

Jewett said that setback and hardcover variances should need surveys. He said that the cost of a survey makes the applicant serious about the request and would prevent frivolous variance requests.

Nagle said that the city fee could be lower.

Webster asked if the city's \$450 fee was reasonable. Daly said it was and that Minneapolis charged \$700.

McNeill said that she would be all for administrative variances.

Eaton asked if the percent of the change would be a helpful minor variance standard. He said staff could have the option to push it forward to planning commission if necessary.

Cooney asked about reducing the city fee. Daly asked about staff hours spent on each request. Cooney said that, even the small variances require staff time for public notice and public mailing. Studer said that the city would lose money on these.

Jewett asked about engineering fees. Cooney said that city engineer does not review the smaller projects.

Jewett said that if someone is requesting a setback variance, the city needs to know what that setback is on a survey.

Cooney asked if the fees don't change and the only savings is a couple of weeks, is it even worth it to have the different process. Daly said that it was.

Nagle said a unanimous vote by the planning commission could be automatic approval. Cooney said that the property at 19150 Lake Avenue was unanimous and was very controversial at the council level. Jewett said that the adjacent neighbor was very upset.

Cooney thanked the planning commission for their direction on the concept and would look into some options.

LIAISON REPORT

Councilmember Jewett said that the variance request at 18385 Northome Boulevard was approved. He said that the project at 3835 Monaltrie was also approved with the condition that the applicant makes the garage expansion meet the city code footprint limitation for accessory structures.

Jewett said that the project at 4300 Chimo East submitted a new drainage plan that would move the raingarden from the end of the driveway to the middle of the circular driveway.

Jewett said that the city hired a new police officer and that she was formerly a Community Service Officer from Chaska.

ADJOURNMENT

Motion by Werneiwski to adjourn the meeting. Motion seconded by McNeill. Motion carried 7-0. The meeting adjourned at 8:53.

Respectfully submitted,
Dale Cooney
Zoning Coordinator