

CALL TO ORDER: Acting Chairperson Melissa McNeill called the meeting to order at 7:00 p.m.

PRESENT: Commissioners John Daly, Jeff Eaton, Melissa McNeill, Doug Nagle, and Cindy Hunt Webster.

ABSENT: Commissioners Bob Werneiwski and John Studer.

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

OATH OF OFFICE

Jeff Eaton was sworn in as Planning Commissioner

MINUTES OF APRIL 17, 2018

Motion by Webster, seconded by Nagle, to approve the minutes of April 17, 2018 as written. Motion carried 5-0.

PUBLIC HEARINGS

Variance requests of Jeff and Pam Konen to exceed the maximum permitted accessory structure height in conjunction with the remodel of an existing garage at 4693 Vine Hill Road.

McNeill introduced the agenda item.

Cooney presented the staff report. He said that Jeff and Pam Konen, property owners, are requesting a variance to exceed the maximum permitted accessory structure height for an existing nonconforming garage at 4693 Vine Hill Road. Cooney noted that the property is zoned R-2 and is 105,773 square feet in size. He said that Section 1302.04(4) of the zoning ordinance limits accessory structure height to 15 feet and that the applicants are proposing an accessory structure height of 19 feet, 3 inches, and are seeking a variance of 4 feet, 3 inches from the maximum permitted accessory structure height.

Cooney said that the applicants are building a new house on the property, but have kept the existing garage and would like to remodel it to match the look of the house. He said that, at 1,207 square feet, the four-car garage exceeds the maximum allowable accessory structure footprint of 1,000 square feet. Cooney noted that, as a legal nonconformity, it cannot be expanded (including upward) without a variance.

Cooney said that the current height of the structure is 14.5 feet tall, and it has a 7 foot high garage door and a shallow hipped roof. He said that the applicant would like to increase the garage door height to 8 feet which is the current standard. Cooney stated that the roof will be insulated to allow for a heated garage and the interior ceiling height is 14 feet, 9.5 inches. He noted that the windows on the garage are decorative only and that, as designed, the garage would not allow for a second story. Cooney said that the applicant has stated that the garage roof could be designed to be lower, but that it would be difficult to meet the 15 foot restriction.

Cooney said that the garage is no closer than 60 feet from any property line and is on the opposite side of the lot from adjacent neighbors. He said that it is his opinion that the proposal would have nominal impacts on the surrounding properties. Cooney said that although the roof pitch could be slightly lowered, it would be difficult to meet the code requirements. He said that he feels that there is not enough benefit to the city to require code compliance and that the property owner's aesthetic considerations are appropriate for the structure.

Cooney said that he recommends approval of the variance request to exceed the maximum permitted accessory structure height by 4 feet, 3 inches for the nonconforming garage at 4693 Vine Hill Road, as presented 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 excessive accessory structure massing on a property. The garage exists with an oversized footprint, and state law permits the property owner to continue to maintain and use the structure. The additional massing is nominal relative to the existing structure.

(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. While the garage is larger than permitted, it is existing and the proposed changes are reasonable. The large size of the property further enhances the reasonableness of the proposal since the impacts to adjacent neighbors are negligible.

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

Yes. The structure is an existing, oversized, nonconforming garage. The garage door height that exists is not up to modern standards, and therefore some height increase is necessary to make the garage functional.

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

The proposed alterations would not alter the essential character of the locality. The garage exists today and the impact of the changes would be nominal.

Cooney concluded his staff report.

Webster asked if the city had previously approved a variance for the property. Cooney said that a grading variance was requested a couple of months ago.

McNeill asked if the garage was addressed at that meeting. Webster said that the conversation was related to if the garage would remain.

McNeill opened the public hearing.

Jeff Konen, homeowner, said that he did not realize that the garage would require a variance. He said that he had just designed it to match the house and that the dormer windows were decorative. Konen said that the main reason for the increased ceiling height is the garage doors.

Webster asked if it was possible to build without a variance. Konen said that it is nearly 15 feet tall now, and to increase the garage door height and install the appropriate headers, the height would increase. He said he is also trying to match the roof pitch of the house.

Webster said that maybe matching the roof pitch is not necessary in this case. She asked if the garage could work within 15 feet. Konen said that he did not think so, but that he also thought that the improvements would enhance the value of the neighborhood and the property. Webster said that a variance cannot just be for convenience and that he should try to work within the guidelines.

Webster asked if Konen would live at the house. Konen said yes.

Nagle confirmed that Konen was installing 8 foot doors, matching the roof pitch, and that the dormer windows were decorative. Konen said that was correct. Nagle asked if there would be storage up above.

Konen said that there would not be. Nagle asked if the garage footprint was changing. Konen said that it was not.

McNeill closed the public hearing.

Nagle said that he understands the need to accommodate the 8 foot doors for boats or trucks.

Daly said the request seems reasonable.

Motion by Nagle to approve the request as proposed. Motion was seconded by Eaton. Motion carried 5-0.

Variance requests of William Bieber and Helen Meyer to encroach into the minimum side yard setback and exceed the maximum permitted impervious area in order to construct a covered porch at 20730 Linwood Road.

McNeill introduced the agenda item.

Cooney presented the staff report. He said that William Bieber and Helen Meyer, property owners, are requesting a variance to build a lake yard covered porch. He said that the expansion encroaches into the side yard while also expanding impervious area on a property that already exceeds the 25% impervious area limitation. Cooney said that the property owners were unaware of the existing nonconformities on the property when the plans were submitted to the city for building permit and the issues were identified at staff plan review. Cooney noted that at 34,433 square feet, the property is an undersized R-2 lot. He said that the proposed hardcover expansion is 61 square feet.

Cooney said that the house was constructed in 1971 and both side yards are nonconforming. He said that the covered porch is only proposed for the south side yard and less than half of it would encroach into the setback. He said that the porch follows the existing line of the house. Cooney pointed out that Section 1302.04(3) of the zoning ordinance requires a side yard setback of 20 feet. He said that the applicants propose a side yard setback of 16.1 feet and are seeking a variance of 3.9 feet from the minimum required side yard setback.

Cooney noted that Section 1302.04(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25%. Applicants are proposing an impervious surface area of 27.8% and are seeking a variance to exceed the maximum impervious surface area by 2.8%. He stated that the applicants are proposing to expand hardcover on the property by 61 square feet, or 0.2%. Cooney repeated that the property is an undersized R-2 lot. He said that, based on the size of the driveway and the house, staff suspects, but cannot confirm, that the property has likely been over 25% impervious surface area since it was constructed.

Cooney said that the excess impervious areas were only discovered when an updated survey was submitted as part of the variance request. He said that made the architect aware of city ordinances requiring mitigation, and he has stated that the property owners are willing to comply with city requirements but no specific proposal has been submitted.

Cooney said that due to the minor impervious area increase and the likelihood that some amount of nonconforming impervious has been on the property for quite some time, staff is hesitant to require mitigation to bring the property to 25% impervious. He said that he would recommend waiving the mitigation requirements, and instead propose a zero net increase of impervious area for the property by removing an equivalent amount (61 square feet) of impervious area from the property.

Cooney said that he recommends approval with conditions of the variance requests of William Bieber and Helen Meyer to encroach 3.9 feet into the minimum required side yard setback, and to exceed the maximum impervious surface area by 2.6% in conjunction with the construction of a covered porch at

20730 Linwood Road, as proposed. He said that the recommendation is conditioned that: the applicants remove 61 square feet of impervious area from elsewhere on the property.

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 applicant is seeking to vary from the stated setback and impervious surface standards of the ordinance to improve an existing non-conforming house constructed in 1971, per Hennepin County tax records. The expanded conditions are minor and remain in harmony with the purpose and intent of the 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 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 impervious areas 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 1971 and the side yard setbacks are nonconforming. Also, the property is undersized for an R-2 property.

(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 minor expansion of existing conditions.

Cooney concluded his staff report.

Webster asked where the 61 square feet would be removed. Cooney said that his conversation with the architect only stated that they would be willing to work with the city on meeting their hardcover requirements.

Jewett asked if a nonconforming building that is being redone with a property that exceeds 25% would require mitigation. Cooney said that mitigation is only required if the hardcover footprint is changed or expanded. Cooney said that if, in this case, the expansion was over existing hardcover, the hardcover issue would not have come up.

McNeill opened the public hearing.

Bill Bieber, property owner, said that they are moving to this home from Lakeview Avenue in Deephaven. He said that they have an option to buy the vacant lot to the south that they will exercise that option. He said that they have no intention to build on that lot. He said that he was unaware of the hardcover issue. Bieber said that they could remove hardcover from the patio to meet city requirements. He said that when the Wyard's put in the patio they removed a tool shed concrete pad to offset the hardcover.

Eaton asked about the option and if it was a verbal agreement. Bieber said that there is a contract in place and that it is his option to exercise and that he will do that. He said that he has no plans to build on the lot, but that it is a buildable lot.

Rich Laffin, architect for the property owner, said that the patio on the rear of the property is 1,300 square feet and that they would be glad to reduce that in size. He said that it is possible to get back to 25%. Bieber said that it would not be his preference to remove that much of the patio. Laffin said that the expansion is in line with the existing structure.

McNeill closed the public hearing.

Webster said that it is the city's responsibility to correct nonconformities and if that can be done with the removal of the patio, she is in favor of that.

McNeill said that she would be fine with removing 61 square feet.

McNeill made a motion to approve with conditions to remove 61 square feet of impervious area.

Daly said that he would like to make a friendly amendment to verify the option agreement for the property to the south.

Motion was seconded by Nagle. Motion carried 5-0.

Variance requests of Jeff and Susie Boeckmann, property owners, to encroach into the side yard setback, and to exceed maximum permitted impervious area for a home addition at 19150 Lake Avenue.

McNeill introduced the agenda item.

Cooney presented the staff report. He said that Jeff and Susie Boeckmann, property owners at 19150 Lake Avenue, are requesting variances to build a home addition onto a legal non-conforming house which includes the building of a second story onto the house. He said that the addition creates the need for a variance from the minimum side yard setback and the maximum permitted impervious surface area. Cooney said that the footprint, height and massing of the house will increase, as will the overall hardcover for the property. He said the property is a 10,748 square foot R-3 lot, which is 54% of the minimum lot size for the zoning district.

Cooney said that Section 1302.05(3) of the zoning ordinance requires combined side yard setbacks of 25 feet, with a minimum of 10 feet. He stated that the applicants propose a side yard setback of 7.3 feet and are seeking a variance of 2.7 feet from the minimum required side yard setback. Cooney noted that the existing house is 7.5 feet off of the side property line and the house addition maintains the existing line of the house. Cooney pointed out that the house and lot line are not perfectly square with each other and therefore the encroachment will increase by .2 feet from existing conditions.

Cooney said that the overall height and massing of the house will increase significantly since the building will be enlarged from a 1 story house to 2 full stories with a larger footprint. He said that the current height of the house is 17 feet and the proposed house height is 31 feet. Cooney noted that the height limit for this property is 31 feet.

Cooney said that the property to the east at 19140 Lake Street would be most impacted by the addition and increase in massing, since the two houses would be separated by approximately 20 feet.

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 applicants propose an impervious surface area of 28.6% and are seeking a variance of 3.6% from the maximum allowable impervious surface area. Cooney said that, the opinion of staff, the proposed impervious area is a relatively modest overage relative to the lot size.

Cooney said that the variance triggers the city's stormwater mitigation requirements and the property will be required to provide mitigation to the equivalent of 25% impervious surface area. He said the property owner will be required to enter into a stormwater maintenance agreement which will be recorded against the property. Cooney said the applicant is proposing rear yard raingarden to accommodate the stormwater mitigation requirements, and that, as proposed, the raingarden exceeds the city's mitigation requirements. Cooney said that the City Engineer has reviewed the proposed plans and his comments are attached to this staff report.

Cooney noted that the survey shows a proposed "deck" that encroaches into the front yard setback. He said that city code allows steps, and landings not wider than associated steps, that lead directly into the

primary structure and limited to the height of the ground floor level to be permitted up to a distance of 5 feet for front yards. He said he would consider the proposed steps and landing compliant with the city code.

Cooney said that he recommends approval with conditions of the variance requests to encroach 2.7 feet into the minimum required side yard setback, and to exceed the maximum allowable impervious surface area by 3.6% for the proposed home addition at 19150 Lake Avenue, as proposed, with the following conditions:

- 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 his recommendation was 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. 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 1916, according to Hennepin County records. Additionally, the applicant is proposing a modest expansion of impervious areas on a substandard property. Both objectives are in harmony with the purpose and intent of the 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?

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. The expanded hardcover is reasonable relative to the substandard size of the property.

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

Yes. The 1916 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. The lot is 54% of the minimum lot size for the zoning district, creating difficulty in meeting the impervious surface standards of the code.

(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.

McNeill asked if the house was being demolished or if they were simply adding on. Cooney said that they are proposing to add on, but that in the past similar proposals were removed down to the foundation.

McNeill opened up the public hearing.

Jeff and Susie Boeckmann, applicants, said that they met with staff to discuss the proposal. Jeff said that they tried to work within the ordinance requirements. He said that the only way not to greatly expand hardcover was to go up. Boeckmann said that they removed a shed and a carport on the property that reduced hardcover.

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Nagle asked how much of the house would remain. Jeff Boeckmann said that the garage and breezeway would be removed, but that the rest of the first floor of the house would remain. Nagle asked about the basement. Boeckmann said that the basement was structurally sound to build on and that it was cinder block. He said they have no plans to change the basement. Boeckmann said that they wanted to be certain that the structure was suitable to build a second story on without removing the first floor.

Daly asked if the proposal was to have another parking space along the side of the garage. Boeckmann said yes. Daly asked if that hardcover could be removed to make the property more conforming. Boeckmann said that they would be willing to take that area out.

McNeill asked about the deck showed on the survey. Boeckmann said that they were only steps and landing to the house.

Webster said that she added onto her house that was close to the lot line and was given a variance for it. She said she appreciates the applicants willingness to reduce the hardcover.

Margaret and Jeff McKinney, of 19140 Lake Avenue, said that this expansion would greatly impact their property. Jeff McKinney said that the house is 7 feet from their property and that there is so much reconstruction on the property that now they should make the setback conforming.

McKinney said that the 10 foot setback should not apply since that was intended for 50 foot wide lots. Webster said that requiring a 10 foot setback would require that the house be demolished. McKinney said that, with that much construction, they will likely be doing that anyways.

Webster asked about McKinney's variance. He said they received a variance for a garage in 1995 because they did not have a garage on the house. He said it was a detached garage on the rear corner of the lot.

McKinney said that the house and the addition were built before there were any setbacks. He said that he would not be in favor of any house expansion on that side.

Margaret McKinney said that they love their house and that they are about to retire. She said that they are concerned about the loss of light. McNeill said that the second-story height is conforming. McKinney said that if the house were further from the lot line, there would be more light.

Jewett asked if there was a basement under the house. Boeckmann said that it is a partial crawlspace.

McNeill closed the public hearing.

McNeill said that she is supportive with the removal of the parking pad.

Nagle said that the front portion of the house helps minimize the light issue. He mentioned the roof pitch being steeper and that could be reduced for less light impacts. He said that it is tough to run into issues with the neighbors and that he was sympathetic to both parties.

Jewett said that it was important to note that the front portion of the house is still one story.

Daly said that they are not far off the minimum setback requirements for the entire property and that a new house would likely have to meet the setback requirements. He said that there is nearly 20 feet between the properties and that is close to the Deephaven minimum.

Motion by McNeill to approve as presented with the additional condition that the proposed parking pad be removed to minimize hardcover. Motion was seconded by Webster. Motion carried 5-0.

Variance requests of Ashish Aggarwal, property owner, to encroach into the front yard setback, and to exceed maximum permitted impervious area for a new house at 19380 Lake Avenue. —

McNeill introduced the agenda item.

Cooney summarized the staff report. He said Ashish Aggarwal, property owner at 19380 Lake Avenue, is requesting variances to build a new house to replace the existing nonconforming house on the property and that, as proposed, the property would encroach into the front yard setback, and exceed the maximum impervious surface coverage. He said that the property is an 8,440 square foot R-3 lot, which is 42% of the minimum lot size for the zoning district.

He said that Section 1302.05(3) of the zoning ordinance requires a front setback of 35 feet. Cooney said that the applicant proposes a front yard setback of 20 feet and is seeking a variance of 15 feet from the minimum required front yard setback. He said that the existing house is setback 16.7 feet off of the front property line, and the proposed house would reduce the nonconforming setback for the property. Cooney said that the 20 foot setback is slightly greater than the adjacent property's setback and is comparable to other houses on the block.

Cooney noted that one consideration for the front setback requirement is that it helps limit on-street parking. He said that in this case, the proposed house has a side-load garage with a setback comparable to the required front setback, thereby minimizing any parking concerns. Cooney pointed out that the driveway access to the property is via city property and that the city reviewed and approved the easement in 2017.

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 33.40% and is seeking a variance of 8.4% from the maximum allowable impervious surface area. Cooney said that, while the requested impervious percentage is high relative to other similar requests, the property is 42% of the minimum lot size. He said that at 2,819 square feet, the total hardcover footprint is actually quite modest. For the sake of comparison, Cooney noted that the property would only need to be 11,276 square feet in size—still a relatively small property—for the proposed impervious footprint to meet the 25% limitation.

Cooney said that the variance triggers the city's stormwater mitigation requirements and that the property will be required to provide mitigation to the equivalent of 25% impervious surface area. He said the applicants are proposing a perimeter French drain system along the north and west property line, and that, as proposed, the system exceeds the city's mitigation requirements. Cooney said the property owner will be required to enter into a stormwater maintenance agreement which will be recorded against the property.

Cooney said that he recommends approval with conditions of the variance requests to encroach 15 feet into the minimum required front yard setback, and to exceed the maximum allowable impervious surface area by 8.4% for the property at 19380 Lake Avenue, as proposed, with the following conditions:

- 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 his recommendation is 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. The applicant is seeking to vary from the stated setback and impervious standards of the ordinance in build a new home on a significantly substandard lot size for the zoning district. Both objectives are in harmony with the purpose and intent of the 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?

The proposal puts the property to use in a reasonable manner. The scale of the house is consistent with zoning limitations for the property, and the requested front setback is reasonable in the context of the surrounding setbacks. The expanded hardcover is reasonable relative to the substandard size of the property.

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

Yes. At 8,440 square feet, the property is only 42% of the minimum lot size for the zoning district, which creates challenges to meeting the impervious surface limitations. The existing house is setback 16.7 feet from the front property line, and the proposed setback would reduce this nonconformity while also situating the house to be setback slightly further than the adjacent property.

(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, is of a similar size and scale to other houses within the area, and has a comparable front yard setback to neighboring properties.

Cooney concluded his staff report.

Daly asked if there were a rooftop balcony. Ashish Aggarwal, applicant, said that there is no rooftop balcony.

Aggarwal said that he bought the house last fall and that it was intended as a rehab. He said that there are issues with the foundation. He said that the house is for his family. He said that he tried to work within the zoning code as much as possible. Aggarwal said that this is a very small lot, one of the smallest in Deephaven. He said that they are proposing to mitigate a significant amount of stormwater based on city requirements.

Jewett asked about the mitigation. Tom Osfar, builder for the property owner, said that because it is a flat roof, they needed to manage all of the roof water. He said the roof would have a center drain that would drain to the driveway area and then into the French drain.

Eaton said that it looks like the water drains to a low spot in the back yard. Osfar said that was correct, and that they would level the back yard to help make the drainage work better.

Aggarwal said that the flat roof was an attempt to work within the height requirements.

Osfar said that the reason for the driveway turnaround area was for safety. He said that the area is very busy and that he wanted the owners to be able to turnaround rather than backing out. He said that the tradeoff for safety was more hardcover.

Jewett asked about the French drain overflowing into the tennis courts. Osfar said that there would be a reduction in runoff from existing conditions. Cooney said that the tennis court was about 6 inches above the grade of the surrounding yard.

Webster asked where the new well would be located. Osfar said that would need to be moved to meet state requirements.

Webster said that she thought it was too big and said that she could not get behind a 33.4% hardcover property. Osfar said that the house footprint is 1,800 square feet and that a lot of the impervious is related to the driveway which is larger than typical because of the safety issues.

Nagle asked if the driveway calculations included that driveway area on city property. Osfar said it did not.

Aggarwal said that the lot is very small, one of the smallest in Deephaven. He said it is not a large house. He said that they could reduce the driveway, but would that make sense.

Webster said that the property is being scraped and that the project should be compliant. She said that she is willing to give a little, but not that much.

McNeill said that the issue is that the lot is becoming less compliant on hardcover, that the applicant knew they were buying a small lot, and that they are significantly over hardcover.

Cooney said that the square footage of hardcover on this lot is less than the total hardcover on the property just recommended for approval at 19150 Lake Avenue. He said that he understands the lots are differently sized, but they are both very small lots.

McNeill asked what the building footprint was for the house. Osfar said it was about 1,800 square feet. McNeill said that this was a large house relative to the lot size.

Webster said that the hardcover is too much. Osfar said that the drainage off of the property will be improved. Webster said it is going from 26% to 33%.

Vern Swedberg, architect, said that the house will be far superior on energy efficiency, which, in his opinion, is just as important as hardcover. He said that they plan to build the deck over existing hardcover to minimize the problem.

McNeill closed the public hearing.

Nagle said that he thought it was too big and that the applicant should look for ways to make it smaller. He said that if the missing rear corner of the property was added back in, that would give the property about 10,000 square feet, which is what the owner should design to. He said that there is extra driveway that could be removed, in addition to the driveway on city property. He said that every meeting, the city is pushed to expand hardcover which keeps growing. He said that mitigation doesn't simply permit 35-40% hardcover. He said that the house is too big.

Webster said that the city can't continue to approve hardcover variances for new houses.

Eaton said that this is the most significant hardcover percentage he has seen.

Daly said that there is a lot of parking and driveways. He said that there is some benefit in the mitigation they are proposing and that this is the lowest property before the lake. He said that he struggles with "big" and "small" since it is relative, but he said that the structure is 21% of the property.

Aggarwal said that it is only a 3 bedroom house, and that they can put in a smaller driveway but are concerned about safety in the beach area.

Jewett said that the city knew that they would deal with these issues when they put in the zoning districts with a 20,000 square foot minimum lot size. He said that, if the city sticks to 25% hardcover on every lot, there would be no need for a Planning Commission. He said that these kinds of lots aren't going away.

Nagle said that he would look at the issue differently if it were a remodel versus a new house.

McNeill said that the house is beautifully done, but that the house is big for a small lot.

Aggarwal said that it is a small house that meets the minimum needs. He said that he could just do a light remodel on the existing house and sell it, but would that be a benefit for the city.

Nagle said that if he squared off the lot, it would be a 10,000 square foot lot and that, in his mind, he could justify 2,500 square feet of hardcover for the property.

Daly said that 2,500 square feet is approximately 30%.

Nagle made a motion to approve the requests as proposed, with the condition that the property not exceed 30% impervious area. Motion was seconded by Daly. Motion carried 4 -1 with Webster voting against.

Variance requests of Brent and Lauren Asplund, property owners, to exceed the maximum permitted building footprint, exceed the maximum permitted grade alteration, and to vary from the minimum connection requirements between structures in order to construct a new house on the properties at 18450 and 18500 Maple Ridge Road.

Cooney said the property owners have applied for variances to construct a new house on the R-2 properties at 18450 and 18500 Maple Ridge Road. He said the applicants are in the process of combining the properties and that, once combined, the properties will have a total lot area of 3.33 acres (145, 053 square feet). He said that the existing houses on the property would be removed and a new home is proposed that would cross the existing boundary between the two properties.

Cooney said that the lot consolidation will happen at a later date and will require the vacation of utility easements between the properties. He said that a building permit will not be issued until the lots are consolidated and noted that lot consolidations are reviewed by the City Council only.

Cooney said that Section 1313.03 Subd. 3(b)(2) allows R-2 properties that exceed the R-1 minimum lot size to have building coverage of up to 8,000 square feet. He said that the applicants are proposing building coverage of 8,942 and requesting a variance to exceed the building coverage limit by 942 square feet. He said that, while many cities set a proportional limit to building coverage by lot size, Deephaven has a set limit for each zoning district regardless of property size.

Cooney pointed out that the applicants are attempting to work with the drainage patterns on the lot, and the primary drainageway through the property would run beneath the main level of the house. He said that the house footprint is increased since the proposed home bridges this drainageway. Cooney said that, while this house layout is partially a design decision, the drainageway is also an unavoidable characteristic of the property that needs to be addressed.

Cooney stated that, once combined, the property would be more than double the minimum required lot size for an R-1 property, and that due to the large lot size, the proposed footprint would remain proportional to the property size. Cooney said that based on the placement of the proposed house and the large property size, the parcel would likely be subdividable in the future even if the house were to remain. He estimated that, even if the property were to resubdivide, the proposed house would likely sit on an 80,000-100,000 square foot lot.

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 10 feet, and is seeking a variance of 7 feet from the maximum permitted land alteration. Cooney pointed out that the two principal areas for grade alteration are 1) up to 10 feet of fill near the front entry to create an level, elevated lawn area; 2) up to 7 feet of cut in the front yard to further enhance the natural drainage pattern of the property allowing water to move more readily from the adjacent hill side towards the lake.

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 said that neither of these concerns are the case in this proposal. Cooney stated that the overall drainage of the property towards the lake will be enhanced, and the minor regrading near the west property line will be managed with side yard swales.

Regarding minimum building connection requirements, Cooney said that Section 1310.10 Subd. 1(d) states that *“An accessory structure shall be considered as part of the principle structure if the connection between the accessory and principle structure is above grade, fully enclosed with a full frost footing and has a minimum width equal to twenty five percent of the longest dimension of the accessory structure to be attached. In no case shall the length of the connection exceed fifty percent of the longest dimension of the accessory structure to be attached.”*

He said that the main level connection between the main building and the master suite area does not meet the above standards because 1) the connection does not include a full frost footing, 2) the enclosed portion of the connection is 5 feet, 8 inches wide connecting to a building that, at its longest dimension, is 53 feet wide; 3) the length of the connection is 30 feet, 5.5 inches, which exceeds 50% of the longest dimension of the master suite area. He said that the applicants are seeking a variance to waive the minimum building connection requirements.

Cooney said that the objective of the ordinance is to prevent attempts at circumventing the city's accessory structure limitations, which is not the case in this situation. He stated that the proposed connection is clearly a design decision to help facilitate drainage and not an attempt to circumvent accessory structure standards. Cooney noted that since this part of the house will be connected to sewer, nothing would prevent the master suite area from being converted into more of an accessory dwelling unit in the future.

Regarding the nonconforming accessory dwelling unit, Cooney said that no formal proposal has been submitted to renovate the legal nonconforming structure, but state law permits the ongoing maintenance, repair, or replacement of legal nonconforming structures.

Cooney said that he recommends approval of the variance requests of Brent and Lauren Asplund to exceed the maximum allowable building coverage limit by 942 square feet, to exceed the maximum permitted grade alteration by up to 7 feet, and to waive the minimum building connection requirements for the properties at 18450 and 18500 Maple Ridge Road, as proposed, based on the following findings:

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

Yes. The property is 3.33 acres in size, which is more than double the minimum lot size for an R-1 lot. The proposed home would remain proportional to the lot size, and would cover less of the property, as a percentage, than a code compliant house meeting the R-1 minimum lot size. The purpose and intent of the 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. Neither of these concerns are the case in this proposal and, in fact, the changes would improve the overall drainage for the property. The purpose and intent of the building connection ordinance is to prevent attempts at circumventing the city's accessory structure limitations. The proposal is clearly a design decision meant to work with the overall drainage of the lot by creating a drainage pathway underneath the main level of the house.

(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 single family home is a reasonable use of the property. While the overall footprint is larger than permitted by code, it is proportional to the large lot. Additionally, the footprint of the home is relatively wide, but the overall massing of the house is modest in comparison to what could be permitted by the zoning code.

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

Yes. The drainage from the top of the adjacent hill through the property creates unique circumstances that the applicants are attempting to address through the grading alterations as well as the house footprint. The house footprint is impacted as it is expanded to accommodate the drainageway. This circumstance also impacts the connection between the main building and the master suite area.

(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 overall building footprint on the properties is comparable to what currently exists today. The footprint of the house is larger than permitted by code, but proportional to the lot with modest structural massing.

Cooney concluded his staff report.

McNeill asked if a condition could be placed on not subdividing the lot. Cooney said that, in theory, yes, but that sometimes these things can get lost in the shuffle over time.

Webster asked how it would be subdividable. Cooney said that he was not sure it was practical, but if you measure a 20 foot setback from the proposed house, a large parcel remains that would likely meet the minimum required lot size.

Webster asked about the accessory building. Cooney said that it is an accessory dwelling unit that has a sewer connection.

Brent Asplund said that they purchased the 18500 property in September of 2016 and recently acquired the 18450 property. He said that they love the property, but that the property has issues, especially with drainage. He said that they want to restore the property to its original beauty. He said that they are trying to create a low profile that preserves views and blends into the property.

Gabe Keller, architect, said that they tried to listen to the site. He said that there are two building pads on an undulating site and that they are trying to regrade it to be for one property. He presented a slide show that showed existing conditions, and views of the proposed house. Keller said that the city would review any proposed subdivision and could deny it. He said that the site has a drainageway through the site. He said that the house is quite low, and that they wanted to site it on the property but also maintain the drainageway which creates the bridge to the master suite. Keller said the property is set far back from the adjacent properties.

Asplund said that the other properties are at higher elevation which has, over time, created an erosion issue. He said that the design helps solve that issue.

Eaton asked if water would flow through the swale. Travis Van Liere, landscape architect, said that they would try to keep the site natural to minimize the issue. He said that they are bifurcating the drainage with two swales.

Jewett asked where the water was coming from. Asplund said that the majority of the water is coming from the properties uphill to the southwest.

Keller said that there is a frost footing underground underneath the bridge area.

Webster asked what would be under the bridge. Van Liere said it would be natural groundcover.

Van Liere said that there would be some tree loss, but that would be mitigated by new plantings. He noted the graded areas that would exceed variance requirements. He said that they were creating a couple of lawn areas but that the concept was to maintain a wooded lot. Van Liere said that the proposed hardcover is less than what currently exists.

Keller showed slides of the house massing that could be completed within the existing code and said that while the footprint is larger than allowed, the massing is quite modest and meets the intent of the ordinance.

Eaton asked about the plans for the accessory structure. Asplund said that they will remodel it at some point but that there are no immediate plans.

Nagle asked if there were any neighbor comments. Asplund said that they had talked to the neighbors. Cooney said that he talked to Wendy Lee and that she seemed comfortable with the proposal.

McNeill said that this is a beautiful home. Her only concern would be a future subdivision.

Motion by McNeill to approve the variance requests as proposed. Motion was seconded by Webster. Motion carried 5-0.

Public hearing to review the Draft City of Deephaven 2040 Comprehensive Plan Update

McNeill introduced the agenda item.

Cooney presented his staff report. He said that the goal of this review is to have a public hearing for the substantially complete version of the comprehensive plan prior to sending it for review to adjacent communities. He said that the document is still considered the draft document and will remain so until it is reviewed by the Metropolitan Council next year. He said that the current iteration of the document incorporates the requested changes from the previous rounds of review as well as the maps and attachments. Cooney said that there are still some minor adjustments that will be made to the document (formatting, updated parcel data for the maps, etc.) but that the draft document is substantially complete.

Cooney said that comprehensive plan updates are required to be submitted for review to the Metropolitan Council by December 31, 2018. He said that before formally submitting the comprehensive plan update to the Metropolitan Council, Deephaven must provide adjacent and affected jurisdictions the opportunity to review and comment on the plan update, and that a mandatory six month review period accommodates this requirement.

Cooney concluded his staff report.

McNeill asked who the city sends the draft plan to. Cooney said that the Metropolitan Council has a list of communities that the city must send the report to.

Webster asked if there should be separate zoning for lots under 20,000 square feet. Cooney said that he has heard that the issue of an R-4 district has been raised several times but that the city has not wanted to make that change.

Easton asked about the Hill site at the corner of Minnetonka Boulevard and asked if there were plans to do something with it. He said that he thought it could have a better use as a park. Webster said that the city doesn't want to get rid of the lot. Eaton said that it is kind of the front door to Deephaven and could be accessed by local residents and seems kind of wasted. Cooney said that park questions could be directed to Dana Young.

Cooney said that if there are any comments they can be sent to him at any time and he can incorporate those comments. He said that as a built-out city, not many changes are expected, but other cities see big changes which they attempt to address through their plans.

The Planning Commission recommended forwarding the draft comprehensive plan on to the city council as written. Motion was seconded by Webster. Motion carried 5 to 0.

LIAISON REPORT

Councilmember Jewett said that 18315 Minnetonka Boulevard CUP for the parking lot and signage passed unanimously. He said that 19035 Lake Avenue setback variance was approved.

Jewett said that the 19094 Minnetonka Boulevard accessory structure passed. He said that it met the DNR setback requirements. He said that he thought the discussion was going to be more controversial.

Jewett said that he is skeptical of the proposals for a second story on an existing house since the houses all tend to come down to the foundation. Jewett said that the city should consider these types of requests as scraping the lot except for the foundation.

Webster asked if there should not be as big of a difference in how the city considers a new house versus a remodel. Jewett said that the expectation should be that the house will come down to the foundation when a second story is proposed.

ADJOURNMENT

Motion by McNeill to adjourn the meeting. Motion seconded by Webster. Motion carried 5-0. The meeting adjourned at 9:41.

Respectfully submitted,
Dale Cooney
Zoning Coordinator