

1. CALL TO ORDER/ROLL CALL

Chairman Lucking called the meeting to order at 7:00 p.m.

Members Present: Chairman Pat Lucking and Commissioners Lake Bechtell, Kristi Conrad, David Paeper, and Douglas Reeder

Absent: None

Others Present: Council Liaison Bill Cook, City Attorney Mark Kelly and Zoning Administrator Gus Karpas.

2. OATH OF OFFICE – City Attorney Kelly Administered the Oath of Office to Commissioner Lake Bechtell.

3. MINUTES – April 16, 2014

Commissioner Paeper moved to approve the minutes of April 16, 2014 as presented. Commissioner Conrad seconded the motion. Motion carried 4-0.

4. PUBLIC HEARINGS

Variance Request, Steve and Heather Pint, 5140 St. Alban's Bay Road – Request to exceed the maximum permitted impervious surface in conjunction with the construction of a new single family home.

Section 1176.04(3)(3) permits a maximum impervious surface area of 30%. The applicant is proposing an impervious surface area of 33.2% and is seeking a variance to exceed the maximum permitted impervious surface area by 3.2%.

Summary: The applicants submitted an application for a building permit in February which was in compliance with the zoning provisions for the issuance of the building permit, but as part of the building permit review of new single family homes, the Excelsior Fire District (EFD) also must approve the plans. It was discovered that the location of the farthest point of the home, one hundred and fifty feet from the public right-of-way required the installation of a fire suppression (sprinkler) system or the construction of a “fire access” road.

Given the home had already been designed, the City Council discussed the options for dealing with this situation including removing that portion of the Joint Powers Agreement (Appendix D, State Fire Code) which contained language regarding the above-mentioned requirements. The contractor felt, and the Council agreed, it was better for the property owners to work with the EFD to find a solution and apply for a variance if necessary.

Karpas noted the comments of the EFD were included in the packet.

Chairman Lucking opened the public hearing.

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Jon Monson, Landschute, summarized the request and said the applicants worked with the EFD to permit a fourteen foot wide fire access road instead of a twenty foot wide road, which would be wider than the public street in which driveway was exiting.

Commissioner Paeper asked about the previous impervious surface area and if the configuration of the driveway was the same as the existing property. Mr. Monson said the proposed impervious surface percentage is slightly above but complied with the ordinance until the fire access road was required and that the driveway is not in the same location; however, is narrower.

Commissioner Bechtell didn't see an issue with the request and felt it was a small variance from the requirements.

Commissioner Paeper asked about the placement of the home in relation to the existing foundation and if it could be moved. He also asked why a fire suppression system could not be installed. Steve Pint said the foundation would be new and slightly pulled back from the lake, but they didn't want to get too far from the existing pool which is intended to remain. Mr. Pint indicated the fact the property was serviced by a well and that impacted the ability to maintain adequate pressure for a fire suppression system.

Commissioner Paeper doesn't see a practical difficulty and feels if the city doesn't believe the requirement for sprinkling is necessary it should remove the requirement and not use the variance process to circumvent it.

Zoning Coordinator Karpas discussed the requirement and noted the applicants were not aware of it until the building permit was about to be issued. It complied with all the city requirements until the EFD "jumped in" at the end. Karpas believes there is a practical difficulty which justifies the issuance of a variance. He noted the fact the EFD worked with the applicants brings to question whether the appendix applies as clearly to the development as originally thought. He said that only a portion of the home is triggering the requirement.

Commissioner Conrad has no issues with the request and feels the difficulty was not created by the homeowners but is not quite sure there is a practical difficulty.

Council Liaison Cook noted the property was developed up to the maximum impervious surface percentage, and though he's sympathetic to what he agrees is over regulation, he believes the city would be setting a dangerous precedent using the variance process to bypass the requirements in the fire code. Zoning Coordinator Karpas said the provision is ambiguous and it's not clear if it applies to single family homes.

Council Liaison Cook said the Council hasn't taken any action on Appendix D and feels taking action on an impervious surface variance goes to the heart of the ordinance. He said his recommendation to the Council would be to deny the variance request and look at the fire code instead.

Chairman Lucking understands the position of the EFD to get close to the house but doesn't understand why the whole driveway needs to be fourteen feet in width. Mr. Pint said part of the width was also based on the fact they couldn't build a twenty foot wide driveway on the property.

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Commissioner Reeder asked if the Fire Chief has the authority to deviate from the fire code.

Mr. Monson said the fire code gives the Fire Chief the discretion to amend the code in situations where there may be difficulty in meeting the provisions of the code. He did sense the Council had an overwhelming desire to change the code, by removing Appendix D, for just one project, now he's hearing the some of the Planning Commission say they don't want to grant a variance from this code for just one project. Mr. Monson noted a practical difficulty is not a hardship and allows each request to be reviewed on a case by case basis. The applicants are requesting help to get through a quagmire, a plight not created by them, and he feels they meet all the criteria for a practical difficulty.

Council Liaison Cook said the Council has to act on this request whether it's on the variance or the removal of the appendix. Mr. Monson said he's sure the applicants don't care how the issue is resolved as long as it's done in a timely manner.

Hearing no further public comment, the hearing was closed.

Commissioner Paeper asked if there were any studies done on how to reduce the impervious surface area. Mr. Pint said the proposal was not a significant increase, the pool would remain, and the location of the home requires a long driveway. He said he didn't "cut corners" on the project. Mr. Monson said the undue burden was placed on the property by the EFD. The applicant is just asking for a fair interpretation of the practical difficulty standard.

Commissioner Reeder asked if the driveway could be designed as a carriage drive. Mr. Pint said they suggested that to the EFD who said it could not be used because the center area could turn soft and create issues for emergency vehicles.

Commissioner Bechtell asked how certain it is that Appendix D could be removed and how long it would take. Council Liaison Cook said he doesn't see as an insurmountable issue. City Attorney Kelly said there would have to be two readings of the ordinance, but they could be done in quick succession if the Council wanted to do so.

City Attorney Kelly noted the city cannot require the applicant abandon an amenity, which moving the home an unreasonable distance away from the pool could be construed as.

Motion by Commissioner Lucking to recommend the city council approve the application for a variance of Section 1176.04(3)(3) to exceed the maximum permitted impervious surface area of 30% by 3.2%.

The motion is based on the following findings: (a) the proposal maintains the spirit and intent of the zoning ordinance by maintaining the low density nature of the R-1A single-family district; (b) the proposal is consistent with the Comprehensive Plan in that it seeks to maintain the character of the city through the maintenance of the existing housing stock; (c) the proposed manner of use is reasonable since it seeks to construct a new single family home; (d) the plight of the homeowner is due to the lot dimensions and the location of the the proposed home which requires a fire access road lot; and (e) the proposal maintains the essential character of the neighborhood.

Commissioner Reeder seconded the motion. Motion carried 4-1. Commissioner Paeper voted nay.

5. NEW BUSINESS

ORDINANCE NO. 233 - An Ordinance of the City Of Greenwood, Minnesota Amending Greenwood Ordinance Code Sections 1150.20, 1155.05 and 1155.15 Regarding Council Consideration of Conditional Use and Variance Requests

Summary: Section 15.99 of the state statute requires that cities take official action on all applications for conditional use permits and variances within sixty days, even if this action is to extend the required action by an additional sixty days as permitted by state statute.

Absent a quorum by the Planning Commission, official action cannot be taken within the required time limit, which by state statute constitutes an approval of the request. Therefore, the city attorney drafted the attached ordinance amendment to the conditional use and variance sections of the code.

The proposed amendment would permit the city council to take action on the request without a recommendation by the planning commission to ensure compliance with state statute.

Staff attached the proposed ordinance language highlighted in red.

The Commission agreed with the proposed language.

Motion by Commissioner Lucking to recommend the Council approve Ordinance 229; An Ordinance of the City Of Greenwood, Minnesota Amending Greenwood Ordinance Code Sections 1150.20, 1155.05 and 1155.15 Regarding Council Consideration of Conditional Use and Variance Requests, as written and that it replace any language that suggests the dissolution of the Planning Commission contained in either Ordinance 230 or 231. Conrad seconded the motion. Motion carried 5-0.

6. LIAISON REPORT

Council Liaison Cook said the Council discussed the upcoming street projects, approved the Old Log Theater Conditional Use Permit, said they heard a presentation from the Lyman Lodge residents about a placing a dock along the LRT and said the city has had all their lift stations thoroughly inspected.

7. ADJOURN

Motion by Commissioner Paeper to adjourn the meeting. Commissioner Conrad seconded the motion. The meeting was adjourned at 8:08 pm.

Respectively Submitted,
Gus Karpas - Zoning Administrator