

**DEEPHAVEN CITY COUNCIL MEETING  
MONDAY, JULY 6, 2009  
MINUTES**

**1. CALL MEETING TO ORDER:** Mayor Paul Skrede called the meeting to order at 7:00 p.m.

PRESENT: Mayor Paul Skrede, Councilmembers Steve Adams, Keith Kask and John Wheaton

ABSENT: Councilmember Kim Crockett

STAFF: Zoning Coordinator Gus Karpas and City Administrator Dana Young

**2. PLEDGE OF ALLEGIANCE**

The Council recited the Pledge of Allegiance.

**3. APPROVE CONSENT AGENDA**

Motion by Councilmember Kask to approve the Consent Agenda, consisting of the following items:

- A. June 15, 2009 Minutes
- B. Approve July Verifieds
- C. Approve Final Pay Estimate to Northwest Asphalt, Inc. for the 2009 Main Beach Project (\$2,399.03)

Seconded by Councilmember Adams. Motion carried 4-0.

**4. MATTERS FROM THE FLOOR**

There were no Matters from the Floor this evening.

**5. PLANNING & ZONING REQUESTS**

**A. VARIANCE – Chris and Diahann Potter, 19685 Lakeview Avenue, (R-3, 20,000)** variance requests to demolish the existing non-conforming home and construct a new home on the non-conforming footprint with an additional garage addition onto the south side and a screened porch addition on the north side of the footprint which would exceed the maximum permitted impervious surface area and would encroach into the required front and lake yard setbacks.

Section 1350(2)(a) of the Shoreland Ordinance permits a maximum impervious surface area of twenty-five percent. The proposal is to exceed the permitted impervious surface area by five percent.

Section 1310.02 of the Zoning Ordinance requires a minimum front yard setback of thirty-five feet in the R-3 Residential District. The proposed construction would be setback thirteen feet, five inches from the front property line. A variance of twenty-one feet, seven inches is sought of the required front yard setback.

Section 1310.02 of the Zoning Ordinance requires a minimum lake yard setback of one hundred feet in the R-3 Residential District. Council action on July 5, 1972 granted a reduced setback for Lots 7 through 11 of Grandview Point Second Addition. The amended lake setback requirement is sixty-seven feet, six inches. The proposed construction would be setback forty-four feet from the ordinary high water level. A variance of twenty-three feet, six inches is sought of the required lake yard setback.

Zoning Coordinator Karpas presented his staff report. He said the proposed design was a modification of what was previously presented to the Council, with the height of the structure reduced by nine feet and the impervious surface area reduced by .6%. He said the proposed encroachments remained the same as previously presented, an encroachment of twenty-one feet, seven inches into the required front yard setback, an encroachment of twenty-three feet, six inches into the required lake yard setback and an encroachment entirely into the required bluff setback. Karpas noted the proposed structure would be constructed over the existing non-conforming footprint and that the proposed encroachments currently exist.

Karpas said the Planning Commission discussed the request at their last meeting and recommended conditional approval by a 4-3 vote. The condition was that the applicant submit a grading plan for the City Engineer's review insuring that runoff and erosion would be controlled during and after construction.

Councilmember Kask noted the modifications to the plan were a result of concerns raised by the Council and neighbors.

Councilmember Wheaton said the issue has always been about massing. He said he spoke with an adjacent neighbor who indicated they felt the massing of the structure has been reduced. Wheaton said he viewed the application as a new application, rather than the amendment of a previous request. He does not want to give the impression that a future applicant can just come in with an oversized structure and then resubmit a smaller one as an improvement. He said that he viewed the application as a new application and the hardship criteria applied. Wheaton stated that he felt the request is a reasonable way to update the original structure.

Councilmember Adams agreed with Wheaton, but said it should be noted the revised proposal is in response to the concerns of the neighborhood.

Councilmember Kask noted the proposal was using the lowest of the existing three elevations in the basement in order to achieve the reduction in height. He asked what protections are proposed for protecting the bluff areas around the proposed foundation.

Mark Warren, Warren Home Restoration, said he has already met with the Minnehaha Creek Watershed District (MCWD) to discuss what would be required for the project. He said the applicants have already taken some steps to control erosion on the slope through some recent reseeding of the area. His specific plan is to place geo-tube erosion control on the top and bottom of the bluff. Mr. Warren said he already has approval for his plan from the MCWD.

Councilmember Kask moved to accept the recommendation and findings of staff for approval of the variance request to encroach twenty-one feet, seven inches into the required front yard setback, to encroach twenty-three feet, six inches into the required lake yard setback, to encroach entirely into the required bluff setback and to exceed the maximum permitted impervious surface area by 4.9% for the

single family structure, as presented for 19865 Lakeview Avenue. The motion is conditioned that the applicant receive a permit for erosion control from the MCWD and that plans be submitted to the City Engineer outlining erosion and runoff control during construction and re-stabilization of the bluff after construction. Seconded by Councilmember Wheaton.

Mayor Skrede commented to the members of the public that the proceedings tonight are not a public hearing, since the public hearing is held before the Planning Commission. He said the Council has received all correspondence sent by neighbors and has reviewed the minutes of the Planning Commission meeting. Even so, he would like to give anyone in the general public an opportunity to comment on the proposal if they would like.

Jim Strampe, 19700 Lakeview Avenue, said he was initially concerned about the proposal but has had a number of conversations with the applicant and feels his input has been taken into consideration. He would like to welcome the applicants to the neighborhood and has no objections to the plan as presented.

Mayor Skrede called the question. Motion carried 4-0.

**B. VARIANCE – Brian and Jennifer Abraham, 20235 Linder Road, (R-3, 20,000).** A variance request to demolish the existing non-conforming screened porch and construct a new kitchen addition which would encroach into the required south side yard setback.

Section 1310.02 of the Zoning Ordinance requires a minimum side yard setback of ten feet in the R-3 Residential District. The proposed construction would be setback two feet, one inch from the south property line. A variance of seven feet, eleven inches is sought of the required south side yard setback.

Zoning Coordinator Karpas presented his staff report. He said the request was to remove the existing screened porch and construct an addition to enlarge the kitchen. The proposal would encroach eight feet, one inch into the required ten foot south side yard setback. The proposed addition would be constructed ten inches further from the property line than the existing porch. He said the proposed addition complies with the required front, north side and rear yard setbacks and is in compliance with the impervious surface and height requirements.

Karpas said the Planning Commission discussed the request at their last meeting and recommended conditional approval by a 5-2 vote. Approval was subject to the condition that the addition be limited to one story in height.

Mayor Skrede clarified the condition, noting it meant the addition was limited to one story of habitable space.

Councilmember Kask said he was concerned about construction and continued maintenance based on the location of the addition so close to the property line. He stated that he would be reluctant to support an application that has some reliance on the use of an adjoining property. He asked if there had been any discussion with the neighbors about an easement or subdivision of their property.

Brian Abraham noted his and the neighbor's homes are located rather close to each other, limiting the ability for a subdivision. He said there have been no discussions on obtaining an easement. He said the existing porch is located on a permanent foundation. The request is to move the foundation further

from the line. He said the layout of the home and plumbing fixtures make the proposed location for the addition the most optimal.

Jennifer Abraham said they looked at a number of alternatives, including moving it further from the line. Moving it back would put the addition in direct view of the neighbors and impact their view of the park. She said an internal stairway limited the locations for the proposed addition and felt maintenance would be minimal on the corner of the addition closest to the property line.

Councilmember Kask noted that staff indicates the placement of the home creates a hardship, but that doesn't relieve him of his concerns, though he understands the location is an existing condition, he's reluctant to approve variances for this request. Councilmember Wheaton noted the Council did not create this situation which has existed for a number of years. He understands that approving the variance would allow the condition to continue but did not view maintenance as a big issue, at least not in the near future.

Councilmember Kask discussed his concerns about how a use morphs into more intense uses over the years. He stated that he would like to see the applicant reach an agreement with the neighbor for an easement.

Brian Abraham noted this thing to ask for their neighbor's support for a variance request and another to ask for a legal right to use their property. Jennifer Abraham doesn't feel they would seek such an agreement from the neighbor.

Councilmember Adams agreed with Councilmember Wheaton that the condition has existed for a long time and it wasn't created by the Council. He stated that he's not sure making the applicant approach their neighbors for legal rights over their property is a good thing.

Mayor Skrede said he would be interested to hear from the builder on how the addition would be constructed without impacting the adjacent property.

John Duroscher, Ashland Builders, said he will approach the construction from the other side of the property, and all the machinery would be located on the Abraham's property. Brian Abraham said the intent was to pull all the dirt from the property line and use it to level the area. Jennifer Abraham said they have discussed the construction process with the neighbors.

Councilmember Wheaton felt an agreement can be reached between the neighbors without an official easement, which would include the temporary use of the adjacent property, if necessary, with all damage done to the property being repaired by the Abrahams.

Mayor Skrede said continued maintenance will still be an issue, though he's more sensitive to the initial construction.

John Duroscher noted that continued maintenance would be limited to painting every five to seven years. Jennifer Abraham noted that only a corner of the proposed addition would be located two feet off the property line.

Mayor Skrede noted the Council could act on the request without an easement, though he suggests the applicants discuss the issue of future maintenance with their neighbors.

Councilmember Wheaton moved to accept the recommendation and findings of staff for approval of the variance request to encroach eight feet, one inch into the required south side yard setback for the proposed kitchen addition, as presented for 20325 Linden Road. The motion is conditioned that the height of the addition remain one story in height as presented and that any damage done to the adjacent property in conjunction with the construction be repaired and the expense of such repair be borne by the Abrahams. Seconded by Councilmember Adams. Motion carried 4-0.

**6. NEW BUSINESS**

**A. Approve Temporary On-Sale Non-Intox. Malt Liquor License for St. Therese**

Administrator Young stated that the Church of St. Therese in Deephaven is requesting a Temporary On Sale Non-Intoxicating Malt Liquor License for their Oktoberfest Fundraiser on October 10, 2009.

Parish Administrator Ed Smith was present to represent St. Therese and to describe the activities associated with Oktoberfest. He stated that Oktoberfest is a peaceful community celebration that is supported by the surrounding neighborhood. He stated that it continues to be one of St. Therese's largest fundraising events.

Mayor Skrede asked if liquor liability insurance is required. Ed Smith stated that an insurance rider is provided by their insurance company.

Councilmember Wheaton asked if there was still an issue concerning a neighbor complaining about the noise.

Ed Smith stated that the event ends at 11:00 p.m. and that there were no complaints received last year.

Councilmember Kask stated that he spoke with five residents neighboring St. Therese and all five were very enthusiastic about the event.

Councilmember Wheaton asked about the gambling events conducted at Oktoberfest.

Ed Smith stated that St. Therese obtains a lawful gambling permit in order to conduct a raffle and bingo during the event.

Motion by Councilmember Kask to approve a Temporary On-Sale Non-Intoxicating Malt Liquor License for St. Therese for October 10, 2009, subject to the provision of liquor liability insurance. Seconded by Councilmember Adams. Motion carried 4-0.

**B. Approve 2010 EFD Capital Equipment Plan / 2010 EFD Operating Budget**

Administrator Young provided a brief review of the 2010 Excelsior Fire District Operating Budget, the Fire Facility Fund and Capital Equipment Fund. He stated that it was the intent of the Fire Board and District Staff to provide a 2010 EFD Budget that included a 0% increase in the 2010 municipal contribution while incorporating a \$120,000 mandatory contribution to the Fire Relief Association. He stated that in order to achieve these two goals, the 2010 EFD Budget required a \$40,000 transfer from the Fire Facilities Fund, the use of \$40,000 in Operating Fund reserves, and a \$30,450 reduction in operating costs. He stated that the annual contribution to the Capital Equipment Fund would remain at 2009 levels in the amount of \$155,000.

Councilmember Kask questioned whether there were adequate reserves in the Operating Fund and Fire Facilities Fund to support the use of \$40,000 in reserves from each fund.

Mayor Skrede provided a brief history of the Fire Facility Fund and stated that initial contributions to the Fund prior to issuing bonds for the construction of the fire facilities has left the Fire Facility Fund with surplus funds. He stated that the Operating Fund, primarily due to the diligence of the Fire Chief in monitoring the annual budget, has also left the Operating Fund with a projected fund balance of 26.4% at the end of 2010 even with the proposed use of \$40,000 in fund reserves. He stated that the District's auditors have recommended a fund reserve from 20-30%.

Councilmember Adams asked about the 2010 mandatory contribution to the Fire Relief Association in the amount of \$120,000 and whether these mandatory contributions would continue beyond 2010.

Mayor Skrede stated that the amount of the mandatory contribution is due to two components – the profitability of the Fire Relief's investments and the availability of the 2% insurance contribution from the State of Minnesota. He stated that although the exact amount of the mandatory contribution is unknown beyond 2010, it is highly likely that some sort of mandatory contribution will be needed beyond 2010.

Motion by Councilmember Adams to approve the 2010 Operating Budget in the amount of \$854,027, the 2010 Capital Equipment contribution in the amount of \$155,000, and 2010 Facility Bond Payments in the amount of \$552,859. Seconded by Councilmember Wheaton. Motion carried 4-0.

## **7. DEPARTMENT REPORTS**

### **A. Police Department**

Mayor Skrede provided a brief update on the following items pertaining to the Police Department:

- New Office Update
- July 4<sup>th</sup> Parade
- Burglary Arrest
- Tour de Tonka Update

### **B. Excelsior Fire District**

Administrator Young noted that the annual Firefighter's Dance will be held on Friday, July 17<sup>th</sup> at Station No. 1 and invited everyone to attend this popular event.

### **C. Public Works**

Administrator Young provided an update on recent and upcoming public work activities.

Councilmember Adams stated that he had a discussion with Administrator Young earlier today about efforts to redirect the water runoff from Haralson Park and that a meeting will be held with the City Engineer to review the problem.

Mayor Skrede noted that the Public Works Committee has reviewed the water runoff problem and that there doesn't appear to be a simple fix.

**D. Administration**

Administrator Young provided a brief summary on the following items:

- Population & Household Data
- Woodland Annual Contract
- Boat Measurements on Slide Spaces
- Deephaven Days
- Preconstruction Meetings
- 2009 Street Improvement Project

**8. ADJOURNMENT**

Motion to adjourn by Councilmember Kask, seconded by Councilmember Adams. Motion carried 4-0. The meeting adjourned at 8:20 p.m.

Respectfully submitted,

Dana H. Young  
City Administrator