

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

PRESENT: Chairman Kent Carlson and Commissioners Jim Anderson, Gen McJilton, Bill Sharpe, John Studer, and Bob Werneiwski

ABSENT: Brandon Gustafson

OTHERS PRESENT: Zoning Coordinator Dale Cooney, Council Liaison Darel Gustafson

MINUTES OF September 15, 2015

Motion by Commissioner Anderson, seconded by Commissioner McJilton, to approve the minutes of September 15, 2015. Motion carried 6-0.

PUBLIC HEARINGS

Consider Variance Requests, The Landschute Group, Inc., for 20430 Lakeview Avenue— Request for variances from the required R-2 lake yard setback, in conjunction with the construction of a new house, and expansion of a non-conforming structure in conjunction with the remodeling of an existing garage.

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney presented the staff report.

Cooney said that the Landschute Group, Inc., architect for the property owner, has applied for a variance to construct a new single family house partially onto an existing non-conforming footprint. Cooney said that the proposed house would require a variance to encroach into the required lake yard setback. Cooney added that the applicant is also requesting a variance to expand a legal non-conforming detached garage.

Cooney said that the applicant proposes to remove the existing home and rebuild a new home partially within the non-conforming footprint of the existing home. He stated that the existing home currently sits 37 feet from the OHW of Lake Minnetonka, and that the proposed house would sit 61 feet, 6 inches from the OHW. Cooney said that Section 1302.04(3) of the zoning ordinance requires a lake yard setback of 100 feet. The applicant is seeking a variance of 38 feet, 6 inches from the minimum required lake yard setback for the new house.

Cooney said that the proposed 61 foot, 6 inch lake yard setback would reduce the current encroachment by 24 feet, 6 inches. He said that, by way of comparison, the property immediately to the south at 20550 Lakeview has an existing lake yard setback of 36 feet, albeit on a lot size of just under 16,000 square feet.

Cooney said that, according to the site plan submitted by the architect, the proposed property would reduce the non-conforming areas of the house footprint below current existing conditions. He said that the current footprint has 2,779 square feet of encroachment, while the proposed footprint would have 1,992 square feet of encroachment, and that the magnitude of the encroachment would be reduced by 787 square feet.

Cooney stated proposal complies with the remaining setback requirements, building coverage limitations, and height limitations outlined in Section 1302.04, and the maximum permitted grade alteration permitted in Section 1312.04, and the maximum permitted impervious surface requirements of Section 1350.06(2)(a).

Cooney said that the property also contains an existing legal, non-conforming garage that is proposed to be remodeled. He noted that state law allows legal non-conforming structures to be continued through repair, replacement, restoration, maintenance, improvement, but not including expansion. Cooney said that the footprint of the garage is not changing. He said that the roof peak is being lowered, while the slope of the roof will widen the overall second story area. Cooney said that, technically, this could be considered an expansion of the non-conformity. Cooney noted that the applicant has stated that the second story area will not be used as an accessory dwelling, but will be used as a gardening shed.

Cooney said that he recommends approval of the variance request by The Landschute Group, Inc. to encroach 38 feet, 6 inches from the minimum required lake yard setback for the proposed new home construction, and to approve the expansion of the existing non-conforming garage at 20430 Lakeview Avenue, as presented. He said that his recommendation was based on the following findings:

- a) The variance is 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 standards of the ordinance to remove an existing non-conforming single family home constructed in 1955 and replace it with a new home that significantly reduces the non-conforming area compared with existing conditions. The applicant is also proposing a modest change to an existing non-conforming structure.
- b) The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the redevelopment of residential property within the city.
- c) The construction of a new single family home puts the property to use in a reasonable manner and continues the single family use of the property. The existing garage remodel is a reasonable modification of an existing structure.
- d) There are unique circumstances to the property not created by the landowner. According to Hennepin County Tax Records, the existing home was constructed in 1955, prior to the setback standards that are in place today. The encroachments on the existing house and garage are legal non-conformities, and the applicant is proposing to reduce the non-conforming footprint of the new house.
- e) The proposal would not alter the essential character of the locality. The property is in an area where, due to the ages of the houses, lake yard non-conformities are common. The proposed project would reduce the non-conformities compared with existing conditions. The modest garage remodel of an existing non-conformity will not alter the essential character of the locality.

Cooney concluded the staff report.

Jon Monson, of the Landschute Group, Inc., and Deephaven resident at 20260 Lakeview Avenue, said that he is speaking as the applicant and as a neighbor that this is a reasonable request. Monson pointed out that the staff report characterized the garage as having a second story, when in fact it has a main story and a lower level. He said that the proposal would reduce the existing non-conformity by about 30%. He said that the new home will fit in with the community and look like it has always been there.

Chairman Carlson opened the public hearing. Hearing no comments, Chairman Carlson made a motion to close the public hearing. The motion was seconded by Commissioner Sharpe. Motion carried 6-0.

Chairman Carlson surveyed the commission for any comments related to the variance requests. The Commissioners said that they were in favor of the request. Chairman Carlson said that he was supportive of the proposal as well.

Chairman Carlson made a motion to accept staff's recommendation and to approve the variance requests as submitted. Commissioner Werneiwski seconded the motion. Motion carried 6-0.

OLD BUSINESS:

Draft Ordinances, Adding Section 1353 - Impervious Surface Regulations, and Amending Section 1350 - Shoreland Management District – Review draft ordinances.

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney summarized the staff report and draft ordinance.

Cooney said that, after the previous draft ordinance was rejected because of the impervious surface restrictions, he had proposed the concept of a stormwater management plan. Cooney said that, at the time, he thought that one option for the stormwater management plan might be a more rigorous plan review process with stormwater mitigation requirements under certain circumstances.

Cooney said that, in numerous conversations with the city engineer, he learned that a) the plan review process, while not perfect, addresses stormwater concerns to the reasonable extent that they can be addressed without requiring stormwater mitigation. Cooney said that both city engineers stated that beyond what is already being reviewed, there is little additional value in placing requirements on features such as gutters and rooflines. Cooney added that, when those types of changes would be valuable, those requested changes are made as part of their current review process.

Cooney said that, from the city engineer's standpoint, unless the total volume of water exiting the property is addressed, the stormwater problems will not be adequately managed. Cooney said that it is the city engineer's opinion that unless there is willingness to regulate impervious surface areas within the currently unregulated areas of the city, the city's current plan review requirements are the most that can be reasonably accomplished with minimal city intervention.

Cooney said that, in his discussions with the city engineer, the next simplest level of regulatory oversight would be regulating impervious surfaces by requiring stormwater mitigation via volume control measures such as raingardens, cisterns, and French Drains. Cooney said that it is the city engineer's opinion that managing stormwater through limiting impervious surface areas is strongly preferred over mitigation, since mitigation measures tend to fail over time, but that requiring mitigation is a compromise. Cooney said that the city engineer recommends volume control mitigation measures since the design and engineering costs tend to be relatively low.

Acknowledging the reluctance of the City Council to require a strict limit on impervious surfaces, Cooney said that he came up with a "soft cap" approach to impervious surface regulation. He said that the draft ordinance being reviewed tonight allows for unlimited hardcover expansion on currently unregulated properties, but that mitigation would be required, in certain circumstances, to offset the expanded hardcover. Cooney said that these mitigation requirements would have various trigger points, and that the implementation of the mitigation requirements would be handled at the administrative level. He stated that, as proposed, no property would have to mitigate below 25% impervious. Cooney pointed out that, under this proposal, no variances would be required to expand hardcover outside of the Shoreland Management District.

Cooney went through the proposed ordinance thresholds that would trigger a stormwater management plan and possibly mitigation:

- All new construction.
- Any hardcover expansion of 10% or more over existing conditions.
- Any residential hardcover expansion that would create more than 35% hardcover on a lot 10,000 square feet in size or less, or 30% hardcover on a lot greater than 10,000 square feet in size.
- Any commercial expansion that would create more than 75% hardcover.
- Any proposal that would not adequately manage on-site stormwater.

Cooney listed the proposed exemptions from stormwater management plan requirements:

- Any project with an impervious surface footprint of less than 500 square feet.
- Total proposed hardcover results in less than 25% impervious surface area on a given property.
- City Engineer/City Staff determination that Stormwater Management Plan is not required.

Cooney said that the draft ordinance proposes the following mitigation requirements:

- Mitigate to the less restrictive of:
 - the square footage of proposed hardcover expansion
 - the portion of the proposed hardcover expansion that exceeds 25% impervious surface area for the lot.

Cooney concluded his staff report.

Chairman Carlson asked Councilmember Gustafson if the proposed ordinance was consistent with the feedback heard at the last City Council meeting. Councilmember Gustafson said that he thought that the proposal is consistent. Gustafson said that he disagreed with the city engineer that the volume of water is the issue. He said that there are properties that change the water runoff on a site without expanding the footprint creating problems where problems didn't exist before.

Gustafson mentioned the new construction by Boyer Building Corporation on Azure Road and said that he is sure the neighbor will complain about increased runoff. Zoning Coordinator Cooney said that he looked at that site with the city engineer. Cooney said that the city engineer pointed out that, in a gentle rain, the site would not have issues since it could handle the rainfall and the impacts would be minimal. Cooney said that the city engineer stated that when the rain is heavier there is an issue and that issue comes down to the volume of water leaving the property. Gustafson said that the volume of water coming onto the property would be the same, but the volume of runoff is increased. Chairman Carlson said that, yes, the volume of runoff is increased since the impervious areas that could absorb the rainfall are smaller.

Chairman Carlson said that he thought the ordinance reflected the feedback from the City Council. Carlson said that the primary thing he thought was missing was the credit that would be given for the mitigation systems. Zoning Coordinator Cooney said that in previous conversations, the Planning Commission had settled on 75% credit for systems.

Chairman Carlson asked if the City Engineer would be reviewing the plans to determine if, according to the ordinance, the water is not adequately managed on site. Cooney said that, yes, this was to catch those projects that might not trigger the thresholds, but might require some kind of stormwater management.

Commissioner Anderson asked if that provision would catch the instances where the footprint doesn't change, but that the roof angles did change. Commissioner Werneiwski asked if the city engineer would

see the plans and catch the problems. Zoning Coordinator Cooney said that the city engineer sees the plans for new construction and those plans show existing and proposed grading and drainage.

Commissioner Werneiwski said that he felt that there were more things at play than simply volume of stormwater and that he favored a stormwater management plan that didn't necessarily require mitigation.

Cooney said that, currently the city doesn't get surveys for smaller projects, since the city doesn't require it. He said that the city could be stricter in requiring surveys to review. Cooney said that the proposed ordinance requires hardcover calculations and drawings/plans (as opposed to surveys) for smaller projects.

Chairman Carlson said that, currently, we are seeing drainage and runoff plans as a part of new construction.

Commissioner Sharpe asked if the city would inform contractors of stormwater management expectations when they come to the city for permits. Cooney said that he tries to set expectations, but that the people who come in are usually trying to do the right thing. Cooney said that it will be the people that don't come into the city that will be difficult and that the after-the-fact enforcement will be challenging.

Commissioner McJilton said that the oversight of the new construction will be easy since those projects are required to get a building permit. She said that it will be those projects that don't require a building permit, like driveway expansions, that will be difficult. She said that enforcing those types of projects without being overly burdensome will be the challenge.

Chairman Carlson said that when someone expands their driveway and adds tennis courts, this ordinance give the city enforcement capabilities. He said that, unfortunately, the enforcement will often come after the fact.

Commissioner Werneiwski asked what would require a person or contractor to come into the city if a building permit were not required. Cooney said that, while many contractors do call to find out the hardcover restrictions, many do not. He said that in those cases we might not find out until after the fact and that would be a code enforcement issue.

Commissioner Anderson asked if most of the high-quality landscapers come to city hall to ask staff questions. He said that the weekend warrior might be more of the problem.

Commissioner Studer said that the goal would be to get the information to contractors. Studer said that perhaps a \$15 license with a packet containing the city's hardcover requirements would help keep contractors informed of the regulations.

Chairman Carlson asked if there was consensus on the ordinance with the addition of the 75% hardcover credit percentage.

Councilmember Gustafson asked if raingardens, French Drains, and cisterns were all considered equal for the 75% credit. Carlson said yes, they would be the same. Gustafson said that unless a cistern is emptied, it would not function and might not qualify for as much as mitigation.

Chairman Carlson asked if we wanted to address cisterns specifically in the ordinance. Commissioner Sharpe said that the Planning Commission had agreed not to call out any specific systems in the ordinance and to just have the 75% across-the-board credit. Carlson said that he agreed and that the city should keep the language generic for all the systems.

Chairman Carlson said that if the City Council approves of the draft ordinance at their next meeting, it would come back to the Planning Commission for public comment next month.

Chairman Carlson closed the discussion at this point.

LIAISON REPORT

Council Liaison Darel Gustafson said that the City Council discussed the proposed impervious surface regulations at the last meeting. Gustafson said that the two variances from last month's meeting came to the council and both were approved. Gustafson said that he was the lone dissenting vote on the proposed variance for 3620 Northome Avenue since, in his opinion, a 25 foot house could have reasonably been built within the side setbacks. Gustafson said that he also felt the size of the house relative to the lot size would create stormwater runoff problems.

ADJOURNMENT

Motion by Commissioner Carlson to adjourn the meeting, Commissioner Studer seconded. Motion Carried 6-0. The meeting adjourned at 7:49.

Respectfully submitted,
Dale Cooney
Zoning Coordinator