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 MAY 15, 2018
Motion by McNeill, seconded by Webster, to approve the minutes of May 15th, 2018 with the correction of removing Studer from the list of commissioners present. Motion carried 7-0.

PUBLIC HEARINGS

Public Hearing to consider the conditional use permit request of Quick Hit Fitness Lab to operate a physical fitness establishment and install a sign at 18128 Minnetonka Boulevard.

Werneiwski introduced the agenda item.

Cooney presented the staff report. He said that Tim Regan is leasing space at 18128 Minnetonka Boulevard in order to operate an appointment-only, one-on-one fitness facility. Cooney said the business will be located in the C-1 (Commercial District 1) zoning district, and physical fitness establishments are regulated as a conditional use. He said that the applicant is also requesting a conditional use permit to install a sign for the business.

Cooney said that per Section 1302.01 (Subd. 2) physical fitness establishments are a conditional use within the C-1 zoning district. 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 or the service provided to the public by the use.

Cooney said that Section 1305.03(1) limits the hours a business can sell goods and services to consumers to only between the hours of 6 AM and 9:30 PM and that the applicant proposes the hours of 6 AM to 8 PM, Monday through Friday, 8 AM to 11 AM on Saturday, and closed Sunday. He stated that the proposed hours meet the regulations in the zoning code.

Cooney said Section 1310.04 regulates off-street parking requirements and that physical fitness establishments are not regulated specifically by off-street parking requirements and would fall within the "other commercial" category which requires 1 space for each 300 square feet of parking. He said that he estimates the building footprint at 700 square feet and city code requires two parking spaces. Cooney said that the applicant has stated that their lease agreement provides for two parking spaces.

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 said 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.

He said the applicant is proposing a sign of 11 square feet for the front façade and the sign would be externally illuminated. Cooney said Section 1115.09(a) sets the maximum sign area for wall signs at 15% of the wall area of the front façade. He noted that the façade of the applicant's structure is approximately 325 square feet and the proposed sign equals approximately 3% of the front façade area.

Cooney said the proposal would illuminate the sign externally with an overhead light near the roof peak and said the code states that interior and exterior lighted signs permitted to businesses may operate during business hours only.

Cooney said that he recommends approval of the conditional use permit request of Quick Hit Fitness Lab to operate a physical fitness establishment and to install an 11 square foot business sign at 18128 Minnetonka Boulevard 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 said his recommendation is conditioned that (a) the hours of operation of the business and illumination of the sign be as outlined in Section 1305.03 of the ordinance.

Cooney concluded his staff report.

Werneiwski opened the public hearing.

Tim Regan, applicant, said that he has been a Deephaven resident since 2003 and that he is available for questions.

Werneiwski closed the public hearing.

Motion by Werneiwski to approve the request based on the recommendation, findings and conditions of staff. Motion was seconded by Studer. Motion carried 7-0.

Variance request of Jeanne Hamilton, property owner, to encroach into the side yard setback for a home addition at 18385 Northome Boulevard.

Werneiwski introduced the agenda item.

Cooney presented the staff report. He said that Jeanne Hamilton (J Hamilton Design LLC), property owner at 18385 Northome Boulevard, is requesting a variance to build a home addition onto a legal non-conforming house. He said the 1-story addition creates the need for a variance from the minimum side yard setback. Cooney said the footprint of the house will increase by 255 square feet, bringing the house footprint to a modest 1,122 square feet. He said that the property is an 8,751 square foot R-3 lot, which is 44% of the minimum lot size for the zoning district.

Cooney said that Section 1302.05(3) of the zoning ordinance requires combined side yard setbacks of 25 feet, with a minimum of 10 feet. He said the applicant proposes a side yard setback of 6.4 feet and is seeking a variance of 3.6 feet from the minimum required side yard setback. He noted that the house is legal nonconforming and was constructed in 1910 according to Hennepin County records. Cooney said the existing house is 6.4 feet off of the side property line and the house addition maintains the existing line of the house. He said the addition is a one-story addition of a master bedroom, mudroom, and bathroom, and that the addition would expand the footprint of the house from 867 square feet to 1,122 square feet.

Cooney noted that the property is outside of the Shoreland Management District, and is not subject to an impervious surface variance.

Cooney said that he recommends approval of the variance requests to encroach 3.6 feet into the minimum required side yard setback for the proposed home addition at 18385 Northome Boulevard, as proposed, 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 and dimensional standards of the ordinance in order to modify a non-conforming house built in 1910, according to Hennepin County 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 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 proposal puts the property to use in a reasonable manner. But for the existing non-conforming setback, the scale of the house is consistent with zoning limitations for the property. The expanded footprint of the home remains very modest at 1,122 square feet.

(d) Are there unique circumstances to the property not created by the landowner?
Yes. The 1910 house was built prior to the city's zoning requirements. The narrow side yard setback prevents expansions to much of the house without requiring the need for a variance.

(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.

Cooney concluded his staff report.

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

Daly said that he felt this was a reasonable request. He said it was a cool old house and it would restore some old history in Deephaven.

Werneiwski said that he supports the investment in the community and that it is a modest request.

Webster said that it was a thoughtful design.

Nagle said that it is a unique house and it would be a shame to have it torn down. He said that it could be an icon there.

Eaton said that he agrees and that it helps that there were no neighbor comments opposing the request.

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

Variance requests of Greg Holde, property owner, to encroach into the minimum required side yard setback for a house addition; and to encroach into the minimum required rear yard setback and exceed the maximum allowable accessory structure footprint for a garage addition at 3835 Monaltrie Avenue.

Werneiwski introduced the agenda item.

Cooney presented the staff report. He said that the property owner has applied for variances to encroach into the minimum required side yard setback for a house addition, and to encroach into the minimum required rear yard setback and exceed the maximum allowable accessory structure footprint for a detached garage addition at 3835 Monaltrie Avenue. Cooney said that the property is a 15,000 square foot R-3 property, which is assembled from two 50 x 150 lots (Deephaven Park, Lots 418 and 419). He said that the house was built in 1938 according to Hennepin County records. Cooney noted that the newer detached two-car garage was granted a variance in 1999 to encroach into the rear yard setback.

Cooney said that Section 1302.05(3) of the city ordinance requires combined minimum side yard setbacks of 25 feet with a minimum side yard of 10 feet. He said that the proposed north side yard setback would be 4.9 feet and applicant is seeking a variance of 5.1 feet from the minimum required side yard setback.

Cooney stated that the house addition would increase the elevation by over 7 feet to create a livable second story on the house. He said that the house will also expand its footprint from a small 992 square feet (including porches), to a still modest 1,503 square feet (including porches). Cooney said that the applicant has stated that it is not his intention to tear down the house, but to keep the existing main level of the structure.

Cooney noted that the house addition maintains the existing line of the house and that the height increase is also relatively modest since the house already has an attic area and the expansion is not a full two stories. He said that, while the increase does occur only 4.9 feet from the existing property line, the garage area of the new house on the lot immediately to the north is 28 feet away and angled away from the applicant's property in such a way that the impact on that property would be minimal. He said that for those reasons, staff is supportive of the variance request for the house.

Cooney said that Section 1302.05(3) of the city ordinance requires rear yard setback of 15 feet. He said that the proposed rear setback would be 3.2 feet and applicant is seeking a variance of 11.8 feet from the minimum required rear yard setback. Cooney he existing setback was approved by the city in 1999.

He said Section 1310.10(Subd. 1(f)) of the city ordinance limits the accessory structure footprint for R-3 properties to 700 square feet. Cooney said that, as proposed the garage footprint would be 820 square feet and applicant is seeking a variance of 120 square feet from the maximum allowable accessory structure footprint. Cooney said that it is his opinion that the applicant has not met the practical difficulty standard demonstrating why the additional square footage is anything other than the desire of the property owner, and why he should be afforded the extra square footage not permitted to other R-3 property owners.

Cooney said that the location of the proposed garage expansion would be within an existing drainage easement and possibly within a wetland or a wetland buffer and—regardless of staff's opinion on the practical difficulty issue—could not legally be built on this portion of the property. He said that for the proposal to be legal, the applicant would have to A) have the drainage easement restated via the approval of the city; and B) demonstrate through that the structure does not encroach into a wetland or a wetland buffer.

Cooney said that he recommends approval of the variance request to encroach into the minimum required side yard setback by 5.1 feet for the house addition at 3835 Monaltrie, as proposed, 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 and dimensional standards of the

ordinance in order to modify a non-conforming house built in 1938, according to Hennepin County records. The objective is 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 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 proposal puts the property to use in a reasonable manner. But for the existing non-conforming setback, the scale of the house is consistent with zoning limitations for the property.

(d) Are there unique circumstances to the property not created by the landowner?
Yes. The 1938 house was built prior to the city's zoning requirements. The narrow side yard setback prevents expansions to much of the house without requiring the need for a variance.

(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.

Cooney said that he recommends denial of the variance request to encroach into the minimum required rear yard setback by 11.8 feet and to exceed the maximum allowable accessory structure footprint by 120 square feet for a detached garage addition at 3835 Monaltrie Avenue, as proposed, 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 intent of the ordinance is to limit the excessive size or number of accessory structures, and the applicant <u>has not</u> demonstrated that the proposal is in harmony with that intent.

(b) Is the variance consistent with the comprehensive plan?
The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which 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?
In the context of the zoning district, the excessive size of the garage is not a reasonable use of the property.

(d) Are there unique circumstances to the property not created by the landowner?
No. The property owner has not demonstrated that the request for the expanded footprint is more than a desire for extra garage square footage, nor why he should be afforded the extra square footage not permitted to other R-3 property owners.

(e) Will the variance, if granted, alter the essential character of the locality?
Yes. The expanded garage footprint would be out of character with the locality which is limited in accessory footprint size to 700 square feet.

Cooney concluded his staff report.

McNeill asked about the possible wetland. Cooney said that it was not certain that it was a wetland, it just came up on a map and he wanted to make sure. McNeill said that it does not look like a wetland.

Nagle said that he did not think the proposal would have any impact to the house to the north.

Greg Holde, property owner, said that he is keeping the first floor and the house has a lot of its original character. He said that he wants the garage expansion for extra shop space, but that he was unaware of the 700 square foot limit. He said that he can make the request work within the 700 square foot footprint.

Webster said that she does not have a problem with the house addition, and appreciates the comment on reducing the garage footprint.

Cooney said that, if the Planning Commission were in favor of the garage proposal, they could certainly craft some kind of conditional approval based on the council's willingness to restate the drainage easement.

Nagle asked if the garage bumpout could be elsewhere. Holde said that moving the bumpout to the north would impact his garden area and he would probably not do the addition if that were the case.

Daly said that the request would need to be reduced by half to be compliant.

Nagle asked if Holde had considered adding space to the front of the garage. Daly said that would require redoing the garage doors. Holde said that he had not considered that.

Holde said that he had a model of the proposal and showed the planning commission a scale model of the proposal.

Werneiwski opened the public hearing.

Rick Vogt, 18780 Lake Avenue, said that he has lived in the city for more than 40 years. He said that the city assessed the residents for the drainage. He said that he was curious as to what was proposed for the house. Holde explained the basic plan. Vogt said that he did not have an issue with it.

Werneiwski closed the public hearing.

Studer said that if the applicant wants to resize the garage proposal, he would be fine with it.

Werneiwski said that he didn't have an issue with it at the proposed size. He suggested withdrawing the garage addition for the meantime.

Webster said that she did not have a problem with the garage addition if he could make it legal with the drainage easement. She said that she had no problem with the house addition.

McNeill said that she supported the request for the house. She said that she would like to see the garage reduced, but be a separate request.

Daly said that he does not have an issue with the garage as proposed since it would allow some interior storage of exterior items. He said that the neighboring property is owned by the city and that the next house is far away.

Motion by McNeill to approve the house variance as proposed and to approve the garage variance to be approved with conditions that it be reduced to a conforming footprint and that the council restate the drainage easement permitting the structure.

Werneiwski said that he would support a motion at the proposed size. Daly suggested the motion be broken into separate action for the house and the garage. McNeill withdrew the motion.

Nagle motioned to approve the variance for the house addition as proposed. Motion was seconded by Werneiwski. Motion carried 7-0.

Werneiwski said that he is in favor of pulling the garage request for now until there is more information. Jewett said that, instead of making the applicant wait, propose a conditional approval.

Motion by Daly to approve the garage request as proposed with the condition that the city council approve the restating of the easement to permit the structural encroachment. Daly said that there is a unique circumstance with the fact that that the property is adjacent to a public drainage area and the impact of the extra garage space would only minimally impact the neighbors. Motion was seconded by Werneiwski. Motion failed 2-5, with Webster, Studer, Eaton, Nagle, and McNeill voting against.

Variance requests of HP Holdings, LLC, property owner, to exceed the maximum permitted grade alteration, to exceed the maximum permitted principal structure height, 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 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, and exceed the maximum allowable impervious area. 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 land alteration greater than three feet at any point. He stated that the applicants are proposing land alteration of up to 8.5 feet, and are seeking a variance of 5.5 foot from the maximum permitted land alteration.

He said that much of the front yard and the side yards 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. He said that current conditions have the driveway as much as 7 feet lower than the street grade, and since the applicants cannot lower the street they must elevate the grade of the property. Cooney said the applicants appear to be elevating the property to the minimum extent required to create positive drainage from the house to the street. He said that much of the front yard, particularly in the driveway area will be elevated by up to 7 feet. Cooney said that the greatest elevation change will be near the proposed retaining walls on the west side. Cooney 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 sf in size. He said that 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). He said that the applicant proposes a walkout elevation of 40.1 feet and is seeking a variance of 5.1 feet from the maximum allowable principal structure height.

Cooney stated that the grading issue and the height issue are closely linked. He said that 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 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. He said that the applicants are proposing street side elevation of 28.6 feet. Cooney noted that, while house height variance requests are somewhat rare, in his opinion, it is not practical to require conformance with the code since the applicants would have to sacrifice a second level to the home only to gain extra basement ceiling height in the

tradeoff. He said that the street level height is reasonable, and the walkout proposal works with the elevation change on the property.

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 the applicants propose an impervious surface area of 33.14% and are seeking a variance of 8.14% from the maximum allowable impervious surface area. Cooney said that the property is 47% of the minimum lot size and the total hardcover footprint is 3,137 square feet. He said that, while the property is small, the proposed impervious area is in the upper limit of what staff feels comfortable with for a property of this size. He said that it would be staff's preference that one of the rear yard amenities (either the porch or the deck) be removed from the proposal. He said that removing the smaller of these two items (the 180 sf deck) would bring the proposed impervious to 31.2%.

Cooney said that the variance triggers the city's stormwater mitigation requirements and that the property will be required to provide mitigation to the equivalent of 25% impervious surface area. He said that the applicants are proposing a rear yard drainage trench. Cooney said that the City Engineer has reviewed the proposed mitigation plans and determined that the proposed mitigation meets city requirements. He said that 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 land alteration by 5.5 feet, to exceed the maximum allowable principal structure height by 5.1 feet, and to exceed the maximum allowable impervious surface area by 6.2% for the property at 19370 Lake Avenue, as proposed.

Cooney said his recommendation is conditioned that:

- In order to reduce the proposed impervious surface area, the applicants remove either the screened porch or the deck from the proposed plans.
- The applicants complete the stormwater management improvements to meet the requirements and specifications of the city engineer.
- 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 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. 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.

(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. Both 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 concluded his staff report.

Jewett asked about the city engineer's stormwater comments. Cooney said that the changes were made to the city engineer's satisfaction.

McNeill asked if the house is measured from the proposed grade. Cooney said yes, but that the grade change on the rear side was about 2 feet.

Eaton asked about the impacts on the uphill property. Cooney said that he defers to the comments of city engineer.

Nagle said the property is a challenge. He said that he thought there might be impacts on the rear of the property to the house to the east.

Tom Bakritges of HP Holdings LLC, applicant, said that the home has been designed to accommodate the family of 5 moving into the house. He said it is not a spec home. He said that the property is 9,467 square feet for an R-3 lot which has a minimum lot size of 20,000 square feet. He said that if they had 20,000 square feet, the property would be 15.9% hardcover. He said that it has a front porch, 3-season porch, and a deck. Bakritges said that the house is in a hole, and that the garage is 7.1 feet below street level and the rear is 14 feet below street level. He said that the height variance is from the walkout side only. He said that the property is currently over hardcover. He said it is a small lot it is difficult to stay within 25% hardcover. Bakritges said that staff recommended removal of the deck, which would reduce impervious by 1.94%. He said that they are making the house more conforming by moving the house back to meet setback requirements. Bakritges said that they will be blending in the grades with the property to the west. He said that property to the east is higher and none of their drainage would be going to that property.

Jewett asked about the height of the deck to ground level. Bakritges said it would be 12.1 feet.

Studer asked about the grade of the property to the east. Bakritges showed Studer how the drainage would flow and the elevations on the property.

Werneiwski opened the public hearing.

Jeff Underhill of 19360 Lake Avenue said that he lives to the east and has not been contacted by the builder so he does not know how the drainage will work. He said that he sees some issues for the grading in front of the property. Underhill said that they applicant has not met the practical difficulty issue for height and impervious area. He said that they are asking for these variances for economic reasons and that the city should not consider these. He said that the lot size is not unique for the R-3 district. He said that the house size is more in keeping with an R-2 or an R-1 house size. Underhill said that they want a bigger building to make more money, which is not a practical difficulty. He said that there will be a 40 foot wall 12 feet from his house. He said that setting the house back on the lot will block his view.

Steve Brandt of 19350 Lake Avenue said the location of the house will block his view. He said that they are setting the house close to the house to the east and it should be closer to the house to the west. Brandt said that the house at 19380 Lake Avenue kept the house closer to the street.

Nancy Woelffer of 19365 Azure Road said that they tore down two houses to build their current house and planned a house that was appropriate for the lot. She said that the grading and runoff will impact their lot. She said that their house runs from the alley to the beach. Woelffer said that the house does not fit the property and that she opposes it.

Jim Stark of 3780 Northome Avenue said that he remembers a property owner who asked for variances to build a house that they said they would live in for a long time and, once it was built, immediately put a for sale sign up. He said that he was skeptical that this was not a spec home.

Werneiwski closed the public hearing.

Webster said that the applicant should take into account the rules when they buy a property. She said that the neighborhood is up in arms and she cannot justify a property that asks for all of these variances. She said do not to buy the lot if you cannot fit a house on it.

Studer said that it is a lot of house for a small lot. He asked how the city was going to make sure the water gets to the French drain. He asked about downspouts being directed there. He said that it is a beautiful house, but that he had concerns about water towards the neighboring house only 12 feet away.

Webster said that when scraping a lot, the applicant should be able to come closer to compliance.

Nagle said that the ordinance requires 25%. He said that the neighbors see the project as negatively impactful towards them. He said that the structure is too big for the lot and that the drainage to the rear does not provide a resolution.

Bakritges said that they are happy to work with the neighbors, but said that you need to walk the property to see how it really handles the water. Nagle said that he did walk the lot, and it is a difficult lot.

Werneiwski said that he was not sure pushing the house back is best. He said that he understands the house is in a hole. He said he would like to have them work with the neighbors to come up with a better plan. He said that he was not as troubled by the size of the house.

McNeill said that she is disappointed the applicant did not work with the homeowners. She said it is a difficult lot and that she would like to see it closer to compliance with regulations.

Eaton asked if there is a precedent for relaxing the front yard setback. Webster said that it was relaxed for the property next door. Webster asked about bringing the house closer to the road to alleviate some issues.

Daly said that the house fits the city setbacks, and looks different which is not their fault. He said that the required setback also increases the hardcover. He said that he struggles with the height in the back. He said that he does have concerns about drainage.

Jewett said that the house at 19380 Lake did get a variance to be 20 feet back. Cooney said that house had a side load garage so off-street parking is less of an issue.

Bakritges asked for a continuance of the application in order to talk to the buyers, the neighbors, and make some revisions to the proposal.

Cooney said that Bakritges should send him a letter waiving the 60-day time limit and asking for a continuance within the 120-day time limit. Cooney said that he would send out a neighbor notice when this application comes back before the planning commission.

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.

Cooney presented the staff report. He said that Joe and Tracy Ryan, property owners, are requesting variances to build an accessory structure within the lake yard setback. He said that the accessory structure would be built into the embankment near the lake, necessitating a variance from the maximum permitted grade alteration. Cooney said the structure would be located 19.5 feet from the Ordinary High Water Level (OHWL) of Lake Minnetonka and is intended to be used for boat and dock storage.

Cooney said that Section 1302.04(3) of the zoning ordinance requires a 100 foot lake yard setback from the OHWL. He said the applicant is proposing to place the structure 19.5 feet from the OHWL and is seeking a variance of 80.5 feet from the minimum required lake yard setback. Cooney said that, as proposed, the structure would be built into the embankment to reduce visibility from adjacent neighbors and would include a deck on the roof. He said that the 216 square foot accessory building would remain under the limits for accessory structure footprint on the property.

Cooney said that the principal structure on the property sits 61.5 feet from the OHWL, and the lot is generally flat between the house and the proposed structure. Cooney said that the property drops 10 feet at the shoreline, and the opening for the structure is approximately 7 feet below the existing grade in this area.

Cooney said that the applicant's narrative includes references to State of Minnesota shoreland regulations regarding "Water-Oriented Accessory Structures" that permit one accessory structure (less than 250 square feet in size in most cases) within the required lake yard setback. He said the City of Deephaven has not adopted language related to Water-Oriented Accessory Structures and the current city ordinance is more restrictive than state law.

He said that he sought DNR comments regarding the request prior to formal variance submission and the applicant worked to address any concerns. Cooney said that, at this point, staff has not received formal comments regarding the variance request, but will pass along any comments received. He said the DNR can appeal any decision made by the city, but the city remains the regulatory jurisdiction based on its adopted shoreland management ordinance.

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 the applicant is proposing land alteration of up to 7 feet, and is seeking a variance of 4 feet from the maximum permitted land alteration. Cooney noted that the principal justifications for land alteration restrictions are to limit properties from circumventing the house height limitations by building up the grade around a property, or altering overall drainage patterns in a significant or detrimental way and that neither of these concerns are the case in this proposal.

Cooney said the applicant has tried to ensure that the proposal is compliant with the Water-Oriented Accessory Structures standards in state law, however, the City of Deephaven has not adopted these standards, and the city is more restrictive than state law. He said the applicant will be held to the "practical difficulty" standard for variance requests.

Cooney said that to meet the practical difficulty standard, <u>all</u> of the factors must be met. He said that, in particular, he cannot find justification for *"unique circumstances to the property not created by the*

landowner." Cooney said that while every property is unique in some way, in his opinion, there is not a distinguishing characteristic of this property that would merit such an exception from the city's regulations. He said the house is only 61.5 feet away from the OHWL, which is already well within principal structure setback requirements. Cooney noted that, unlike the proposed location of the structure, the south side of the property has a gradual slope to the house's lower level entry which would make boat and dock storage highly accessible. He said that, in spite of the many topographic challenges within Deephaven, it is not necessarily within the city's regulatory framework to try and make lake yard storage convenient for the property owner.

Cooney said that the city recently approved a lake yard accessory structure at 19094 Minnetonka Boulevard, and it is important to point out the truly unique circumstances for that property that distinguish it from the current request:

- The property already contained a legal, non-conforming accessory structure within the lake yard setback.
- There is 42 feet of elevation change between the OHWL and the rear of the house.
- Siting an accessory structure within the lake yard but beyond the bluff would have put the structure approximately 160 feet from the OWHL.
- Before the bluff begins, the property contains relatively flat, usable space up to 50 feet back from the shoreline.
- Since the structure is situated over 50 feet from the OHWL, it is <u>not</u> considered a Water Oriented Accessory Structure under state regulations for General Development lakes, and it conforms with the <u>principal structure</u> setbacks required by state shoreland regulations.

He said that he recommends denial of the variance request of Joe and Tracy Ryan 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, as proposed, based on the following findings:

(a) Is the variance in harmony with the purpose and intent of the ordinance?
No. The purpose of the ordinance is to provide for the wise development of the shoreland of public waters and to preserve the economic and natural environmental values of shoreland. The proposal would not further any of the stated purposes of the zoning ordinance.

(b) Is the variance consistent with the comprehensive plan? No. The comprehensive plan states that it will be a city policy to "Continue to maintain or exceed Department of Natural Resources shoreline standards through locally adopted shoreland ordinance requirements." The city has adopted shoreland controls in excess of DNR standards.

(c) Does the proposal put property to use in a reasonable manner?
While an accessory structure of this size is reasonable, the proposed location of the lake yard accessory structure 19.5 feet from the OHWL is not using the property in a reasonable manner based on the zoning ordinance.

(d) Are there unique circumstances to the property not created by the landowner?
No. There is not a distinguishing characteristic of the property that would necessitate such a deviation from the setback requirements, and the city's regulatory framework is not designed to help facilitate easy or convenient lake yard storage.

(e) Will the variance, if granted, alter the essential character of the locality?
Yes. The city has placed great importance on keeping the lake yards of properties clear of structural encroachments. Lakeshore accessory structures that remain on the lake as legal nonconformities are rare, and adding a new accessory structures this close to the water's edge would alter the essential character of the locality.

Cooney concluded his staff report.

Studer asked about the city's regulations versus the DNR regulations. Webster said that this came up two months ago with the 19094 Minnetonka Boulevard property.

Studer asked why the city is more restrictive than state law. Cooney said that he does not know, but that cities can be more restrictive than state law, but not less restrictive.

Webster mentioned in the staff report there was something to the reasoning behind the shoreland restrictions. Cooney said that the ordinance stated purpose is "to provide for the wise development of the shoreland of public waters and to preserve the economic and natural environmental values of shoreland."

Eaton asked about the existing conditions. Clark Wicklund, engineer for the applicant, said that there is an 8x18 deck in the area near where the structure is proposed. He said that the proposed structure would be built into the topography and that this area is not considered a bluff. Wicklund said that the building height is zero. He said that there was some dialogue with the DNR about particulars of the proposal that have been met.

Cooney said that he did correspond with the DNR and felt that they had reached a point where they were not opposed to the project based on the shoreland regulations. He said that this was during the draft phase of this proposal and that he had not heard any formal comments on the submitted variance request.

Wicklund asked about the grade alteration and thought they may be under code requirements. Cooney said that any point that exceeds three feet in grade change requires a variance.

Wicklund said that, compared to the property at 19094 Minnetonka, this structure is flush with the top of the grade whereas that structure is free-standing at-grade and that the site line impacts are less. Wicklund noted the support of the adjacent neighbors.

Webster asked what the practical difficulty was. She said that the house is 60 feet from the lake, and that she did not understand why they needed a variance to store their equipment right at the shoreline. Wicklund said that, in order to minimize the visual impact, it would need to be built into the grade and that is where the grade change is located. Webster said that she did not understand the practical difficulty of having to store the equipment in this area. She said it is a boathouse.

Studer said that the proposal is below grade and that the configuration is unique to this property. Webster said that is opening a can of worms.

Nagle asked if there is a precedent for this kind of thing being approved. Werneiwski said that he remembers a sauna request a couple of years ago that was similar. Wicklund confirmed that this is the same property.

Wicklund said that other structures within Deephaven are similar including many historical structures. He said that the proposed structure would be less intrusive visually from the lake than the recent approval at 19094 Minnetonka.

Werneiwski said that he did not oppose the sauna when it came before the city.

Studer said that it is unique that it minimizes site lines by being set into the hill.

Webster said that this is a very big deal and that it would set a precedent.

Nagle showed pictures of the structure at 19094 Minnetonka and said that the city shouldn't have an ordinance prohibiting structures on the lake if they are just going to allow structures on the lake. He said

that it would be more rational to just get rid of the ordinance. Nagle said that he has a lakeshore area with a similar hillside, and that he can come before the city and ask for the same structure and it should be approved as well.

Studer said that the zero height is unique. Nagle said that the city would need to allow all zero height structures. Studer said that he might be okay with that.

Nagle said that he has gotten pushback from the 19094 Minnetonka structure and that those neighbors want the same rights as others. He said that if the city is going to open the door on this, it needs to be allowed for everybody.

Eaton said that the solution and design are well done. He said that the neighbors have voiced support. Webster said that they voiced support because they want the same thing. Eaton said that it is a ticklish situation that is precedent setting.

Jewett asked about the deck railing being an additional variance. Cooney said that is not a fence, but a railing and is more of a building code requirement that is outside of the variance requirement.

Daly asked the property owner how they plan to use the structure. Joe Ryan, property owner, said that it would be used for storage, a changing area, and potentially an electric sauna with no running water. He said that the practical difficulty is it is easier to use that area near the dock for these things than elsewhere on the property.

Motion by McNeill to deny the request based on the recommendation and findings of staff. Motion was seconded by Nagle. Motion failed 3-to-4 with Daly, Eaton, Studer, and Werneiwski voting against.

LIAISON REPORT
Councilmember Jewett said that at the June 4 meeting the 4693 Vine Hill Road garage height variance was approved. He said that the 20730 Linwood Road request was also approved.

Jewett said that the 19150 Lake Avenue request was approved. He said that is was a contentious decision.

Jewett said that 19380 Lake Avenue was approved with adding the turnaround back in due to public safety concerns taking precedent over the hardcover concerns. He said that the redesign brought the property to under 30%. Cooney said that the planning commission recommendation was to reduce hardcover to 30% or less. McNeill said that she wanted to see the house reduced in size.

Jewett said that the variance request for Maple Hill Road was approved.

ADJOURNMENT
Motion by Werneiwski to adjourn the meeting. Motion seconded by Studer. Motion carried 7-0. The meeting adjourned at 9:25.

Respectfully submitted,
Dale Cooney
Zoning Coordinator