

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

PRESENT: Chairman Bob Werneiwski, Commissioners John Daly, Melissa McNeill, Bill Sharpe, John Studer, and Cindy Hunt Webster

ABSENT: Commissioner Walter Linder

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

OATH OF OFFICE

Zoning Coordinator Cooney administered the oath of office to Planning Commissioners John Studer and John Daly.

MINUTES OF February 21, 2017

Motion by McNeill, seconded by Werneiwski, to approve the minutes of February 21, 2017 as written. Motion carried 6-0.

PUBLIC HEARINGS

Variance request of Ben Burgum to encroach into the lake yard setback in order to expand an existing deck at 4280 Chimo East

Chairman Werneiwski introduced the agenda item. He said that Section 1302.04(3) of the zoning ordinance requires a lake yard setback of 100 feet and that the applicant proposes a lake yard setback of 74 feet, 2 inches.

Zoning Coordinator Cooney summarized the staff report. He said that Ben Burgum, the property owner, is requesting a variance to expand an existing lake yard deck. Cooney noted that the existing setback for the house and the deck were approved via a variance in May of 1975.

He said that Section 1302.04(3) of the zoning ordinance requires a lake yard setback of 100 feet. Cooney said that the applicant proposes a lake yard setback of 74 feet, 2 inches and is seeking a variance of 25 feet, 10 inches from the minimum required lake yard setback.

He said that because the new deck is slightly shallower than the existing deck, the lake yard encroachment would be reduced by 1 feet, 8 inches, but noted that the new deck is significantly wider. Cooney said that the proposed deck is 53 feet 4 inches wide, and 10 feet 4 inches deep, while the existing deck is 35 feet, 6 inches wide and 12 feet deep. Cooney noted that the encroaching area is expanding by 233 square feet. He said that the impervious area on the property is increasing from 17.3% to 20.8%, but is still well under the impervious surface limitations.

Cooney said that he recommends approval of the variance request 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 expand a legal, non-conforming deck that had been previously granted via a variance. The depth of the encroachment into the lake yard is being reduced from existing conditions.

(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 expansion of the deck footprint 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 1975 and was granted a variance for the existing non-conforming lake yard setback. Changing the configuration of the deck is not possible without 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 proposed project is a modest expansion of existing conditions.

Cooney concluded his staff report.

Ben Burgum, applicant, said that the existing deck is a half hexagon and that he is installing sliding doors on the rear of his home. He said that the new deck will allow multiple access points from the house. He said that the deck is shallower to help preserve an existing tree.

Webster asked if the deck would impact an egress window opening. Burgum said that the window opening was not an egress window.

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

Motion to recommend approval by Werneiwski based on the findings of staff. Motion was seconded by McNeill. Motion carried 6-0.

Variance request of John Kosmas to encroach into the side yard setback, and to exceed maximum permitted impervious area for a home addition at 19365 Lake Avenue.

Chairman Werneiwski introduced the agenda item. He said that Section 1302.05(3) of the zoning ordinance requires a side yard setback of 15 feet, and the applicant proposes a side yard setback of 2 feet, 6 inches. He said that Section 1302.05(2) of the zoning ordinance limits the maximum allowable impervious surface area on the property to 25% and the applicant proposes an impervious surface area of 33.38%

Zoning Coordinator Cooney summarized the staff report. He said that John Kosmas, the architect for the property owner at 19365 Lake Avenue, is requesting variances to build a home addition onto a legal non-conforming house. Cooney said that the addition creates the need for a variance from the minimum side yard setback and the maximum permitted impervious surface area. He said that the footprint, height and massing of the house will increase. Cooney said that the applicant proposes to remove several areas of impervious area such that the overall impervious area for the property will be slightly reduced. Cooney noted that the property is a 16,104 square foot R-3 lot.

Cooney said that Section 1302.05(3) of the zoning ordinance requires a side yard setback of 15 feet. He said that the applicant proposes a side yard setback of 2 feet, 6 inches and is seeking a variance of 7 feet, 6 inches from the minimum required side yard setback. He said that the existing house is 2 feet, 7 inches off of the side property line and the house addition maintains the existing line of the house. Cooney said that the house and lot line are not perfectly square with each other and therefore the encroachment will increase by 1 inch from existing conditions.

He said that the overall height and massing of the house will increase significantly, since the building will be enlarged from a 1.5 story house to two full stories with a larger footprint. Cooney stated that the current height of the house (measured from the highest adjoining grade elevation for non-lookout/walkout

houses) is 18 feet, 6 inches and the proposed house height is 29 feet. He noted that the height limit for this property is 34 feet.

Cooney said that the two properties to the east (19355 Lake Avenue, and 3840 Northome Avenue) that share the non-conforming lot line would be most impacted by the addition and increase in massing. He said that with rough measurements using aerial imagery, staff estimates that 19355 Lake Avenue is 35 feet from the existing house, while 3840 Northome Avenue is 45 feet from the proposed addition.

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 applicant proposes an impervious surface area of 33.38% and is seeking a variance of 8.38% from the maximum allowable impervious surface area. Cooney said that currently the property is at 33.68% impervious surface area and the applicant is proposing to remove a number of impervious areas to reduce the overall impervious to less than existing in spite of the house addition. He said that the property drains away from the principal structures on the adjacent properties to the east and towards Lake Minnetonka.

He said that the variance triggers the city's stormwater mitigation requirements. He said that the property will be required to provide mitigation to the equivalent of 25% impervious surface area. Cooney said that the property owner will be required to enter into a stormwater maintenance agreement which will be recorded against the property. He said that the applicant is proposing underground storage/infiltration to accommodate the stormwater mitigation requirements. Cooney said that the City Engineer has reviewed the proposed mitigation plans and has asked for more detail on the proposal. Cooney noted that, as of this writing, he has not received enough additional information to approve the mitigation proposal as presented.

Cooney noted that the property is host to two non-conforming (in terms of setbacks and combined footprint) garages which are not proposed to be modified as a part of this request. He said that the proposal complies with the remaining setback requirements, building coverage limitations, and maximum permitted grade alteration.

Cooney said that his biggest concern is the overall increase in height and massing for what is an extremely narrow side yard setback. He said that while the height and massing are zoning code compliant, one cannot ignore the impacts to neighboring property owners who share the narrow setback. He said that his concerns are mostly allayed by the fact that the principal structures of the neighbors who share the setback are an estimated 35 feet and 45 feet away from the proposed house. Cooney pointed out that a theoretically zoning code compliant combined setback for two similarly oriented R-3 properties could have the principal structures located as close as 25 feet from each other.

Cooney said that he recommends approval with conditions of the variance requests to encroach 7 feet, 6 inches into the minimum required side yard setback, and to exceed the maximum allowable impervious surface area by 8.38% for the proposed home addition at 19365 Lake Avenue, as presented.

He said that his approval recommendation was conditioned that...

- 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 that he based his recommendation 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 1918, 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 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. 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 1918 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.

Sharpe asked if there was stormwater management currently on the property. Cooney said that there was not. Sharpe asked if the limit of the height of the house was 34 feet for the zoning district. Cooney said that was correct, and in this district allowable height increases with lot size.

John Kosmas, applicant, said that he is the architect for the project. He said that the homeowners are also present. He said that the 1918 house is very close to the property line and that there is a little bit of convergence towards the lot line when the house is expanded. Kosmas said that the ponding area is new and that the pond will be underground and covered with sod. He said that the soil below the infiltration area will drain, and that the net hardcover for the property will be 25%.

Studer asked how the water will get to the infiltration area. Kosmas said that there will be a swale to direct water from the west side of the property, and that the water naturally drains towards the area from the east.

Webster asked about the location of the stormwater improvements. She said that the majority of the water will be coming off the northwest corner of the property and shouldn't the improvements be there. Kosmas said that the water will be controlled more quickly when it is closer to the house. Webster said that all the runoff from the yard will go into the street. Kosmas said that several large trees would be impacted if the stormwater area were in the northwest corner. He said that the grade would also have to be modified significantly to create a ponding area. Webster said that the biggest part of the problem is the water running off the yard and that the location of the raingarden doesn't address that. Kosmas said the idea is to get the water from the impervious area. Webster said that the driveway and garages are on the other side of the lot. Kosmas said that they are collecting the water from the house proper to catch it earlier before it runs across the lot. Webster said that the water is not going to go around the house into the ponding area.

Webster asked why they are not proposing to attach the garage and get rid of the other two structures.

Studer asked about hard piping water from the house to the stormwater area. Kosmas said that they can do that. He said that the piping can get damaged through frost and that the surface water should also be designed to go to the stormwater area. Kosmas said that is something they could do.

McNeill asked about the impervious surface areas that are being removed. Kosmas pointed out the areas to be removed for the commissioners.

Werneiwski said that he did not have any problems with the stormwater proposal. Kosmas said that the grading was favorable and that the property has the land area to accommodate it.

Chairman Werneiwski opened the public hearing.

Joseph Saint Martin said that they are not in favor of expanding the house. He said that their view will be minimized. He said that he was worried about a large oak tree right on the property line being damaged. He said that he was also worried about their property values since the house and garage are very close to their property line and now they want to build an expansion along their property line which would amount to a wall in their back yard. He said that he did not think the tree would survive if the property owners had to put in footings for the expansion.

Beth Burgan of 19355 Lake Avenue said that the Mitchells have been great neighbors but that she wished that there had been a conversation with her before this point. She said that when she removed her old garage she was required to replace it with a garage that was zoning code compliant in terms of setbacks. She said that she accommodated those requirements. She said that the City Council at the time said that there is only a chance every 100 years to replace structures within the city. She said that there will now be a 32 foot high wall near her property, and it will reduce the light she receives. She said that it will make her feel like she is living in the city. Burgan said that this is also a privacy issue. She said that gutters will not handle all of the runoff, and will dump water on her retaining wall. Burgan asked how anyone could maintain the property without coming on to her property.

Webster said that the addition to the house was near the opposite end of the property. Burgan said that the existing house would nearly double in size.

Scott Hemink of 3825 Northome Avenue said that he was a former Planning Commissioner. He said that he recognizes that the city is evolving. Hemink said that the size of the house is increasing by roughly 75% in size which is very aggressive. He also asked how the house would be maintained that close to the lot line. He said that a remodel of the house within the existing footprint makes sense, but that adding more foundation opens up more questions. He said that if the owners don't get along, then maintaining the house could be contentious. Hemink said that there is a chance to get something that fits better in the city.

Joseph Saint Martin said that when they painted last year, they had to come onto their property with the ladder.

Werneiwski closed the public hearing.

Werneiwski said that in the past the city has required stepping back the new area from the property line a reasonable distance and not carry the encroaching area further.

Werneiwski surveyed the commissioners for comments.

Daly said that he thinks further reductions of the hardcover could be made. He said that he has concerns about the maintenance of the stormwater management, even though the city does require ongoing maintenance and inspections. He said that he didn't like the idea of making the non-conforming property even more non-conforming.

Studer said that he shares the thoughts of compounding the issue of the non-conformity. He said that he believes there are rights to increase the height of the house on the existing foundation, but not to expand the house further within the setbacks. He said that he does have concerns about excavation so close to

the property. He said that there is an opportunity to expand the house west, but that the proposal unduly burdens the neighbors with the expansion of the house footprint. Studer said that they were making an effort on the hardcover, but could see trying to do more and not maintaining the status quo.

Webster said that she sympathizes with both sides. She said that in this instance it is just a little too close. She said that with the size of the lot there were opportunities to better site the improvements. She understands the neighbors' perspective of not wanting a monster house in the back yard. Webster said that she thinks there is a better way to do this project.

McNeill said that she is disappointed that the conversations did not take place with the neighbors beforehand. She wants to see the neighborhood improve but that there are potentially better options on this lot.

Sharpe said that the improvements seem to go against the spirit of the ordinance.

Motion to recommend denial of the request by Webster 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. By expanding house along the non-conforming narrow setback where other less burdensome options exist, the variance is not in harmony with the purpose and intent of the ordinance.

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

Yes. 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?

No. The further compounding of the already very extreme side yard encroachment is not putting the property to use in a reasonable manner and burdens neighboring property owners.

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

Yes. The 1918 house was built prior to the city's zoning requirements and the narrow side yard setback is an existing condition not created by the landowner.

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

Yes. The proposal would alter the essential character of the locality by creating a much larger house along a very narrow setback line. The scale of the proposed home renovation is out of scale with the existing narrow setback for the more modest 1918 house.

Motion was seconded by Werneiwski. Motion carried 6-0. Webster said that she would encourage the property owners to submit a revised plan because she believes that something can be accomplished on this property.

(Note: Since they are out of town, the property owner has requested, in writing, that this application be heard at the May 4 City Council meeting.)

LIAISON REPORT

DEEPHAVEN PLANNING COMMISSION MEETING MINUTES
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Liaison Jewett said that at the March 6 meeting the City Council approved the signage CUP for Lakeside Nails and Spa at 18202 Minnetonka Blvd, Suite 101B. He said that the grading variance for 3675 Northome Avenue was also approved, as was the garage expansion for 3965 Walden Road.

Jewett said that the meeting on March 20 was focused on the city audit. He said that the City Council also raised several plumbing fees.

He said that they are maintaining the tennis courts in Thorpe Park. He said that they are also working on the hockey rink and warming house in Thorpe Park.

Webster asked if there were plans for the warming house. Jewett said that there were not any plans yet. Jewett confirmed that the building will have bathrooms that will remain unlocked throughout the day and locked up at night.

ADJOURNMENT

Motion by Sharpe to adjourn the meeting. Motion seconded by Werneiwski. Motion carried 6-0. The meeting adjourned at 8:03.

Respectfully submitted,
Dale Cooney
Zoning Coordinator