

**MINUTES**

**CALL TO ORDER**

Chair Maddy called the meeting to order at 7:03 P.M.

**ROLL CALL**

Present: Chair Maddy; Commissioners Eggenberger, Huskins, and Riedel; Planning Director Darling; Council Liaison Siakel; Consulting City Planner Kendra Lindahl; and City Attorney Shepherd

Absent: Commissioner Gault

**1. APPROVAL OF AGENDA**

Riedel moved, Huskins seconded, approving the agenda for February 15, 2022, as presented. Roll Call Vote: Ayes – all Motion passed 4/0.

**2. APPROVAL OF MINUTES**

- **November 16, 2021**

Chair Maddy noted that Commissioner Huskins was listed as both present and absent in the minutes.

Commissioner Huskins confirmed that he was absent at the November meeting.

Riedel moved, Eggenberger seconded, approving the minutes for the November 16, 2021 meeting, as revised. Roll Call vote: Ayes – all. Motion passed 3/0/1 (Huskins abstained).

**3. MATTERS FROM THE FLOOR**

Kristine Sanschragrin asked if there would be an opportunity for the public to speak later in the meeting under the New Business items.

Chair Maddy explained that it is not technically a public hearing, but the Commission will open the agenda items up for public comment.

**4. PUBLIC HEARINGS - NONE**

**5. NEW BUSINESS**

- A. Variance to Setback to OHWL for Dock**  
Applicant: Jennifer and David Labadie  
Location: 5510 Howards Point Road

Chair Maddy acknowledged that this item involves the Mayor of Shorewood and clarified that there were no conflicts of interest within the Commission for this agenda item. He explained that the staff report would be given by a contract planner, and not Planning Director Darling. He stated that the Commission will allow for public comment on this item, but asked that the speakers limit themselves to three minutes and try not to repeat points that have already been made.

Consulting City Planner Lindahl, Landform Professional Services, stated that this is a request for two variances at 5510 Howards Point Road. One variance request is to allow a dock greater than four feet wide and the other is to allow the dock to branch out within eight feet of the Ordinary High Water Level (OHWL). She explained that notice of the request was mailed to property owners within 500 feet of the property. She noted that the City received twelve letters and e-mails after the packet went out which have been entered into the public record, along with the three e-mails submitted by the applicant, but noted that many of the comments in the letters were unrelated to the variance request. The comments related to the variances requests were expressing the opinion that the variance standards were not met, as proposed. She noted that the dock was installed on or before April of 1985 and is permanent, which means it remains in the water year round. She explained that in 1989, the homeowners at that time, obtained a MNDNR permit to dredge the channel to provide access to the upper lake, which lowered the channel in order to provide access for this home as well as some of the neighbors and created channel in the middle of the lagoon. She stated that in 2000, the existing home was demolished and a new home built, also not by the applicant. She explained that the current ordinance was adopted in 2006 and was intended to bring the City's dock ordinance into compliance with the MNDNR and the Lake Minnetonka Conservation District (LMCD) standards. She noted that the applicant purchased the property in 2010 and explained that they were notified of an existing dock violation in October of 2021. She stated that the applicant received an extension after working with staff, and then submitted a variance application which is what is being considered this evening. She explained that when reviewing a variance, the City Code outlines specific standards or criteria that must be reviewed with the burden of proof landing on the applicant. She gave a brief overview of the standards to be considered as part of the analysis of the variance request. She stated that the dock is allowed in the R1-A district, is consistent with the intent of the Comprehensive Plan and uses anticipated by the Zoning Ordinance, has been in place for at least 36 years, and is not removed during the winter months. She stated that staff finds that the continued use of the dock, which has been in place for over 36 years, is a reasonable use and the plight of the landowner is due to circumstances unique to the property and were not created by this landowner. She noted that the application materials include statements from two local dock installation professionals who gave the opinion that the soils in this lagoon create a unique circumstance that would not allow the dock to be safely extended further out into the lagoon. She stated that the variance is not based exclusively on economic considerations and noted that the local dock installation professionals who indicated that extending the dock would likely result in its sinking on the end furthest from the shoreline and would create an unstable dock situation as well as an unstable boat lift and slip. She stated that the variance would not impair the supply of light and air to adjacent property owners, increase congestion, or endanger public safety. She stated that the variances to allow the dock to remain would be the minimum action necessary to address the practical difficulties. She stated that for the reasons she has outlined, staff is recommending approval of both variances, but noted that variance criteria are open to interpretation.

Commissioner Riedel stated that in the application packet, the applicant made claim to the so called 'grandfathering' status for the dock and that they felt the dock qualified as a legally non-conforming structure. She stated that it appears as though City staff rejected that argument which resulted in the variance application. He asked about that process and the basis for the City disagreeing with this dock being a legally non-conforming structure.

Planning Consultant Lindahl stated that staff felt the variance request was the right approach, but asked City Attorney Shepherd to weigh in on that particular analysis.

City Attorney Shepherd stated that the application package does talk about a lawful non-conformity assertion. He stated that it is more akin to an administrative appeal in the context of the procedural posture of the application. He stated that the administrative appeal is not in front of the Planning Commission tonight nor were they being asked to make a decision on whether or not there is a lawful non-conforming use, but are being asked to make a recommendation on the variance application.

Chair Maddy stated that if the City Council ends up granting this variance, then the enforcement action will stop. He asked that if the City Council rejects this variance request, if it would then go back to administrative enforcement on a legally non-conforming use.

City Attorney Shepherd stated that it is correct that the variance application is the opportunity for the applicant to bring their property into compliance with the City Code through the variance. He stated that if the City Council denies the variance, then there is a dock that it is in violation of City Code and enforcement would follow.

Chair Maddy referenced an aerial photo from 2002 that shows the dock was already there, double width and within 8 feet of shore, which pre-dates modern zoning on dock size and asked how the argument could be made that this would not be legally non-conforming. He stated that he would like to understand why this is going through the variance process first.

City Attorney Shepherd stated that the lawful non-conforming use argument is an administrative appeal to the enforcement of the Code, which was not filed in a timely manner. He reiterated that the application being considered tonight is for the variance requests.

Commissioner Riedel stated that he understands that the agenda item is for consideration of the variance requests, but nevertheless, the issue of legal non-conformity does bare on a variance decision. He gave the example of a home on a non-conforming lot where the homeowner wants to put in an addition. He stated that in that example, the addition would not qualify as a legally non-conforming structure, but the discussion of the house being legally non-conforming is relevant because that generally forms the basis of the decision to grant a variance. He asked if the City had taken no position on whether this could be considered a legally non-conforming structure.

City Attorney Shepherd clarified that City staff is not taking a position on whether there is a lawful non-conforming use and are just taking the position, as outlined in the staff report, on the variance application. He stated that he takes Commissioner Riedel's point with respect to the idea of a use pre-dating City Code. He stated that as Planning Consultant Lindahl stated, this is a dock that has been in place for 36 years, which can be a factor in the analysis with respect to the practical difficulties test.

Commissioner Huskins asked if there was a variance request made by the Labadie's in 2012, prior to the dock maintenance and the third section being addition.

Planning Consultant Lindahl stated that her understanding is that the dock was simply installed but no variance was applied for and the slip was part of the work for fixing the footings on the end of the dock. She stated that she does not believe a permit or a variance was applied for at that time.

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Commissioner Huskins asked if there are any legal prohibitions on approving variances retroactively, for work that has already been completed.

City Attorney Shepherd stated that there are no legal prohibitions for that situation and noted that this happens frequently where someone may have a property that is considered in violation of the City Code and then they apply for a variance as a way to remedy the problem and achieve compliance with the City Code.

Commissioner Huskins stated that this is referring to one dock on the lagoon and asked if there would be any precedents set for any of the other docks as to their compliance with the Code from 2006.

City Attorney Shepherd stated that other dock situations will be unique in different ways than this application. He reiterated that the Planning Commission is being asked to consider this particular dock and the variance requests.

Commissioner Eggenberger asked about the variance related to the setback from the OHWL. He asked if the dock was currently 1 foot short of being in compliance.

Planning Consultant Lindahl explained that the dock is 1 foot from the shoreline, where 8 feet is required.

Chair Maddy asked if the applicant would like to address the Commission.

Jennifer Labadie stated that she would like to answer any questions that the Commission may have and asked to reserve the right to speak at the end.

Commissioner Riedel asked the applicant to comment on the precise history of this dock. He stated that from the packet information it appears that there was a dock in place since 1985, but there has been indications from the dock maintenance professionals, that the dock was repaired, maintained, and perhaps expanded. He asked if Ms. Labadie had a precise timeline that she could share, in particular, the footprint of the dock and when any changes were made.

Ms. Labadie stated that the earliest aerial photo related to this property is dated April of 1985 and the earliest County aerial photo is dated 1989. She noted that the current home was built in 2000 and she and her husband moved in in 2010. She stated that when they moved in, there was a dock in the backyard and explained that there are neighbors who are very familiar with the house as it was built in 2000 who have indicated that the dock was in existence in the current location at that time. She explained that the rear end of the dock that is located at the furthest point from the shoreline began to sink and they hired professional dock installers to handle the repair. She stated that two different companies came and performed repair work, lifting up the end of the dock, but the dock was not removed from the water at that point. She explained that mud plates were placed under the footers which is a tool that is commonly used in the dock installation industry when there is a location that is considered substandard soil. She explained that at this time, they did add the second boat house on the north side of the dock and located it where the professionals had recommended.

Commissioner Riedel stated that he believes what is most relevant is the footprint of the dock. He referenced Exhibit E, which is aerial imagery from 2004 which is 2 years prior to the relevant code section being adopted restricting the footprints of docks. He stated that he sees that it has the same footprint that is currently in place and asked if that was accurate.

Ms. Labadie stated that it is not correct and noted that it appears the same, however, the dock section on the most northern side, did not exist at the time that they purchased the home. She stated that it is similar to their current dock, but that portion of the dock was added to the existing section.

Commissioner Riedel asked when that portion of the dock was added.

Ms. Labadie stated that it was added in 2012 and the other portion had been in existence since 1985.

Chair Maddy asked why it was depicted in the picture from 2004 if it was added in 2012.

Ms. Labadie explained that was a portion that belonged to the former homeowners and explained that portion did not exist when they purchased the home.

Chair Maddy asked if that was within 8 feet of the shoreline on that side of the dock.

Ms. Labadie stated that she is unsure but noted that she believes it is the OHWL and not the shoreline. She noted that it is difficult to determine the OHWL right now because the lake is down several feet due to the drought conditions from last summer.

Chair Maddy asked Planning Consultant Lindahl to comment on whether the northern portion of the dock is in violation.

Planning Consultant Lindahl stated that there are two violations and explained that the entire front section, the 'main dock' is in violation because it ranges from about 1 foot from the shoreline to 4 feet from the shoreline. She stated that they do not have a survey with the OHWL but according to the watershed district, for Lake Minnetonka it is 929.4. She stated that based on the surveys in the packet, it is a bit tricky, but they believe it is about 1 to 4 feet from the OHWL where 8 feet is required.

Chair Maddy confirmed that she was saying that both sides of the dock are too close.

Commissioner Eggenberger asked Ms. Labadie when she first became aware that the dock was not in compliance.

Ms. Labadie explained that they received notice of the violation in the fall of 2021, sometime in October.

Commissioner Eggenberger confirmed that she had no knowledge of this situation when she purchased the home or anytime before the notice came in the fall of 2021.

Ms. Labadie stated that this was correct and noted that they had professional dock installers come and had them install the addition and perform the repair work based on their professional opinion. She noted that they simply relied on the professionals that they had hired.

Commissioner Riedel stated that he would like to ask the same question that he posed earlier to City Attorney Shepherd. He stated that the status of this dock is that it existed prior to the modern City Code and there were modifications made after the modern City Code was adopted. He stated that the legal non-conforming argument hinges on the use of the dock and asked Ms. Labadie to comment on that.

Ms. Labadie asked if he was asking her to comment on what they use the dock for.

Commissioner Riedel stated that he thinks it is appropriate to ask the question whether she feels this is a legally non-conforming structure or not.

Chair Maddy clarified that the Planning Commission is only talking about variances.

Commissioner Riedel agreed, but explained that he felt this point was relevant because a variance based on a legally non-conforming structure is different than a variance that is simply based on an otherwise fully conforming situation. He stated that the existing dock, that existed prior to 2006, he thinks would qualify as legally non-conforming and the modifications that were made afterwards may not be, which may be the basis for the variance. He asked if that was the argument the applicant was making to the Commission.

Ms. Labadie stated that was the thought process when the application for a variance was prepared. She stated that they have one dock that has been in existence for over 30 years and a newly installed dock. She stated that she feels the requirements for a variance, as set forth in the City Code, are met in this situation and felt a variance would be appropriate.

Commissioner Huskins stated that there are two aspects to the variance and when a recommendation is made he assumes that the Commission will discuss each of them separately. He asked if those two things, in her mind, were tied together.

Ms. Labadie stated that although they are treated in one application for variance requests, she feels they are two distinct issues. She stated that she feels the issues stand separately.

Commissioner Huskins asked if one variance and not the other was approved whether this would not dampen the use of the dock and would be a satisfactory outcome.

Ms. Labadie disagreed and noted that it would hamper the use of the dock and also the safety of the dock, because the dock hugging the shoreline and not meeting the 8 foot requirement, is the safest possible configuration, as has been stated by two dock professionals. She stated that in both of their opinions, they felt extending it out further could result in an unstable dock situation versus leaving it in its current location. She stated that on the second issue, the two dock catwalks that are put together, exceed the 4 feet, which is also a safety issue because it allows full access of the boat from either side on the newly installed dock and from the one side on the original dock that it is attached to. She stated that she does feel this is a safety issue relating to both aspects of the variance requests.

Commissioner Eggenberger asked if the 8 foot catwalk was 8 feet when the second boathouse was installed.

Ms. Labadie stated that the installation of the second boathouse caused it to be the 7 foot width. She stated that before the installation of the boat house, it was not that width. She pointed out that in the opinion of the dock installers and her neighbors, extending the dock out into the lagoon hampers the traverse ability of the lagoon itself because the structure will take up more water space. She noted that valid DNR permits were obtained and channels were dredged to each of the properties, including hers, and it is possible that moving the dock backwards could place it in the dredged channel which definitely would make it more unstable and more difficult to secure in a safe manner.

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Commissioner Riedel stated that in the application packet, much of the argument centers on what was just described by Ms. Labadie of the professional opinion that moving the dock further out may be problematic. She stated that there is not much that describes the basis for the variance for the double-width and asked for more information on that item and the practical difficulty of not having a dock with the double-width in the center.

Ms. Labadie explained that the double-width is the way it was configured and installed by the professionals. She stated that they installed it that way for safety and access to the boat and reiterated that they had relied on the advice of the professionals at the time the work was completed.

Chair Maddy asked if there was anyone from the public would like to speak on this issue and reiterated the request that comments be limited to three minutes, not repeat each other, nor should the comments focus on character assassination.

Jeff Cameron, 27695 Island View Road, stated that he feels this is a pretty clear case where no variance should be allowed. He stated that the applicant had one slip in 2006 as shown on Exhibit F, and the Code was changed just after the picture was taken. He stated that Exhibit I, from 2015 shows the two docks and another slip was added and widened the center section. He stated that the applicant is arguing that they cannot make the dock longer, which does not have to be done. He stated that the applicant would need to move the parts that are parallel to the shore out which will effectively make the slips shorter. He stated that this is not the fault of the City that the applicant chose to make it this way. He stated that the stuff that was added in 2012 does not affect the length of the dock. He explained that the argument for the center portion being 7 feet wide being done because a 3.5 foot dock would be a safety hazard does not make sense because the standard width of a dock is 3.5 to 4 feet wide and people put boats on either side of those all the time. He stated that he feels this is not a substantial hardship and noted that most people on the lake have that dock width.

Kristine Sanschagrín, 27725 Island View Road, stated that she would like to respond to one of the letters that was included in the packet. She stated that she opposes the variance request being made and noted that the process for code compliance has not been followed, nor does the dock meet the 'grandfather' requirements. She stated that she does not feel the applicant meets the hurdle related to hardship. She stated that she finds it interesting that Ms. McNeil's letter was included in the variance request because she appears to be responding to a news story and not the variance included in the packet. She stated that she would like to speak to some of the conjecture and false statements that she feels were included. She stated that Ms. McNeil has the right to disagree with the complaints, but her statement that the access was on the deed as well as others and was clear to all of us that a dock was not permitted, is false. She stated that she is an owner of the property and the claim is unsubstantiated. She stated that Ms. McNeil and her husband are not registered with the County as easement holders nor have the owners of this property been presented with legal proof of their easement. She stated that they have affidavits from an easement holder and an aerial photo from the 1970s that refutes Ms. McNeil's claims that there has never been a dock on the property. In addition, her comment that it is beyond odd that docks that have been on the lake for years are now under investigation is irrelevant. She stated that if someone purchased a home in the neighborhood that was found to have a code violation, the home would have to be brought up to code prior to sale. She stated that Ms. McNeil's claim that there has been a dock on the property since the early 2000s is also irrelevant, however there is a dispute about whether or not the dock was changed and noted her disappointment that this was not noted by the consultant in her presentation. She stated that when false narratives are shared in the neighborhood it provides unneighborly activity and this is an example of something that was included in the packet and is irrelevant and feels it should be withdrawn. She stated that

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she does not feel there is any legal way that this dock should be granted a variance and stated that Ms. Labadie's position as mayor for this variance request should be agnostic. She stated that they are all citizens of this community and nobody, including Ms. Labadie should be an exception in having to meet code requirements. She stated that if the Planning Commission chooses otherwise, they are admitting to special treatment for certain members of the community and not treating all members consistently under the code requirements.

Guy Sanschagrín, 27725 Island View Road, stated that he has written a letter in opposition to the City's practice of providing special treatment to certain residents while dealing with others heavy handedly. He stated that it is important that Shorewood's code enforcement processes are not arbitrary or capricious and noted that currently the process seems selective and subjective. He stated that he would like to ask about the purpose of the rules that are being looked at and whether it was safety, health, welfare. He stated that he feels that understanding this purpose is important. He noted that if this variance is granted, he would question whether these rules should even exist and asked when the City would actually enforce the rules. He asked why the City had any dock regulations at all and noted that the City pays to be part of the LMCD whose purpose is to harmonize the rules on Lake Minnetonka. He asked why another full layer of special rules for Shorewood lakeshore was needed. He suggested that abolishing the City's dock restrictions is the solution in place of a variance. He stated that he feels this action would solve many issues for the City and for its residents. He asked how the City can justify punitively dragging two families through the criminal and civil court systems over the last 5 years while at the same time allowing City officials to violate the code through variances and not enforcement. He asked how the same City officials, who do not adhere to the code turn around and enforce the same code on others. He stated that it is clear that Shorewood's rules only apply to certain residents and the process felt by the common resident is very different than the process afforded to the privileged and politically connected. He stated that zoning enforcement should not be political and should be based on the facts and the law. He stated that residents who stand up to the City and disagree with the status quo are shut out, smeared, and denied a seat at the table. He stated that to him, Shorewood's governance feels much like an oligarchy. He stated that in consideration all these factors, he feels the variance requests should be denied as a first step in reforming the City government in the direction of equal treatment under the law for all residents.

Marty Davis, Edgewood and Birch Bluff area, stated that he feels it is sensible and obvious that this dock should be grandfathered in and fits in with those parameters. He stated that what bothers him is that there have been comments made about false narratives. He stated that some individuals keep putting another dock into the middle of this situation and if they would like, he can lay out the facts, not opinions, for that situation. He stated that he has spoken with Mr. Sanschagrín about these facts so he is aware of them and he is standing too far from the truth. He stated that he feels it is sour grapes to go after a mayor like this and is punitive to her decision to do her job, which he feels is all she has tried to do. He reiterated that he feels the opposition to this request is sour grapes because those individuals did not get what they wanted. He stated that if the truth gets out about what happened in the other situation with the dock next to him at Howards Point, they will find that they have been deceitful and are the ones that have caused the City to waste taxpayer money. He suggested that people contact Brad Neilson and have him let people know what went on with that property. He noted that he does not feel that the people that have written in regarding this issue, have been informed of the truth. He reiterated that people around town really need to understand what went on in that situation and how noble the City officials have been throughout that whole process.

Chair Maddy noted that individuals would only be allowed to speak one time this evening and noted that there appear to be two individuals who have not yet spoken.

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Mary Rotunno, 5525 Howards Point Road, stated that she is here to support the variance requests. She stated that in her opinion, the applicant went through the proper channels, does not believe there was malicious intent, nor does she feel that they have received any special treatment. She stated that she believes that this has become a personal issue within the community which has gotten out of hand. She stated that the personal attacks on the mayor and Council have been, in her opinion, childish. She reiterated that she supports the variance request.

Mary Borgeson, 5485 Grant Lorenz Road, stated that she has been watching this and there have been discussions about whether the dock was legal or not and whether a variance would keep it into compliance. She stated that she is not attacking the mayor, but as someone in a position of power, whether it is legal or ethical, it is always good to take the high road and not be hypocritical. She clarified that she is not calling the mayor a hypocrite, but feels everyone has been guilty of hypocrisy at one time or another because you want something so badly that you cannot see the conflict. She stated the dock issues in this community have become a really hot button issue and she would suggest that the Ms. Labadie bring her dock into compliance first and then ask for a variance. She stated that it may be a sacrifice for Ms. Labadie but explained that it would be a much better look ethically for her to make it legal prior to asking for a variance. She stated that they are very lucky to have a gender diverse City Council and mayor. She noted that when she graduated from high school, a woman could not even get a loan. She stated that the mayor and the two female Councilmembers are leaders in the community and are an example for other young women and thinks they should hold themselves to a higher standard. She reiterated that it would be a much better 'look' and not so divisive if the dock would just be brought into compliance.

Chris Rotunno, 5525 Howards Point Road, stated that he feels this issue comes down to common sense. He stated that there is an aerial photo that shows the dock being discussed and noted that it probably looks better than any other dock in the whole bay. He stated that he knows that because he parked by it until last year and noted that others that have spoken tonight also did, illegally. He stated that he thinks that Ms. Labadie is being persecuted for other issues. He stated that he would encourage the Commission and staff to not treat this like they are dealing with the mayor, but as though they were dealing with a normal citizen. He stated that he really feels like this is common sense and this request is nothing that is hindering anyone else. He stated that it may not sound like a big deal to move the dock out a few feet but the way the bay is configured, they would not be able to get a boat through which would cause complications for the other homeowners in the bay. He stated that some of the individuals no longer have any involvement in this bay and are here fighting against Ms. Labadie and attacking because she is the mayor. He asked the Commission not to punish the mayor because she won an election by a landslide.

Alan Yelsey, 26335 Peach Circle, stated that his interest in this is in the integrity of government. He stated that he appreciates the questions that have been asked by the Planning Commission. He stated that he feels the integrity of the City is at stake in this situation because there is a mayor in the middle of an issue that she should not have been in if Ms. Labadie had followed the code. He stated that he feels the Commission needs to hold Ms. Labadie accountable as it would for any other citizen, without any favoritism. He stated that from what he has seen, in terms of variances and code violations in the past, the City has been fairly strict and feels the process that has been used with others should be followed in this case. He stated that he is disturbed that some other parties have been persecuted for doing something that was compliant with code while in this case, there is clearly non-compliance with code. He stated that for the integrity of government, because the mayor is in the middle of this, it will be very good for her to accept the code violations and change whatever is necessary to be compliant. He stated the hardships that have been mentioned do not sound accurate to him and he feels that some modifications could be adopted with some technical and engineering assistance and still maintain her dock and

privileges. He stated that this is a City that should not be for the rich, wealthy, and influential and should be a City for everyone.

There being no additional public input, Chair Maddy closed the public testimony portion of the meeting at 8:13 p.m.

Commissioner Riedel stated that he would reiterate the point he made in his earlier questioning. He stated that the dock existed, at least partially in its current configuration prior to the adoption of the Code, which is pivotal in this situation. He gave the example of a non-conforming lot with a house that existed on the lot prior to the code being adopted that restricted the setbacks and other criteria for building. He explained that this would be a legally non-conforming house and the owner could continue to live in the house and even rebuild on the exact same footprint with no variance required. He stated that if the applicant wanted to modify the house, for example, put on an addition, they would be permitted to do it as long as the addition did not increase the non-conformity. He stated that this a common scenario for the Planning Commission to consider, where somebody with such a property wants to do something that is quite reasonable, for instance, put on a new deck. He stated that putting on a new deck would increase the non-conformity, so they would not be permitted to do so without applying for a variance. He stated that the variance process is appropriate in that case and this is a situation where there was an existing dock, partly in its current configuration that existed prior to the code being adopted that restricted such docks. He stated that subsequent to that, there were changes made to the dock, hence the need for a variance. He stated that in that context, the Planning Commission must take into account further information, that the current applicant purchased the property with the dock in place and based upon good faith, made modifications to the dock unaware of the code restrictions 10 years ago. He stated that information can be taken into account in the deliberations and noted that it would seem to him that the grandfathering in of the dock, the legal non-conformity of part of the dock, and the changes made without knowledge that they were violating the code, means a variance is appropriate. He stated that the notion that the Planning Commission would never recommend approval of a variance of this type is false. He stated that each case is unique and there is no concept of a precedent when it comes to a variance. He stated that he feels, on its merits, the variance in this case clearly crosses the threshold of being reasonable based on the fact that there was an existing dock in place and the notice of the code violation is being brought forth 10 years after the last modification.

Commissioner Eggenberger stated that there was an implication that if he chooses to vote in favor of approval of this variance, that he is doing so because of some agenda that he would have. He stressed that he has never done that and explained that he votes for things because he thinks they are right or they are wrong. He explained that he intended to do that in this case, as well. He stated that he thinks this variance request is reasonable and agrees with Commissioner Riedel's comments. He stated that he feels it is common sense that this variance was applied for when the applicant found out they were not in compliance, in order to get it into compliance. He stated that he feels the applicant has met all the criteria for the variance request.

Chair Maddy noted that it appears as though there is a hand raised from someone who has not yet spoken. He noted that to ensure that everyone who would like to comment on this item has that ability, he would like to formally reopen the public testimony portion of the meeting at 8:19 p.m.

Kay McNeil, 5620 Howards Point Road, apologized for her lack of technical knowledge and explained that it took her extra time to figure out how to 'raise her hand' within Zoom. She stated that since her name was brought up by one of the neighbors, she felt that she should be heard. She stated that for her, all of this has been based on right or wrong. She stated that she did have

deeded access and feels that this has gone on too long because this is a personal vendetta against Ms. Labadie. She stated that the City is very fortunate that there is a young mom and attorney who has been willing to give her time to help the City. She noted that she does not want to play the 'he said/she said' game. She stated that she wrote a letter based on what she knew of the dock, of having taken care of it for the owner, and to stand up and fight for the right things for the City. She stated that she has watched the property for years and now feels that she has been called a liar and publicly shamed. She stated that she is a grandma, loves the marina and feels it is fortunate that the City has Mr. Davis has brought a wonderful manager into the neighborhood marina. She stated that the people on this street love it here and do not need anymore nonsense. She asked that the Planning Commission be allowed to do their jobs and the City perform what they need to do and put this to rest. She stated that she does not know about the legality of the dock, nor does she want to know. She explained that her whole position was to support the mayor and do what is right and explained that she supports her and the Council 100%. She stated that she is in support of the variance request.

Chair Maddy closed the additional public testimony at 8:23 p.m.

Commissioner Huskins stated that from what he has heard tonight and seen in the packet, he thinks it is clear that there has been a dock there for a long period of time. He stated that regardless of whether there were two slips or one slip, he thinks he is seeing in the photographs that it is consistent over the entire period of time, in the location close to shore. He stated that he has to believe that there is some purpose and reason behind why it was constructed that way initially. He stated that the code did change in 2006 but the aerial photos from that time until 2010 do not show any change in the proximity to the shoreline. He stated that there were opinions expressed by two dock experts about the reason for leaving the structure in this place and noted that he is willing to listen to their expertise. He stated that the difficulty here is that a timely variance would have been applied for at the extension of the dock to create the second slip, but is also persuaded that the City did not do anything to notify through inspection when the deed transferred to the owner. He stated that he takes Ms. Labadie's statement at face value that the first time she learned that she was not compliant with the 2006 code was when she received the notice last fall. He stated that similar to Commissioner Riedel, he is struggling not to take into account the legally non-conforming structure, as he believes this dock was in 2010. He asked earlier if there was any legal prohibition of approving variances retroactively and City Attorney Shepherd stated that there was no legal constraint against doing that. He stated that when he takes everything into consideration and reviews the application, he feels very comfortable in approving the variance requests.

Chair Maddy stated that he has struggled with this one. He noted that Ms. Labadie has asked the Commission to not to reference her as an elected official, but feels that they do not have that luxury. He stated that he feels elected officials and people like himself need to be held to a high standard, but at the same time, had the dock contractor in 2012 come in and requested this variance because of the soil conditions, he is sure that it would have been granted. He stated that the Commission does its best to work with homeowners to enable them to be able to enjoy their property. He stated that he feels if any other person had come in and asked for this, the Commission would have recommended it be granted.

**Riedel moved, Huskins seconded, to recommend approval of the variance requests at 5510 Howards Point Road, to allow a dock greater than 4 feet in width and to the dock setback from the OHWL.**

Chair Maddy clarified that by granting this variance, the City would not be allowing the dock to be further enlarged, but are saying that where it is currently located is as big as it will get.

Planning Consultant Lindahl noted that there is a staff recommendation to recommend approval based on the findings, which allows the dock to remain in its current configuration without expansion.

**Roll Call Vote: Ayes – all. Motion carried 4/0.**

Chair Maddy recessed the meeting at 8:30 p.m. and reconvened at 8:35 p.m.

## **B. Urban Farm Animal City Code Amendments Discussion**

Planning Director Darling gave an overview of the past discussions regarding amendments to the Urban Farm Animal regulations. She noted that the City Council had adopted standards for keeping and care of urban farm animals but asked staff to research additional standards to reduce negative impacts for things such as keeping birds on the owners property. She explained that when the most recent code amendments were adopted, there were several people in the audience that noted concerns with noise and property damage when the neighbor's chickens escaped. She asked the Commission to review the proposed draft language and noted that a public hearing will be scheduled in March. She reviewed the proposed ordinance amendments and noted that staff is just looking for initial comments from the Commission on the proposed amendments.

Commissioner Huskins stated that under definitions, he asked why the City is referring to certain animals as both farm animals and farm birds.

Planning Director Darling explained that the reason she separated them out was because rabbits generally do not escape from their hutches and bees cannot be contained. She stated that if she required all urban farm animals to be fully enclosed, that would defeat the purpose of keeping bees and would provide unnecessary regulations for rabbits. She explained that ducks, geese, turkeys, chickens, and guinea hens would be in both urban farm animals and urban farm birds.

Commissioner Huskins stated that in the definition he is not sure it is helpful to have them appear under both farm animals and farm birds.

Commissioner Riedel stated that one is the subset of the other and noted that urban farm animal is the larger set and urban farm birds is a subset of that the larger set. He stated that he does think it is useful.

Commissioner Huskins asked about subdivision 3 (4)g, where it talks about some consequence for failure to pay application fee on any condition set forth in any other permits granted by the City. He asked why the City would say that because they defaulted on one permit it would invalidate the ability to have a farm animal permit.

Planning Director Darling stated that she believes it refers to just under this section or chapter.

Commissioner Huskins stated that to him, it reads as though if he did not pay a fee to put an addition on his home or something, that this would invalidate his ability to apply for an urban farm animal permit.

Planning Director Darling stated that she understands that concern and noted that she will clarify the language with City Attorney. She stated that she believes that item was added in solely to be applied to this chapter.

Chair Maddy stated that he has some really great chicken owners next door and this ordinance seems to be written in response to the worst chicken owners because it limits how many chickens they can have. He stated that he does not want to burden good chicken owners because of the acts of a few others. He stated that is just his general reaction to these proposed amendments and noted that he has also seen good chicken keeping take place on smaller lots and noted that unless the chicken owners want to start feeding the great horned owls, they would already be putting netting on top of their chicken runs and does not understand why the City would require it.

Commissioner Riedel noted that he believes that there had been complaints about escaping chickens.

Chair Maddy stated that there are a large number of wild turkeys who walk through his yard and having concerns about one escaped chicken seems like an over-reaction.

Commissioner Riedel stated that he agrees with the restriction of 6 or 4, but does seem low, if you have a larger lot and only allowing 6 chickens is a fairly strict requirement.

Chair Maddy stated that he understands that the Council gave staff some direction on this that is perhaps more conservative than the Commission feedback. He asked if there were details on what the Council was concerned with.

Planning Director Darling explained that the Council had given general direction to staff and did not supply any specific number of chickens. She stated that they had discussed limiting the number of chickens based on the size of the property.

Commissioner Huskins asked if staff had any data points with neighboring cities.

Planning Director Darling stated that she did not have them with her this evening, but had provided them with previous packets. She stated that she can provide this information at the next meeting.

Commissioner Eggenberger asked if Chair Maddy had a number in mind, because, to him, 6 chickens seems like a lot.

Chair Maddy explained that he had had seen it work well with 6 chickens on a small lot, but they are responsible chicken owners. He stated that he would rather just have 6 total and not limit it down to 4 for the smaller lots.

Commissioner Eggenberger stated that he would agree with that.

Chair Maddy asked if most of the complaints were related to smells or trespassing of chickens.

Planning Director Darling explained that it was primarily trespassing of chickens and noise.

Council Liaison Siakel stated that she thinks some of the comments came where there were situations where there are people who have multiple neighbors who have chickens. She stated that she thinks the thought was to strike a balance for those concerned about escaping chickens, the mess, the smell, and noted that were a number of people who showed up and wanted a bit more restriction and guidance around people who choose to keep chickens. She stated that there was also some conversation about limiting the number of households that the City allows to have chickens.

Commissioner Eggenberger agreed that even though they are not roosters, they can get noisy. He stated that he has chickens nearby and they get noisy once or twice a day, which he has assumed is at feeding time. He stated that it is not obnoxious, but they do make noise and can be heard.

Commissioner Riedel stated that it seems problematic to cap the total number of chicken permits because it would become like a chicken lottery. He stated that he believes it will be better to deal with this by simple, consistent rules that limit the number of chickens per lot.

Commissioner Huskins asked if the recourse of a neighbor who felt they were disadvantaged because multiple properties had chickens, was to file a complaint with the City.

Planning Director Darling explained that if they have a concern about how the chickens are being kept on a specific property, they would need to call staff and formally ask for the property to be inspected. She noted that if no violations were to be found, there is no recourse.

Commissioner Huskins asked if the City would be able to fairly decide on whether a complaint related to escaped chickens, odor, or noise, was valid.

Planning Director Darling stated that if the chickens are out when the inspector gets there they can. She stated that the challenge with a noise issue is the same as for a barking dog. She explained that if they run and check and the dog is not barking, the inspector or police will just move on. She noted that she had not received any complaints about odor, but did get one for erosion.

Commissioner Huskins stated that he also likes the idea of simplicity without creating a lottery situation. He stated that he would just like to make sure that if there is a legitimate reasons for complaint that there be some mechanism by which the City would handle those in a way that would be satisfactory to the complaining neighbor.

Chair Maddy stated that it sounds like it is tough to enforce much of this and noted that he used to be an odor inspector for the City of Minneapolis. He stated that he believes the City wants to find the balance of something that is enforceable but also protects the adjacent homeowners.

Planning Director Darling stated that she will take the comments received from the Commission and incorporate them into a draft ordinance for review at the time of the Public Hearing.

Chair Maddy asked if the Commission felt the right number of birds should be split or have one flat amount for the City.

***There was consensus of the Commission to support a flat number of 6 chickens, regardless of lot size.***

The Commission discussed the setback requirements for urban farm animals.

Chair Maddy asked what would happen if there was someone who had an existing coop that is less than the newly adopted required setback.

Planning Director Darling explained that this is not in the Zoning Ordinance because chicken coops are typically mobile, so when the permit expires, the coops will have to be brought into

conformance the next time they apply for a permit. She noted that the permit now expires in 1 year.

Commissioner Eggenberger asked if they could also apply for a variance.

Planning Director Darling stated that there was no variance provision in this section of code.

Chair Maddy noted that he can see that becoming a problem because many people have bought sheds from Home Depot to raise chickens and store lawnmowers in that are not easily moved.

Planning Director Darling stated that she will look into this issue with City Attorney Shepherd.

Commissioner Eggenberger noted that Planning Director Darling had stated earlier in the meeting that rabbits were separated out because they do not typically escape their enclosure.

Planning Director Darling clarified that she had not received any complaints and noted that there is currently only one permitted rabbit hutch in the City.

Commissioner Eggenberger stated that he grew up to people who had rabbits and they had an enclosure that they would let the rabbits run around in, and they were constantly escaping from the enclosure because they would dig under the fencing, so rabbits do escape their enclosures.

Planning Director Darling noted that they do not fly over the top of their enclosure though.

Commissioner Riedel stated that it could also be that rabbits just disappear if they escape, so there is not much complaining if that happens.

### **C. Work Program and Meeting Schedule for 2022**

Chair Maddy noted that missing on the work program was discussion on minimum structure width requirements in residential areas.

Planning Director Darling stated that she had mentioned that at the Council meeting when they were reviewing the variance recommendation for the slightly more narrow home. She stated that she heard from one Councilmember that with only one variance requested, there was not proof that those were forming a hardship for the community, in general. She stated that this is why she had not included it on the work program schedule.

**Riedel moved, Huskins seconded, to accept the 2022 Work Program, as presented. Roll Call Vote: Ayes – all. Motion carried 4/0.**

### **D. Liaison Volunteers for February and March**

February – Chair Maddy

March – Commissioner Riedel

April – Commissioner Eggenberger

May – Commissioner Huskins

Chair Maddy noted that Commissioner Gault would no longer be serving on the Commission and there will be a new Commissioner starting in March.

Planning Director Darling stated that they are planning to hold the March 1, 2022 Planning Commission meeting virtually.

Commissioner Huskins noted that he will be out of town for the March 1, 2022 and asked that communication be handled electronically without a physical packet.

**6. OLD BUSINESS - NONE**

**7. REPORTS**

- **Liaison to Council**

Council Liaison Siakel reported on Council considerations and actions from the February 14, 2022 meeting.

- **Draft Next Meeting Agenda**

Planning Director Darling stated there will be a discussion of potential ordinance amendments to election, campaign, and non-conforming speech signs. There will also be two Public Hearings one for additional antennae on an existing monopole and another for the amendments to the Urban Farm Animal Ordinance.

Commissioner Eggenberger asked Council Liaison Siakel about past discussions about some available funds for broadband and asked for an update.

Council Liaison Siakel stated that there is a company called Jaguar Communications that approached the City about running fiber optic internet services to residents within Shorewood, Excelsior, and Tonka Bay. She stated that her understanding was that they should be touching base with the public within the next 6 months with their intent to offer additional service to residents of the area. She stated that she will try to find out more details and get back to the Commission with a specific answer.

**8. ADJOURNMENT**

**Huskins moved, Eggenberger seconded, adjourning the Planning Commission Meeting of February 15, 2022, at 9:17 P.M. Roll Call Vote: Ayes – all. Motion passed 4/0.**