

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

**PRESENT:** Chairman Bob Werneiwski, Commissioners John Daly, Doug Nagle, and Cindy Hunt Webster.

**ABSENT:** Commissioners Melissa McNeill, Bill Sharpe, and John Studer.

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

### **MINUTES OF FEBRUARY 20, 2018**

Motion by Werneiwski, seconded by Webster, to approve the minutes of February 20, 2018 as written. Motion carried 4-0.

### **PUBLIC HEARINGS**

#### **Consider the variance requests of Dean and Stephanie Friesen to encroach into the minimum front yard setback and exceed the maximum roof eave encroachment allowance for the property at 4395 Cottonwood Lane.**

Werneiwski introduced the agenda item.

Cooney presented his staff report. Cooney said that Dean and Stephanie Friesen, property owners, are requesting a variance to expand the front entryway to their house and that the expansion would require a variance of the front yard setback and maximum roof eave encroachment. He said that at 17,551 square feet, the property is a slightly undersized R-3 property.

Cooney said that the project proposes several minor additions, only one of which triggers a variance. He said that the front entry of the house would be increased two feet in depth, would be wider than the existing entry, and would encroach 1 additional foot into front yard setback. Cooney pointed out that the front entry would add approximately 17 square feet of new front yard encroachment.

Cooney said that Section 1302.05(3) of the zoning ordinance requires a front yard setback of 35 feet. He stated that the applicants propose a front yard setback of 31.6 feet and are seeking a variance of 3.4 feet from the minimum required front yard setback.

Cooney said that applicants' have stated their need for the expanded front entry is to allow more access area for guests since there is a stairwell immediately off of the front foyer. Cooney noted that the front of the house already encroaches into the front yard setback, and even minor expansions to the front of the house require a variance.

Cooney stated that the applicants are also rebuilding an entry overhang on the front of the house. He said that Section 1310.02 of the zoning code allows roof eaves to encroach into a setback by as much as 3 feet. He said that, as proposed, the roof eaves for the overhang would encroach 4 feet into the front setback and the applicants are seeking a variance of 1 foot from the maximum permitted roof eave encroachment.

Cooney said that he recommends approval of the variance request to encroach 3.4 feet into the minimum required front yard setback, and to exceed the maximum allowable eave encroachment by 1 foot, for the proposed expansion of the front entryway at 4395 Cottonwood Lane, as presented based on the following findings:

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

Yes. The applicant is seeking to vary from the stated setback standards of the ordinance to improve an existing non-conforming house constructed in 1959, per Hennepin County tax records.

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

The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which encourage residents to maintain and/or improve older homes which will promote diversity of housing in Deephaven.

(c) Does the proposal put property to use in a reasonable manner?

The minor expansion of the non-conforming footprint of the house and the eave encroachment are 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 1959 and the front of the house is entirely within the required front setback. It is not possible to modify the front of the house without a variance into the setback.

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

The proposal would not alter the essential character of the locality. The proposed project is a very minor expansion of existing conditions.

Cooney concluded his staff report.

Werneiwski opened the public hearing.

Dale Moe, of 20465 Linwood Road said that he lives near the property. He said that the house is not parallel with the front lot lines which creates a problem for the homeowners. He said that he is in favor of the request.

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

Daly said that he might prefer that the overhang be pulled back to meet zoning. Webster said that she is okay with it. She said that she does not have an overhang and ice and snow are a problem.

Nagle noted that the house does not sit square on the lot.

Motion to approve by Werneiwski. Motion was seconded by Nagle. Motion carried 4-0.

**Consider the variance request of Zehnder Homes, Inc. to exceed the maximum permitted grade alteration in conjunction with the construction of a new house at 197XX Manor Road (address unassigned, the southern half of the property formerly considered part of 19655 Cottagewood Road)**

Werneiwski introduced the agenda item.

Cooney presented his staff report. Cooney said that Zehnder Homes, Inc., property owner, is requesting a variance to exceed the maximum permitted grade alteration in conjunction with the construction of a new house. He said the property is zoned R-2 and is 79,911 square feet in size. Cooney stated that Section 1312.04 of the zoning ordinance requires a variance for any land alteration greater than 3 feet at any point. He said the applicant is proposing land alteration of up to 6 feet, and is seeking a variance of 3 feet from the maximum permitted land alteration.

Cooney said that the property was subdivided from the property at 19655 Cottagewood Road in 2016 and has never had a house on it before. He said that grading on this property was always going to be a challenge since the grade drops away quickly from Dyer Lane towards the wetland in the rear yard.

Cooney noted that the applicant is exceeding the maximum permitted grade alteration in two areas: 1) the northwest corner of the house near the stoop area, and 2) immediately behind the garage.

Cooney said 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. He pointed out that either of these concerns are the case in this proposal. Cooney said that the property is challenging and, except for the two small variance areas, the applicant has worked within the constraints of the lot.

Cooney said that he recommends approval of the variance request to exceed the maximum permitted grade alteration by 3 feet for the property at 197XX Manor Road (address unassigned), as presented and based on the following findings:

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

Yes. The purpose and intent of the ordinance is 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, neither of which is the case in this proposal.

(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 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 proposed house and grading are reasonable for the property, and are comparable in scope and scale to surrounding properties. The grading changes are minor in comparison to the overall project and the proposal generally works with the constraints of the lot.

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

Yes. The property drops away sharply from Manor Road towards the low lying wetland area. The applicant has been able to meet the grading limitations except for two small variance areas.

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

The proposed grading alterations would not alter the essential character of the locality. The overall proposal is of a scope and scale similar to neighboring properties.

Cooney concluded his staff report.

Werneiwski opened the public hearing.

Eric Zehnder of Zehnder Homes, applicant, stated that he was available to answer questions.

Webster asked about the reasons for the grading alteration. Zehnder said that they are essentially trying to add some grade in the front between the street and the house. He said that the reason for the grading near the stoop was so that there was not a huge drop off right next to the stoop.

Nagle asked about the retaining wall. Zehnder said that the retaining wall was to minimize the area of the grading alteration and to hold that area of the yard up.

Webster asked about where the house would be relative to the existing fence on the property. Zehnder said that the fence runs roughly through the center of the proposed house.

Motion by Nagle to approve the variance request as proposed. Motion was seconded by Werneiwski. Motion carried 4-0.

**Consider variance requests of Joel Conner and Rachael Jarosh to exceed the maximum permitted impervious surface coverage for the property at 4300 Chimo East.**

Werneiwski introduced the agenda item.

Cooney presented his staff report. He said that the property owners have applied for variances to redo the hardcover on the R-2 property at 4300 Chimo East. Cooney said the property is 46,170 square feet in size and exceeds the minimum lot size for the R-2 district.

Cooney said that Section 1302.04(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25%. He said the applicants are proposing an impervious surface area of 27.11% and are seeking a variance to exceed the maximum impervious surface area by 2.11%. Cooney noted that currently, the property is at 27.56% impervious.

Cooney said that the house was built in 2000, and the proposed impervious area for the property at that time was 23.5% (which consisted of the 5,618 square foot house, a 4,851 driveway, and an 86 square foot walkway). He said that a variance was never granted for the additional impervious areas. He noted that all impervious areas over 25% should be considered illegal nonconforming and it is within the city's right to enforce the zoning code and request that the impervious areas be removed. He noted that the bulk of the illegal impervious areas appear to be at-grade patio and step areas around the house. Cooney said that the property owners purchased the house in February of 2015, and that he assumes that they have inherited the excess impervious coverage.

Cooney said that the applicants are proposing to redo the impervious areas on the property at a percentage slightly less than existing conditions. He said that impervious surface variances for an R-2 property that exceeds the minimum lot size are rare, and he is unaware of an instance where known illegal nonconforming impervious areas were granted a variance. Cooney stated that since the hardcover on the property is being completely redone, this may be the appropriate time to have the owners assess their priorities and bring the property into compliance. He noted that a reduction of the 4,531 square foot carriage driveway represents an opportunity to both bring the property into compliance while also allowing for the desired patio areas.

Cooney said that he is inclined to give the applicants the benefit of the doubt for trying to improve a situation not of their own making and attempting to bring the property into compliance by A) requesting a variance, and B) providing the required mitigation. He noted that, without such a request, the excess hardcover would have remained undetected and the city would not have benefited from the proposed mitigation.

Cooney said that as of the writing of the staff report, Owen and Dorothy Schott, owners of the property at 4290 Chimo East for which several storm sewer additions are proposed as a part of this project, had not been contacted by the homeowners or the contractor in regards to their property. Cooney said that he is supportive of the project in principal, but that it is very unfortunate that staff has had to field calls from the property owner about the proposed improvements. He said that in addition to needing to construct on the property, the applicants are also proposing two additional manholes for the project to be placed on the Schott property. He said that he questions the necessity of these manholes and, again, is discouraged that the Schott's were not consulted on these improvements. Cooney said that he would withhold any approval motion until the neighbor has been consulted and these concerns addressed.

Cooney said that, as proposed, the property would be required to provide 110.6 cubic feet of mitigation volume and that the applicants are proposing 162 cubic feet of mitigation volume with excess runoff routed towards the lake via storm sewer belonging to the homeowners association. He said that a portion of the roof runoff will be routed to the mitigation area via direct connection to the downspouts. Cooney

said that he has requested written approval from the homeowners association to link into the storm sewer.

Cooney said that he recommends approval with conditions of the variance requests of Joel Conner and Rachael Jarosh to exceed the maximum allowable impervious surface area by 2.11%, for the property at 4300 Chimo East, as proposed, with the following conditions:

- A. Applicants comply with the recommendations of the city engineer.
- B. Eliminate the two additional manholes proposed for the 4290 Chimo East property.
- C. Applicants obtain written consent from neighboring property owner to install the proposed improvements.
- D. Applicants verify that the storm sewer is in proper working order.
- E. Applicants obtain written consent from the homeowners association to utilize the storm sewer.
- F. 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 was based on the following findings:

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

Yes. The requested excess impervious surface area reduces impervious conditions from existing while also providing required mitigation.

(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 impervious areas, while they exceed code requirements, are improvements from existing conditions.

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

Yes. The excess impervious areas are an existing condition of the property created prior to their purchase of the home in 2015.

(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.

Cooney concluded his staff report.

Webster asked about the proposed addition shown on the survey. Tim Johnson, contractor for the property owners, said that the addition is outside of the scope of the variance request. Cooney said that the addition has been approved via a building permit.

Webster said that she has concerns about the project. She said that she would like to see the property back in compliance and asked how it exceeded impervious areas. She said she was concerned about the neighbors at 4290 Chimo East.

Johnson said that his clients inherited the problems. He said that he has since spoken with the neighbors. He said that there are water issues in the area partially from the new house up the hill as well as the water from the street. He said that there was water coming from a couple of different directions towards both 4300 Chimo East and 4290 Chimo East.

Johnson said that they have permission to tie into the storm drain, but that unfortunately goes through the property at 4290 Chimo East.

Webster asked about the maintenance of the storm drain. Owen Schott, property owner at 4290 Chimo East, said that it does not need much maintenance. Schott said that he gets the water from Minnetonka Boulevard and the cul-de-sac and that it collects at a culvert near his house. He said that the drain recently collapsed and was replaced with a 20 inch concrete pipe. He said there is a lot of water in this area.

Webster asked if the residents can come back to the city about the stormwater issue. Cooney said that they could ask the city, but that the city is not obligated to take care of the issue.

Webster asked about why the property is not being brought into compliance. She said that mitigation does not always work. Johnson said that he was trying to get below existing hardcover and mitigate the rest. Johnson said that the driveway is smaller, but that the location of the house requires the long driveway.

Daly asked about the width of the driveway. Johnson said it was 12 feet wide, but that he is also working around the existing well. He said that he is filling in the pit in the center of the driveway too. He said that the new driveway will be safer.

Dan Schmidt, engineer for the project, said that they are capturing stormwater from the side of the hill and the roof. He said that once the system captures the required volume it will overflow to the storm sewer. He said that the systems are designed to be maintained periodically.

Daly asked if this system will help the neighborhood in general. Schmidt said it will capture water from the property to the west as well as the roof drains. Schmidt said that the grades are subtle on the Schott lot and that he recommends keeping at least one catch basin on their lot.

Werneiwski opened the public hearing.

Schott said that he would welcome to improvements in the stormwater situation. He said that he did not want to see catch basins on his property and that there are other creative ways to deal with the situation.

Cooney asked if Schott would have any objections to the applicants tying their private storm sewer to the Chimo storm sewer via his property. Schott said that he would not object to that. Webster asked if he would be willing to provide written approval. Schott said he is willing to work with the neighbors and that he does not want to cause them a lot of grief. He said that the water issues coming down the hill are significant.

Daly asked about the curb. Johnson said it would be to the west of the client's driveway.

Joe Bergquist of 19094 Minnetonka Boulevard said that he wants to make sure that none of the solutions to negatively impact his property.

Werneiwski closed the public hearing.

Werneiwski said he struggles with the proposal and is not a big fan of mitigation, but that he is probably okay with it if they work with the property owner.

Daly said that he is in favor of the proposal. He said that the hardcover is being slightly reduced. Daly said that he thinks there are benefits to the neighboring properties and the association. He said that he thinks the benefits exceed the hardcover overage.

Nagle asked about the lake yard patio and said that he would like to see that beyond the setback. Cooney noted that patios are allowed to encroach into the setback.

Johnson came to the dais to help explain to the commissioners the areas of existing and proposed hardcover.

Motion by Werniewski to approve the request based on the recommendation, findings, and conditions of staff. Motion was seconded by Daly. Motion failed 2-2 with Webster and Nagle voting against.

**Consider the variance requests of Steve Perkins to exceed the maximum permitted impervious surface coverage, and to encroach into the minimum required lake yard setback at 19980 Lakeview Avenue.**

Werneiwski introduced the agenda item.

Cooney presented his staff report. Cooney said that property owner has applied for variances to expand hardcover on the property and to reconfigure an existing deck. He said that, at 14,926 square feet, the property is a substandard R-3 property. He said that in 2012, the property was granted several variances in order to construct a new house including a reduced front yard setback, a reduced lake yard setback, to exceed the maximum permitted impervious surface area, and to exceed the maximum permitted grade alteration.

Cooney said that Section 1302.05(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25%. He said the applicant is proposing an impervious surface area of 32.9% and is seeking a variance to exceed the maximum impervious surface area by 7.9%. Cooney noted that the property is currently at 27.8% impervious area. Cooney said that the property is undersized for an R-3 lot, and greater hardcover percentages have been granted to similarly sized lots, but he said that typically those lots are proposing a reduction from existing conditions.

Cooney noted that the property was granted a variance to exceed hardcover in 2012, but the variance percentage permitted was only 25.8%. He said that existing hardcover is 27.8%, or 2% percent higher than that permitted by variance. Cooney said that an as-built survey was not provided upon completion of the project.

Cooney said that, taking existing conditions at face value, the applicant is still asking for a hardcover expansion of 5.1%. The expansion areas are the large patio in the lake yard and stepping stones to the lake. He said the applicant states that one of the reasons for the improvements is to help manage a drainage issue near the rear of the house.

Cooney said that a practical difficulty case could be made based on the undersized lot, but that he is not supportive of such an aggressive expansion of hardcover. Cooney said that the newly proposed rear patio is nearly 1,000 square feet in size. He said that he might be supportive of a request that slightly increased hardcover but, as proposed, there does not appear to be an attempt to work within existing constraints. He noted that the drainage issue could be managed without additional impervious areas.

Cooney said that the applicant is required to provide 132 cubic feet of mitigation volume and that the proposed mitigation volume exceeds city requirements.

Cooney said that Section 1302.05(3) of the city ordinance requires a minimum lake yard setback of 100 feet and that the applicant is proposing to modify an existing deck which would expand it toward the lake yard. He said that the proposed deck setback would be 84 feet and applicant is seeking a variance of 16 feet from the minimum required lake yard setback. He said that the deck would have a similar footprint to the existing deck, but would be rounded to improve functionality.

Cooney said that recommends denial of the variance request to exceed the maximum allowable impervious surface area by 7.9%, and approval of the variance request to encroach into the minimum required lake yard setback by 16 feet for the property at 19980 Lakeview Avenue, as proposed.

Cooney said that his recommendation of denial is 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 limit the uncontrolled expansion of impervious areas in order to reduce stormwater impacts on public waters and adjacent properties. The proposal would contribute to additional stormwater stress. While mitigation is proposed to alleviate the issue, mitigation should not be, in and of itself, considered a suitable substitute for maintaining pervious areas in the first place.

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

No. The comprehensive plans goal is to protect natural resources which serve vital functions in the city, such as drainage ways, wetlands, and other environmental features. The additional impervious areas serve to diminish those natural resources.

(c) Does the proposal put property to use in a reasonable manner?

No. While a rear yard patio is reasonable, the aggressive expansion of impervious areas beyond existing conditions is not reasonable.

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

Yes. The property is substandard by R-3 zoning requirements, however the property already exceeds impervious surface area limitations.

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

Yes. The proposal would set a precedent that constant expansion of impervious areas, regardless of existing conditions, should be permitted. Such a precedent would begin to erode the essential character of the locality.

Cooney said that his recommendation of approval is based on the following findings:

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

Yes. The ordinance is intended to limit uncontrolled development within the shoreland areas. The proposal is a modest expansion of existing conditions granted via an existing variance.

(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 deck is a reasonable use and a minor expansion of existing conditions.

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

Yes. The property was granted a variance to build within the lake yard setback. The reconfiguration of any structure in this area requires a variance.

(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 proposal is of a similar size to other legal, conforming single-family houses within in the neighborhood and will be largely unnoticeable.

Cooney concluded his staff report.

Cori Johnson, of NRD Landscape, contractor for the homeowner, said that she has worked with the homeowner to find ways to fix the drainage issue on the homeowner's property. She said that the raingarden is more than double the city requirements.

Werneiwski asked about the drainage problem. Johnson said that the neighbors to the east are higher. She said that the boulder walls direct water towards the rear foundation. She said that the patio grade will direct water to the raingarden and that the boulder walls will have an extra row added to push the water away from the home and toward the raingarden.

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

Werneiwski said that he thinks the request is too much.

Daly said that he does not have an issue with the deck.

Webster said that the scope of the project is not reasonable.

Daly asked if the homeowner was aware of the nonconforming hardcover. Johnson said that the owner was not aware and not the original owner of the property.

Motion by Werneiwski to accept the recommendation and findings of staff to deny the impervious surface variance request and to approve the deck setback request. Motion was seconded by Daly. Motion carried 4-0.

**Public hearing to consider the rezoning of 19300 State Hwy No. 7, 19340 State Hwy No. 7, 19400 State Hwy No. 7, from C-1 (Commercial District 1) to C-2 (Commercial District 2).**

Werneiwski introduced the agenda item.

Cooney presented his staff report. He said that currently the city has two commercial zoning districts: C-1 and C-2 and that, as written, they are virtually identical. He said the zoning code defines them as follows:

C-1 Commercial District 1: retail sales and service businesses directly oriented to the consumer.

C-2 Commercial District 2: sales and service businesses not directly oriented to the consumer.

Cooney said that in conversations with the city council, he heard a desire to distinguish between those businesses in Chohan's Corner and those that are highway commercial. Cooney said that the council anticipates that the highway businesses may have different impacts than those in Chohan's Corner and that the same zoning for those parcels facing County Road 101 and State Highway 7 would be logical.

Cooney said that the proposal is to rezone these addresses from C-1 to C-2 in order to make the zoning consistent with other highway commercial properties. Cooney said that if the long-term vision is for these commercial zoning districts to remain nearly identical, then it may make more sense to simply have one commercial district.

On the TV monitor Cooney showed the C-1 and C-2 districts as written side by side so that the public could see the differences between the two districts. Cooney noted that there are only a few conditional uses that are different between the two districts and that they are otherwise the same. Cooney said that no redevelopment is being proposed.

Cooney concluded his staff report.

Jewett said that Cooney is trying to clean up the code and said that the council had suggested that the zoning for these be cleaned up.

Werneiwski said that there are a lot of things in the code that are quirks of history. He said that the zoning change is not significant.

Werneiwski opened the public hearing.

Lee Blaske of 19555 Excelsior Boulevard asked why there are two commercial zoning districts and couldn't they be consolidated. He said that the entrance to the properties is on Excelsior Boulevard and they should not be viewed as Highway 7 properties. He asked about 5078 Vine Hill and that someone might be buying that property with the hopes of expanding the commercial district. He asked about the Coldwell Banker property and the lot that is the barrier lot between that property and the residential property. Blaske said that the Vine Hill intersection is problematic.

Werneiwski said that the current zoning is a quirk of history.

Cooney said that the Coldwell Banker property is just one lot that is zoned C-1 but that there is a conservation easement over the undeveloped western portion of the lot.

Peter Lowry of 5036 Vine Hill Road said that he has lived in the city since 1973. He said that there has been development pressure in this area. He mentioned the reversion clause for the property at 19400 State Highway 7. He said that the home at 5078 Vine Hill was recently sold. He said that the company who bought the property sold it to a new unknown buyer. He said that he has received calls about his willingness to sell his property. Lowry said that the rezoning would allow things such as motels, adult entertainment, pool halls, etc. He asked why there should be a rezoning at all. Lowry asked what interests the city council was serving and who was it working for? He said that this is more than a coincidence and that he suspects something untoward is going on.

Werneiwski said that the uses he listed are not accurate. Webster said that changing the zoning is to make the uses consistent and that no tattoo parlors and adult entertainment are permitted.

Stephen Farnes of 5014 Vine Hill Road said that his reaction to the rezoning was that the developers and commercial interest are at it again. He asked what the problem is that the city is trying to solve. He said that bookkeeping does not cut it. He said that this is a residential and that the city should not give consideration to the commercial interests. He said that he agreed that there is something else going on here. He asked why the city doesn't just change the existing C-2 area to C-1. He said that he also speaks for his Aunt Shirley Johnson at 20285 Cottagewood Avenue. He said that there is no problem here.

Rick Dalstrom of 233 Center Street in Excelsior said he rents across State Highway 7 and that his building has been sold and will be torn down. He said that he finds it ironic that Starbucks is having traffic issues with their proposal and that now Deephaven is changing its zoning. He said that the city should say what it is really doing. He said that this was ironic asked if the city was working with Shorewood to make the commercial areas on both sides of the highway compatible.

Werneiwski said that he was not aware of anything going on. He said those areas are not under Deephaven's oversight.

Cooney said that, as written, restaurants would not be allowed since they are too close to residential properties. He also said a drive through or fast food area is not permitted.

Dave Zauver of 19150 Vine Ridge Court asked what caused the city to address this zoning. Cooney said that the city has a comprehensive plan that is due to the Metropolitan Council and that this is the

appropriate time to address zoning inconsistencies in advance of submitting that plan. Zauver asked why rezone the properties if there is such a small difference between the districts. He said that he would propose to keep them the same and how would it benefit the city to change the zoning. He said that it would be a slippery slope towards more impacts.

Webster said that there is no conspiracy and that this is just to update the city's comprehensive plan. Zauver asked what the benefit to the city would be.

Cooney said that he would not necessarily see an expansion of uses within the C-2 district so much as a restriction of uses within the C-1 district. He said that he could see some value in keeping businesses such as Midas and Jerry's automotive at their current locations, but that those businesses might not be compatible with Chowen's Corner anymore. Cooney said that this was pure speculation on his part, but that he could see the value of having the different districts for those reasons.

Jewett said that the issue of signage for the areas may make for different allowances for the zoning districts. He said that it isn't logical the way the commercial districts are organized now.

Zauver said that the residential impacts in this area are more comparable to Chowan's Corner than Highway 101. He said that there is no reason to make the change. He said the best way to clean up the zoning would be to make them all C-1.

Daly said that based on the businesses and the locations as well as signage it seemed that the Highway 101 and Highway 7 districts had similar uses to each other and that they should be zoned the same.

Jeff Olejnik of 19450 Excelsior Boulevard asked if there was anything that would prohibit the Highway 101 properties from becoming C-1. Cooney said that those properties could be rezoned. Olejnik said that his preference would be to have the more restrictive district near his house and that district is C-1.

Wendy Lasky of 19610 Excelsior Boulevard said that it is a traffic nightmare in this area and that anything that makes it busier would be a negative.

Mike Randall of 4982 Vine Hill Road said that he is not sure about the change and why it needs to happen now. He asked if the city could just wait.

Cooney noted that there is no proposal to rezone any residential property to a commercial property. He said that the neighbors would be notified if such a rezoning were to be proposed.

Peter Lowry said that if the zoning were changed to C-2, it would be easier to change the zoning. Webster said that it would not be easier and that rezoning is not on the table.

Werneiwski said that the Planning Commission makes a recommendation to the City Council who will make the final decision. He questioned why there are two districts if they are basically the same. He said that he would be in favor of consolidating the two commercial districts.

Nagle agreed that rezoning the Highway 101 district would make sense. Jewett said that it is confusing how it is currently set up and he would like to see some logic behind the zoning regardless of how they are rezoned.

Daly said that Deephaven is mostly a residential city and that keeping things simple and logical makes sense, even if that means consolidating into one commercial zoning district. He said that the Highway 7 area is one entrance into Deephaven and that he wants to make sure it can remain vibrant.

Nagle motioned to rezone the Highway 101 area to C-1. There was not a second for the motion.

Webster said that she did not want to recommend whether the consolidation be to C-1 or C-2 and that the city council should make that decision. Werneiwski agreed.

Motion by Webster to consolidate the commercial zoning in Deephaven into one commercial zoning district. Motion was seconded by Werneiwski. Motion carried 3-1 with Nagle voting against.

## **OTHER BUSINESS**

### **The Pines Neighborhood Zoning Discussion**

Werneiwski introduced the agenda item.

Cooney presented his staff report. He said that the Planning Commission has been tasked with exploring options for, at minimum, additional height restrictions within the neighborhood known as "the Pines". He said that to help guide the discussion he had provided several attachments for review. He said that those attachments included sample house sections that illustrate the height of a typical 1, 1.5, and 2 story house built using modern construction methods. He said that under current zoning, the majority of properties within the Deephaven portion of the neighborhood would be limited to 32 or 33 feet house height (to the roof peak). He noted that a couple of the larger parcels could go up to 36 feet.

Cooney said that the housing elevation study shows the street level impacts of new, taller houses relative to the many single-story houses within the neighborhood. He said that the buildings are shown relative to the 100 foot and 110 foot lot width typical of the neighborhood.

Cooney said that he included a copy of the City of Deephaven R-3 Zoning. He said that he also included the City of Minnetonka R-1 Zoning as a point of reference. Cooney noted that the house height limit for the Minnetonka properties is a maximum of 35 feet to the midpoint of a gable roof.

Cooney said that recently, construction began on a new house at 3508 Leroy Street in Minnetonka. He said that, as a point of information, staff has attached the building elevation and survey for that property. He said that, prior to the meeting, staff would strongly encourage a site visit to the neighborhood to see first-hand the impacts of the new construction on the current neighborhood. He said that with two new houses in the community, this is the best way to evaluate the street-level impacts of any possible zoning restrictions.

Cooney concluded his staff report.

Nagle thanked Carlson for providing the height study and that it helps to provide some context and take the emotional response out of it.

Councilmember Kent Carlson said that the early stages of construction are a little misleading as to the actual scale of a house.

Webster said that she drove through the area and that her original feelings on the issue still stand. She said that those are nice lots that are bigger than her neighborhood. She said that the large lots allow for trees and for increased setbacks. She said that she does not see a need to change the ordinance.

Werneiwski agreed. He said that he prefers the diversity in the streetscape. He said that he was concerned about limiting the property values for some of the property owners.

Webster said that the penalty will be paid by those who don't want these restrictions and it will be limiting the potential future value of their property. Webster said that she found that problematic.

Daly said that he did not want to create architectural restrictions. He said that he thought there could be more variances if there were additional regulations.

Carlson asked about the height restrictions in Minnetonka. Cooney said that Minnetonka was 35 feet to the midpoint, and that Deephaven was a little more restrictive on height since we limited height to the roof peak.

The Planning Commission recommended that the city should not amend the ordinance in order to create more restrictive zoning regulations in the Pines neighborhood.

**LIAISON REPORT**

Councilmember Jewett said that at the March 5 meeting the grading variance for 4693 Vine Hill Road was approved. He said that the variances at 20350 Lakeview were also approved. Jewett said that there was a lot of discussion about the garage for that request.

Jewett said that the City Council was finally able to take action on the several ordinance amendments that came through the Planning Commission a couple of months ago. He said that the City Council also designated Wetland Conservation Act oversight authority to the Riley Purgatory Bluff Creek Watershed District for those areas within the city.

**ADJOURNMENT**

Motion by Werneiwski to adjourn the meeting. Motion seconded by Webster. Motion carried 4-0. The meeting adjourned at 9:41.

Respectfully submitted,  
Dale Cooney  
Zoning Coordinator