

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

PRESENT: Chairman Kent Carlson, and Commissioners Melissa McNeill, Bill Sharpe, and Bob Werneiwski

ABSENT: Commissioners Jim Anderson, Gen McJilton, and John Studer.

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

MINUTES OF MAY 17, 2016

Motion by Commissioner Werneiwski, seconded by Commissioner McNeill, to approve the minutes of May 17, 2016. Motion carried 4-0.

PUBLIC HEARINGS

Consider request of The Landschute Group for a variance for the alteration of a non-conforming structure at 20430 Lakeview Avenue – Applicant proposes to slightly modify the non-conforming structure that was previously approved in November of 2015. The modification would take place within the lake yard encroachment.

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney summarized the staff report. Cooney said that The Landschute Group was granted a lake yard setback variance in November of 2015 and that the applicant is requesting a slight modification of the approved footprint for the home.

Cooney said that, as approved, the variance for the house would sit 61 feet, 6 inches from the OHW. He said the modifications will not increase the maximum lake yard encroachment. Cooney said that the applicant proposes be the addition of a 25 square foot side entry stoop, which would slightly increase the overall footprint of the building area within the lake yard. Cooney said that a 32 square foot patio area is proposed to be removed, creating a net reduction in impervious surface area and that the property would remain below the 25% maximum impervious surface area.

Cooney said that since the variance for the house was approved, and the encroachment is not increasing, staff believes that the variance request would be for the alteration of a legal non-conforming structure.

Cooney said that staff recommends approval of the variance request by The Landschute Group, Inc. to modify the non-conforming structure at 20430 Lakeview Avenue, as presented, 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 proposing a modest change to an existing non-conforming structure. The change will have minimal impact on the lake yard.

(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 minor change is a reasonable modification of the approved structure.

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

The lake yard encroachments on the house are legal non-conformities, and making modifications to this portion of the house cannot be done without impacting the setback in some way.

(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 change is a minor change to an approved variance.

Cooney concluded his staff report.

Chairman Carlson opened the public hearing.

Joe Paetzel, representative of the Landschute Group, said that he is available for any questions.

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

Carlson surveyed the Planning Commissioners for questions or comments, and general consensus for approval was expressed by the Commissioners.

Carlson made a motion recommend approval of the request by The Landschute Group, Inc. for the alteration of a legal non-conforming structure at 20430 Lakeview Avenue, as presented, based on the findings of staff. Motion was seconded by Werneiwski. Motion carried 4-0.

Consider request of Tom Preissing for a variance to exceed the maximum allowable impervious surface coverage in order construct a patio and expand a driveway at 4260 Jefferson Street–

Section 1302.05(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25%. Applicant is proposing an impervious surface area of 28.6%.

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney summarized the staff report. Cooney said that Tom Preissing, the property owner at 4260 Jefferson Street, has applied for a variance to exceed the maximum allowable impervious surface area in order to expand a driveway and build a patio on the property. Cooney said that the lot area is 10,421 square feet in size, and the applicant is requesting 28.6% impervious surface area for the property. Cooney noted that the house was constructed last year without any variances. Cooney said that, at the time, the approved plans showed an impervious surface area of 24.9% and the applicant indicated that he might be interested in pursuing a variance for the driveway, but he did not want to delay construction.

Cooney said that Section 1302.05(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25%. He said that the applicant is proposing an impervious surface area of 28.6% and is seeking a variance to exceed the maximum impervious surface area by 3.6%.

Cooney said that prior to construction of the new house, the previously existing conditions on the property were 23.6% impervious. Cooney noted that since previously existing hardcover on the property is less than proposed, "grandfathering" of excess impervious surface area is not a consideration in this case. Cooney pointed out that lots of similar sizes have been granted variances for comparable amounts of excess hardcover regardless of existing conditions. He said that, for the sake of comparison, the property at 19915 Lakeview was an 8,630 square foot vacant lot and was granted variances for 2,746 square feet (31.8%) of impervious surface area with existing conditions being 0% hardcover. Cooney said that 4260 Jefferson is requesting at total of 2,984 square feet of impervious surface area on a 10,421 square foot lot.

Cooney said that the applicant has proposed a raingarden and an infiltration swale as part of the application materials. Cooney said that Section 1353.03 of the zoning code requires stormwater

mitigation for those impervious areas over 25%. He said that the mitigation will be required to handle a 1" rain event, and the performance credit given for stormwater mitigation practices shall be 75% of calculated volume retained. He said that the proposed mitigation will handle approximately 5 times the required volume. Cooney said that the applicant will be required to comply with the requirements of the city engineer for design and installation.

Cooney said that staff recommends approval with conditions of the request of Tom Preissing for a variance to exceed the allowable maximum impervious surface area by 3.6% for the property at 4260 Jefferson Street, as presented. He said that his recommendation would be conditioned that:

- The required stormwater management practices meet the requirements and specifications of the city engineer.
- The applicant enters 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 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. The applicant is seeking to vary from the stated impervious surface standards of the ordinance in order to construct hardcover improvements on an undersized lot. The requested variances remain 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.
- d) Are there unique circumstances to the property not created by the landowner?
The property is an undersized lot, but of a size that is consistent with other single-family properties in the neighborhood. The undersized property creates difficulties in the hardcover restrictions of the ordinance.
- 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 of a similar size and scale to other single-family houses within the neighborhood.

Cooney concluded his staff report.

Chairman Carlson opened the public hearing.

Tom Preissing, applicant, said that he has spoken with the neighbors and that they have expressed support of the expansion or did not have feelings either way.

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

Commissioner Sharpe asked if the proposed stormwater mitigation would bring the property less than 25% impervious. Cooney said that the proposed mitigation would bring the property to less than 25% impervious, and would, in fact, bring it much lower than that based upon the capacity of the proposed

mitigation. Cooney said that the final impervious percentage was less important than the fact that they were doing more than the minimum based upon the code requirements.

Werneiwski said that he liked where the raingardens were located, and it works as an amenity. Werneiwski asked about the infiltration swale. Preissing said that they wanted an area for the water on the north side of the house to infiltrate.

Carlson agreed that he liked the location of the mitigation systems using both sides of the property and that they could serve as a kind of demonstration project for the neighborhood.

Werneiwski asked about the plantings for the raingarden. Preissing said that they have not gotten that far.

Commissioner Werneiwski made a motion to recommend that the City Council approve with conditions the request of Tom Preissing for a variance to exceed the allowable maximum impervious surface area by 3.6% for the property at 4260 Jefferson Street, as presented, and based on the findings and conditions of staff. Motion was seconded by Sharpe. Motion carried 4-0.

Public Hearing for the Preliminary Plat at 19615 Manor Road: Aspect Design Build has made application for a Preliminary Plat at 19615 Manor Road. The property, proposed plat name of "Webb Pond", would plat the existing lot into two buildable properties.

Section 1200.07(3) requires the Planning Commission to review the preliminary plat and submit their recommendations to the City Council.

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney summarized the staff report. He said that Aspect Design Build has made application for a Preliminary Plat at 19615 Manor Road. Cooney said that the property, with a proposed plat name of "Webb Pond", would plat the existing lot into two buildable properties. He said that the property is in the R-2 zoning district and that the previously existing house on the property was demolished in May of 2014.

Cooney said that the proposal meets the minimum lot size, road frontage, and impervious surface requirements of the zoning code. He said that the plans show an area for a possible house within the building pad. Cooney noted that the proposed conditions are shown merely to demonstrate the viability of the lots to meet the zoning code requirements. He said that final house design, grading, and other considerations will likely be different than what is shown on the survey. Cooney said that, in the opinion of staff, future variance requests for these lots would be met with skepticism since any shortcomings the lots may have should have been identified and vetted as a part of this process.

Cooney said that the Deephaven Zoning Code defines "Lot Area or Lot Size" as "the area within the lot lines exclusive of land below the ordinary high water line of a public water body."

Cooney said that he Deephaven Zoning Code defines "Public Waters" as "any water of the State which serve a beneficial public purpose, as defined in Minnesota Statutes 103G.005 Subd. 15 & 18. However, no lake, pond or flowage of less than 10 acres in size and no river or stream having a total drainage area less than two square miles shall be regulated for the purposes of these regulations."

Cooney noted that the wetland on the property is just over 2 acres in size and that he interprets the above definitions to mean that the entire property should be included in the calculations for purposes of the subdivision. For these reasons, Cooney said, it is his interpretation that the proposed lots are zoning code compliant for lot size.

Cooney said that the previous house on the lot was situated toward the road in the middle of the lot. He said that some regrading of the lots is required to accommodate the proposed house pads and driveways, but, as proposed, would not require a variance to do so.

Cooney said that proposal would require the acquisition of an additional sewer lateral. He said that the property was assessed for the trunk line (\$2,154) and one sewer lateral (\$2,400) in 1971 and that the applicants would be required to pay an additional sewer connection fee of \$2,400 as condition of approval. He said that this fee would be in addition to any SAC charges that the Metropolitan Council may require.

Cooney said that rear portion of the property hosts a Type 4, Deep Marsh wetland on the site, and that no disturbance of the wetland is proposed. He said that the applicants have completed a wetland delineation and submitted a wetland boundary application to the Minnehaha Creek Watershed District. Cooney said that the comment period for the application ends on June 24, after which the MCWD will issue a decision. Cooney noted that in speaking with the staff at MCWD, they did not raise any specific concerns about the wetlands impacting the viability of the subdivision, but the applicants will be required to comply with any restrictions put on the property by the MCWD.

Cooney stated that the city requires 10% of the land to be subdivided be dedicated to the city parks system, or that, in lieu of land, the city may require 10% of the equivalent fair market value of the land to be subdivided. He said that the fair market value is determined by the City Assessor who has determined that the fair market value of the additional lot at 19615 Manor Road is \$180,000. Cooney said that, as condition of approval, the city will require payment of \$18,000 in park dedication fees prior to signature of the Final Plat.

Cooney said that he recommends approval of the Preliminary Plat for Webb Pond, with the following conditions:

- a) Prior to the signature of the Final Plat:
 - All fees incurred by the City for the review of the Preliminary and Final Plat must be paid prior to the release of the escrow submitted by the applicant.
 - All park dedication and sewer lateral fees must be paid.
- b) That the drainage and grading plans be approved by the City Engineer prior to the issuance of a building permit for each lot on an individual basis.
- c) The applicants comply with the requirements of the Minnehaha Creek Watershed District.

He said that in the opinion of staff, the proposed plat does not impact the integrity and general development of the community, does not impact the health, safety and general welfare of the neighborhood, will not negatively impact the traffic on adjacent streets, would not have an adverse impact on property values and will maintain the general character of the neighborhood.

Cooney concluded his staff report.

Commissioner Werneiwski asked what the lot areas would be without the pond. Cooney said that he did not know, but that they would not meet the minimum lot area.

Werneiwski asked about the drainage of the wetland. Cooney said that he does not know about the drainage of the wetland. He said the information he has on the wetland is from the wetland delineation report. Werneiwski asked if he could see the report. Cooney printed out a copy of the report for Werneiwski to review.

Carlson said that if you removed the wetland from the calculation, you are losing about 40% of the lot area, which would be well below the R-2 minimum. But, Carlson said that this is not a navigable body of water, so the land area for the wetland should be included.

Chairman Carlson opened the public hearing.

Shaun Winkler of Aspect Design, applicant, said that he does not know specifically about the wetland drainage. He said that his goal with the subdivision was to keep it as a very simple subdivision and just split the lot in half. He said that they were not going to pursue variances. He said that grading on the lot might be the most challenging.

Carlson asked if the proposed houses on the lots were still in flux. Winkler said that they are very much in flux. He said they plan to pre-sell one of the parcels, and build a house on the other.

Chairman Carlson closed the public hearing.

Werneiwski said that the delineation report did not really answer the drainage question. He said that it appears to be an enclosed wetland. Werneiwski said that the lot area is the lot area, regardless of the wetland. Cooney said that was his conclusion based on the definitions. Werneiwski said that he was comfortable with the proposal.

Councilmember Gustafson asked about future potential variances and if the property, since the property owners are selling the other property. Cooney said that he did not have a good answer other than it would become a "buyer beware" situation.

Gustafson asked about the building sites on the property, and how this compares with the wetland issue that has taken place on Heathcote Drive. He asked if the city was baking itself into a corner without enough knowledge about the buildability of the lots.

Cooney said that the issue on Heathcote was building within the wetlands. He said that the wetland has been delineated on the Manor Road property and there is an adequate building pad for the two houses.

Carlson said that the applicant has also shown the setback from the wetland and the road with a building pad that shows a buildable area. He said that the Heathcote situation did not have a building pad that could meet those setbacks without impacting the wetland.

Sharpe made a motion to recommend that the City Council accept the conditional approval of the Preliminary Plat of the Webb Pond subdivision, as presented, based on the findings and conditions of staff. Motion was seconded by Werneiwski. Motion carried 4-0.

OTHER BUSINESS

Discussion related to building permitting processes.

Chairman Carlson introduced the agenda item. Zoning Coordinator Cooney summarized his memo. He said that this issue was raised at the last Planning Commission meeting regarding stagnant construction projects and how to handle them, and that perhaps time limiting permits might be one solution to explore. He said that he spoke with building departments in Edina, Wayzata, Minnetonka, Metro West Inspections (who handles permitting for a variety of west metro communities including Excelsior and Medina), and Deephaven city staff.

He said that some of these cities have time limits on permits, and this system may keep some projects moving, but it appears to be more of a housekeeping effort since many of these projects have been completed but not had a final inspection. He said that he is not convinced that time limits would eliminate issues related to problem properties.

He said that most of the problem properties are ultimately referred to code enforcement officials and enforced via the nuisance code. He said that pursuing problem projects through expanded nuisance regulations could be an area worth exploring and that Minnetonka's nuisance code has language related to construction issues.

Carlson said that a nuisance situation could get into a daily fine. Cooney confirmed that could be the impact of the nuisance violation. Cooney said that time limiting smaller permits would only create work for staff for projects that were likely completed anyways, and it would not get at the core of the issue.

McNeill asked about what it would take to adopt nuisance regulations. Cooney said that the process is the same as for the shipping containers.

Carlson suggested that Councilmember Gustafson ask the Council if they would like to see expanded language. Gustafson said that it is more efficient for something to be proposed for the City Council to react to.

Carlson said that he has not seen a lot of stalled projects in the city.

McNeill said that she lives near the property and that she thinks it is a problem. Carlson said that, even though the nuisance chapter is outside of the Planning Commissions jurisdiction, if McNeill wanted to propose some language, the Planning Commission could have a discussion about it.

McNeill said that she was also interested in the fenced storage area in the rear of the property.

LIAISON REPORT

Council Liaison Gustafson said that the Coldwell Banker sign at 19400 State Highway 7 was approved, the 4814 Vine Hill Road variance was approved. He said that the 4210 Water Street impervious variance was approved, but that the front setback variance was denied. Gustafson said that 20200 Lakeview Avenue variances were approved. He said that the accessory structure language regarding storage containers was approved.

Gustafson also mentioned the Streeter + Associates project at 20670 Linwood Road second sewer connection at the boathouse was approved. He said that the project was a perfect storm with staff changeover, ordinance language changing, and plans showing the plumbing in the building signed off by staff. Gustafson said that the City Council would like the Planning Commission to look for and try to point out these things when they review an application.

Carlson asked about why there is opposition to the second sewer connection. He said that this particular issue was an enforcement issue for the previous owners at the previously existing house.

Gustafson said that in that particular case, there would be a sewer connection in an area where you could also dispose of motor oil. Gustafson said that the general concern is accessory dwelling units.

Carlson asked about pool houses, and other uses that could benefit from the second sewer connection. Gustafson said that the question is about where to draw the line.

Gustafson said that he did have concerns about the subdivision heard tonight and future variance requests on that property. He said that the discussion about not allowing variances would be quickly forgotten. Cooney said that conditions could be placed within the resolution and recorded against the property. Carlson said that the resolution could be attached to the plat which would come up when the buyer reviews the title work.

ADJOURNMENT

Motion by Chairman Carlson to adjourn the meeting. Motion seconded by Commissioner Werneiwski. Motion carried 4-0. The meeting adjourned at 8:07.

Respectfully submitted,
Dale Cooney
Zoning Coordinator