

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

**PRESENT:** Chairman Kent Carlson, and Commissioners Jim Anderson, Melissa McNeill, Bill Sharpe, John Studer, and Bob Werneiwski

**ABSENT:** Gen McJilton

**OTHERS PRESENT:** Council Liaison Darel Gustafson and Zoning Coordinator Dale Cooney

**MINUTES OF September 20, 2016**

Motion by Chairman Carlson, seconded by Commissioner Sharpe, to approve the minutes of September 20, 2016 as written. Motion carried 6-0.

**PUBLIC HEARINGS**

**Consider the request of Revision, LLC for variances from the minimum required front and lake yard setbacks, in order to construct a second story on a nonconforming house at 19725 Lakeview Avenue**

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney summarized the staff report. He said that Revision, LLC, builder for the property owners, has applied for a variance to construct a second story addition onto the existing nonconforming house at 19725 Lakeview Avenue. Cooney noted that the second story will not expand the footprint of the house but that the house encroachments are being expanded upward, a variance is required. He said that the property is an R-3 parcel and the existing home, built in 1972, has nonconforming front and lake yard setbacks and nonconforming impervious coverage.

Cooney noted that state statute allows nonconformities to be continued through repair, replacement, restoration, maintenance, improvement, but not including expansion. He said that expanding the encroaching areas of the house upwards is considered an expansion, and a variance is required. Cooney said that, since the footprint of the existing nonconforming impervious surface area will remain the same, a variance is not required for that nonconformity.

Cooney said that Section 1302.05(3) of the zoning ordinance requires a front yard setback of 35 feet. He said that the applicants are requesting a front yard setback of 24 feet and are seeking a variance of 11 feet. He said that Section 1302.05(3) of the zoning ordinance requires a lake yard setback of 100 feet. Cooney said that the applicants are requesting a lake yard setback to the rear face of the house of 55 feet and are seeking a variance of 45 feet.

Cooney pointed out the existing survey shows a lake yard setback of 56.7 feet, which is measured from the northeast corner of the covered porch, but that the porch overhang should be included in the setback calculation, which would put the rear face of the house at 55' from the OHWL.

Cooney said that the house is built into a hillside, and rear of the house is built up to the edge of a number of retaining walls, giving the perception of a taller house. He said that, since the retaining walls are not part of the building itself, they should not be calculated as part of the building height.

Cooney said that he recommends approval of the variance requests of Revision, LLC to encroach 11 feet into the minimum required front yard setback, and for the rear face of the house to encroach 45 feet into the minimum required lake yard setback for the property at 19725 Lakeview Avenue, as presented. He 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 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 in order to build a second story on an existing nonconforming house. The footprint of the house will not change and no proposed outward expansion of the nonconformities is proposed. The proposal is otherwise zoning code compliant.

(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 promotes the redevelopment of residential property within the city.

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

Yes. The proposal puts the property to use in a reasonable manner. The property is a reasonable expansion and modernization of a 1972 house.

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

Yes. The encroaching footprint of the house creates practical difficulties to expand the house upwards to legal building height limits without expanding the volume of the encroachment.

(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 proposed changes maintain existing setbacks, and the house will remain of a size and scale that is consistent with other updated homes in the area.

Cooney concluded his staff report.

Commissioner Werneiwski asked about the survey being older. Cooney said that the footprint of all elements was not changing, so he considered it to be valid for the city's needs. Werneiwski said that the survey was not certified and that he thought it should be. Carlson agreed.

Commissioner Sharpe asked about the retaining walls and if they would need to be replaced. Cooney said that he spoke with the applicant and that he said the retaining walls would remain for the time being.

John Daly of Revision, LLC, applicant, said that the retaining walls had a limited life span but that they were not addressing them at this point.

Chairman Carlson opened the public hearing. Hearing no public comments Chairman Carlson closed the public hearing.

Sharpe asked about the changes regarding privacy proposed by the neighbor via e-mail. Cooney handed the applicant a copy of the e-mail. Daly said that this was the first time they had seen this.

Ashley Sugalski, future property owner, said that the windows on the dormer over the garage were high on the wall and primarily to let light in. She said that they would not impact the privacy for the neighbor, but that she would work with the neighbor to address the concerns.

Carlson asked about the lake yard trees. Daly said that they would remove two trees and trim one. He said that the base and roots of the trees would remain since they might not be able to get a stump grinder on the hillside.

Carlson said that the property has high potential for erosion problems and that any help with the grading would be appreciated.

Motion to approve by Carlson with the condition that and updated certified survey be provided, and that the applicant work with the neighbors to address their privacy concerns. Motion was seconded by Sharpe. Motion carried 6-0.

**Consider variance request to exceed the maximum impervious surface area in conjunction with the construction of a swimming pool at 20650 Bayview Court—**

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney summarized the staff report. He said that Coen + Partners has applied for a variance to exceed the maximum allowable impervious surface area in order to build a pool on the R-2 property. He said that the applicant is requesting 27.6% impervious surface area for the property. Cooney noted that with a lot size of 40,163 square feet, the property meets the minimum lot size for the zoning district.

Cooney said that Section 1302.04(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25% and that, currently, the property slightly exceeds the current impervious surface limitations. He said that the applicant is proposing an impervious surface area of 27.6% and is seeking a variance to exceed the maximum impervious surface area by 2.6%.

Cooney said that the applicant has stated that the steep grade of the lot and the location of the buildable area for the property required significant additional hardcover for the driveway. Cooney said that the driveway accounts for 37.6% of the property's allowable hardcover.

Cooney said that the applicant proposes stormwater infiltration systems that would exceed the city's performance standards and is proposing stormwater mitigation that would handle 48% of the property's proposed hardcover.

Cooney said that impervious surface variances for conforming R-2 properties should be rare occurrences since the lot sizes, which are nearly one acre in size, are generous enough to accommodate most needs. He said that he recognizes the driveway as a limitation to the property that requires additional hardcover, but that because of the city's topography and proximity to water and wetlands, there are few lots in Deephaven that don't provide some kind of building challenge. Cooney said that variances should not be granted to maximize the use of a property based perceived deviations from the concept of an ideal lot that is flat and evenly proportioned.

Cooney said that the property on Bayview Court currently has a number of other hardcover amenities including an 808 square foot basketball court, 999 square feet of deck and screened porch, and 308 square feet of patio. He said that he struggles to find justification for additional impervious surface expansion, and believes there is an opportunity to reallocate existing impervious area to accommodate a pool without the need for a variance. Cooney said that he is concerned about the precedent that might be set by allowing a 40,000 square foot R-2 property exceed impervious surface requirements to accommodate what amounts to an outdoor amenity.

Cooney said that he recommends denial of the request of Coen + Partners for a variance to exceed the allowable maximum impervious surface area by 2.6% for the property at 20650 Bayview Court, as presented. He said that his recommendation was based on the following findings:

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

No. The purpose and intent of the ordinance is to limit the uncontrolled use of shoreland, via the Shoreland Management District impervious surface restrictions, which affects the public health, safety, and general welfare not only by contributing to pollution of public waters, but also by impairing the local tax base. The requested excess impervious surface area further exacerbates these issues, which are

having a negative cumulative effect on the city. The proposed mitigation helps to alleviate this issue, but the city's objective is to avoid the impact in the first place.

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

The comprehensive plan states that it will be a city policy to "Continue to maintain or exceed Department of Natural Resources shoreline standards through locally adopted shoreland ordinance requirements." Allowing the conforming lot to exceed to impervious surface requirements to accommodate what amounts to an outdoor amenity, and without a clear practical difficulty, would be counter to these objectives and set a negative precedent for the city.

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

Yes. A pool of this size is a reasonable use of the property.

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

No. While the driveway creates some limitations for the property, the limitations are not unique within the city. These limitations do not create notable constraints for the use of the property as evidenced by the number of other impervious surface amenities on the property including the basketball court, deck, and the patio.

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

No. The proposal would not alter the essential character of the locality.

Cooney concluded his staff report.

Commissioner Anderson asked about decks and if they are considered impervious. Cooney said that the city considers decks as impervious surfaces.

Robin Ganser of Coen+Partners, applicant, said that the house sits at the top of a significant slope which requires a long, switchback driveway. He said that runoff is not being caught by the current surface. He said that the current decks sit over pervious surface and if decks were considered pervious, the property would be under the impervious limitation.

Sharpe asked if there is any rainwater system for the property. Ganser said no. Carlson asked if a soil test had been performed. Ganser said that they had not performed a soil test.

Chairman Carlson opened the public hearing.

Susan Kickhaefer, property owner, said that they have inherited most of the hardcover on the property. She said that they are willing to make it right, they are improving the situation, and that most of the water currently runs off of the property.

Chairman Carlson closed the public hearing.

Commissioner Anderson said that he disagrees with staff's recommendation. He said that it is a unique lot that is built at the crest of the hill.

Commissioner Studer said that proposed mitigation would work better than existing conditions. He said that this would be an improvement.

Werneiwski said that the stormwater mitigation ordinance is for the entire city, and that it can be applied to R-2 lots as well.

Carlson said that there is 27 feet of vertical change, and that topography dictated the location of the house, which created the issue of the long driveway. He asked if the downspouts would be connected via

an underground system. Ganser said that they would be connected. Carlson asked if they would conduct a soil test and allow the city engineer to review the plans and criteria. Ganser said that they would.

Motion to approve by Werneiwski based on the findings that the property's topography and driveway create circumstances unique to the property not created by the homeowner. The motion is conditioned that the applicant provides a soil test and meets the requirements of the city engineer. Motion was seconded by Anderson. Motion carried 6-0.

**Consider variance requests to exceed the maximum allowable impervious surface coverage, and for a reduction from the minimum required house width in order to build a new house at 20760 Linwood Road**

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney summarized the staff report. He said that Peterssen/Keller Architecture has applied for a variance to construct a new house on the currently vacant R-2 parcel at 20760 Linwood Road. He said that the property is undersized for an R-2 parcel, and the elevation on the property is such that a basement cannot be constructed. He said that the property has not had any prior development.

Regarding lot size, Cooney said 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 although the 32,699 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 Section 1302.04(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25%. He said that the applicant is proposing an impervious surface area of 29.45% and is seeking a variance to exceed the maximum impervious surface area by 4.45%. Cooney said that the property is vacant, and existing impervious conditions are 0%.

Cooney said that the elevation of the property is approximately 934 feet, and the floodplain elevation is 931.5 feet, which does not accommodate a basement being built for the home. Cooney said that the applicant has stated that the footprint of the house must be larger in order to accommodate those areas that are typically housed within the basement. He said that the lot is also 81% of the required minimum lot size for an R-2 property.

He said that the applicant has proposed a combination of stormwater mitigation systems for the property. Cooney said that portion of the required volume will be mitigated via a French drain infiltration basin, and a portion of the volume will be mitigated via a cistern. Cooney said that, as proposed, the system is somewhat oversized and will accommodate 145% of required mitigation volume.

Cooney said that the property was assessed \$2,400 for a sanitary sewer lateral at the time the sewer improvements were installed. He said that since the property has not had a house on it before, the City of Deephaven charges an additional sewer connection fee is \$2,400. He said that this would be in addition to the Metropolitan Council's Sewer Access Charge that is typically charged at the time of building permit.

Cooney said that Section 1310.03 of the zoning ordinance requires that a single family residential dwelling must be a minimum of 25 feet wide at its narrowest dimension. He said that the applicant is proposing a house that has a dimension of 19 feet for the area that connects the main living area to the garage, as well as a 6 foot connection to the accessory-type structure. Cooney said that the connection to

the accessory-type structure is allowed by the zoning code, and that therefore he interprets the potential variance as 6 feet from the minimum required house width.

Cooney said that impervious surface variances for R-2 properties are rare, as they should be. He said that, in 2007, the city granted an impervious surface variance for the R-2 property at 3342 Robinson's Bay Road and that the situation on the property was very similar. He said that the 32,161 square foot property was an undersized R-2 property with no ability to build a basement. Cooney said that the major differences were that the existing hardcover for the property was 34.9%, and a private road encroached creating additional hardcover issues. Cooney said that property was granted a variance for 30.4% hardcover, but minus the road encroachment the effective hardcover for the property itself was 26.6%.

Cooney said that this background was provided to show that there is a precedent for this type of request. He said that he recognizes that the combination of an undersized lot paired with the inability to build a basement do create unique circumstances for the property that could justify a variance of some kind.

Cooney said that, in his opinion, the primary judgement for the planning commission is the reasonableness of the request. He said that the variance findings found in Section 1315 asks the question: *Does the proposal put property to use in a reasonable manner?* Cooney said that the role of the variance is not about enabling the applicant to maximize the use of the property, but rather to permit reasonable uses where unique circumstances exist. He said that scale becomes an issue, since 5% impervious surface for a 10,000 square foot lot is 500 square feet, whereas 5% impervious surface for a 30,000 square foot lot is 1,500 square feet. Cooney said that the percentage might be comparable in both cases, but the request is 3 times greater in terms of square footage for the 30,000 square foot property.

Cooney said that while he believes that unique circumstances exist for the property, he struggles with the reasonableness of the request. He said that there are a number of amenities that suggest that the applicants are not attempting to work within the given limitations of the property. Cooney said that he does not begrudge the amenities, but in the face of a variance request, there must be some constraints. Cooney noted that the proposal includes a fourth garage stall, an accessory-type structure, a combined house/garage footprint of 5,296 square feet, a 3,152 square foot driveway/auto court, and a 651 square foot terrace. Cooney said that any single one of these items might be justifiable, but taken as a whole they fail to meet "reasonable manner" criteria.

Cooney said that he recommends denial of the variance requests of Peterssen/Keller Architecture to exceed the maximum allowable impervious surface area by 4.45%, and for a variance from the minimum required house width of 6 feet for the property at 20760 Linwood Road, as presented, based on the following findings:

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

No. The purpose and intent of the ordinance is to limit the uncontrolled use of shoreland in the City of Deephaven which affects the public health, safety, and general welfare not only by contributing to pollution of public waters, but also by impairing the local tax base. The requested excess impervious surface area further exacerbates these issues, which are having a negative cumulative effect on the city. The proposed mitigation helps to alleviate this issue, but the city's objective is to avoid the impact, to the extent practical, in the first place.

(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?

No. The proposal includes a fourth garage stall, an accessory-type structure, a combined house/garage footprint of 5,296 square feet, a 3,152 square foot driveway/auto court, and a 651 square foot terrace.

The request suggests that the applicants are not attempting to work within the constraints of the undersized property.

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

Yes. The property is undersized for an R-2 lot, and the elevation of the property prohibits the construction of a full basement for the house.

(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. While the hardcover is in excess of what is permitted for the property, the proposal is of a similar size to other legal, conforming single-family houses within in the neighborhood.

Cooney concluded his staff report.

Jessica Otis, future property owner of 20760, said that they wanted to be respectful of the charm of the neighborhood and be respectful of the lot. She said that they were only building a one and one half story lot and were hoping for a little extra space.

Gabriel Keller of Peterssen/Keller Architecture, applicant, said that the site is flat and not able to have a basement. He said that there is a lot of the house that typically goes into a basement that needs to be accommodated on the first floor or second floor. He said that it was important to have a project that fits in with the neighborhood. He said that the one and a half story house brings down the scale of the house and that it looks smaller than it is. He said that in order to accomplish this, the house needs to spread out. Keller showed a graphic of a house that could be built without a variance which he said does not cover as much of the site but is more massive.

Travis Van Liere of TVL Studios, landscape designer for the proposed project, said that the narrowness of the lot stretched out the design of the house, which also stretched out the driveway. He said that mitigation would be provided by a cistern connected to the roof runoff. He said that the water would be used for irrigation. He said that they added an infiltration trench along the auto court portion of the driveway to capture the runoff from that area. Van Liere said the trench was a rock trench that would allow the captured water to infiltrate. He said that, because the property is so low, infiltration systems like raingardens would not function as well. Van Liere said that the auto court, while large, is of that size that would allow for an appropriate turning radius, and not require that cars back down the driveway.

Carlson asked if the trench accommodates the entire auto court. Van Liere said that it did, and that the mitigation is above and beyond city requirements. Carlson asked about the 1500 gallon cistern. Van Liere said that it was connected directly to the gutters with an overflow to the lake if needed.

Werneiwski asked about the existing trees on the lot. Van Liere said that those within the footprint of the house would be lost, but most of the oaks, maples, and basswoods would be kept. Van Liere said that the wooded nature of the lot is an aspect they want to preserve and that other trees will be planted.

Keller said that, regarding the reasonableness of the request, the proposal is comparable to other R-2 lots, and that if the lot were 40,000 square feet, a variance would not be required. He said that there are 5 bedrooms, which is typical of similar home. He said that the guest bedroom, workshop, man cave, are elements that are typically housed in the basement that are now required to be above grade.

Chairman Carlson opened the public hearing. Hearing no comments from the public, Carlson closed the public hearing.

Sharpe said that he thought it was a well thought out plan.

Werneiwski said that he appreciated the attention to design. He said he struggled with the fact that this is essentially a greenfield lot without any existing encumbrances. He said that since the mitigation proposed is more than required and would be better than a conforming lot, it has left him undecided.

McNeill said that she has the same struggle as Werneiwski. She said the visual of what could legally be built was helpful. She said she is still struggling with the three car versus four car garage. She said she is struggling with precedent, but can see arguments for both sides.

Studer said that, on a practical level, the proposed mitigation would work better than a conforming lot. He said that he liked the design and did not have an issue with the proposal.

Anderson said that the house is a beautiful design. He said that he struggled a little with the proposal, but said that even though the property was a clean slate, the city is not giving that much up. He said that with the mitigation provided this proposal is probably the better way to go and he would be in favor of the proposal.

Carlson said that he appreciated the design elements. He said the footprint is consistent with the surrounding properties. He said the design fits in with the neighborhood. Carlson said that Deephaven is one of the more restrictive lake communities in terms of impervious restrictions, but that the applicant has gone above and beyond on the mitigation, and that the city should respect that. He said the 6,000 square foot footprint is not out of character for the neighborhood.

Motion to approve the variance request by Anderson with the findings that the proposal puts the property to use in a reasonable manner that is comparable to that of the surrounding neighborhood. Motion was seconded by Sharpe. Motion carried 6-0

**Consider variance requests for side yard setback, exceeding the maximum accessory structure size, exceeding the maximum impervious surface limitation, and exceeding maximum grade alteration limitation in order to modify an existing garage and regrade a portion of the property at 3425 Northome Road**

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney summarized the staff report. He said that Tom Kaul has applied for a variance to construct a garage addition and regrade a portion of the R-3 parcel at 3425 Northome Road. Cooney said that the garage addition would include an expansion towards the rear of the property, the addition of a second story for the garage, regrading in the vicinity of the garage, and the creation of a green roof on top of the garage. He said that the proposal triggers a number of variances.

Cooney said that he requested an updated survey from the applicant which, as of this writing, has not been provided. He said that the applicant has verbally expressed the desire not to incur additional costs prior to seeing if the project will be able to move forward. Therefore, some of the information below related to setbacks and impervious area, is based on staff's inferences and calculations from the previously submitted survey.

Cooney said that Section 1310.10 (1)(f) limits the maximum footprint for R-3 accessory structures that contain walls or a roof to 700 square feet. He said that, as proposed the accessory structure would be 1,003 square feet in size, and the applicant is seeking a variance to exceed the maximum accessory structure footprint by 303 square feet. Cooney noted that, as proposed, the accessory structure footprint would also exceed the footprint limitations for the R-2 zoning district, which has a minimum lot size of 40,000 square feet.

Cooney said that Section 1302.05(4) of the zoning ordinance limits the maximum accessory structure height to 15 feet. He said that the applicant is requesting an accessory structure height of 15 feet,

measured to the top of the parapet for the green roof. He said that this height does not include the height of the railing for the green roof, which would further expand the height of the structure. Cooney said that the maximum height of the structure overall is if the railing/hedge is included would be 17 feet 8 inches.

Cooney said that structure will be stepped back from the rear of the property as the height increases. Due to the grade change, no single portion of the proposed structure would be greater than 15 feet in height above grade, including the railing and the hedge. If the grade is taken into account, the top of the railing/hedge would be a maximum of approximately 14 feet above grade. The Planning Commission should make a determination on whether or not they consider the height to be compliant.

Cooney said that the applicant is requesting variances from the side yard setback and the rear yard setback. He said that the existing garage is 5 feet 5 inches into the south side yard setback, and it is not possible to expand the garage without further encroachment into the setback. Cooney said that the applicant is seeking a side yard setback variance of 4 feet, 7 inches.

Cooney said that Section 1302.05(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25%. He said that the applicant is proposing an impervious surface area of 30.6% and is seeking a variance to exceed the maximum impervious surface area by 5.6%. He said that existing conditions on the property are 27.5% hardcover, and the applicant is proposing to expand the impervious surface area on the 11,150 square foot lot by 3.1%.

Cooney said that, in his opinion, the green roof should be considered stormwater mitigation. He said that the applicant would be required to meet the city's performance criteria, meet the specifications and requirements of the city engineer, and sign a maintenance agreement for the system. Cooney said that the city engineer has stated that the green roof should be considered pervious area. Cooney said that if the city considers the green roof area as adequate for stormwater mitigation, the impervious area on the lot would be reduced to 21.6%.

Cooney said that Section 1312.04 of the zoning ordinance states that any land increase or decrease of more than three feet at any point requires a variance. He said that the applicant is proposing to alter the existing contours by up to 9 feet at the rear of the garage and is seeking a variance to exceed the maximum grade alteration by up to 6 feet in order to be able to access the proposed green roof.

Cooney said that as Chairman Carlson pointed out at the original review of this application, the steep grade from the front of the property to the garage poses access problems for the owner and that access will be improved with this proposal. Cooney also noted that the existing setback conditions for the side yard are often allowed to remain as the building footprint expands.

He said that the proposed grade change is significant. Cooney noted that the principal justifications for land alteration restrictions is to limit builders from cheating height limitations by building up the grade around a property, or altering drainage patterns that would have adverse impacts. Cooney said that neither of those concerns seems to be the case here.

Cooney said that he struggles with finding a practical difficulty for the accessory structure to exceed the district requirements of 700 square feet. He said that the applicant's desire to provide extra storage and a green roof garden are desires of the homeowner, and not unique circumstances to the property. Cooney said that improved access and a flat garden area can be accommodated within the 700 square foot footprint restriction, as can a large, functional, two-car garage with room for additional storage.

Cooney said that he recommends denial of the variance requests of Tom Kaul:

- To exceed the maximum permitted accessory structure footprint by 303 feet
- To encroach 4 feet, 7 inches into the minimum required side yard setback
- To exceed the allowable maximum impervious surface area by 5.6%
- To exceed the maximum allowable grade alteration by up to 6 feet

for the property at 3425 Northome Road, as presented, 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. While modifying the existing non-conforming structure as it is currently located would meet the purpose and intent of the ordinance, exceeding the footprint requirements of the ordinance is not 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 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 expanded footprint of the accessory structure significantly exceeds the city's regulations for an R-3 property and is not a reasonable request within the limitations of the zoning district.

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

There are not unique circumstances to the property not created by the landowner. While there are access issues for the garage, the request for additional square footage is not created by limitations of the property itself, but rather by the property owner's desire to expand storage and create a rooftop garden.

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

The proposal will alter the essential character of the locality by creating an accessory structure where the footprint of the structure is disproportionate in scale to other accessory structures.

Cooney concluded his staff report.

Tom Kaul, applicant, asked if the neighbors had any input. Cooney said yes and handed him a copy of the letter from Jim Kaufman at 3405 Deephaven Avenue.

Kaul said that the garage can only be in this location. He said that access is an issue and this will resolved this. Kaul said that building onto the house would be more expensive and that they wanted a small house. He said that he was proposing a hedge that would take place of a railing if it can withstand the required lateral force.

Werneiwski asked about the hedge. Kaul said that it would be reinforced with chicken wire, but that the hedge would only be in six inches of soil. Werneiwski said that he was skeptical the soil would hold the required force. Kaul said he could install railings on the lower portion of the roof, since it was below the height requirement.

Carlson asked about the roof and the planting boxes. Kaul said most of the roof would be 6 inches of grass, with planting boxes in the identified areas.

Sharpe asked if railings could be hidden within the shrubs. Kaul said that was an option. He said that the railings exceed height requirements and he was looking for a creative solution.

Studer asked about the city engineer comments on the green roof. Cooney said that the city engineer said that a green roof could be considered pervious, if it met the standards of the city engineer, but that no details were given on the design of the green roof. Kaul said that he will do what it takes to design the roof properly since he would be spending a lot of money on the project.

Carlson asked about the upper level of the proposed structure. Kaul said that there would be skylights, and it would be a workshop. Carlson asked about water or sewer to the garage. Kaul said that water and sewer were not proposed.

Chairman Carlson opened the public hearing. Hearing no public comments, Carlson closed the public hearing.

Kaul said that the garage doesn't function as designed, and the house is small which does not allow for much storage. He said building on the back of the house was too expensive and that he is hoping to make the garage better aesthetically for the neighborhood.

Werneiwski asked if the applicant was parking cars in the garage. Kaul said yes, and that the new arrangement would make access much easier since he can come through the garage instead of down the steep, icy steps.

Studer asked about the grading on the uphill side of the garage. He asked how that would be handled since it looked like a retaining wall would be needed. Kaul said that no wall was proposed. Studer said that the 7 or 8 foot soil drop would need some kind of slope or retaining wall. Carlson said that the city would need a grading plan and an updated survey.

Werneiwski said that there are two issues: the first being the overall concept, the second being a lack of details on the proposal. He said that the proposal raises a lot of questions. Cooney said that he brought this to the Planning Commission knowing that there was a lot of missing information. Cooney said that he would advise either a recommendation for denial of the request, or a recommendation for another 60 days to allow the applicant to provide the necessary information. He said that he did not think that there was enough information for a recommendation of approval.

Sharpe said that he thinks that the city should work with the applicant and that what is proposed would be an upgrade for the property.

Werneiwski said that he recognized a practical difficulty since the narrow lot requires a detached garage, and that other properties could have both an attached garage and an accessory structure.

Studer said that he is not as opposed to the size of the structure as much as he is the height, and that the applicant could accomplish his goals all on one level while eliminating a lot of problems. Carlson said that part of the goal is to improve access to the bottom of the hill.

McNeill said that she liked the revised plan, but that she considered it an incomplete plan that would require a landscape architect. She said that there was not enough information to move forward.

Carlson said that he thinks there is a need for the garage in this area, and that there is consensus that the Planning Commission likes the concept of the plan, but additional information would be required for a recommendation from the Planning Commission.

Council Liaison Gustafson said that he would prefer that the applicant brought a more complete plan that the Planning Commission could vote on, and not simply a concept plan.

Anderson said that he is generally in favor of the request, but that there is additional information that is needed. Anderson said that completing the information would not guarantee a recommendation of approval.

Carlson asked about the current shallow setback of the garage from the street, and said that it would work better if the garage were set back further. Cooney said that the applicant was proposing to keep this existing portion of the garage. Kaul confirmed that was his intention.

McNeill said that a landscape architect and a structural engineer would be needed to successfully complete the project.

Motion by Werneiwski to recommend that the City Council extend the 60 day time limit by an additional 60 days to January 14, 2017 in order for the applicant to provide more detailed information regarding the grading, the green roof, the railing, impervious surface and survey information. Motion was seconded by Studer. Motion carried 6-0.

## **OTHER BUSINESS**

### **LIAISON REPORT**

Council Liaison Gustafson said that a 60-day extension was requested for the underground sauna variance request at 20430 Lakeview Avenue. Gustafson said that the city council also had some questions for the Minnesota DNR regarding their shoreland restrictions and how they would relate to the 20430 Lakeview Avenue variance request.

He said that the preliminary plat for 19655 Cottagewood Road was approved. Gustafson said that the City Council did not express a willingness to revisit idea for an R-4 zoning district.

Gustafson said that the Excelsior Fire Department's request for a new ladder truck was approved. He said the ladder truck could reach 100 feet, which was needed for taller buildings like the proposed hotel, Deephaven Woods, as well as for properties with challenging access and slopes.

### **ADJOURNMENT**

Motion by Chairman Carlson to adjourn the meeting. Motion seconded by Commissioner Anderson. Motion carried 6-0. The meeting adjourned at 9:15.

Respectfully submitted,  
Dale Cooney  
Zoning Coordinator