

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

**PRESENT:** Commissioners John Daly, Walter Linder, Melissa McNeill, Bill Sharpe, John Studer, and Cindy Hunt Webster

**ABSENT:** Chairman Bob Werneiwski

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

**MINUTES OF April 18, 2017**

Linder suggested several changes to the minutes which were distributed via a printout. Motion by Linder, seconded by McNeill, to approve the minutes of April 18, 2017 as amended. Motion carried 6-0.

**PUBLIC HEARINGS**

**Variance request of David and Katie Naab, property owners, to encroach into the side yard setback for a home addition at 4960 Highcrest Drive.**

Studer introduced the agenda item.

Zoning Coordinator Cooney presented the staff report. He said that David and Katie Naab, property owners at 4960 Highcrest Drive, are requesting a variance 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. He said that the height of the house will increase by 4 feet, however the footprint of the house will remain the same. He noted that the property is an 18,059 square foot R-2 lot.

Cooney said that Section 1302.04(3) of the zoning ordinance requires a side yard setback of 20 feet, while the existing footprint of the house has a setback of 10 feet, 11 inches. He said that the applicant proposes to build upward on the footprint of the existing side yard encroachment. Cooney noted that state statute allows nonconformities to be continued through repair, replacement, restoration, maintenance, improvement, but not including expansion, and that expanding upward is considered an expansion. He said that the applicant is seeking a variance of 9 feet, 1 inch from the minimum required side yard setback.

Cooney said that he recommends approval of the variance request to encroach 9 feet, 1 inch into the minimum required side yard setback, for the proposed home addition at 4960 Highcrest Drive, 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 and dimensional standards of the ordinance in order to modify a non-conforming house built in 1952, according to Hennepin County records.

(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?

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 1952 house was built prior to the city's zoning requirements. The narrow side yard setback impedes work on this portion of the house without first obtaining 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.

Studer opened the public hearing.

David Naab, applicant and property owner, said that he and his wife have lived in the house since 2011 and want to expand the upstairs to get more interior volume. He said that the expansion will allow an improved bedroom size. He said that the neighbor has seen the plans and was supportive.

Studer closed the public hearing.

Sharpe said that he was supportive of the request and was glad that the applicant talked to the neighbors about the project.

Linder said that he was a little concerned about the increased size, but that the proposal seemed appropriate and he was supportive.

Webster thanked Naab for being at the meeting and said that property owners do not always attend. She said that she had a few concerns about the increased size, but that she was in favor of the variance.

Studer thanked Naab for approaching the neighbor about the improvements and said that he was supportive of the request.

McNeill said that she was happy to see the support of her neighbors. She said she shared Webster's concerns about the expansion but ultimately felt that the house is respectful and appropriate for the neighborhood.

Naab said that there have been two properties on Rosedale that were demolished to the foundation and rebuilt. He said that his house would not be as large as those and would be proportionate for the neighborhood. He said that it will be a beautiful addition to the area.

Daly said that he was supportive of the request. He said that, while the house was close to the property line, the impacted neighbor's house was approximately 40 feet away.

Motion by Sharpe to recommend City Council accept the recommendation and findings of staff to approve the variance request. Motion was seconded by Linder. Motion carried 6-0.

**Consider the variance request of John and Linda Haugen to exceed the maximum permitted grade alteration in conjunction with the construction of a new house at 20720 Linwood Road.**

Studer introduced the agenda item.

Cooney presented the staff report. He said that John and Linda Haugen, property owners, are requesting a variance to exceed the maximum permitted grade alteration in conjunction with the construction a new house at 20720 Linwood Road. 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 that the applicant is proposing land alteration of up to 8 feet, and is seeking a variance of 5 feet from the maximum permitted land alteration.

Cooney said that the lot is relatively flat, however there is a “shelf” in the middle of the lot as it drops towards the lake. He said that, typically, property owners see this as an opportunity to create a walkout level for the property. In this case however, Cooney pointed out, it is the desire of the property owners to have lakeside access via the main level. He said that they are also attempting to minimize the perception of mass from the lake yard and create an overall visual appearance of a 1.5 story house.

He said that the city engineer has reviewed the proposed plans. Cooney said that the City Engineer stated that overall drainage patterns would be maintained, but he has asked for revisions to the side yard grading to further define the swales and maintain the drainage towards the street and the lake. Cooney said that he would recommend conditioning any approval on the fact that these revisions are made.

Cooney said that there is the opportunity to create an elevated deck in this area that would allow for the property owners to achieve main level lakeside access without requiring a variance. He said, however, 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. He said that, apart from the rear patio portion of the proposal, the plan is sensitive to the conditions of the existing grade.

Cooney noted that Section 1310.01(2) of the zoning ordinance states *“A structure may be built on any lot or tract of land of a size less than that required by this Section if such lot or tract of land is included in a plat or registered land survey filed for record after May 4, 1960 in accordance with all applicable laws, ordinances and regulations, and if there is compliance with all of the other dimensional requirements. If a new structure is to be built on any other lot or tract of land of a size less than that required by this Section, a variance must first be obtained in accordance with this Section.”*

He said that city records do not indicate that the property has ever had a house on it. Cooney pointed out that although the 37,235 square foot property is substandard by current R-2 zoning requirements, the property was subdivided in 1969 and is therefore not subject to a lot size variance.

Cooney said that he has conducted a plan review of the proposal and has determined that the proposed house complies with the setback, height, and building coverage limitations outlined in the zoning code. He also said that no stormwater mitigation requirements are triggered by the proposal.

Cooney said that he recommends approval with conditions of the variance request to exceed the maximum permitted grade alteration by 5 feet for the property at 20720 Linwood Road, as presented. He said that his approval is conditioned that the applicant complies with the requirements of the city engineer and that revised plans are reviewed and approved by the city engineer prior to the issuance of any building permit.

He said his recommendation was 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.

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

Yes. The existing grade of the property has a "shelf" in the middle which creates challenges for providing main level lake yard access for the house.

(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 what exists today.

Cooney concluded his staff report. Studer opened the public hearing.

Mike Sharratt, architect for the property owners, said that the Haugens, property owners, wanted to be at the meeting but one was traveling for business and the other had a conflict. He said that what is proposed for the property is similar to other new homes on Linwood Road and that this footprint is smaller. He said that the property owners did not want a 3 story appearance on the lakeside, but wanted to provide main level access on the lakeside. Sharratt distributed a diagram showing those areas above the 3 foot grading restriction.

Sharratt said that tree preservation is important and they are trying to protect trees. He noted that the site is very flat and only has about two feet of fall in over 100 feet of distance on the lakeside. He said that water will have the tendency to pond in heavier rains and he was considering the idea of small raingardens at the base of the berm area.

Webster said that she had concerns with what looks like a big bubble in the rear of the property that would direct runoff onto adjacent properties on the lakeside.

McNeill asked how the engineer's comments about the swales were addressed. Sharratt said that he would provide additional changes prior to the City Council meeting. Cooney said that they had proposed changes but that the city engineer is still asking for more information on how the swales would work.

Studer said that he was concerned about the rate the water would fall off of the raised patio and then turn the corner to the lake. Sharratt said that the berm would be landscaped, and not with sod, which would help control the runoff rate, in addition to the swale.

McNeill asked what the concern was about the 3 stories on the lakeside. She asked if it was just a visual preference, since the city would not be reviewing this at all if it would be a deck.

Sharratt said a deck would not reduce runoff. Linder said that it would not runoff to the side of the property.

Studer said that it looks like the water will be running north and south in this area and was not convinced that the swale would contain the runoff. Sharratt showed a revised drawing that had more side yard area for the water to be redirected. He said that he was also proposing raingardens to the property owners.

Sharratt said that the slope could be more gradual towards the lake, but that would require the removal of a number of trees. Linder said that assumes that the big mound is needed in the first place.

Daly asked about the elevation of the house and if it could be lowered to reduce the need to do as much grading in the back. Linder said he had a similar thought. Sharratt said that the basement has a 9 foot height, and pushing the house down would invite more water back towards the house.

Studer closed the public hearing.

Daly said this is a raw piece of land and there is not an existing condition to work around. He said it is difficult to justify the practical difficulty. He said that there are probably engineering solutions that would make this work, but it was hard to justify as a variance.

McNeill said that she did not feel that there was enough information to approve the request since the plans are still being modified. She was also concerned about allowing a variance to accommodate a visual preference.

Studer said that he would feel more comfortable if there was some kind of hard stop that would contain the water such as a raingarden or a French drain. He said it would be difficult to hear that the property owner has water issues a year from now based on this request. Studer said that increased impervious would also increase the runoff and was not convinced the runoff would be effectively managed.

Webster said she would want to see something more specific with a landscape plan. She said that perhaps gutters should be required. She said that she did not have information to make a decision.

Linder said that he was troubled by the request because of the drainage issues, but also because the proposal is completely discretionary. He said that the lot could accommodate countless other designs and that this is merely a preference. Linder said this is a significant mound to be added for discretionary reasons.

Sharpe said that he was not as troubled with the proposal, but would feel more comfortable with better information controlling the runoff.

Motion by McNeill to recommend denial based the fact that there is incomplete information. Motion was seconded by Webster. Linder motioned to add a friendly amendment to the motion that there is no practical difficulty and that the request is substantial and unnecessary. Motion was seconded by Daly. Motion carried 5-1 with Sharpe voting against.

## **OTHER BUSINESS**

### **LIAISON REPORT**

Councilmember Jewett said that 3570 Deephaven Avenue was sent back to the Planning Commission. He said that Skrede said that there was a process that needed to be followed. Cooney informed Jewett that the owner had pulled the application and would resubmit at a later date.

Jewett said that the garage variance request at 19865 Lakeview was approved.

Jewett said that the 19365 Lake Avenue request for an addition was approved. He said that there was a lot of discussion and that the neighbors were at the City Council meeting too. He said that Skrede voted against. Jewett said that it was not an easy decision, but that the reason he voted for it was that moving the house off of the lot line would not have addressed the neighbors' primary concerns which were about visibility.

Webster asked about maintenance of this house taking place on the neighbor's lot. Jewett said that this could be accommodated with scaffolding, but that it was not completely resolved. He said it was not an easy vote.

Jewett said that the tennis courts are being fixed and are requiring more work than originally thought. He said that the docks are being repaired. Jewett said that the city plans to use a bubbler beginning in March to prevent the dock problem in the future.

## **ADJOURNMENT**

DEEPHAVEN PLANNING COMMISSION MEETING MINUTES  
TUESDAY MAY 16, 2017  
7:00 P.M.  
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Motion by Sharpe to adjourn the meeting. Motion seconded by Studer. Motion carried 6-0. The meeting adjourned at 8:05.

Respectfully submitted,  
Dale Cooney  
Zoning Coordinator