



ARDEN HILLS
MEMORANDUM

DATE: February 5, 2020

PC Agenda Item **3.B**

TO: Planning Commission Chair and Commissioners

FROM: Joe Hartmann, Associate Planner
Mike Mroska, Community Development Manager/City Planner

SUBJECT: Planning Case #19-020 – No Public Hearing Required
Applicant: Justin Brown
Property Location: 3159 Shoreline Lane
Request: Variance

Requested Action

Justin Brown (“The Applicant”) has requested a variance for an ordinary high water (OHW) yard setback of five feet, six inches (5’ 6”) to construct a new deck behind a single-family dwelling located at 3159 Shoreline Lane (“Subject Property”).

Background

On October 16th, 2019 Curtin and Sons Construction LLC submitted a building permit for construction of a new deck in the rear yard of the Subject Property (“2019-01063”). Staff inspected the property and determined that the previous deck, which was approved under a building permit in 2007 (“B07-9967”), had been removed and the contractor was planning to build a larger deck, based on photos of the property from 2017 and the evidence that the posts for the new deck had been dug farther out than the posts for the previous deck. Under 2019-01063, the contractor indicated the replacement deck proposed was 13 feet, 6 inches wide and 34 feet, 3 inches long where the previous deck under B07-9967 was built to eight feet (8’) wide and 30 feet long.

1. Overview of Request

The Applicant is requesting a variance to the setback from the ordinary high water level (OHWL). The required setback is 50 feet but the Zoning Ordinance allows a six foot (6’) encroachment into the required setback. The proposed deck exceeds the allowed setback and encroachment by five and a half feet (5.5’).

Staff notes that building plans are not required as part of a submission for a Land Use Application, but because the nature of the request is regarding a pre-existing structure encroaching on the setbacks for the property, previous building permits have been included in the Land Use Application for comparison. The Planning Commission is being asked to determine if a variance

request for flexibility with the OHW setback requirement should be approved. The evaluation of the proposal should be based on the District Provisions in Section 1320.06 and the Requirements for a Variance in Section 1355.04, Subd. 4.

Plan Evaluation

Chapter 13, Zoning Regulations Review

1. District Provisions (R-2 Single Family Residential District) – Section 1320.06

Lot Size and Dimensions

The Subject Property is a legally non-conforming lot located in the R2 district due to its dimensions. The R2 district standards require a minimum lot width of 85 feet and a minimum lot area of 11,000. The Subject Property is between 42 feet and 45 feet in width and approximately 14,191 square feet in area. The lot width is narrower than the minimum width required by City Code for its district.

Structure Setbacks - Flexibility Requested

The principle structure was built in 1962, which pre-dates the city's zoning code and setback requirements. The rear of the Subject Property faces Lake Josephine, which has a setback of 50 feet from the Ordinary High Water Level (OHWL). Minnesota Statutes 103G.005 Subd. 14 defines the OHWL as

“...the elevation delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial....”

The principle structure without the deck is, on average, fifty-two feet (52') from the OHWL. The south end of the Subject Property is less than 52 feet from the OHWL and the north end of the Subject property is more than 52 feet from the OHWL. The Applicant submitted a survey for the property marking the OHWL for Lake Josephine showing that the shoreline on the rear of the property is not parallel to the front property line, but the structure is 52 feet from the rear property line at the midpoint of the property.

City Code Section 1325.03 highlights the exceptions to the minimum requirements for setbacks and Subd. 2 of that code highlights the parts of the principle structure that are permitted to encroach on setbacks. Decks, uncovered porches, ramps, and steps generally may extend six feet (6') into required setbacks but in no case shall these encroachments be less than six feet (6') from any lot line. The previous deck was built to a width of eight feet (8'), which is the total of the two feet (2') from the rear of the principle structure to the rear setback of the property on Lake Josephine at the OHWL and the six feet (6') that the Applicant is allowed by ordinance to encroach into the rear setback under City Code Section 1325.03.

2. Variance Review

The role of the Planning Commission is to determine and consider how the facts presented to them compare with the City's articulated standards. The Commission should base their decision on the facts presented and then apply those facts to the legal standards contained in city ordinances and

relevant state law. Neighborhood opinion alone is not a valid basis for granting or denying a variance request. While the Planning Commission may feel their decision should reflect the overall will of the residents, the task in considering a variance request is limited to evaluating how the variance application meets the statutory practical difficulties factors. Residents can often provide important facts that may help in addressing these factors, however, unsubstantiated opinions and reactions to a request do not form a legitimate basis for a variance decision.

The Planning Commission may impose conditions when granting variances as long as the conditions are directly related and bear a rough proportionality to the impact created by the variance. For instance, if a variance is granted to exceed the rear setback limit, any conditions attached should presumably relate to mitigating the effect of the encroachment.

3. Variance Requirements – Section 1355.04, Subd. 4

The Applicant requests a variance to construct a new deck on the rear of the residential dwelling that would encroach into the rear yard setback by an additional five feet, six inches (5' 6"), due to the nature of the shoreline of Lake Josephine which abuts the rear of the property. The Planning Commission will need to make a determination utilizing the following variance findings and criteria on whether there are practical difficulties with complying with the zoning regulations. If the applicant does not meet all the factors of the statutory test, then a variance should not be granted. Variances are only permitted when they are in harmony with the general purposes and intent of the ordinance.

1. Purpose and Intent. The variance request shall comply with the purpose and intent of the provisions of the City's Zoning Regulations and with the policies of the City's Comprehensive Plan.

Staff finds the variance request for 3159 Shoreline Lane would comply with the purpose and intent of the R-2 Zoning District and with the policies within the City's Comprehensive Plan.

2. Practical Difficulties. The Applicant for a variance shall establish that there are practical difficulties in complying with the provisions of the Arden Hills Zoning Regulations. The term "Practical Difficulties" as used in the granting of a variance means:

- a. *Reasonable Use.* The property owner proposes to use the property in a reasonable manner not permitted by the Zoning Ordinance.

Staff finds that a detached home with a deck is a reasonable use of the Subject Property in the R-2 Zoning District.

- b. *Unique Circumstances.* The plight of the property owner is due to circumstances unique to the property not created by the landowner.

According to the Applicants' application, they are requesting a larger deck that encroaches on the rear yard setback because 1) since the time of the home's construction, conditions have changed and the setback restrictions and shoreline including changing high watermark present a hardship 2) the current code will not allow for a reasonable size deck to be constructed, similar to comparable properties on the lake, so the proposed

deck would not alter the character of the neighborhood and 3) the new proposed deck will not adversely affect either abutting properties, nor affect the lake view or water runoff of any surrounding properties in the immediate area.

- c. *Character of Neighborhood.* The variance, if granted, will not alter the essential character of the neighborhood.

According to the Applicants' application materials, the existing neighborhood has homes with decks in the rear yard and a variety of different yard setbacks and proposed variance will not alter the character of the neighborhood.

3. Economic Consideration. Economic consideration alone does not constitute a practical difficulty.

The proposed variance is not based on economic consideration.

4. Access to Sunlight. Inadequate access to direct sunlight for solar energy systems shall be considered a practical difficulty.

A solar energy system is not proposed.

Findings of Fact

The Planning Commission must make a finding as to whether or not the proposed application would adversely affect the surrounding neighborhood or the community as a whole based on the aforementioned factors. Staff offers the following findings for consideration:

General Findings:

1. City Staff received a land use application for a request to build a new deck behind the single family dwelling at the Subject Property 3159 Shoreline Lane.
2. The Subject Property is located in the R-2 One and Two Family Residential District.
3. A deck on a single-family detached dwelling is a permitted use in the R-2 district.
4. The Subject Property is non-conforming with the R-2 districts standards for minimum lot width requirements.
5. The rear setback to the property is determined by the Ordinary High Water Level (OHWL) for Lake Josephine, which is 50 feet.
6. The principle structure is 52 feet from the OHWL.
7. Decks, uncovered porches, ramps, and steps generally may extend six feet (6') into required setbacks but in no case shall these encroachments be less than six feet (6') from any lot line.
8. The proposed deck on the Subject Property would otherwise conform to all other requirements and standards of the R-2 district and Shoreland Management Regulations.
9. The proposed development would not encroach on any flood plains, wetlands, or easements.
10. A variance may be granted if the Applicant meets all three factors of the statutory test for practical difficulties.

Additional Review

Residential Building Inspector

The Residential Building Inspector has reviewed the plans and has no additional comments at this time. A Building Permit will be required prior to construction.

Engineering Staff

The *Engineering Staff* has reviewed the plans and has no additional comments at this time.

Rice Creek Watershed District

The Rice Creek Watershed District has reviewed the proposed project and determined that no permit will be required.

Minnesota Department of Natural Resources

Municipalities are required to provide the Minnesota Department of Natural Resources (DNR) with a copy of the variance request for properties within designated shoreland areas at least 10 days before the public meeting. Staff notified the DNR about this application on December 24, 2019. No comments have been provided by the DNR at this time.

Options and Motion Language

Staff has provided the following options and motion language for this case. The Planning Commission should consider providing additional findings of fact as part of the motion to support their recommendation for approval or denial.

- **Recommend Approval with Conditions:** Motion to recommend *approval* of Planning Case 19-020 for a Variance at 3159 Shoreline Lane, based on the findings of fact and the submitted plans, as amended by the conditions below:
 1. A Building Permit shall be issued prior to commencement of construction.
 2. The proposed building shall conform to all other standards and regulations in the City Code.
- **Recommend Approval as Submitted:** Motion to recommend *approval* of Planning Case 19-020 for a Variance at 3159 Shoreline Lane, based on the findings of fact and the submitted materials.
- **Recommend Denial:** Motion to recommend *denial* Planning Case 19-020 for a Variance at 3159 Shoreline Lane, based on the following findings: *findings to deny should specifically reference the reasons for denial and why those reasons cannot be mitigated.*
- **Table:** Motion to *table* Planning Case 19-020 for a Variance at 3159 Shoreline Lane: *a specific reason and information request should be included with a motion to table.*

Notice

Although a variance does not require a public hearing, a public meeting notice was prepared by the City and mailed to properties within 500 feet of the Subject Property. Minnesota statute does not clearly require a public hearing before a variance is granted or denied, however, after consulting with the City Attorney, staff agree that the best practice is to allow public forum on all variance requests. A public forum allows the city to establish a record and elicit facts to help determine if the application meets the practical difficulties factors.

Public Comments

As of January 29, 2020 Staff has received three (3) inquiries about this proposal from residents over-the-phone and three (3) residents have submitted written comments in regards to this proposal.

Deadline for Agency Actions

The City of Arden Hills received the completed application for this request on December 20, 2019. Pursuant to Minnesota State Statute, the City must act on this request by February 18, 2020 (60 days), unless the City provides the petitioner with written reasons for an additional 60-day review period. With consent of the Applicant, the City may extend the review period beyond the initial 120 days.

Attachments

- A. Land Use Application
- B. Location Map
- C. Setback Variance Plans and Narrative
- D. Public Comments
- E. Deck Building Permits