

DEEPHAVEN PLANNING COMMISSION

TUESDAY AUGUST 15, 2006

7:00 P.M.

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

PRESENT: Chairman Warren Nelson, Commissioners Walter Linder, Jeff McKinney, Josh Sparber and Bob Werneiwski.

ABSENT: Commissioner Joan Budd and Chairman Dan Dyb

OTHERS PRESENT: Councilmember Kim Crockett and Zoning Coordinator Gus Karpas

MINUTES OF July 18, 2006

Motion by Commissioner Linder, second by Commissioner Werneiwski, to approve the minutes of July 18, 2006 as presented. Motion carried 5-0.

PUBLIC HEARINGS

ORDINANCE AMENDMENT – Recommendation to the City Council on an amendment to Section 1310.10(1)(d) of the zoning ordinance adding language defining a connection between an accessory structure and principle structure.

Zoning Coordinator Karpas gave an overview of the proposed ordinance. He said the proposed amendment will define what constitutes a connection between an accessory structure and principle structure, making the accessory structure a part of the principle structure.

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

Commissioner Werneiwski said he envisioned an ordinance that would tie the accessory structure into the principle structure through requirements of a frost footing, full enclosure and climate control language. Zoning Coordinator Karpas said he was correct and agreed that the ordinance was not clear on those issues. He said he could redraft some language for the Planning Commission's review.

Chairman Nelson commented that a frost footing would be required if it were attached to the principle structure since it is assumed the principle structure has a full frost footing. Karpas concurred but said it should be spelled out clearly in the ordinance provision.

Commissioner Linder said the dimension language for the proposed attachment was confusing. He would like to see it clarified.

Zoning Coordinator Karpas said he could redraft the language and present it to the Planning Commission at their next meeting. The Commissioners agreed to continue the proposed amendment to their September 19th meeting.

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ORDINANCE AMENDMENT – Recommendation to the City Council on an amendment to Section 1310.08 of the zoning ordinance adding language requiring fencing around swimming pools.

Zoning Coordinator Karpas gave an overview of the proposed ordinance. He said the proposed amendment would require fencing around all new swimming pools constructed in the city. He said though there currently is not one, an exception could be made for pools that have a hard surfaced pool cover.

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

Commissioner McKinney said the issue with giving an exception for a pool cover is determining what constitutes a pool cover. Chairman Nelson said he would like to see language allowing an exception for pool covers. Commissioner Werneiwski asked what the purpose of the exception would be since a pool cover could be left open, taking away the intended safety measure.

Commissioner Linder said he attended the past Town Hall Meeting, where this issue was discussed. He said he didn't sense any consensus of support for a fence requirement.

Zoning Coordinator Karpas reminded the Planning Commission that they had the authority to recommend denial for the proposed ordinance change. It would then be up to the Council whether to heed the recommendation of the Commission.

ACTION: Motion by Commissioner Sparber to recommend that the City Council reject Ordinance 13-42, amending Section 1310.08 of the Zoning Ordinance, adding language requiring fencing around swimming pools. There does not appear to be a need for the proposed regulation. Commissioner Werneiwski seconded the motion. The motion carried 4-1. Upon roll call vote on a motion to reject the ordinance language, Commissioners Linder, McKinney, Sparber and Werneiwski voted aye. Commissioner Nelson voted nay.

ORDINANCE AMENDMENT – Recommendation to the City Council on an amendment to Section 1310.10(1)(c) of the zoning ordinance adding language for an increased setback for swimming pools.

Zoning Coordinator Karpas gave an overview of the proposed ordinance. He said the proposed amendment would increase the setback for swimming pools to twenty feet. This would only affect pools in the R-3 District since the R-1 and R-2 are already more restrictive with their normal side and rear yard setbacks.

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

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Commissioner Sparber asked the purpose of the ordinance. Zoning Coordinator Karpas said the ordinance's intent was to push pools further from the property lines in more densely populated areas. He said realistically, five feet doesn't make that much difference in addressing the issues such as noise. It's more of a physiological affect with the perceived increase in setback, lessen the impact on adjoining properties.

Commissioner Linder commented the ordinance is intended on protecting the public peace for those properties adjacent to a swimming pool. Council Liaison Crockett noted it would also address some concerns about damage to root systems of trees on adjacent properties.

Commissioner Sparber feels the existing setback of fifteen feet is sufficient. He noted that setback in conjunction with the adjacent property's perceived setback of fifteen percent would create a thirty-foot buffer between a pool and structures on an adjacent property.

Commissioner McKinney said the proposed change would have a detrimental affect on smaller property owners who may want to install a pool. Commissioner Linder said he does not feel compelled to make accommodations to those smaller properties so they can construct a pool. He noted that issues such as noise and close proximity to property lines are amplified on smaller lots, leading to a greater degree of disruption for adjacent property owners.

ACTION: Motion by Commissioner Nelson to recommend that the City Council adopt Ordinance 13-43, amending Section 1310.10(1)(c) of the Zoning Ordinance, adding language for an increased setback for swimming pools. Commissioner Linder seconded the motion. The motion carried 3-2. Upon roll call vote on a motion to adopt the ordinance language, Commissioners Linder, Nelson and Werneiwski voted aye. Commissioners McKinney and Sparber voted nay.

ORDINANCE AMENDMENT – Recommendation to the City Council on an amendments to Sections 1200 of the city ordinances, revising language as it pertains to subdivisions in the city. The proposed amendments seek to clarify issues with access and development in areas with sloping terrain.

Zoning Coordinator Karpas gave an overview of the proposed amendments. He said the two main amendments are incorporating the existing bluff language from the Comprehensive Plan and Zoning Ordinance and creating language regulating the use and design of private roads. Karpas and the Commission went through the proposed changes on a page by page basis.

A question was asked about the difference between a bluff and a slope. Karpas said that there are four specific ordinance criteria in defining a bluff, one being that the topography must slope towards a water body. Any area not meeting all the criteria would fall under a slope classification. Slopes prone to erosion would have to have a grade of more than twelve percent.

The Commission discussed the proposed addition of Section 1200.10(4)(g) stating that if any portion of the subdivision ordinance is in conflict with the Comprehensive Plan, the more

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restrictive provision shall be enforced. Councilmember Crockett said she was concerned about putting the city in a situation where the Comprehensive Plan governed. She suggested that Commissioners take some time and read the plan to familiarize themselves with it. Zoning Coordinator Karpas explained that the Comprehensive Plan was a document which outlines broad development goals for the city and that the subdivision and zoning ordinances were the regulatory arm of that document. He said the provision is intended to tie the two together in case there was an oversight in the development of the ordinances. He said it would insure the development goals of the city were being met.

Commissioner Sparber asked who determines the “developmental controls” referenced in Section 1200.10(4)(g). Karpas said that the applicant is required to submit proposals, which are then reviewed by the City Engineer. The concept of “best engineering practices” comes into play.

Chairman Nelson opened the public hearing.

Jim McNulty, business address, 400 Second Avenue South, Minneapolis, said that he has done development in a number of cities and has never seen an ordinance where it is tied directly into the Comprehensive Plan. He believes that tying the ordinance with the Comprehensive Plan makes the Comprehensive Plan the de facto city ordinance. He noted that the Comprehensive Plan is a broad document and suggested that Planning Commissioners consider tabling the ordinance to give them time to review it. He said he has an application submitted for the next Planning Commission meeting and believes the proposed changes will affect that request.

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

Commissioners discussed the proposed changes and questioned its affect on the remaining available lots in the city. In response to Commission questions, Mr. McNulty said his current application is for further division of a nine-acre parcel along Manor Road. He noted a large portion of it was wetland.

In response to Mr. McNulty’s comments, Zoning Coordinator Karpas reiterated that the city ordinances are in fact tied into the Comprehensive Plan in that they are the regulatory tools to carry out the goals and objectives of the plan.

Chairman Nelson said that even though he has not recently read the entire Comprehensive Plan, he was on the Commission when it was last updated. He desires to see the remaining land in the city developed in the best way possible and believes the proposed ordinance amendment would help do that. Commissioner Werneiwski said he has not read the plan but will make a point to look at it.

Council Liaison Crockett questioned a need for a “catch all” provision. Commissioner Linder said he had no issue tying the ordinance into the Comprehensive Plan. He noted that the

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Comprehensive Plan was reviewed and adopted by the city so he has no concerns about unintended regulations.

Commissioner McKinney was in support of the proposed changes.

Commissioner Sparber said, not being familiar with the Comprehensive Plan, he can't determine what is or is not included in the ordinance that could fall under the proposed "catch all" provision. He agrees with Commission Linder that the Comprehensive Plan was reviewed and adopted by the city and he's comfortable with the proposed changes.

Commissioner Werneiwski asked about the rationale behind a twenty-foot paved requirement for private roads. Zoning Coordinator Karpas said the requirement is to insure public safety. He said the City of Deephaven is primarily run on a private well system which requires the use of a pumper truck for fire suppression and there is a need to make sure vehicles can access and leave a property in the case of a fire. He also noted that the City of Deephaven's Police Department are "first responders" to all calls made to the fire department, which means there will always be one or more vehicles on a site above and beyond those needed for a particular fire call.

Chairman Nelson questioned the need to permit private roads. Karpas said it allows flexibility in development. He used the example of "The Woods of Deephaven" where a private road was used to access a three lot subdivision. He said a requirement of a full sixty-six foot wide right-of-way would have hindered the development of the property. He said private roads are permitted in almost all cities and the proposed ordinance language seeks to regulate those aspects of private roads necessary to ensure public safety.

ACTION: Motion by Commissioner Nelson to recommend that the City Council adopt Ordinance 12-19, amending Section 1200 of the city ordinances, clarifying access and slope regulations in the subdivision ordinance. Commissioner McKinney seconded the motion. The motion carried 5-0.

LIAISON REPORT

Council Liaison Kim Crockett informed the Planning Commission that the Council approved the Accessory Structure Size and Setback requests from Norm and Adeline Perl on Linwood Road. The Council felt the request was reasonable and fell under the provisions in the State Statutes governing the reconstruction of non-conforming structure.

Councilmember Crockett said the Council unanimously approved the proposed ordinance changes removing the language permitting a reduced setback and increased size for accessory structures.

ADJOURNMENT

Motion by Chairman Nelson to adjourn the meeting. Commissioner McKinney seconded. The motion carried 5-0. The meeting adjourned at 8:30 p.m.

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Respectfully submitted,
Gus Karpas
Zoning Coordinator