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

PRESENT: Chairman John Studer, Commissioners John Daly, Jeff Eaton, Doug Nagle, Cindy Hunt Webster, Bob Werneiwski, and Josh Wilcox

ABSENT: None.

OTHERS PRESENT: Zoning Coordinator Dale Cooney and City Council Liaison Melissa McNeill

MINUTES OF September 17, 2019
Motion by Studer, seconded by Webster, to approve the minutes of September 17, 2019 as written. Motion carried 7-0.

PUBLIC HEARINGS

Public hearing to consider the variance requests of Minnetonka School District No. 276, for the Minnetonka Community Education Center property, to exceed the maximum permitted grade alteration, exceed the maximum permitted impervious area, exceed the maximum allowable structural footprint, encroach into a rear yard setback, and exceed the maximum allowable structure height in conjunction with a building addition and retaining walls at 4584 Vine Hill Road and retaining walls at 4452 Vine Hill Road.

Chairman Studer introduced the agenda item.

Cooney presented the staff report. He said that Minnetonka School District No. 276 is requesting a number of variances in conjunction with a building addition for the Minnetonka Community Education Center. He noted that the property is zoned R-2 and the use of the property as a school is a conditional use within the zoning district. Cooney said the applicants are proposing a 2,130 square foot building expansion for the property. He said the expansion will also require that some of the parking and drive areas on the property be reconfigured to accommodate the new building footprint.

Cooney stated that Section 1302.04(4) of the city ordinance limits the maximum building height to 36 feet. He said the applicants are proposing a building height of 42 feet and are requesting a variance of 6 feet from the maximum permitted building height. Cooney stated that the building height of the addition would match the height of the existing building, and the footprint expansion is minor relative to existing conditions for the property.

Cooney said that Section 1302.04(2) of the city ordinance limits the maximum structural footprint for the property to 6,000 square feet and the applicants are proposing a structural footprint of 28,905 square feet which is an increase of 2,130 square feet from existing. He said the applicants are seeking a variance of 22,905 square feet from the maximum allowable structural footprint. Cooney noted that the property is highly nonconforming in this regard, and the proposed footprint expansion is an 11% increase from existing conditions. He said the size and location of the proposed addition seem appropriate given the current configuration of the property. Cooney said that unless the city were to take the position that the property is unable to support further expansion, the proposed footprint expansion is reasonable and staff is supportive of this aspect of the request.

Cooney said that Section 1302.04(3) of the zoning ordinance requires a rear yard setback of 25 feet and a side yard setback of 20 feet. He said the applicants propose a rear yard setback of 44.67 feet and a side yard setback of 47.38 for the building. He noted that retaining walls over 3.5 feet are regulated as structures, and the proposed retaining walls would have a 2-foot setback from the rear property line and a 0-foot setback for the north side property line. Cooney said that the applicant is seeking a variance of 23 feet from the minimum required rear yard setback and 20 feet from the minimum required north side yard

setback. Cooney noted that the retaining wall to the north would continue on into the Deephaven Elementary School property at 4452 Vine Hill Road and the variance would apply to that property as well.

Cooney said that Section 1302.04(2) of the city ordinance limits the maximum impervious area on a property to 25%. He said the applicants are proposing an impervious area of 74% and seeking a variance of 49% from the maximum permitted impervious surface area. He noted that he existing property is at 71% impervious surface area, and the impervious area on the property is proposed to be expanded by .09 acres (approximately 3,920 square feet).

Cooney said that, as a property within the Shoreland Overlay District, city code would require that the property mitigate to 25%, but staff does not feel that level of mitigation is justified given the existing conditions for the property. He said the Minnehaha Creek Watershed District will require some degree of mitigation for the impervious area expansion as well. Cooney said the applicants are proposing a significant amount of mitigation for the property and that the city engineer estimates that the proposed system would be able to handle a mitigation volume of up to approximately 50% of the water volume in excess of 25%. Cooney said that the city engineer has expressed concerns about the location of the mitigation area as well as the outlet for the mitigation.

Cooney pointed out that, as proposed, the mitigation area is proximate to a steep slope (approximate 20% grade) that goes through Burton Park and drains towards the lake. He said that the city engineer was not supportive of the mitigation in this area since water and moisture storage in this area has the potential to undermine the slope and create erosion issues. Cooney quoted the city engineers comments stating, *"The Minnesota Stormwater Manual highly recommends that infiltration practices be located a minimum horizontal distance of 200' from the toe of slopes greater than 20%. Since proposed stormwater management facilities appear to be located within 200' of the toe of the adjacent steep slope, alternatives should be considered to meeting stormwater management requirements. Alternatives include installing facilities sized to manage the same volume of runoff in a different location on site or allowing just water quality treatment with no infiltration requirements."* Cooney said that the city engineer also was not supportive of the outlet for the mitigation system in this location since it also has the potential to create erosion issues. Cooney said that he recommends an alternate location for the mitigation system that is away from the steep slopes on the site.

Cooney said that there was initially some concern that the proposed retaining walls may encroach into a bluff impact zone, which is defined as a bluff and land located within 20 feet from the top of a bluff. He stated that the applicant provided information confirming that the location of the retaining walls is not within the bluff impact zone.

Cooney said that he recommends approval with conditions of the variance requests of to exceed the maximum permitted grade alteration by 6 feet, exceed the maximum permitted impervious area by 49%, exceed the maximum allowable structural footprint by 22,905 square feet, encroach into a rear yard setback by 23 feet, encroach into a side yard setback by 20 feet, and exceed the maximum allowable structure height by 6 feet in conjunction with a building addition and retaining walls at 4584 Vine Hill Road and retaining walls at 4452 Vine Hill Road, as proposed.

He said that the recommendation is conditioned that:
The location and outlet for the proposed mitigation system be relocated, and that the relocated system would be subject to the review and approval of the City Engineer.

All proposed parking and drive areas be beyond the bluff impact zone.

Cooney said that his recommendation is based on the following findings:

Is the variance in harmony with the purpose and intent of the ordinance?
Yes. The applicant is seeking to expand a use that is regulated as a conditional use within the city and is

requesting variances as part of that expansion. The variances are consistent with the current use of the property as an educational building. The scale of the use is a modest expansion from existing conditions, and the city has previously determined that the existing conditions are in harmony with the purpose and intent of the ordinance.

Is the variance consistent with the comprehensive plan?
The subject property is located within the R-2 Residential District and permitted as a conditional use. The 2040 Land Use Plan contained in the city's Comprehensive Plan lists the use of this property as Public/Semi-Public. The proposed variances would permit the further advancement of the educational goals of the Minnetonka Schools, which fall under that designation.

Does the proposal put property to use in a reasonable manner?
The proposed use of the property is reasonable and is an expansion of the current educational activities that take place on the site. The overall expansion is modest relative to the existing nonconforming conditions on the property.

Are there unique circumstances to the property not created by the landowner?
The circumstances causing the need for the variance are not caused by the property owner. The unique use of the property as an education center that serves a growing community on a limited site, the existing location and size of the building, and the challenging grades on the rear of the lot are unique circumstances not created by the landowner.

Will the variance, if granted, alter the essential character of the locality?
The proposal would not alter the essential character of the area since the project is a relatively modest expansion of an existing building, fits within the design and height of the existing building, and is in an inconspicuous location on the property.

Cooney concluded his staff report.

Wilcox asked about the practical difficulty standard as it relates to an institutional use on a residential property. Cooney said that the standard is the same, and that the city has approved the intensity of the existing use up to this point.

Daly asked about the history of the building in this location. Cooney said that would be a better question for the applicant. Daly asked about the mitigation system crossing the property lines. Cooney said the property owner is the same for both, and it is only an issue if the property is sold. Cooney said that an easement agreement would be an appropriate private agreement at that time.

Studer asked about parking for the property. Cooney said that it was somewhat hard to quantify since the use is as a school, and the city code is based on the number of chairs or students but that the building is not used as a traditional school.

Nagle asked about the suitability mitigation system location. Cooney said that the city engineer raised concerns about the location and that the applicants would need to find a more suitable location away from the adjacent slopes. Cooney said that there are many options and that it doesn't matter which water from the property is mitigated.

Wilcox said that, in the interest of full disclosure, he is running for a seat on the Minnetonka School Board, but that he does not feel that situation will influence his objectivity in this request.

Tim Litfin, Executive Director of Minnetonka Community Education, representing the applicant, said that the building serves as a preschool facility and an adult enrichment facility. He said that they will be adding 9 parking spaces. He said that there is a need for the expansion and has been for some time since there is a waiting list for the programs. Litfin said that the building was built in 1930 and has been both a public

school and a private school. He said that in 2009 there was an expansion to both ends of the building. Litfin said that the first and second floors will serve preschool and the third floor will serve adult enrichment.

Webster asked if they had looked at different options for the expansion. Litfin said they looked at a number of options and that this was the most cost effective and eliminated the fewest parking spots.

Eaton asked about the parking situation for the property. Litfin said that they have adequate parking. He said that the parking lot is busy, but there are usually several spots available except when there are events at Deephaven Elementary.

Webster said that, for full disclosure, she used to be the Advisory Volunteer Board Chair of the Minnetonka Community Education Center.

Eaton asked about the new parking spaces. Litfin said that there would be 6 behind the building, and 3 in the parking lot across the street. Litfin said that, for safety reasons, one of the entrances to the lot across the street would be closed off and made into parking spaces.

Paul Bourgeois, finance director for the school district, said that moving the moving the mitigation system elsewhere on the property would be a cost increase, but something that they would be able to do.

Wilcox said that, unlike Deephaven Elementary, MCEC has staggered start times and don't get a single crush of traffic. He said that this helps with traffic flow.

Cooney asked about how the space was used and if different programs used the same rooms at different times. Litfin said that fire code requires ground level exits for preschoolers, so they are limited to using the first floor and second floor since both have ground level exits. He said that adult enrichment is on the first floor.

Eaton asked if further expansions might be necessary. Litfin said that he did not know. He said that about half of the space could be utilized as soon as the building is constructed due to the waiting list.

Daly asked why the drive area was necessary around the back and if that could be eliminated to reduce some of the grading and retaining wall requirements.

Bourgeois said that is primarily needed for fire access so that the trucks can get to all parts of the building. He said that there are also utilities in that area.

Wilcox asked if there were other services in the district like this. Litfin said that this is the only preschool but that there are other locations for the Explorer program and Community Education. Wilcox asked if the preschool could be located around the district. Litfin said that, theoretically they could, but in a growing school district the preschoolers are the first group to get squeezed out of a school if the space is needed for the other students. He said that the current situation keeps them from getting shuffled around.

Studer opened the public hearing.

Adrian Weidmann,19000 Maple Lane, said that this is a great program and that the city is lucky to have it. He said that traffic is extensive on Vine Hill Road. He said that the end of Maple Lane becomes overflow parking for the school and destroys the grass. Webster asked if he had enquired about no parking signs. Weidmann said that this was the first time he had raised the concern. He said that the parking overflow trashes the grass and lawn areas at the end of the street.

Studer closed the public hearing.

Wilcox said that he had concerns with the expansion of traffic in the area, but that given the context the proposal seems reasonable.

Daly said that there is a lot to unpack in the proposal. He said that the impacted property from the setback encroachments is a city park and that they are really jamming this up against the city's property line. He wondered if the additional parking spaces were necessary and could alleviate some issues including grading and hardcover. He said that he did not have an issue with the building expansion itself.

Studer said that he had less issue with the hardcover since it could be directed where we wanted it to go. He said that capturing the driveway areas for mitigation would be best since that is the dirtiest water. He said that he agrees with the city engineer about the concerns with the placement of the mitigation system. He said he wonders about the mitigation being located on another property.

Cooney said that the city could require a condition that the mitigation be on-site.

Webster said that the city is lucky to have this facility. She said that her only concern was with the water. She said she was okay with a relocated mitigation system if it meets the conditions of the city engineer.

Nagle said that he was okay with the proposal. He said that the only impact is the mitigation and that more attention needs to be paid to the design of that system. He said that traffic access is a huge deal. He said that if we keep expanding the facilities, the problem will continue.

Eaton asked about traffic flows and car counts. Cooney said that he could get information from the police on this.

Wilcox said that traffic access is an issue but that parking is not.

Webster said that the traffic issues are a Deephaven Elementary problem that would need to be addressed. She said it was not an MCEC problem.

Daly said that the parking rush is an issue at all schools in the district.

Motion by Daly to recommend approval of the request based on the recommendation, findings, and conditions of staff. Motion was seconded by Werneiwski. Motion carried 7-0.

NEW BUSINESS

OLD BUSINESS

Discuss potential regulations on short term rental property.

Studer introduced the agenda item.

Cooney presented the staff report. He said that this issue was first considered at the August 20 Planning Commission meeting, and that resident Jim Blakeway of 20040 Minnetonka Boulevard, requested that the City of Deephaven look into potential regulations for short-term rental properties. He said Mr. Blakeway also distributed short-term rental ordinances from peer cities around Lake Minnetonka.

Cooney said that the Planning Commission considered this matter at their September 17 meeting. He said the Planning Commission felt that more information on enforcement was needed to make a recommendation.

Cooney said that he reached out to staff at other communities with short-term rental regulations. Below is a summary of those conversations:

Minnetrista: Enforcement is challenging. The problem house that they identified and was the reason for the ordinance has been difficult to enforce and has claimed legal nonconforming status. They have challenged the city and run up legal costs. They identified about 6 houses, one of which has discontinued. Only a couple of complaints this year.

Mound: Quiet. Ordinance went into effect 1 year ago. Existing properties were identified and considered legal nonconforming and were allowed to continue. The city established the level of use/occupancy at that time and the properties are being held to that level of use/occupancy going forward.

Shorewood: Enforcement is going pretty well. The ordinance is not a part of the zoning ordinance, so legal nonconforming restrictions do not apply. The law is in the Rental Housing Code chapter. (The planner also noted that, since the short-term rentals are temporary occupancies, legal nonconforming rights may not apply anyways. That is a legal question that may or may not have an easy answer.) Shorewood requires rental licensing. They also have administrative hearing process that they can issue fines and do a quasi-court process beyond the formal legal system. It took a lot of work and long time to enforce, but they were able get rid of an absentee landlord “party house” that had as many as 30 guests at a time. They were able to confirm the violations of the 30-day rule by running license plates with the help of the police department. They photographed the plates and also had the nearby neighbors help with the issue.

Cooney concluded his staff report.

Eaton asked if the city wanted to be proactive about the issue or not. Cooney said that he had heard the discussion more around if it is a problem or not and not to make a law if it was not a problem.

Studer said he felt that the issue is more about the enforcement, not if the issue was a problem or not. Wilcox said that he certainly feels that the city should be proactive on the issue, and beef up its enforcement abilities.

Webster said that she would prefer to take a wait and see approach. She said that she would prefer to table this for a year. She said that there has been only one complaint and that there were no police calls to the property.

Cooney said that the city could easily add language prohibiting this in the zoning code just to give the city some protection. He said that if it became a bigger problem, they could look at more robust enforcement capabilities such as licensing and administrative fines which would be more complex to implement.

Studer said that he would like to get a legal perspective on the matter and if the short-term rentals can be considered legal non-conforming as well as the licensing issues.

Werneiwski said that he agreed with Webster that he doesn’t think it is a problem and that a law isn’t needed.

Eaton said that he was not here last month, but that he completely understands the perspective of the neighbor and that if it happened at the house next door to where he lives he would be very upset. He said that he thinks something should be done to prevent the issue from becoming a bigger deal.

Studer made a motion that the planning commission recommend the city council amend the zoning code to include restrictions on short term rentals within the city. Motion was seconded by Daly. Motion carried 5-2 with Webster and Werneiwski voting against.

LIAISON REPORT
McNeill said that the Jolstad request for a garage addition at 20770 Linwood Road was approved. She thanked the Planning Commission for their input in this matter.

McNeill said that the ordinance amendment to fences was approved.

She said that the request at 3216 Robinsons Bay Road was withdrawn. She said that the mayor requested withdrawal rather than tabling due to the statutory time limits for a city to decide on these requests.

Wilcox asked what the context was regarding the memo McNeill sent out. McNeill said that she expected some controversial issues to be coming up and that she wanted to make sure the commissioners focused on the legality of the request from the land use perspective. She said that she wants to try to keep personal feelings about the issue out of the discussion.

ADJOURNMENT
Motion by Studer to adjourn the meeting. Motion seconded by Webster. Motion carried 7-0. The meeting adjourned at 8:18.

Respectfully submitted,
Dale Cooney
Zoning Coordinator