

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

**PRESENT:** Vice Chairman John Studer and Commissioners John Daly, Melissa McNeill, Doug Nagle, and Cindy Hunt Webster.

**ABSENT:** Bill Sharpe, Bob Werneiwski

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

**OATH OF OFFICE**

Cooney administered the Oath of Office to Doug Nagle.

**MINUTES OF September 19, 2017**

Motion by McNeill, seconded by Webster, to approve the minutes of September 19, 2017 as written.

Motion carried 5-0.

**PUBLIC HEARINGS**

**Consider the variance requests of Tom and Elizabeth Nicol to encroach into the minimum required lake yard setback, to exceed the maximum permitted impervious surface coverage, to exceed the maximum permitted grade alteration, and to exceed the maximum permitted eave encroachment in conjunction with the construction of a new house and pool at 19955 Cottagewood Avenue**

Studer introduced the agenda item.

Cooney presented his staff report. He said that Tom and Elizabeth Nicol recently purchased the property at 19955 Cottagewood Avenue and are requesting variances to encroach into the minimum required lake yard setback, to exceed the maximum permitted impervious surface coverage, to exceed the maximum permitted grade alteration, and to exceed the maximum permitted eave encroachment in conjunction with the construction of a new house and pool at 19955 Cottagewood Avenue.

Cooney said that Section 1302.05(3) of the city ordinance requires a minimum lake yard setback of 100 feet and that this setback requirement applies to the principal structure and accessory structures including swimming pools (as measured from the outside edge of the pool decking). He said that for the principal structure, the applicants are proposing a lake yard setback of 94 feet, 3 inches and are seeking a variance of 5 feet, 9 inches from the minimum required lake yard setback. Cooney said that for the pool/hot tub area, the applicants are proposing a lake yard setback of 80 feet, 3 inches and are seeking a variance of 19 feet, 9 inches from the minimum required lake yard setback.

Cooney said that the applicants state that the existence of an underground gun range constructed of concrete and reinforced steel, which would be very challenging to remove, has forced portions of the house be constructed as much as 16 feet closer to the lake than would have otherwise been required. He said that only a small portion of the southwest corner of the house encroaches into the lake yard setback (with approximately 115 square feet of total encroachment). Cooney noted that this is significantly less of encroachment area than the existing house on the property. He pointed out that the primary area of encroachment is caused by the proposed pool, which is comparable to the furthest encroachment of the existing house. He said that, in his opinion, the reduced above-grade structural encroachment of the new house coupled with the mitigating circumstances of the gun range, are enough to justify the practical difficulty for the lake yard setback.

He said that the applicants have stated that they hope to restore the disturbed area of the shoreline, which eventually would further reduce the lake yard encroachment. Cooney noted that that decision would be in the hands of the DNR.

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 applicants are proposing an impervious surface area of 26.9% and are seeking a variance to exceed the maximum impervious surface area by 1.9%. He said that the proposal maintains the existing hardcover percentage for the property. Cooney noted that the property exceeds the minimum lot size for the zoning district, and substandard lot sizes are the typical justification for impervious surface variances. Cooney said that the location of the house, due to the existing gun range, requires that the home be pushed closer toward the lake, increasing the length of the driveway which would account for at least a portion of the impervious overage.

He stated that, as proposed, the impervious overage requires 53 cubic feet of mitigation volume, and the applicants are proposing to mitigate 59 cubic feet of stormwater.

Cooney said that 1312.04 of the zoning ordinance requires a variance for any grade alteration greater than 3 feet at any point. He said that the applicants are proposing land alteration of up to 5 feet, and are seeking a variance of 2 feet from the maximum permitted land alteration. He said that the proposed grading would simply realign existing retaining walls and does not significantly alter the grading on the property.

Cooney noted that Section 1310.02 of the zoning code allows roof eaves to encroach into a setback by as much as 3 feet and that, as proposed, the roof eaves are 4 feet deep. He said that since the house is setback by more than one foot from the minimum setbacks for the other three yards, this requirement only impacts the lake yard encroachment for the house.

Cooney said that he recommends approval of the variance requests, as proposed, 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 applicants are seeking to vary from the setback standards on the lot to accommodate an existing condition and the proposal has attempted to accommodate these limitations. Grading issues and impervious surface areas are existing conditions on the property and the proposal does not exacerbate these existing issues.

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

Yes. The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which encourage safe, healthy and quality housing that respects the natural environment of the community.

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

Yes. The proposed house and pool are reasonable uses of the property and the proposed conditions are less impactful than the existing nonconformities on the property. The grading is a reasonable realignment of existing retaining walls. The impervious area for the property matches existing conditions.

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

Yes. There is an underground gun range on the property made of reinforced steel and concrete which would be very costly to remove. The proposed house seeks to work around this structure to the extent practicable, but some lake yard encroachments are necessary to deal with the existing conditions. Impervious area and grading are existing conditions of the property and will not be expanded.

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

No. The proposed variances would not alter the essential character of the locality. The overall proposal is of a scope and scale similar to other homes within the area.

Cooney concluded his staff report.

Studer opened the public hearing.

Tom Nicol, applicant, stated that they had purchased the house three weeks ago and that he was happy to try and answer any questions.

Webster asked if the paver driveway would be pervious. Nicol said that the driveway would not be sealed and the pavers would have gaps. Cooney noted that the city did not give mitigation credit for pavers. Webster said that she was aware, but was asking to determine how the driveway might impact runoff.

Todd Irvine, landscape architect for the applicant, said that the stormwater would be mitigated by collecting water from the roof. Webster asked about gutters on the house. Nate Wissink, of Streeter and Associates, architect for the property owner, said that the gutters shown were to provide information on the mitigation systems and that other gutters would likely be installed.

Studer asked about the gun range and said that if the applicant is removing the home, he does not understand why they could not also remove the gun range. He said that, while he understood it was reinforced concrete, it is not uncommon to removed reinforced concrete foundations.

Nicol said that they would like to keep the gun range, and that they cannot build over it but must build behind it. He said that the engineer told him it would take about a week of jackhammering to remove the structure.

Wissink said that, regardless of the gun range, the existing house encroaches into both the front and rear setback. He said that the proposed house footprint reduces both of these nonconforming situations.

Studer said that this is a larger piece of property and that it would not have been that challenging to bring it into conformity.

Wissink said that, yes, there were many design alternatives, one of which was a conforming proposal. He said that the variance standard is more concerned with, given the existing conditions of the property, is the proposal reasonable. He said that he believed that the proposal met the reasonableness standard given the existing conditions of the gun range and nonconforming nature of the current house.

Studer said that the variance standard also states that economic conditions should not alone be a consideration, and that cost of removal of the gun range should not necessarily impact the variance decision.

Nicol said that the decision is not solely based on cost. He said they want to keep the gun range. He said that the foundation could be easily removed, but that the gun range would be several days of jackhammering to remove.

Studer said that a structure that can be constructed can be deconstructed. He said that he has trouble understanding the hardship. Wissink said that they do want to keep the gun range and work with it, but that they need to work around it.

Cooney said that if only the house footprint were taken into account, there is a minor encroachment which, he believes, would typically be viewed as uncontroversial. He said that the addition of the pool beyond that makes this a more challenging proposal.

Webster said that she has an issue with building a new house and planning on variances since it would be a blank slate at that point. She said this is a large lot for Cottagewood. Webster said that the cost of removing the gun range would be very minor in the scope of this project.

Nicol said that the eaves and the retaining walls are very minor requests. He said that he thought that he might renovate the house originally. Webster said that she is just troubled with granting variances for every single new house in Deephaven.

Daly asked how deep underground the structure is. Nicol said 3 feet.

Nagle asked about the ventilation stack. Nicol admitted it was ugly. He said that it is ventilated by a fan.

Wissink said that they are improving the existing encroachments, pushing the house forward, and improving the lake yard impacts. He said that this would not be a precedent-setting decision.

Webster said that she did not think the swimming pool was reasonable. Nicol said that a variance was given for a swimming pool on Bayview Court. Cooney said that was an R-2 property and, in that case, the grade required a long driveway which created a practical difficulty for the impervious area.

Daly asked about the aggregate path that was not included in impervious calculations. Irving said that it was .75 inch clear rock 3 inches deep.

Studer closed the public hearing.

McNeill said that she does not have issues with the proposal except for the pool.

Webster said that if they want to keep the gun range, that is fine, but it may impede other things that they also want. She said that she has a problem with the pool.

Studer said that he appreciates that they reached out to their neighbors. He said that the property is moving towards conformity. He said that he understands the concerns about the pool, but that he is less inclined to view that as an issue. He said that moving the house forward might be more negative for the neighbors.

Daly said that he was also appreciative of the applicants checking with the neighbors. He said that he doesn't have much of an issue with the pool, but also recognizes that the lake is one of the principal amenities of the area and worth protecting. He said that he had the most issue with the hardcover. The property is only approximately 500 square feet over the limit. Daly said that mitigation is not a substitute for pervious area, and that the property is large enough that he would prefer that it conform to the 25% restriction. He said that he recognized that they were trying to create some wins with this property. But, he also sees a new house on a lot as an opportunity to reset the property into conformity.

Nagle said that he did have concerns about the height since it would look massive next to the neighboring properties. Wissink said that they propose to step down the roof line.

Nagle said that he would like to see fewer overall variances. He said he would like to see the encroaching corner of the house removed. He said that he would prefer to see the impervious reduced. Nagle said that he did not have a problem with the pool since it was not a site line issue.

Wissink said that every city does hardcover a little differently. Nicol said that he would not have an issue providing additional mitigation.

Studer said that he did not have an issue with the porch encroachment, but that he was supportive of making the property compliant with the hardcover restriction.

Motion by McNeill to recommend City Council approve the variance requests based on the recommendation and findings of staff. The motion was conditioned that the property does not exceed 25% impervious surface area. Motion was seconded by Webster. Motion carried 5-0.

## **OLD BUSINESS**

### **The Pines Neighborhood Zoning Discussion**

Studer introduced the agenda item.

Cooney said that a public meeting for the Pines Neighborhood was held on September 28. He said that the Planning Commission should discuss the outcome of the meeting. He also said that the Planning Commission has been tasked with exploring potential zoning changes and making a recommendation to the City Council.

Daly said that he was at the meeting and he led the most contentious group. He said that he felt that the property owners really wanted some kind of homeowners association, including architectural controls.

Webster said that she understands the frustrations and the desire to keep the neighborhood intact, but she did not want to limit someone's future ability to build within the city's current zoning. She said that there was not a consensus on having additional restrictions, and that many of the lots in this area were larger than the lots in her neighborhood.

Studer asked what the common complaint was from the residents. Webster said that the primary issue was height. But she said that, in her opinion, some of this was about fear of change. McNeill agreed.

Cooney said that he thinks that the Planning Commission needs to present an analysis on the impacts of maximum building heights before it makes a formal recommendation about zoning changes. Jewett agreed and said that there is a desire to see visual examples.

Webster said that some of the anger is about the fact that the house is being built by a developer.

Cooney said that changes to the height in the Pines area would not create nonconforming houses, whereas changes in height in other parts of town would create a significant number of new nonconforming houses.

McNeill said that she would be supportive of a new sliding scale for height, but that she feels that it should apply to all of Deephaven.

Webster asked about the people that opposed additional regulations, and how it is fair to those residents who are not supportive of change.

Studer said that it might be valuable to look at some of the meeting minutes related to the previously adopted height ordinance from a few years ago.

McNeill left the meeting at 8:30.

Studer asked about the footprint for a 13,000 square foot lot. Cooney said that the R-3 footprint limit is 4,500 square feet and it is not based on lot size. He said that the footprint for 3542 Leroy was not close to this limit.

Studer said that the inventory in this area is aging and that new houses will need to be built in this neighborhood in the near future.

Jewett said that the appeal of the neighborhood for the residents is that it is still a value for Deephaven. Webster said that some residents want to control the affordability and some residents do not.

Nagle said that there might need to be a certain level of educating the residents on the current restrictions and potential impacts. Jewett said that the visual examples in a height study would help make that case. Cooney said that the purpose of the neighborhood meeting was to be a listening session and not to inform residents about current zoning restrictions.

**LIAISON REPORT**

Councilmember Jewett said that the variance request for 20505 Lakeview Avenue house was approved. He said that the grading variance at 20035 Manor Road was also approved.

He said that the October 16 City Council meeting was focused primarily on the budget.

**ADJOURNMENT**

Motion by Webster to adjourn the meeting. Motion seconded by Studer. Motion carried 4-0. The meeting adjourned at 8:48.

Respectfully submitted,  
Dale Cooney  
Zoning Coordinator