

CALL TO ORDER: Chairman Werneiwski called the meeting to order at 7:00 p.m.

PRESENT: Chairman Bob Werneiwski, Commissioners Barbarajean Brandt, Dan Dyb, Jeff McKinney and Warren Nelson

ABSENT: Planning Commissioners Kent Carlson, Walter Linder and Jeff McKinney.
Council Liaison Keith Kask

OTHERS PRESENT: Council Liaison Paul Skrede and Zoning Coordinator Gus Karpas

MINUTES OF January 20, 2009

Motion by Commissioner Dyb, seconded by Commissioner Werneiwski, to approve the minutes of January 20, 2009 as presented. Motion carried 4-0.

PUBLIC HEARINGS

VARIANCE REQUEST – Minnetonka Public Schools, Deephaven Education

Center, 4584 Vinehill Road, (R-2, 40,000) Variance requests to design parking stalls below the minimum required dimensions and create parking stalls below the minimum required square footage.

Section 1310.04 requires a minimum dimension for parking stalls of nine (9) feet in width by twenty (20) feet in length. The applicant proposes a parking stall width of nine (9) feet and length of eighteen (18) feet, requiring a variance of two (2) feet of the required length.

Section 1310.04 requires a minimum parking stall area of two hundred (200) square feet. The applicant proposes a parking stall area of one hundred sixty two (162) square feet, requiring a variance of thirty-eight (38) square feet of the minimum required parking stall area.

Zoning Coordinator Karpas presented his staff report. He said Minnetonka Public Schools would like to alter the parking lot at the Deephaven Education Center (DEC) by re-stripping the lot to gain additional parking spaces. The physical dimensions of the parking lot itself will not change.

He said the City Council approved a variance to allow for parking spaces below the minimum required area in conjunction with the proposed expansion request for the DEC in December 2008. At that time, the applicant was proposing parking spaces that were nine (9) feet wide by twenty-two (22) feet in length and a total parking space area of one hundred and ninety eight (198) square feet. The proposal before the City reduces the length and area of each parking space from the previous request.

The applicant cites a number of reasons for the proposed alteration including increased safety, more on-site staff parking, increased need due to expansion of classrooms and the increased use of the building for conferences and events and has indicated the proposed striping plan is consistent with that of their other buildings throughout the district.

Karpas said he recommended denial of the variance request to re-stripe the existing parking lot which further reduces the dimensions and area of each space from the variance previously granted by the City Council. He felt the property could be put to a reasonable use without the issuance of a variance. Even though the use of the property is unique and requires a large amount of parking, there is more than the required parking available for the site when the lot across the street is taken into account. The City has approved safety measures in the past to permit safe crossing for that lot.

He said the circumstances causing the need for the variance are caused by the property owner, since the additional classroom area and increased use of the facility is due to the expansion of the structure and that approval of the proposed parking space dimensions would be inconsistent with what the City has required for other uses that have parking requirements.

He noted, as designed, the current parking area complies with the required number of parking spaces in the City Ordinances.

Cliff Buhman, Inspec, stated the proposed stall dimensions are common with uses such as schools and commercial uses. Chairman Werneiwski asked how many spaces would be in the parking lot. Mr. Buhman said a total of fifty-three. Werneiwski asked why so many spaces were necessary. Mr. Buhman said the design is to handle the peak loading times during the morning and early afternoon.

Chairman Werneiwski opened the public hearing. Hearing no public comment, the hearing was closed.

Commissioner Nelson noted that he was not in support of the previous expansion of the Education Center, saying that it has now led to this request for additional parking stalls to meet demand. He agrees there are safety concerns with crossing Vinehill Road from the off-site lot. He does like the design and agrees the proposed dimensions are consistent with other parking stalls he's seen.

Commissioner Dyb said he measured a number of spaces throughout the Education Center and Elementary School properties and found the proposed spaces are consistent in dimension. He asked about the proposed aisle widths. Mr. Buhman said the east west aisles would be twenty-five feet and the north south aisles would be twenty-three feet. Dyb said he was supportive of the request since it would not change

the character of the surrounding area and would address the safety issues with people having to cross the street to the off-site parking area.

Chairman Werneiwski agreed the proposed dimensions are the acceptable standards currently used. He agrees with Commissioner Nelson that the intersection near the off-site parking is difficult due to sight lines and is in favor of the request.

Commissioner Brandt said she also measured spaces and verified those currently in use by the school are of the same dimensions. She agrees the additional spaces would increase safety by limiting the number of people crossing to the off-site parking area. She asked if there would be any type of internal signage to control flow within the lot. Mr. Buhman said there would be.

Commissioner Dyb commented that the depth of the stalls could be increased, lessening the degree of variance needed, while still maintaining a reasonable aisle width.

ACTION: Motion by Commissioner Dyb to recommend that the City Council approve the variance requests to create parking stalls with a length two feet less than the minimum required twenty foot length and an area thirty-eight square feet less than the two hundred square foot minimum required, as presented for 4584 Vinehill Road. A practical difficulty/hardship exists in the need to provide onsite parking, limiting safety concerns caused by having patrons crossing Vinehill Road to the off-site parking area and the proposal would not alter the character of the surrounding area since the proposed dimension are consistent with the existing parking stalls in adjoining lots. Commissioner Werneiwski seconded the motion. Motion carried 4-0.

VARIANCE REQUEST – Minnetonka Public Schools, Deephaven Elementary, 4452 Vinehill Road, (R-2, 40,000) Variance request to construct a classroom addition which would exceed the maximum permitted impervious surface area. The proposed addition would increase the impervious by .1 percent.

Section 1350.06(2)(a) permits a maximum impervious surface area of twenty (25) percent. The applicant proposes an impervious surface area of 34.9%, requiring a variance of 9.9% of the maximum permitted impervious surface area.

Zoning Coordinator Karpas said Minnetonka Public Schools would like to construct a 1,322 square foot classroom addition onto the southeast portion of the existing structure and is seeking a variance to exceed the maximum permitted impervious surface area. The proposed alteration would comply with the required fifty (50) foot front yard setback and the required twenty-five (25) foot south side yard setback.

He said the existing impervious surface area on the property is 34.8% and due to the creation of additional greenspace through a small reconfiguration of the parking lot in

that area, the applicant proposes a net increase of impervious surface area of 482 square feet or .1%.

He noted the height of the proposed addition would be approximately ten feet and match the height of the existing structure in that area and is similar to an addition approved by City Council on the southwest portion of the structure in 2008.

He said he recommended approval of the variance request to exceed the maximum permitted impervious surface area by 9.9% finding that the unique use of the property requires a large amount of impervious surface for a parking area and recreational facilities skews the percentage of overall impervious surface, that the circumstances causing the need for the variance are not caused by the property owner, since the enrollment projections indicate a need for additional classroom area to meet future demand and that the requested variance would not alter the essential character of the locality. The proposed classroom addition would be in line with the existing east wall of the structure and due to the small size of the addition, there should be no noticeable impact on the existing traffic pattern.

He noted that the increase in impervious surface is minimal, only .1%.

Chairman Werneiwski said he was under the impression that enrollment was decreasing. Cliff Buhman, Inspec, said it is his understanding that the Minnetonka School District was doing well compared to other districts.

Chairman Werneiwski opened the public hearing

Scott Hemink, 4080 Sibley, said he had heard that enrollment was going down within the district, but open enrollment was bringing more people into the district from the outside.

Hearing no further public comment, the public hearing was closed.

Chairman Werneiwski said he was generally in favor of the request.

Commissioner Brandt said she was also curious about the growth because she had also heard there were reductions in enrollment. She would like to have data regarding enrollment included with the request so it can be verified it is not out of date information. She said any perceived growth would be coming from outside Deephaven, which takes away from the community feel of the school. She questioned why this addition was not part of the addition requested the previous year.

Commission Dyb agree with Brandt's concerns, but said it takes a lot of work for a school district to construct an entirely new structure to handle outside enrollment. He feels the impervious surface information needs to be clarified on how it is calculated.

He is generally supportive of the request since there would be a minimal increase in overall hardcover.

Commissioner Nelson also agrees with Brandt's concerns, stating that even if projected enrollments are higher, it could change quickly the other way. He feels if the school is growing, it may consider building up rather than increasing the footprint incrementally. He also agrees specific information is needed on the calculation of hardcover on the site. He said he was not in favor of the request without specific data on enrollment included for discussion.

Mr. Buhman said there has been growth in the community and within the district. He said the District takes spending money very seriously and would not be proposing the expansion if it were not necessary. He said the current state of the economy is going to impact the district with a number of students leaving private schools to attend public schools.

Chairman Werneiwski tends to agree that school districts take spending money seriously, especially when it comes to expansions. Commissioner Nelson disagreed. He said citizens have the right to see what numbers the district is basing its enrollment on before it can be substantiated that the expansion is needed.

Zoning Coordinator Karpas told the Commission they have some options when it comes to action on this request. He noted that it appeared the Commission is split evenly at this time, which would constitute a denial of the request. He said the Commission could table the request and allow the District to provide more specific information on enrollment and the change in impervious surface. The item would then be placed on the April agenda.

Commissioner Nelson said the school district has to justify their proposed addition and has not done it with this application.

ACTION: Motion by Commissioner Nelson to recommend that the City Council deny the variance request to exceed the maximum permitted impervious surface area by 9.9% for the proposed classroom addition, as presented for 4452 Vinehill Road. A practical difficulty/hardship has not been demonstrated and the School District has not substantiated a need for the request. Commissioner Brandt seconded the motion. Upon the motion to deny, Commissioners Brandt and Nelson voted aye, Commissioners Dyb and Werneiwski voted nay. The motion failed.

ACTION: Motion by Commissioner Dyb to recommend that the City Council approve the variance request to exceed the maximum permitted impervious surface area by 9.9% for the proposed classroom addition, as presented for 4452 Vinehill Road. The proposal would have minimal impact on the surrounding area and is necessary to address the increasing enrollment of the District. The motion is conditioned that the applicant provide information clarifying the amount of existing and proposed impervious

surface and that a representative of the School District be present to address the Council on the request. Commissioner Werneiwski seconded the motion. Upon the motion to approve, Commissioners Dyb and Werneiwski voted aye, Commissioners Brandt and Nelson voted nay. The motion failed.

Absent a vote in the affirmative on a motion to approve, the request advances to the Council under a recommendation for denial.

VARIANCE REQUEST – Verizon Wireless, City Hall Campus, 20225 Cottagewood Road, (R-3, 20,000) Special Use and Variance requests to remove the existing monopole cell tower and construct a new tower that exceeds the maximum permitted tower height in its place and collocate their antennas with T-Mobile on the tower. The proposal includes the construction of a new 13'-4" by 20'-8" equipment shelter adjacent from the new cell tower and existing hockey rink.

1311.05(1) permits the construction of cell towers with the issuance of a Special Use Permit.

Section 1311.04(8)(a) permits a maximum tower height of one hundred (100) feet. Section 1311.09 authorizes the issuance of variances for towers unable to conform to the provisions of the ordinance. The applicant proposes a tower height of one hundred and twenty (120) feet, requiring a variance to exceed the allowable tower height by twenty (20) feet.

Zoning Coordinator Karpas presented his staff report. He said the City of Deephaven adopted an ordinance regulating the placement of wireless communications towers in December 2005. This was done so the city would be in compliance with the Telecommunications Act of 1996 and to facilitate the request of T-Mobile and other carriers for the placement of a tower within the city. The ordinance limited the placement of towers to city owned properties and required a special use permit for the erection of a tower. Further, the ordinance included height provision and requirements for collocation so that multiple carriers could locate on a single structure, limiting the need for numerous towers.

T-Mobile submitted an application for the construction of a monopole cell tower to be located on land it leased from the city directly adjacent to the Fire Station. Once approved, T-Mobile constructed a one hundred foot tower, locating their antennas at the top of the structure, with additional space for a future carrier at a lower position. The leased area was enclosed with security fencing and all associated equipment was housed within that fenced area.

Verizon Wireless has been working with City Staff for a number of months to address their needs within the city. After discussing a number of potential options, Verizon chose to collocate their antennas onto the existing T-Mobile tower.

After some testing, it was determined that Verizon could not attain the needed coverage at the available height on the tower. Structural analysis was done to gauge the feasibility of expanding the existing T-Mobile tower to a height of one hundred and twenty feet to get the needed coverage. The analysis indicated that the existing tower could not be expanded without extensive structural bracing.

Due to this issue, Verizon Wireless has negotiated a deal with T-Mobile to replace the existing tower with a new tower that can accommodate both of their needs and leave space for one additional carrier. The proposal by Verizon Wireless is to construct a new tower directly adjacent to the existing tower and remove that tower upon completion of the new tower. The tower would then revert back to T-Mobile ownership and Verizon would lease space on the new tower.

Verizon has submitted applications for a Special Use permit and a Variance for the proposed tower. Section 1311.05(1) permits the construction of cell towers only with the issuance of a Special Use permit.

Section 1311.04(8)(a) permits a maximum tower height of one hundred (100) feet. Section 1311.09 authorizes the issuance of variances for towers unable to conform to the provisions of the ordinance. Verizon Wireless proposes a tower height of one hundred and twenty (120) feet, requiring a variance to exceed the allowable tower height by twenty (20) feet.

As part of the proposal, Verizon Wireless has been negotiating a Lease Agreement with the city to collocate on the tower and to lease a portion land to place their equipment shelter.

The proposed equipment shelter would be 13'-4" by 20'-8" and located adjacent to the new cell tower and the existing hockey rink. The placement of the structure would require the relocation of two existing evergreen trees. There has been no additional landscaping proposed for the area around the shelter.

He said the application submitted by Verizon Wireless addresses the ordinance requirements on a Section by Section basis.

Karpas said he did not make a recommendation on this request.

Chairman Werneiwski opened the public hearing. Karpas said he received correspondence from Kim Kirk, address unknown, and Tom Pokonosky, 20100 Minnetonka Boulevard in favor of the request. He received correspondence from David Koenig, 20200 Cottagewood Road, opposed to the request due to the visual impact it would have on his property. Karpas distributed photographs of the existing tower, taken from Mr. Koenig's property.

Hearing no further public comment, the hearing was closed.

Amy Dresch, FMHC Corp., presented the request. She has been working with the city for over a year to find a suitable location to meet Verizon's needs. It was determined the City Hall site would be the best with modification to the existing monopole. She said the tower was originally approved so it could be expandable to 120'. After further review, it was determined that the tower could not handle the proposed loading with two carriers without significant modification for stabilization. In addition, the existing diameter is such that it cannot contain all the cable necessary for both carriers.

Ms. Dresch said Verizon did a drive test to determine the needed height for the desired coverage. The test results determined a need for higher position than what was available on the existing tower. Ms. Dresch informed the Commission that Verizon has also entered into a separate lease agreement for the property needed for its equipment shed.

Chairman Werneiwski asked for clarification on the needed height and why a lower height does not meet Verizon's objectives. Ms. Dresch said the available height is 80 which only gives coverage for about a half a mile. This is due to the foliage and topography surrounding the tower. The range doubles to one mile by increasing the height to 120 feet. She said Verizon has had a significant number of complaints about coverage in the area. Ms. Dresch discussed the testing method and distributed a map showing the signal ranges at 80 feet and 120 feet.

Commissioner Nelson said he was in favor of the request and thought at the time the ordinance was adopted that the allowable height would not be adequate. He agreed that reception is bad in this area and noted the location of the tower is in one of the lowest locations in the city.

Commissioner Dyb agreed with Nelson about the ordinance provisions regarding height and commented it may need to be changed in the future. He said he was supportive of the request because there is a need to provide adequate coverage in the city and it can be argued the original tower was not designed to handle multiple carriers. Dyb asked if the proposed equipment shed would be able to handle a third carrier's equipment.

Ms. Dresch said it would not due to different technology needs, plus the need to keep competing carriers equipment separate.

Commissioner Brandt feels the expansion of the tower with greater coverage and an additional carrier will benefit residents. She supports the proposed expansion provided the design remains a monopole without platforms. She asked if the proposed height would allow a third carrier adequate coverage. Ms. Dresch said she can't speak for other carriers, but said the design of the pole would structurally accommodate their equipment.

Commissioner Brandt clarified the proposed height of 120 feet was from grade. Ms. Dresch said it was. Brandt asked about the placement of the shed and whether it could be placed on the other side of the trail near the city salt shed. Ms. Dresch said it could not due to an easement owned by Three Rivers Park District. She said even if they could place it there, they most likely would not have since the longer the connection cables have to run, the more signal strength you lose.

Chairman Werneiwski agreed with Commissioner Nelson's comments regarding the ordinance and stated he was in favor of the request. He said most people own cell phones and want adequate coverage. Cell towers are the price of progress.

Council Liaison Skrede commented that he would like to see something in writing from T-Mobile stating they were on board with the proposal and that it would not impact the existing lease agreement with the city.

ACTION: Motion by Commissioner Nelson to recommend that the City Council approve the special use request to construct a new cellular tower to replace the existing tower and the variance request to construct the new tower at a height of one hundred and twenty feet, as presented for City Hall Campus, 20225 Cottagewood Road. A practical difficulty/hardship exists in need to provide adequate coverage for subscribers and that the location of the existing tower in a low spot within the city requires the additional height to get the desired coverage. The motion is conditioned the applicant provide documentation from T-Mobile in support of the project and an understanding that the proposal does not invalidate the existing lease agreement with the city. Commissioner Dyb seconded the motion. Motion carried 4-0.

ORDINANCE AMENDMENT - To consider the amendment of the Shoreland Management Ordinance, rescinding the recently adopted standards for shoreline conservation, including the provision for maintaining the recreational use of the lake through aquatic plant management.

Zoning Coordinator Karpas read his memo to the Commission on this request.

Chairman Werneiwski opened the public hearing.

Kent Norby, 19990 Minnetonka Boulevard, requests that the ordinance not be rescinded. He feels by leaving the ordinance in place, the city can deal from a position of strength when developing a Lake Management plan with the DNR. He discussed the current rules for aquatic weed control and how the proposed rules ending the grandfather clause for Carson's and St. Louis Bays would negatively impact the quality of the bays. He said the DNR has been administering permits for aquatic management as though the proposed rule changes were already in effect, limiting the percentage of the bay that can be treated. He reiterated his position that the ordinance remains in effect until such time the City Attorney advises it be rescinded.

Council Liaison Skrede said he and the City Administrator met with Mr. Hirsch at the DNR soon after it was determined by an Administrative Law Judge that the ordinance adopted by the city may violate the proposed DNR rule changes. Mr. Hirsch was eager to see the city take action to rescind the ordinance. Skrede said he was not comfortable with the answers given to him from the DNR about the application of the new rules and said he was not in a hurry to remove the ordinance from the books until further data could be gathered about the new rules and their impact.

Commissioner Nelson asked if other cities were spraying aquatic weeds. Mr. Norby said a number of entities including homeowner associations and cities spray aquatic weeds, but only seven bays in the State are permitted to exceed the 10% treatment area.

Commissioner Brandt asked if it were possible for the homeowners associations to break with the city and try to work with the DNR on their own. Mr. Norby said it could but the city also has property included in the association's permit.

Commissioner Dyb clarified the city's interest in this is due to the fact it owns land on both grandfathered bays. Council Liaison Skrede said it was and when the original proposal for the rule change was known, the city looked to adopt an ordinance that would maintain the grandfather clause. He said the intent was not to usurp the authority of the DNR to issue permits.

Commissioner Nelson asked Mr. Norby if he believes by rescinding the ordinance, it would look like the city is backing down. Mr. Norby said it is his belief having the city involved with the negotiations carries more weight than just the homeowners associations alone. Mr. Norby said the homeowners on Carson's Bay have been spraying the weeds for over fifty years and the proposed lake management plans included in the rule changes will increase the expenses to the association with questionable results.

Commissioner Nelson said if the ordinance is rescinded the city needs to understand the future proposals for aquatic weed control. Mr. Norby believes the DNR would be more flexible in the development of the management plan if the city is involved.

Commissioner Dyb believes the city has a vested interest.

Chairman Werneiwski doesn't see a downside for keeping the ordinance on the books for now since the city has spent time and resources on its development. He's in favor of keeping the ordinance.

Council Liaison Skrede commented that the Commission could table action on the request to allow for further investigation of the fact. He feels that if there is any way for the city to participate in the development of a lake management plan, it should do so.

ACTION: Motion by Commissioner Dyb to table the ordinance and continue the public hearing, until further investigation can be conducted to allow for a more informed decision prior to action. Commissioner Nelson seconded the motion. Motion carried 3-1. Upon a motion to table and continue the public hearing, Commissioners Brandt, Dyb and Nelson voted aye, Chairman Werneiwski voted nay.

NEW BUSINESS

Appoint Chair/Vice-Chair – Appoint Chair and Vice-chair for 2009.

The Commission discussed the appointment of the Chair and Vice-chair for 2009. Zoning Coordinator Karpas said City Ordinances require that the Planning Commission appoint the Chair and Vice-Chair on an annual basis. He said the Commission is not required to change those holding the positions, but a motion must be made to the Council naming the appointments.

ACTION: Motion by Commissioner Dyb to recommend that Bob Werneiwski be appointed Chairperson and Dan Dyb be appointed Vice-Chairperson of the Planning Commission for 2009. Commissioner Brandt seconded the motion. Motion carried 4-0.

LIAISON REPORT

Council Liaison Skrede said Council discussed the Surface Water Management Plan and approved the final version of the Comprehensive Plan.

OTHER BUSINESS

Commissioner Dyb stated for the record his thanks to outgoing Commissioner Warren Nelson for his years of service on the Planning Commission and his steadfast defense and enforcement of the city's impervious surface standards.

ADJOURNMENT

Motion by Commissioner Dyb to adjourn the meeting. Commissioner Werneiwski seconded. The motion carried 4-0. The meeting adjourned at 9:15 p.m.

Respectfully submitted,
Gus Karpas
Zoning Coordinator