

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

PRESENT: Chairman John Studer, Commissioners Jeff Eaton, Doug Nagle, Cindy Hunt Webster, Bob Werneiwski, and Josh Wilcox

ABSENT: Commissioner John Daly

OTHERS PRESENT: City Council Liaison Melissa McNeill and Zoning Coordinator Dale Cooney

MINUTES OF May 21, 2019

Motion by Webster, seconded by Eaton, to approve the minutes of May 21, 2019 as written. Motion carried 6-0.

PUBLIC HEARINGS

Public hearing to consider the variance requests of Joshua and Beth Janzen, property owners, to encroach into the minimum required lake yard setback, to encroach into the minimum required front yard setback, to encroach into the minimum required side yard setback, and to exceed the maximum permitted impervious surface coverage in conjunction with a home addition and a fence at 19820 Cottagewood Road.

Chairman Studer introduced the agenda item.

Cooney presented the staff report. He said that the property owners are building a garage and shed addition to the existing house which triggers several variance requests. Cooney noted that the property is a 17,380 square foot R-2 property which is 43% of the minimum lot size for the zoning district. He said that the lake yard and front yard setback requirements overlap, thus constructing anything on the property requires a variance. Cooney said that the house was built in 1952 according to Hennepin County records.

Cooney said that Section 1302.04(3) of the zoning ordinance requires a front yard setback of 50 feet and a lake yard setback of 100 feet and that the applicant is seeking a variance to encroach 14.9 feet into the front yard setback, and 60.9 feet into the lake yard setback. Cooney noted that, currently the closest encroachment in the front yard is 27.7 feet, and the closest lake yard encroachment is 36.8 feet, and the applicant is proposing additional encroachments for the proposed garage and shed that do not exceed these encroachments. Cooney said that he is supportive of this aspect of the request since the proposed addition does not exceed the existing closest encroachments but that his recommendation does not include approval of the trellis shown in the drawings, but not shown in the survey.

Cooney said that Section 1302.04(3) of the zoning ordinance requires a side yard setback of 20 feet. He said that, as proposed, the addition would be 17.1 feet off of the east side property line and the applicant is seeking a variance to encroach 2.9 feet into the west side yard setback. Cooney said that the existing house sits 44 feet off of the east property line. He said that the side property line is at a severe angle to the front property line and the majority of the proposed addition is within the required setback. Cooney noted that only a small portion of the front of the addition would encroach into side yard setback and the proposal is generally working within the constraints of the lot.

Cooney stated that Section 1302.04(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 27.7% and is seeking a variance to exceed the maximum permitted impervious surface area by 2.7%. Cooney noted that, at 17,380 square feet, the property is 43% of the minimum lot size for the R-2 zoning district (and would be substandard even if it were within the R-3 zoning district). Cooney said that, due to the substandard lot size, the fact that the property is well below any structural coverage limitations, he is supportive of the expanded impervious coverage. He said that, since the property drains to the lake, there is little stormwater impact to the adjacent

properties and the proposed mitigation would offer some pretreatment of stormwater runoff in the vicinity of the driveway.

Cooney said that the applicant is requesting a privacy fence along the east and west property lines. He said that Section 1310.08(h) states that fences over 3.5 feet tall shall not be constructed in the lakeshore setbacks and, as proposed, the fence would be as close as 5 feet from the OHW of Lake Minnetonka. Cooney said that, due to the property configuration, staff is supportive of some kind of variance for fencing, but would not be supportive of fences within the lake yard itself. He noted that even conforming lake front properties are not permitted to have privacy fences in the lake yards unless they are over 100 feet from the OHW, and few of the properties meet this criteria. Cooney said that he would recommend that any privacy fence be no closer to the lake than the rear of the house on the west side, and the rear of the proposed shed on the east side. He said the fencing would need to meet all other fence standards, including the side yard setback requirement from the neighboring properties.

Cooney said that he recommends approval with conditions of the variance request to encroach 14.9 feet into the front yard setback, to encroach 60.9 feet into the lake yard setback, to encroach 2.9 feet into the side yard setback, and to exceed the maximum permitted impervious surface area by 2.7% for the proposed house addition and fence at 19820 Cottagewood Road, as proposed.

And conditioned that:

- The privacy fence be no closer to the lake than the rear of the house on the west side, and the rear of the proposed shed on the east side. The fencing would need to meet all other fence standards, including the side yard setback requirement from the neighboring properties.
- The applicants complete the stormwater management improvements to meet the requirements and specifications of the city engineer.
- Construction of stormwater management facilities should be observed by a City representative to ensure system is installed as proposed. At least 24 hours' notice shall be given prior to inspection.
- 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?

Yes. The proposal seeks to modify an existing nonconforming property in terms of setbacks, grading and impervious area. Since the front and lake yard setbacks for the property overlap, the legal nonconforming property would be otherwise unbuildable without some kind of variance. The property is also a substandard size for the zoning district. The lot lines are at a severe angle to the house and the front yard setback, creating a wider than usual area for potential setback encroachments.

(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?

Yes. The garage and shed addition are reasonable expansions of the existing house. The proposed structural footprint of 3,506 square feet is well below the zoning district limitations of 6,000 square feet. The impervious area is reasonable given the substandard property size.

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

Yes. The lake yard and front yard setback requirements overlap, thus constructing anything on the property requires a variance. The side property line is at a severe angle to the front property line and the majority of the proposed addition is within the required setback. At 17,380 square feet, the property is 43% of the minimum lot size for the R-2 zoning district (and would be substandard even if it were within the R-3 zoning district).

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

No. The proposal would not alter the essential character of the locality. The scale of the proposed building footprint is comparable to other properties within the neighborhood.

Cooney concluded his staff report.

Studer asked if the privacy fencing was prohibited in the lake yard setback and if a shorter 3.5 foot fence could go all the way to the lake. Cooney said that is the way the code is written, but he has never seen even a shorter lake yard fence.

Webster asked about the height of the fence. Josh Janzen, applicant, said that the fence would be a 6 foot fence.

Webster asked if the structure has been altered. Cooney said that he is unsure, but it appears that there was a lake yard addition at one time. Janzen said that was correct and also the master bedroom was converted from a 1 stall garage. He said that there is not a full basement for the house and that the existing garage was added in the 80's.

Nagle asked about Cooney's fence recommendation. Cooney said that he would not want to see the fence go any further back towards the lake than the back of the existing house and proposed shed.

Webster said that the existing garage would stay and that there would be an additional 2 car garage. Janzen said that, at 22 feet wide, it is more like a 1.5 stall garage. Webster said that this would be a total 4 car garage. She asked about the 6 foot door height on the size. Janzen said it was driven by the grade. Webster asked if the request is to have the fence all the way down to the lake. Janzen said he is requesting a privacy fence within 5 feet of the lake. Webster asked about the proposed trellis. Janzen said it was just for looks.

Dan Anderson, 3540 Montgomerie Avenue, architect for the property owners said that AIA standards state that a two car garage is 24 feet wide, and a 22 foot wide garage is very narrow and impractical for two cars. Webster said that they could put 4 cars in the garages. Anderson said that the roof height above the garage is to prevent the house from looking like it is just one big garage. Webster said that the 3D drawing is deceiving. Anderson said that he understands and referred to the elevation drawing.

Webster asked how the shed would be accessed. Janzen said that there would be an internal stairway.

Nagle asked if there was anything under the new garage addition. Janzen said no.

Wilcox asked about moving the front of the shed such that it does not encroach. Janzen said they would be open to that, he said that bumping it in would add carpentry expense and would be less appealing. Wilcox noted that there was a comment from the neighbor with concerns about the project.

Webster said that she was not in favor of the side yard encroachment. Anderson noted that the house doesn't have a basement and the extra space is needed. Webster asked about adding space under the proposed garage. Anderson said that would triple the costs of the project. Webster said that going into the side setback was not a practical difficulty and that it is strictly preferential.

Eaton asked about the size of the house. Janzen said that the house has 5 bedrooms and 3 bathrooms and about 2,500 square feet. Anderson said that the storage area in relation to the house is very small.

Studer opened the public hearing.

Robert Barnheiser, 19860 Cottagewood Road, said that he is the neighbor to the west. He said that

he would be most impacted by the fence and that he supports it. Barnheiser said that Janzen is trying to protect his family. He said that while technically this is a lake setback, it is really a swamp. He said that it doesn't block lake views.

Studer asked if Barnheiser would be opposed to a privacy fence at the lake. Barnheiser said he fully supports the privacy fence to the lake. Webster said that people need to abide by the rules that are in place and some changes might need to be made. Barnheiser said that Webster has power to allow exceptions to those rules.

Studer asked for commissioner comments. Wilcox said that he would not support the privacy fence in the lake yard and is fine with it going to the back of the house. He said that he would like to see the shed moved out of the side yard setback.

Studer said that he agreed with Wilcox's comments about the fence. He asked if the garage was reduced in width if it could alleviate both the impervious coverage issue and the side setback issue. Anderson said that it is really about storage for the property and not as much as parking for vehicles. Anderson said that it could be shifted to the rear of the yard.

Studer asked what the property owner's intent is for the fence. Janzen said he would not put it in the front yard. Studer said that he would prefer that the addition meet the side yard setback. Janzen said he understands but pointed out that there would be approximately 60 feet between the two houses. Janzen asked about putting the privacy fence on the lot line. Studer said that it would be important to delineate the proposed location of the entire fence for the city council.

Webster said that she is not in favor of the privacy fence except as far as the front of the house, and a shorter fence to the back of the house excluding the recent addition. She said the fence isn't enclosed on water side, so she doesn't understand the security issue. She said that she is not in favor of the side yard encroachment.

Werneiwski said that this is a tough property and that he doesn't have an issue with what they are proposing. Wilcox asked about precedent. Werneiwski said that every property is unique and that he has not seen a run on any kind of specific request based on a variance decision.

Nagle said that he would want to meet the 20 foot side yard setback, particularly based on the neighbor concerns. Nagle said that he is a lakeshore owner and is unaware of a privacy fence in any lake yard and he would be against that. He said he understands the safety concerns but would not support the fence beyond the back of the house.

Eaton said that he generally agrees with Nagle. He said that he appreciates the storage issue and that is helpful to know. He said that, unless the fence blocks off the entire street or the lake, it is a privacy fence and not a safety fence since those are the two biggest hazards. He said that the side yard setback is the one setback not being encroached upon and that he would like to preserve that setback.

Studer asked, if the entire structure was moved back to meet the side setback, would there be support for that even though the addition would be closer to the lake. Nagle said that it would be a comparable setback to the addition on the west side and that he would be fine with that. Eaton said that he would be okay with that.

Webster said that she was not sure if the code allowed the lower fence and would like to get the city council's take on the issue. Cooney said he would be happy to get that input.

Janzen said that the elevation of his back yard relative to the neighbors would minimize any site line issues. Eaton said that he understands, but does not see how it preserves safety. Beth Janzen said that the original intent was to enclose the yard.

Webster noted the locked terraced yard and said that there was already an enclosed safe area.

Wilcox noted that there was no discussion about the impervious area. Studer said that he did not have an issue with the impervious areas as proposed. Studer said that he would like to see the fence on a plan for the city council.

Studer made a motion to approve the variance request based on the recommendation and findings of staff with the following conditions:

- 1) That the entire proposed addition, in its current configuration, be pushed towards the rear of the lot the minimum distance needed to meet the 20 foot side yard setback.
- 2) That the privacy fence encroach no closer than the furthest encroachment of the existing house on the west side and the proposed addition on the east side, with the distance determined based on a line drawn at a right angle to the property line.

Motion was seconded by Wilcox. Motion carried 5-1 with Webster voting against.

LIAISON REPORT

McNeill presented the liaison report. She said that the city council was not supportive of the draft ordinance for an assumed impervious surface withholding of 2% for non-house and non-driveway uses. She said that the council preferred to focus on the enforcement of the existing laws on the books, notably the mitigation requirements.

Studer asked about the variance application at 19680 Lakeview Avenue. Cooney said that the request was withdrawn and that he expects them to come back with a new house proposal.

McNeill said that Wilcox is invited to present his ideas on enforcement issues at an upcoming meeting that works for him.

McNeill noted that most interior roads will have a new speed limit of 25 miles per hour.

Eaton asked about the schedule for Minnetonka Boulevard. McNeill said that the start date is to be determined, but that the finish date would still be prior to the start of school.

ADJOURNMENT

Motion by Nagle to adjourn the meeting. Motion seconded by Studer. Motion carried 6-0. The meeting adjourned at 8:12.

Respectfully submitted,
Dale Cooney
Zoning Coordinator