

APPROVED
Minnetonka Beach Planning Commission Meeting Minutes
August 26, 2024 – 7 pm

1. Call to Order

Chair Breazeale called the meeting to order at 7:04 pm.

2. Roll Call

Present: Commissioners Blodgett, Breazeale, Finnegan, Steinfeld, Swanson, Whitely, Wortman and Council Liaison Halverson, Special Volunteer Gamble

Absent: City Administrator Heidi Honey

Staff in attendance: City Clerk Jane Burgess; Zoning Administrator Phil Carlson

3. Approve Agenda

(Steinfeld motion, Swanson second to approve the August 26, 2024 meeting agenda; all ayes.) Motion passed.

Due to a storm, the power went out. Commissioners discussed reconvening the meeting. Monson requested their land use application be discussed sooner rather than later. Carlson stated that the Commission could satisfy legal noticing requirements by opening and closing the public hearing and then rescheduling the meeting to a later date.

Commissioners decided to continue with the meeting while waiting for the electricity to come back on.

4. Approve Minutes - Regular Meeting of July 22, 2024

Whitely noted a typo in Section 5 4th line from bottom should say “allow hardcover and it says not allow”. Honey will correct. Finnegan stated that there is an error in Section 5.1, 3rd line down should be Wetland Conservation Act not Water. Honey will correct that as well.

(Swanson motion, Wortman second to approve the Regular Meeting Minutes of July 22, 2024 as amended; all ayes but Steinfeld abstained.) Motion passed.

5. Public Hearing - Opened at 7:12 pm. Closed 7:13 pm. – no comments

5.1. Land Use Application – 2868 Northview Road – Landschute Group, Jon Monson

Carlson presented the request for variances from the setback standards to construct a new home with an attached garage that would be located in almost the same location as the existing home and garage and nearly the same size. The existing legal non-confirming home was built in 1900 and is almost right up to the lot line and over the line in one instance. Except for the place where it is over the lot line, the property owner under state statute would have the right to completely replace the structure in exactly the same place as a legal non-confirming use. What they are proposing instead is almost exactly what is there with a deck added and making it a full two story so the expansions require variances. The lot is small and challenging as it is double-fronted, and the required setbacks leave no buildable area – the 50-ft front setbacks from Northview Rd and Cottage Ln meet in the middle of the lot. The variances requested are reasonable and warranted.

State statute states that they have the right to replace structure in exact same place as it is a legal non-confirming use. They have proposed to build a two-story home similar to the existing home, so the use is reasonable. All in all, hardcover will be reduced from 51.1% to 50.8%. Carlson stated that they could replace structure as it without variances, but he feels that it is reasonable to let them push the location of the home to improve the front (Cottage Ln) and south side setbacks. Carlson recommended approving the variances as presented and they are reasonable and justified.

Monson stated that although he and his wife love old homes and wanted to save this one by remodeling it, they quickly learned that there is a point of diminishing returns, and this house falls into that category economically. The new home would be better placed as the existing home is so close to the south property line. Monson added that they scaled back their original plan to this plan which is a smaller home. The footprint is slightly larger than what is

there. The character of the home will be maintained with the design and the change will not be very noticeable. The new home will be one foot taller, so the upstairs space is habitable. Two front yard setbacks leave no buildable space.

Breazeale asked where hardcover is being reduced. Carlson said they removed the curve in the driveway and the garage is a little different. Wortman asked if they are building to the current zoning code and if there was no home there now what would the parameters be. Carlson stated they legally can build in the exact same home that is there now, but with the changes the variances are required. Breazeale stated that the lot is so small and the setbacks overlap so they can't build.

Swanson stated that City Code states that all nonconforming uses should eventually be brought into conformity. Carlson stated that legal nonconforming structures can't be expanded except by variances. Swanson stated that the garage is set back less than a foot from lot line and asked why it needs to be so close to the line. She added that the actual hardcover reduction is only 2/10ths of a percent. She suggested the garage be moved toward the south.

Whitely stated that the new structure is moving and creating more green space.

Carlson said they are trading some driveway hardcover and narrowing the footprint of house and adding the screen porch. He said they are asking the right questions of why they cannot get it as close to the standards as possible but they need to balance that with what is a reasonable and appropriate thing to do with this property. Whitely asked Carlson for more detail on his comment about rebuilding on the existing footprint. Carlson explained that per state statute, a legal nonconforming use may be repaired, replaced, improved, maintained, but not expanded. They could completely tear down and rebuild as long as it is the same footprint, size and location. Their request is slightly different than that. Planning needs to determine if their request is reasonable considering the very unique circumstances and constraints with this lot. Whitely asked for confirmation that this lot is 100% nonconforming. Carlson stated nothing could be built on this lot that meets setbacks. If they rebuilt exactly what is there now, it would be legal but it would not be conforming.

Breazeale asked if there was a difficulty centering the house on the lot east to west. There was discussion about moving the garage but it would be difficult to use. Breazeale stated the lot is incredibly small and said that he supports the variance requests on a 5000 sq ft lot. The home, garage and driveway will only be 2400 sq ft which is not a lot, he added. He also likes that this plan gets the home out of the City ROW and it is very similar to the house that has been there over 100 years. He added that this plan is better than what is there now. Steinfeld agreed stating this new home will improve the property and the ambiance of the neighborhood. Steinfeld does not think that anyone will notice much of a change. The height is a marginal change.

Swanson and Wortman think that a larger effort should be made to bring the property into hardcover compliance.

Finnegan asked if the driveway was necessary. Monson stated that 40 versions of this plan have been done to fine tune it. They considered using Cottage Lane for access, but it is only 12-14 feet wide so there is not enough turning radius and they would hit the neighbor's mailbox. He added that their goal is to make the new home not noticeable that it was changed. It is designed for one level living as they age. Remodeling the home is totally impractical. The height difference is one foot for usability of the upper level. The Grandma's Attic on the top of the garage will not be an ADU and will be the second bedroom and a bathroom. Carlson stated that the new garage has a pitched roof and is taller than the old one but the position of the eaves will have less visual impact.

Whitely stated that the homes along the Club's entrance street are all interesting. He added that this is a good use of the property, and it is impossible to have conforming use of it. It is not expanding the non-conforming use.

(Whitely motion, Steinfeld second for the Planning Commission to recommend approval of the variances to the front and side setbacks, and hardcover limit for the proposed home at 2868 Northview Road as depicted on the Site Plan Survey from DeMarc Land Surveying & Engineering dated 7-25-24 and architectural plans from Landschute dated 7-25-24, with the following findings of fact:

Findings of Fact for Approval of Variances

- 1) *The Landschute Group LLC owns the property at 2868 Northview Road ("Property"), which is zoned*

R-1 Single Family Residential District.

- 2) ***The lot in question is approximately 60 feet wide by 100 feet deep, fronting both Northview Road and Cottage Lane.***
- 3) ***The Minnetonka Beach Zoning Code standards for the R-1 district require a 50-foot front yard setback from both the Northview Road and Cottage Land rights-of-way, 9-foot setbacks from both the north and south side lot lines, and no more than 30% lot coverage with impervious surface, also known as hardcover.***
- 4) ***There is an existing house and attached garage on the Property that is non-conforming in several respects compared to the standards for the R-1 district in the Minnetonka Beach Zoning Code. Specifically, the front setback to Northview Road is about 27.1 feet; the front setback to Cottage Lane is less than zero, since the existing garage extends beyond the right-of-way line; the north side setback for the garage is about 1 foot; the south side setback for the house is about 5.8 feet; and hardcover on the lot is about 51.1%.***
- 5) ***The Applicant has requested variances to the front and side setbacks and to the hardcover limit for a new house and garage to be constructed on the property. The requested variances are for a front setback to Northview Road of 27.1 feet (same as existing); a front setback to Cottage Lane of zero feet (better than existing); a north side setback of 0.7 foot (same as existing); a south side setback of 9.3 feet (better than existing); and a hardcover percentage of 50.8 percent (better than existing).***
- 6) ***The requested variances for the new structure meet the criteria for approving variances in Section 2.4(C)(4) of the Minnetonka Beach Zoning Code: the proposed use as a single family home and garage is a reasonable use; the size of the lot and the required setbacks pose a practical difficulty in meeting the code standards; there are unique circumstances in the size of the lot that make it impossible to build new structures that meet the setbacks, a situation not created by the landowner; and the proposed structure will nearly match the existing home and garage and not alter the character of the locality;***

Roll call vote: Breazeale aye, Whitely aye, Blodgett aye, Steinfeld aye, Finnegan aye, Wortman abstain, Swanson nay.) Motion passed with 5 of 7 ayes.

Swanson felt the property should be brought more into conformity. Wortman stated that it should be looked at as a lot and bring it into conformity and be less generous.

6. Zoning Code Amendments

6.1. Tree Preservation Ordinance Work Group Update – Survey

Breazeale stated that City Council asked the Planning Commission to review the Tree Protection Ordinance as it has been in place for 18 months or so. The next step was for staff and residents to provide input which is included in packet. The tree ordinance came about due to increased concerns about trees being removed from builders and more. Looked at other communities and most had an ordinance. Feedback from residents showed concerns about parts of the ordinance and support for parts of the ordinance. They want to make sure they are getting a representative view so they designed a short survey to address specific parts of the ordinance. While they were doing that they wanted to take the opportunity to ask about grading and filling to raise home height and get feedback on that. There are also three control questions to understand how regulated people want to be with lake setback questions. The other questions determine how people want to be regulated about tree protection. In response to concerns that the preamble discussed at the work group meeting may bias responses, the preamble was revised and it is presented at this meeting along with a revised survey which was revised from tonight's 6 pm Work Group meeting. The ordinance was designed with resident and DNR concerns in mind. The intent was to not be biased or leading and it was to be factual. He asked if the new preamble was neutral and acceptable.

Wortman requested to eliminate the word "especially" in the survey's preamble. Commissioners agreed. Swanson commented that the first three questions did not make sense if they are things that cannot be changed in the code, especially if they are DNR code. Wortman stated those are control questions to determine how strictly people want to be regulated. Breazeale stated this will help him explain to Council how people feel. He added that he has been on

Planning a long time and has repeatedly heard from people that they paid over \$1 million for their property, and you shouldn't tell me what I can and cannot do. He thinks they want to understand what people view as individual rights in general but also community responsibility. He asked if others agreed with wanting this understanding.

Whitely said although they don't intend on rewriting the code regarding setbacks, they have a duty to fellow residents in making this regulation, so it is very helpful to understand their sentiment around regulations. By broadening the set of questions beyond the trees, it helps them understand general sentiment. Depending on the specific regulation, some may be for it and others may be against it and they are trying to figure out what the range of sentiment is. Breazeale stated the control questions are very necessary for him and understands there are some people who don't like them. It will make his job much more difficult without them. Gamble talked about their use in a distribution curve, and there will always be the 10% on each side but you are really trying to understand the middle 80%. Control questions help us identify the variety of experiences and opinions. Breazeale asked if they understood the intent of the first paragraph and if they are comfortable with how it is written. Swanson stated she would be more comfortable if they did a better job explaining how tree protection ordinance came to be. She recommended "We were bringing our code in line with that of other lakeshore cities and that the City is concerned about preserving the canopy in order to reduce polluting runoff into the lake." Susan said.

Whitely suggested "in 2022 and 2023 the City made several modifications to its zoning code ordinance in order to preserve the unique characteristics of the community and in response to concerns expressed by the DNR and our residents." This clarifies the intent, and all of the questions apply to this intent. Finnegan said why ask all these non-tree related questions as it seems like we are just slipping in trees and not upfront with them. Breazeale said the work group supported control questions for context about how people feel about regulation and noted that some residents don't want them included. He added as Planning Chair, the control questions are important to him to understand the sentiment within context, and it will be a lot harder to trust the results of the survey without them. Whitely said more context about regulations is better since this is a charged issue and only the first three are control questions. Breazeale stated at the broadest level, he is curious how the community feels and said what if 75% of people want their individual rights and no regulations versus if 75% of residents are highly concerned about community standards so regulations may penalize them, but it is for the greater good of the community. It will be important for the Planning Commission to understand that.

Swanson feared the community may think the City is considering changing the zoning code regarding the other questions. Breazeale stated he thinks for context the questions are very important but will explain to Council the concerns about including the control questions. It will be for Council to decide. Whitely explained that if a person responded to all of the tree questions that they were too restrictive, the control questions help them understand if their focus is on not regulating trees or if they are opposed to all regulations.

Breazeale asked who supported the control questions. Finnegan and Swanson were undecided and the other commissioners supported them.

Commissioners reviewed the first three questions. The survey is designed to first ask if something should be regulated and then ask if the regulation is too lenient or too restrictive. Swanson stated some of the explanations were long and technical. Her experience is the longer the survey is the longer it is, the harder it is to get a complete response. Breazeale stated they tried to provide the facts as briefly as possible. The survey will be done via Survey Monkey. Blodgett recommended replacing "I believe that the City should..." with "Should the City...". Commissioners agreed with that change. Questions 1-4, amend question number 4 to grading the lot to raise the land so that a new house would be built higher than neighboring properties. Questions 5-10 were reviewed. Breazeale used the approximate age of trees instead of the size, so people understood the connection between size and age. Breazeale broke out coniferous from deciduous trees because their growth rates are very different. Question 6 needs both types of trees to be broken down. Breazeale will edit that. There was discussion that the survey will also be educational for residents since it refers to what the current code is. There is a lot of misunderstanding in the community about what can or cannot be done.

Swanson asked about logistics. They are proposing one response per person, not household. The name of the household will be recorded so they know what houses are represented and which did not respond. Depending on the amount of the response, they will determine how to follow up with those households that do not respond. Gamble

stated the tool allows a QR code to be imbedded in the Beachcomber, Weekly Splash Eblast, and utility bill. There can be messaging that if someone prefers a paper survey, they can get one at City Hall. The responses will be anonymous, but City Hall will keep track of who has responded for follow up. The respondents should be anyone in the household 18 and over. Swanson thinks the survey is pointless. She does not think they should do a survey. If they must do the survey, then she supports this survey.

(Steinfeld motion, Wortman second to recommend City Council approve the survey as amended; all ayes.) Motion passed.

6.2. Wetland District Update

Honey provided a memo in the packet stating that edits to the code have been made that include comments from the MN Board of Soil and Water Resources and is waiting for them to respond about additional resolutions that may need to be adopted regarding delegating and accepting authority to administer the Water Conservation Act. This information should be received by the September meeting so the Planning Commission can hold the public hearing at that time. The delegation and acceptance of authority is currently part of a Memorandum of Understanding between the City and the Minnehaha Creek Watershed District. Update received.

7. Reports

7.1. Chair Report – no report

7.2. Commissioner Reports

7.3. Council Liaison – Halverson reported on the City Council meeting. There was a presentation from Friends of Crystal Bay for a LID which would affect residents who live on Crystal Bay. A Utilities Exploratory group is doing geographic planning of identifying infrastructure projects, and then how to plan and pay for improvements. Geographic planning would be digging up each area only once.

7.4. Building Permit Report – received and filed

8. Adjournment

(Steinfeld motion, Swanson second to adjourn; all ayes.) Motion passed.

Chair Breazeale adjourned the meeting at 9:02 p.m.

PUBLIC IN ATTENDANCE – Jon and Mary Monson; Matt and Gail Cookson

Minutes respectfully submitted by City Administrator Heidi Honey

Heidi Honey, City Administrator