

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, APRIL 19, 2010
MINUTES**

CALL MEETING TO ORDER: Mayor Paul Skrede called the meeting to order at 7:30 p.m.

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

STAFF: Police Chief Cory Johnson, Zoning Coordinator Gus Karpas and City Administrator Dana Young

PLEDGE OF ALLEGIANCE

The Council recited the Pledge of Allegiance.

APPROVE APRIL 5, 2010 COUNCIL MINUTES

Motion by Councilmember Kask to approve the April 5, 2010 Council minutes. Seconded by Councilmember Adams. Motion carried 5-0.

MATTERS FROM THE FLOOR

There were no Matters from the Floor this evening.

PLANNING & ZONING REQUESTS

VARIANCE – Ben and Anne Pratt, 4045 Hillcrest Court, (R-2, 40,000) variance requests to rebuild and enlarge an existing front entryway, to construct a new pergola shade structure and to construct a new second story addition, all which would encroach into the required front yard setback.

The requested variances are to rebuild and enlarge the existing front entryway, which would encroach approximately twenty-one feet into the required fifty foot front yard setback, to construct a new pergola shade structure that would encroach approximately twenty-one feet, two inches into the required fifty foot front yard setback and to construct a second story addition which would encroach twenty feet, two inches into the required fifty foot front yard setback.

Zoning Coordinator Karpas presented his staff report. He said the request was to rebuild and enlarge the existing front entryway, to construct a new pergola shade structure and to construct a second story addition. The proposed alterations would not increase the existing encroachments. He said he recommended approval of the requests for the proposed entryway and second story addition and denial of the request for the pergola and outlined his findings.

Councilmember Crockett asked how structures like pergolas are addressed in the ordinance. Zoning Coordinator Karpas said if they are attached to the principal structure, they become part of the principal structure and have to comply with the required setbacks and if they are not attached they are considered an accessory structure, which are not allowed to be placed in the front yard. In either case, the proposed pergola would require a variance.

Ashley Mitlyng, Kuhl Design Build, said the intent was to make that area more private and to direct people to the front entryway. She said the pergola would not encroach any further into the required setback than the existing structure. Councilmember Wheaton asked if the main concern was to define that area as family space. Ms. Mitlyng said it was.

Mayor Skrede stated he understood the desire to better identify the front entryway, noting that the proposed columns in the front would help. He said the Council should consider the layout of the house and the fact it is placed on a cul-de-sac. He commented this is not that much different from a request to place a third stall on an existing garage.

Councilmember Kask agreed and said the standard for granting variances are hardship and practical difficulty. He believes a hardship exists without a defined front entryway which is not uncommon in this area of the city. He said if this were a request for a third garage stall, there would have been less discussion about the addition since it is a more defined use that is addressed by the city ordinance. He said, in reality, the applicants could fence in that area without a variance which he feels would be more obtrusive than the proposed pergola.

Councilmember Adams agreed with the comments made by Councilmember Kask.

Councilmember Wheaton didn't see a big issue with the proposed pergola, due to the shape of the lot and the placement of the home on the lot. He stated his only concern is if a future homeowner wanted to enclose that area to create a larger garage, though he understands that would need Council approval.

Councilmember Crockett likes the placement of the house on the lot and feels the proposed additions would not create clutter or disrupt the neighborhood.

Councilmember Kask moved to approve the variance requests to rebuild and enlarge the existing front entryway which would encroach approximately twenty-one feet into the required fifty foot front yard setback, to construct a new pergola shade structure that would encroach approximately twenty-one feet, two inches into the required fifty foot front yard setback and to construct a second story addition which would encroach twenty feet, two inches into the required fifty foot front yard setback, as presented for 4045 Hillcrest Court, based on the findings presented by the Planning Commission and Staff. Seconded by Councilmember Crockett.

Councilmember Wheaton asked if the Council would like to place a condition that the pergola area not be enclosed. Councilmember Kask said Council approval would be needed at that time and doesn't feel it needs to be a condition.

Mayor Skrede called the question. Motion carried 5-0.

VARIANCE – Jim and Betsy Anderson, 20125 Cottagewood Avenue, (R-3, 20,000) variance requests to demolish the existing three season porch and construct a new four season porch in its place on the existing footprint which would encroach into the required east and west side yard setbacks, encroach into the required lake yard setback and exceed the permitted impervious surface area.

The requested variances are to encroach nine inches into the required fifteen foot east side yard setback, encroach three feet, four inches into the required fifteen foot west side yard setback, encroach

forty-one feet into the required one hundred foot lake setback and to exceed the maximum permitted impervious surface area by 11.5%.

Zoning Coordinator Karpas presented his staff report. He said the request was to demolish the existing three season porch and construct a new four season porch in its place on the existing footprint. The proposed project would not increase the existing encroachments. He said he recommended approval of the request and outlined his findings.

Ryan Smolik, architect representing the applicant, said the area would be heated by radiant floor heat, which would heat the area, but not make it usable year around.

The Council had no questions for the applicant.

Councilmember Crockett moved to approve the variance requests to encroach nine inches into the required fifteen foot east side yard setback, encroach three feet, four inches into the required fifteen foot west side yard setback, encroach forty-one feet into the required one hundred foot lake setback and to exceed the maximum permitted impervious surface area by 11.5%, as presented at 20125 Cottagewood Avenue, based on the findings of staff. She noted the proposal is to reconstruct an existing non-conforming structure and a hardship exists based on the existing encroachments. Seconded by Councilmember Adams.

Mayor Skrede asked if the letters submitted by residents regarding this request were read into the record. Zoning Coordinator Karpas said they were.

Councilmember Wheaton asked if we knew the history of the porch, whether it started as a deck and upgraded to a screened porch. Councilmember Crockett said the applicants found the original plan which showed it was always a screened porch.

Mayor Skrede called the question. Motion carried 5-0.

UNFINISHED BUSINESS

Review Audit of 2009 Financial Statements

Steve Wischmann, with Kern DeWenter Viere, was present to present the audit of 2009 Financial Statements for Council review.

Discuss Wireless Communications Tower Ordinance Amendments

Mayor Skrede stated that the issue of city owned properties suitable for tower placement was pretty well covered in the Town Hall portion of the meeting and the Council will wait for feedback from the Park Committee before finalizing the list. He said an issue that needs to be addressed, which has not been previously discussed, is whether the setback from structures should be expanded to include commercial structures as well as residential structures.

Councilmember Kask stated that the reason the setback is limited to residential properties is that they are subject to twenty-four hour occupancy, whereas commercial structures are not.

Councilmember Adams was reluctant to require a setback from commercial structures until he knew what properties would be removed from the list the Council discussed at the Town Hall meeting. He noted the two towers approved by the city would be in violation of the setback requirement if commercial properties were included.

Councilmember Crockett thought maybe the type of construction for commercial would minimize the damage done by impact, but she could only speculate.

The Council agreed to keep the current setback language at this time.

Mayor Skrede said he would be willing to accept the Planning Commission's recommendation that the notification radius be extended from three hundred and fifty feet to five hundred feet. His goal is to get a property index listing the acceptable properties and then look at any additional restrictions or regulations for towers. He said he has spoken to other residents that would like to see further restrictions on the types of towers built in parks. He stated that, aside from the design of a tower in a park, the city could require that equipment shelters be integrated into existing structures which opens up options for the city for improving areas that benefit residents. He said specific language can be developed after viable properties have been identified.

Councilmember Wheaton feels an increased setback from children's play areas would be an appropriate restriction.

Mayor Skrede stressed the importance of time for addressing these issues since the moratorium on communications tower applications will expire on June 29th, unless it is extended.

Administrator Young stated the existing moratorium would require Ordinance amendments to be reviewed and approved by the Planning Commission on June 15th and approved by the Council at their June 21st meeting.

Councilmember Wheaton stated that he would like to see more regulations on the aesthetics of towers, stating he would like to see if there are grounds in which a city can outright deny a request based on aesthetics. Mayor Skrede directed staff to review the FCC regulations to see if the city is within its rights to deny a request based on aesthetics.

Councilmember Crockett stated that she would like to see an ordinance which included a review of anticipated future carriers on a site and what a site would look like after it is built out. She would like the authority to direct a carrier to another suitable location, if one is available, that would have a lower impact on the surrounding area. She wants more flexibility in the ordinance.

Councilmember Wheaton asked if the Council was supportive in maintaining the existing height restrictions. Councilmember Crockett would like to see the permitted height lowered, which would give the city more control.

Mayor Skrede said the city already has control over the style of tower. He noted the city is not getting applications for seventy-five foot towers, because they do not meet the needs of most carriers. He said carriers construct their tower, stake their claim and sell the other sites.

Councilmember Wheaton said he could foresee a problem in the future with wireless providers who need multiple sites. Mayor Skrede said those type of carriers typically locate on power poles, but unfortunately, the city does not own the poles in the city.

Councilmember Crockett said she thought by controlling the height and requiring a variance would allow the city to exert more control. Mayor Skrede doesn't believe height has been the issue as much as location has been.

The Council will hold further discussion on this issue once the Park Committee submits its recommendation of suitable sites.

Other

Discussion was held regarding the efforts of the Lake Minnetonka Communication Commission to initiate a fiber optic network throughout its 17 member communities. Councilmember Kask gave a brief overview of fiber optic networks and its potential impact on its cable competitors.

Councilmember Crockett stated that she would like the Council to be informed on any upcoming fiber to the premises initiatives promoted by the LMCC.

REPORTS FROM STANDING COMMITTEES

Public Works Committee

Administrator Young presented a review of the Public Works Committee meeting held on April 7, 2010 on the following items:

- Goose control at Thorpe Park
- Watershed District concerns regarding snow storage at Robinson's Bay Beach
- Reviewed 2010 Park Survey results
- Reviewed a request for a bus stop sign at the intersection of Heathcote Road & Minnetonka Blvd
- Discussed a request from Grace Lutheran Church to provide community service to the City on May 8th
- Recommended lifting load limit requirements in Deephaven
- Discussed a notice from Reliakor, the street sweeping contractor, that they will be in on April 26th rather than April 19th
- Proposed playground improvements at Thorpe Park

Councilmember Crockett and Wheaton suggested utilizing the Police Department to help dispose of geese at Thorpe Park.

B. Boat Committee

Administrator Young presented a review of the Boat Committee meeting held on April 14, 2010 on the following items:

- Reviewed the possibility of installing a second make ready dock at Carson's Bay launch

- Discussed whether to change the name of the Boat Committee to the Marina Committee
- Carson's Bay Dock renovation

ADJOURNMENT

Motion to adjourn by Councilmember Kask, seconded by Councilmember Wheaton. Motion carried 5-0. The meeting adjourned at 9:38 p.m.

Respectfully submitted,

Gus Karpas
Zoning Coordinator