

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

**PRESENT:** Chairman Studer, John Daly, Cindy Hunt Webster, Bob Werneiwski, and Josh Wilcox (arrived at 7:04)

**ABSENT:** Commissioners Jeff Eaton and Doug Nagle

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

**MINUTES OF FEBRUARY 19, 2019**

Motion by Werneiwski, seconded by Webster, to approve the minutes of February 19, 2019. Motion carried 4-0.

**PUBLIC HEARINGS**

**Consider variance requests of James and Lori Wehmann, property owners, to exceed the maximum permitted building coverage, and exceed the maximum permitted grade alteration in order to construct a new house on the property at 3580 Northome Road.**

Studer introduced the agenda item.

Cooney presented the staff report. He said the property owners have applied for variances to construct a new house on the R-1 property at 3580 Northome Road. Cooney said that, as proposed, the project would exceed the maximum permitted building coverage, and exceed the maximum permitted grade alteration. He noted that the property is 158,300 square feet in size, which is 2.6 times larger than the minimum required lot size for the district. Cooney said the property is host to 3,941 square feet of accessory structure footprint including a boathouse, a cottage, and a garage. He said that while the principal structure itself is under the maximum building coverage limitations, the accessory structures on the property create a combined building coverage that exceeds zoning code limitations.

Cooney said that Section 1302.03(2) of the zoning ordinance limits the maximum building coverage for R-1 properties to 8,000 square feet. He said the applicants are proposing a building coverage of 10,339 square feet and are seeking a variance of 2,339 square feet from the maximum allowable building coverage. Cooney stated that with 9,934 square feet of existing building coverage, the existing conditions on the property are nonconforming and the applicant is proposing to expand the nonconformity by an additional 405 square feet. He noted that both the existing and proposed principal structures are well below the building coverage limitations, but the 3,941 square feet of existing accessory structure footprint area (which is 49% of the allowable building coverage) creates a building coverage overage for the property. Cooney said that the accessory structures are legal nonconforming, and no changes are currently proposed for the accessory structures.

Cooney said that in the opinion of staff, the scale of the property (at 158,300 square feet in size, it is the second largest R-1 property) coupled with the existing nonconforming conditions, justifies the modest increase in building coverage.

Cooney said that Section 1312.04 of the zoning ordinance requires a variance for any grade alteration greater than three feet at any point. He said the applicant is proposing grade alteration of up to 7 feet, and is seeking a variance of 4 feet from the maximum permitted grade alteration. Cooney said the areas that exceed the 3 foot limitation are primarily along the south side of the property near the proposed driveway area and the walkout level by the pool. He said the existing grading in the lake yard does not accommodate a walkout level and the grade is being pulled back to allow for a nearly full walkout level on this side of the house.

Cooney said 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 stated that neither of these concerns are the case in this proposal.

Cooney said that he recommends approval of the variance requests of James and Lori Wehmann to exceed the maximum permitted building coverage by 2,339 square feet, and to exceed the maximum permitted grade alteration by 4 feet for the property at 3580 Northome Road, as proposed, based on the following findings:

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

Yes. The purpose of the building coverage ordinance is to limit the overall scale of buildings on a property. Due to the large property size, and the existing nonconforming conditions, the modest increase in building footprint is in harmony with purpose and intent of the ordinance. The grading changes are not intended to circumvent the house height limitations and do not alter the overall drainage patterns in a significant or detrimental way, which meets the purpose and intent of that 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?

Yes. A single family home in proportion to the size of the property is reasonable. The grade changes, given the overall scale of the property and the project, are also putting the property to use in a reasonable manner.

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

Yes. The property currently has 3,941 square feet of legal nonconforming accessory structure footprint area, which accounts for 49% of the allowable building coverage. The property itself is 158,300 square feet in size, which is 2.6 times larger than the minimum required lot size for the 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 the existing building footprint. The overall drainage pattern of the property will be maintained with the proposed grade changes.

Webster said that she learned that the boathouse and cottage have running water and sewer. She does not know when those were installed, but said that those should be brought into compliance if those buildings are ever remodeled.

Studer asked about an existing conditions survey. He said that there is a lot more hardcover than what was shown on the submitted survey. Cooney said an existing conditions survey was not submitted.

Webster asked the architect, Tom Flint of Alexander Design Group, if he had an existing conditions survey. He said they have one that they can submit.

Studer opened the public hearing.

Flint said that they are removing the driveway to the tuck under garage. Studer asked if there would be a driveway to the existing cottage. Flint said that there is not one now and one is not proposed.

Studer said that he wants to make sure the city gets the correct hardcover. Daly said that hardcover is not an issue on the proposal and that the survey shows the proposed conditions of the property.

Wilcox asked about the city engineer comments regarding retaining walls and MCWD permits. Cooney said that those would be submitted at the building permit phase.

Wilcox asked about the legal nonconforming nature of the property. Cooney said that state law allows the property owner to keep existing legal nonconformities, but that a variance is required if they would like to expand.

Studer closed the public hearing.

Daly said that the city has granted variances for larger homes on larger lots including, recently, 18500 Maple Ridge Road. He said that this is one of the bigger lake lots in Deephaven and that he would support the request based on the size of the lot. He said that he might want some more information on the grade alteration towards the south portion of the lot.

Wilcox asked about the below grade portion of the structure. Flint said he was just trying to point out that the above grade footprint is smaller than the existing.

Wilcox asked about prioritizing certain questions when considering the variance request. Cooney said that the state law three-factor practical difficulty test questions are probably the most important to consider.

Studer said the property is large and that the massing will not be an issue. He said that he wished the site-related items related to grading were highlighted. He said that there should be more information for the city council.

Webster said that she would like to have more information on the plans. She said that she would struggle making a recommendation.

Werneiwski said that he agrees with other comments about information, but also agrees with the staff report in that the size and circumstances of the property make the request reasonable.

Motion by Studer to recommend approval of the request as proposed based on the recommendation and findings of staff, with the conditions that the hardcover on the property shall not exceed 17.96% and that the southern driveway for the property be removed. Motion was seconded by Daly. Motion carried 4-1 with Webster voting against.

#### **OATH OF OFFICE**

Josh Wilcox took the Oath of Office.

#### **LIAISON REPORT**

McNeill presented the liaison report. She said that the Hughes Dental signage CUP at 18305 Minnetonka Boulevard was approved and that the sign on the Deephaven Court property might only include a very small Hughes Dental plaque.

She said that the conversation related to Asao accessory dwelling unit at 4748 Vine Hill road was similar to the Planning Commission's conversation. She said that precedent was a concern. McNeill said that the city would also need to expect that the building would be a permanent garage apartment. She said that the application was withdrawn before the city council made a decision.

Wilcox asked what would happen if they built the structure anyways. McNeill said that the city could require that it be removed. Cooney said that a court order would be needed.

McNeill said that the property owner at 18880 Minnetonka Boulevard addressed the city council. She said that the council informed him that plans would need to be submitted and permits obtained. Webster said

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that the city made him disconnect sewer to the motor home on his property. McNeill said that there are ongoing actions with the property owner, including an order to vacate.

McNeill said that a showcase event permit request for the Parade of Homes at 19035 Lake Avenue was denied. She said that they applied for the tour six months ago, but had never applied for a permit. McNeill said that the discussion was contentious. She said that the property owners are hosting open houses at this point, and that the street is posted no parking on both sides of the road.

**ADJOURNMENT**

Motion by Webster to adjourn the meeting. Motion seconded by Studer. Motion carried 5-0. The meeting adjourned at 7:40.

Respectfully submitted,  
Dale Cooney  
Zoning Coordinator