

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, JUNE 6, 2016
MINUTES**

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

PRESENT: Mayor Paul Skrede, Councilmembers Darel Gustafson, Tony Jewett, Keith Kask and Steve Erickson

STAFF: Police Chief Cory Johnson, Zoning Coordinator Dale Cooney and City Administrator Dana Young

2. **PLEDGE OF ALLEGIANCE**

The Council recited the Pledge of Allegiance.

3. **APPROVE CONSENT AGENDA**

Councilmember Gustafson requested that Item 3C, Approve Special Event Permit to the Minnetonka Yacht Club, be removed from the Consent Agenda and placed under New Business for further discussion.

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

- A. Approve May 16, 2016 City Council Minutes
- B. Approve Verifieds
- C. Approve Mooring Buoy Use – Minnetonka Yacht Club
- D. Approve 2016 Boat Committee Chair & Vice-Chair
- E. Approve April 2016 Treasurer’s Report

Seconded by Councilmember Gustafson. Motion carried 5-0.

4. **MATTERS FROM THE FLOOR**

Ed Oliver, 20230 Cottagewood Road, was present to thank the City for removing the large iron spots on City Hall. He stated that the building looks great and recommended that city staff look to remove the iron spots from the warming house as well. He thanked the City for this improvement.

5. PLANNING & ZONING REQUESTS

A. Signs Unlimited, 19400 State Hwy 7 – Conditional Use Permit request to install commercial signage.

Zoning Coordinator Cooney summarized the staff report. Cooney said that Coldwell Banker Burnet will be installing new signage on the building at 19400 State Highway 7. He said that Signs Unlimited of Plymouth, contractor for the business, is requesting a Conditional Use Permit to install a 17.53 square foot illuminated business identification sign that would be attached to the building. Cooney said that the city code requires a Conditional Use Permit to install the new sign.

Cooney said that the proposed illuminated sign would face east, which faces away from nearby residential properties. He said that Section 1305.03, which regulates business hours, states that interior and exterior lighted signs are permitted to operate during business hours only.

Cooney said that the city code states that the size of a sign may not exceed 15 percent of the wall area of the front façade of the structure in which it is located and in no case can exceed 100 square feet for all other types of signs. He said that the front façade of the property is approximately 1560 square feet in size and that the proposed sign equals 1.1% of the front façade area.

Zoning Coordinator Cooney said that no other signs for the business have been proposed. He noted that there is an existing monument sign in the south side yard of the property (facing State Highway 7) and that the sign contains two faces, each with 52.75 square feet of signage for a total of 105.5 square feet of signage. Cooney said that the monument sign was approved by a special use permit in 1994.

Cooney said that he recommends conditional approval of the conditional use request to install a 17.53 square foot illuminated building sign for the property at 19400 State Highway 7. He said that there is a need to advertise the business and upon review of the application, it was determined there would no negative impact on the development of the community, the character of the community or on the health, safety and general welfare of the occupants of surrounding lands. He said that he proposal would not impact traffic conditions or impact property values. Cooney said that the recommendation is conditioned that the hours of illumination be as outlined in Section 1305.03 of the ordinance.

Cooney said that the Planning Commission held a public hearing on the application at their May 17 meeting and recommended conditional approval of the conditional use permit request to install a 17.53 square foot illuminated building sign for the property at 19400 State Highway 7 based on the findings of staff. The recommended approval would place the following condition on the business: a) the hours of illumination are as outlined in Section 1305.03 of the ordinance.

Cooney concluded his staff report.

Mayor Skrede asked if the tenants own the building and if there are multiple tenants in the building.

Cooney said he does not know if the building owner is the tenant, but that Coldwell Banker Burnet is the only tenant.

Councilmember Jewett asked for clarification on the 100 foot limitation for the ordinance. Cooney said that he interprets it to mean that the property is allowed 15% of the front façade for signage, plus 100 square feet for any other type of site signage.

Motion by Councilmember Kask to recommend conditional approval of the conditional use permit request to install a 17.53 square foot illuminated building sign for the property at 19400 State Highway 7 based on the findings and recommendation of the Planning Commission. The recommended approval would place the following condition on the business: a) the hours of illumination are as outlined in Section 1305.03 of the ordinance. Seconded by Erickson. Motion carried 5-0.

Kask said that he believes that there is some kind of deed restriction on the property, and that he would like to have staff ensure that the deed restriction would not prohibit the installation of the sign.

Skrede said that staff should make the City Council aware of any conflict with the deed restriction that might require that the City Council to revisit the issue.

B. TLC Remodeling, Inc., 4814 Vine Hill Road – Variance Request from the minimum side yard setback for the expansion of a non-conforming accessory structure.

Zoning Coordinator Cooney summarized the staff report. He stated that TLC Remodeling, Inc. is requesting a variance expand an existing non-conforming accessory structure at 4814 Vine Hill Road. The expansion would require a variance of the side yard setback. Cooney said that the project proposes a 16'x18' garage addition which would sit 3 feet, 6 inches off of the property line. He pointed out that the existing garage sits 2 feet, 4 inches off of property line and that the expansion would sit approximately 14 inches further back than the closest encroachment. He said the garage expansion is difficult without some type of encroachment.

Cooney said that the zoning ordinance requires side yard setbacks of 20 feet and that the applicant proposes a north side yard setback of 3 feet, 6 inches for garage. He said that the applicant is seeking a variance of 16 feet, 6 inches from the minimum required side yard setback. Cooney said that the proposal was otherwise zoning code compliant.

Cooney said that he recommends approval of the variance request to encroach 16 feet, 6 inches into the minimum required side yard setback for the proposed expansion of the existing garage at 4814 Vine Hill Road, as presented. Cooney said that his findings are based on the review and approval process in section 1315 of the ordinance:

(a) Is the variance in harmony with the purpose and intent of the ordinance?

The purpose and intent of the ordinance is to allow the orderly development and redevelopment of property within the city and when the ordinance standards cannot be met, it outlines the procedures to vary from these standards. The applicant is seeking to vary from the stated setback

standards of the ordinance to improve an existing non-conforming garage constructed in 1940, per Hennepin County tax records.

(b) Is the variance consistent with the comprehensive plan?

The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the redevelopment of residential property within the city.

(c) Does the proposal put property to use in a reasonable manner?

The expansion of the non-conforming garage is reasonable. The proposed encroachments are due to the non-conformities of the existing structures.

(d) Are there unique circumstances to the property not created by the landowner?

The existing garage was constructed in 1940, prior to the setback standards that are in place today. The current encroachments are legal non-conformities, and it is difficult to improve the garage without expanding these setback encroachments.

(e) Will the variance, if granted, alter the essential character of the locality?

The proposal would not alter the essential character of the locality. The property is in an area where these types of non-conformities are not uncommon. The proposed project is a modest expansion of existing conditions.

Cooney said that the Planning Commission held a public hearing on the request at their May 17 meeting and recommended approval of the variance request to encroach 16 feet, 6 inches from the minimum required side yard setback to expand the existing non-conforming accessory structure at 4814 Vine Hill Road based on the findings of staff.

Cooney concluded his staff report.

Mayor Skrede asked Cooney if staff would have looked at this differently if there was not already a garage in this location. Cooney said that would likely change his opinion on the request.

Motion by Councilmember Gustafson to recommend approval of the variance request to encroach 16 feet, 6 inches from the minimum required side yard setback to expand the existing non-conforming accessory structure at 4814 Vine Hill Road based on the findings and recommendation of the Planning Commission. Seconded by Erickson. Motion carried 5-0.

C. JALIN Design, LLC, 4210 Water Street – Variance requests from the front yard setback and maximum impervious surface to construct a new home on an R-3 lot.

Zoning Coordinator Cooney summarized the staff report. Cooney stated that JALIN Design, LLC, architect for the property owners has applied for variances to construct a new house on the R-3 parcel at 4210 Water Street. He said that the lot area is 7,982 square feet in size. The applicant is requesting a reduced front yard setback as well as a variance to exceed the maximum impervious surface area.

Cooney said that the zoning ordinance requires a front yard setback of 35 feet. He said the applicant is requesting a front yard setback of 32 feet, 9 inches and is seeking a variance of 2 feet, 3 inches. He noted that the previous house on the property was located approximately 19 feet from the front lot line. Cooney said that both the house immediately to the north and immediately to the south have front yard encroachments that are closer.

Cooney said the zoning ordinance limits the maximum impervious coverage of the property to 25%. He said that the applicant is proposing an impervious surface area of 29.9% and is seeking a variance to exceed the maximum impervious surface area by 4.9%. The previous conditions on the property were 38.7% impervious. He noted that lots of similar sizes have been granted variances for comparable amounts of excess hardcover.

Cooney said that the applicant has proposed two rain gardens near the front of the property to handle required stormwater mitigation for those impervious areas over 25%. He said that the city engineer has reviewed the proposed plans and determined that they are acceptable and meet city requirements.

Cooney said that the zoning code permits egress window wells to encroach only to the minimum extent required by building code. He pointed out that as currently shown on the plans, the proposed window wells would exceed this allowance, both in depth and width. He said that he would condition any approval on compliance with this restriction and that the proposal is otherwise zoning code compliant.

Cooney said that he recommends approval with conditions of the variance requests by JALIN Design, LLC for variances to encroach 2 feet, 3 inches into the minimum required front yard setback and to exceed the allowable maximum impervious surface area by 4.9% for the property at 4210 Water Street, as presented.

He said that this approval would be conditioned that...

- The window wells on the proposal are reduced to be zoning code compliant.
- All required stormwater management practices meet the requirements and specifications of the city engineer.
- The applicants enter into a maintenance agreement with the city to ensure the long-term operation and maintenance of the stormwater management improvements. The maintenance agreement shall be executed and recorded against the parcel.

Cooney noted his findings which were based on the review and approval process in section 1315 of the ordinance:

(a) Is the variance in harmony with the purpose and intent of the ordinance?

The purpose and intent of the ordinance is to allow the orderly development and redevelopment of property within the city and when the ordinance standards cannot be met, it outlines the procedures to vary from these standards. The applicant is seeking to vary from the stated setback and impervious surface standards of the ordinance in order to construct a new house on an undersized lot. The requested variances remain in harmony with the purpose and intent of the ordinance.

(b) Is the variance consistent with the comprehensive plan?

The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the redevelopment of residential property within the city.

(c) Does the proposal put property to use in a reasonable manner?

The proposal puts the property to use in a reasonable manner. The use of the property would be consistent with other similar sized properties in the community. Apart from the requested variances, which are reductions from previously existing conditions, the proposal is otherwise zoning code compliant.

(d) Are there unique circumstances to the property not created by the landowner?

The property is an undersized lot, but of a size that is consistent with other single-family properties in the neighborhood. The undersized property creates difficulties in meeting both the dimensional standards of the ordinance, and also meeting the hardcover restrictions of the ordinance.

(e) Will the variance, if granted, alter the essential character of the locality?

The proposal would not alter the essential character of the locality. The proposal is of a similar size and scale to other single-family houses within the neighborhood.

Cooney said that the Planning Commission held a public hearing on the request at their May 17 meeting and recommended approval of the variance requests of JALIN Design, LLC for variances to encroach 2 feet, 3 inches into the minimum required front yard setback and to exceed the allowable maximum impervious surface area by 4.9% for the property at 4210 Water Street, as presented. The motion was conditioned that...

- The window wells on the proposal are reduced to be zoning code compliant.
- The applicant submits plans, specifications, and calculations for all required stormwater management practices prior to review by the City Council. Cooney said that this condition has been met.
- The required stormwater management practices meet the requirements and specifications of the city engineer.
- The applicants enter into a maintenance agreement with the city to ensure the long-term operation and maintenance of the stormwater management improvements. The maintenance agreement shall be executed and recorded against the parcel.

Cooney concluded his staff report.

Mayor Skrede said that he was not sure why the property could not be further back on the property and that there is plenty of room in the rear yard. He said he would prefer to eliminate this variance.

Councilmember Kask said that moving the house back just over 2 feet would be a minimal addition of hardcover of about 20 square feet.

Jeff Lindgren of JALIN Design, the applicant, said that he would have no issue moving the house back on the lot to meet the requirement. He said they were trying to bring the house closer to the front to match the adjoining houses, but that the driveway grade became too steep to move it closer.

Skrede said that he does not mind that some houses are set further back than others on the same street. Skrede asked if the Lindgren was the builder or the owner. Lindgren said he was the designer, that a builder had not been selected, and that the owners currently live in California but will be moving here once the house is ready.

Skrede said that he wants to make sure the owners will maintain the rain gardens.

Motion by Councilmember Kask to deny the request for a variance to encroach 2 feet, 3 inches into the minimum required front yard setback. Seconded by Councilmember Erickson. Motion carried 5-0.

Skrede asked about the maintenance agreement for the property, and how the city would ensure that the rain garden is being maintained.

Cooney said that the maintenance agreement is recorded against the property, and the city will need to see evidence of recording before issuing a certificate of occupancy. Cooney said that inspections on the rain gardens are required every five years.

Motion by Councilmember Kask to approve the variance request to exceed the maximum allowable impervious surface area by up to 5% for the property at 4210 Water Street, which would include the additional impervious surface area for the driveway, and that the proposed rain gardens would be sized appropriately to mitigate the property to the equivalent of 25% impervious surface or less. Seconded by Councilmember Gustafson. Motion carried 5-0.

D. Streeter & Associates, 20200 Lakeview Avenue – Variance requests from the lake yard setback and maximum impervious surface to construct a new home on an R-3 lot.

Zoning Coordinator Cooney summarized the staff report. He stated that Streeter & Associates have applied for variances to construct a new house on the R-3 parcel at 20200 Lakeview Avenue. He said the 15,019 square foot property has an existing non-conforming house that encroaches into the lake yard setback and exceeds the maximum impervious surface coverage. He said that the new house proposes to slightly reduce the existing lake yard setback, and reduce the existing hardcover. Cooney said that significant stormwater mitigation is also proposed. Cooney said that the applicant is also proposing to modify existing non-conforming lakeshore improvements.

Cooney said that the zoning ordinance requires a lake yard setback of 100 feet, and that the applicant is requesting a lake yard setback of 79 feet 7 inches and is seeking a variance of 20 feet, 5 inches. He said that the existing house sits slightly closer towards the lake, at 78 feet, 10 inches. Cooney noted that the overall magnitude of the encroachment of the proposed house remains comparable to existing conditions.

Cooney said that the porch/deck areas, as proposed, encroach into the lake yard and side yard setback. He said that the city has typically allowed at grade improvements to encroach into these areas, and that as proposed, these improvements are less than 1 foot off the ground, which staff would consider an at-grade improvement. Cooney said that the Planning Commission recommended that the porch/deck area should be considered an at-grade improvement and that the lake yard setback would not apply in this case.

Cooney said that the zoning ordinance limits the maximum impervious coverage of the property to 25%. He said the applicant is proposing an impervious surface area of 41.7% and is seeking a variance to exceed the maximum impervious surface area by 16.7%. Cooney said that the aggregate walkways in the survey must be clear rock with landscape fabric underneath to be considered pervious.

Cooney said that the property is currently at 48.3% hardscover, and that a 6.6% hardscover reduction is proposed. He said that the applicant has proposed a cistern/water storage system for the property and that the proposed stormwater mitigation would handle a volume several times greater than that required by city code.

Cooney said that he recognizes the precedent set by the city in making allowances for existing hardscover on substandard lots and also appreciates the robust stormwater mitigation system proposed for the property. However, he said that he finds allowing over 40% hardscover on a 15,000 square foot lot to be somewhat in excess of the spirit of the ordinance.

Cooney said that the zoning ordinance limits the maximum building coverage on an R-3 property to 4,500 square feet. He said that as proposed, the total area for structures on the property is 4,563 square feet. Cooney said that his calculation includes the house, decks, steps and landings. He said that since most of the proposed decking is less than 1 foot above grade, it could be considered non-structural in this case, thereby meeting the building coverage restrictions. He said that the City Council should make a recommendation on whether they feel it meets the requirements of the law or if they would require a reduction in size or a variance.

Cooney said that property currently contains a legal non-conforming lake yard deck. He said that state law allows legal non-conforming structures to be continued through repair, replacement, restoration, maintenance, improvement, but not including expansion. Cooney said that the proposed changes will reconfigure this area, and therefore require a variance. He said that the applicant will need approval from the LMCD for the proposed dock location. Cooney noted that the proposed shoreland grading is not in a bluff area, and is therefore permitted by city code.

Cooney said that the applicant is proposing a number of walls and retaining walls for the property and that the City Engineer has requested more information regarding these walls. He said that retaining walls less than 3 feet, 6 inches are not defined as structures within the city code, and are therefore allowed to encroach into the setbacks. He said that, as proposed, the retaining walls would not exceed 3 feet in height.

Cooney said that the retaining walls would be installed on the lot line of the property and that there is not a way to install these walls without impacting the adjacent property. He said that a construction easement agreement will be required before any building permit would be issued.

Cooney said that short curb wall is proposed within the lake yard setback and that the small retaining wall will serve to separate the lake area from the formal lawn. He said that this short retaining wall (less than 3'-6") would not be considered a structure under the current zoning requirements.

Cooney said that he recommends approval with conditions of the variance requests of Streeter & Associates to encroach 20 feet, 5 inches into the lake yard setback, to exceed the maximum impervious surface coverage by 16.7%, and to modify the non-conforming lakeshore improvements in conjunction with the construction of a new house at 20200 Lakeview Avenue, as presented.

He said that his recommendation was conditioned that:

- The applicant receives construction easement agreements for the east and west lot line retaining walls prior to beginning construction.
- The applicant complies with the requirements of the City Engineer.
- The aggregate walkways shown in the plans must be clear rock with landscape fabric underneath.
- The applicant completes the required stormwater management improvements to meet the requirements and specifications of the city engineer.
- The applicant enters into a maintenance agreement with the city to ensure the long-term operation and maintenance of the stormwater management improvements. The maintenance agreement shall be executed and recorded against the parcel.

Cooney noted his findings were based on the review and approval process in section 1315 of the ordinance:

(a) Is the variance in harmony with the purpose and intent of the ordinance?

The purpose and intent of the ordinance is to allow the orderly development and redevelopment of property within the city and when the ordinance standards cannot be met, it outlines the procedures to vary from these standards. The applicant is seeking to vary from the setback and impervious surface standards on the lot. As proposed, the property would slightly reduce the existing non-conformities.

(b) Is the variance consistent with the comprehensive plan?

The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the development and redevelopment of residential property within the city.

(c) Does the proposal put property to use in a reasonable manner?

The proposal puts the property to use in a reasonable manner. The use of the property will remain a single family house, and the property is otherwise zoning code compliant.

(d) Are there unique circumstances to the property not created by the landowner?

The property is an undersized lot, and some allowances for impervious surface coverage are made for such lots. The existing house setback and hardcover are in excess of what is proposed.

(e) Will the variance, if granted, alter the essential character of the locality?

The proposal would not alter the essential character of the locality. The property is of a similar size to other single-family properties in the neighborhood.

Cooney said that the Planning Commission held a public hearing on the request at their May 17 meeting and recommended approval with conditions of the variance requests of Streeter & Associates to encroach 20 feet, 5 inches into the lake yard setback, to exceed the maximum impervious surface coverage by 16.7%, and to modify the non-conforming lakeshore improvements in conjunction with the construction of a new house on at 20200 Lakeview Avenue, as presented.

Cooney said that the Planning Commission placed the following conditions on the approval:

- The applicant receives construction easement agreements for the east and west lot line retaining walls prior to beginning construction.
- If the applicant negotiates with the neighbors to reposition the house within the required side yard setbacks, updated plans must be presented to the City Council prior to approval.
- The applicant complies with the requirements of the City Engineer.
- The aggregate walkways shown in the plans must be clear rock with landscape fabric underneath.
- The applicants complete the required stormwater management improvements to meet the requirements and specifications of the city engineer.
- The applicants enter into a maintenance agreement with the city to ensure the long-term operation and maintenance of the stormwater management improvements. The maintenance agreement shall be executed and recorded against the parcel.

Cooney said that there is an e-mail printed out for the council from the neighbor, Dan Feidt and Margery Martin of 20180 Lakeview Avenue. The e-mail stated that they were supportive of the project with the changes Feidt and Streeter had agreed on.

Cooney concluded his staff report.

Skrede asked about the changes noted in the letter from the neighbor. Cooney said that they were not city requested changes. Skrede asked if the changes were neighbor negotiated. Cooney stated that was correct.

Gabriel Keller of Peterssen/Keller Architecture, architect for the project, introduced himself and said he was available for questions and also was able to show a digital 3D rendering of the property if necessary.

Councilmember Jewett asked what “clear rock” was. Cooney said that is was rock without fine dust particles. The fine particles would allow the rock to compact to impervious surface over time. Without the particles, the rock allows the water to penetrate into the soil. Cooney said that

the Planning Commission had recommended a preference for mulch in these areas, and that the City Council could do the same if they were not comfortable with the rock paths.

Travis Van Liere of TVL Studios, landscape designer for the project, said that the rock does not have fine particles, and is laid over a layer of permeable geotextile fabric that keeps the rock from being compacted down into the soils. He said that the paths have edging that keep the yard and the paths separate, and keep the rock contained within the path. He said that this is a relatively common application in the northeastern part of the country that has strict stormwater regulations.

Mayor Skrede inquired about the stormwater management proposal and asked if the city will inspect what is proposed to make sure it is installed properly. Cooney said that the city engineer inspects the stormwater management and that the applicant is required to give 24 hours' notice prior to installation to allow for inspection.

Councilmember Gustafson asked about the hardcover calculations on the survey and the concerns that were raised in the letter from Rachel McGary of 20155 Lakeview Avenue. Cooney said that he does not recalculate the survey and generally takes it at face value. He said he does proof it to make sure that the items that the survey counts are the items the city counts. He said in this instance, the deck and retaining walls were different than how we would calculate them, but that the end result was not much different. Cooney said that the only significant item he thought worth noting were the aggregate paths that, if constructed improperly, could be considered hardcover. Cooney reiterated that the city could require a different material if they were uncomfortable with the proposal. Cooney said that he had no reason to believe that the survey was inaccurate.

Steven Streeter, the applicant, said that the surveys are certified by the surveyor and their credibility is on the line when they do so. He said the calculations are checked.

Skrede said that he was comfortable with the aggregate as proposed. Erickson said that he was also comfortable with the paths and thinks the city could benefit from the experience of having them installed on a property to see how they function.

Councilmember Jewett said that he thought the deck should count as part of building coverage. Erickson asked if he would count the area if it were a patio. Jewett said no. Erickson said that there should probably be another discussion about this at some point, but that he was comfortable with the deck area since it was less than a foot off of the ground.

Jewett asked about the retaining walls and that the city engineer asked for more information. Van Liere said that they were thin and made of corten steel. Cooney said that the engineer had questions about the construction and the height. He said that it was not obvious from the survey.

Erickson asked about the cistern. Van Liere said that it held about 12,000 gallons and that the water would be repurposed for irrigation. He said that the cistern could handle about two weeks' worth of irrigation in the dry season. He said that the cistern could handle more than the city

requirements, and could hold a 100-year rain event before it would begin to overflow into the lake.

Skrede asked if the system would be hooked up and functional. Van Liere said yes. He said that they will also take pictures of the installation. Skrede said that the city would not issue a certificate of occupancy without inspection of the system.

Motion by Councilmember Kask to approve with conditions the variance requests of Streeter & Associates to encroach 20 feet, 5 inches into the lake yard setback, to exceed the maximum impervious surface coverage by 16.7%, and to modify the non-conforming lakeshore improvements for the property at 20200 Lakeview Avenue, as presented.

The motion was conditioned that...

- The applicant receives construction easement agreements for the east and west lot line retaining walls prior to beginning construction.
- The applicant complies with the requirements of the City Engineer.
- The aggregate walkways shown in the plans must be clear rock with landscape fabric underneath.
- The applicants complete the required stormwater management improvements to meet the requirements and specifications of the city engineer.
- The applicants enter into a maintenance agreement with the city to ensure the long-term operation and maintenance of the stormwater management improvements. The maintenance agreement shall be executed and recorded against the parcel.

Seconded by Councilmember Erickson. Motion carried 5-0.

Skrede asked that Cooney contact Rachel McGary of 20155 Lakeview Avenue to discuss the outcome of the meeting, to let her know that her comments were heard by the city, and to explain the reasoning behind the city's decision.

E. Adopt Ordinance No. 13-74, Amending Section 1310.03 regarding Accessory Structure Standards and Storage Containers.

Zoning Coordinator Cooney summarized his staff report. He stated that the ordinance amendment was proposed by Mayor Skrede and Councilmember Kask in an effort to restrict the unlimited keeping of shipping or storage container units on a property. Cooney said the units are inconsistent with the character of the community are currently unregulated. An ordinance restricting the keeping of these types of storage containers on a property for more than 60 days was recently passed by the City Council and is located in the Nuisance section of Chapter 5 of the City Code of Ordinances. Cooney said that this additional ordinance would prevent residents from making the claim that these items were accessory structures not subject to the 60 day timeline.

Cooney concluded his staff report.

Skrede noted that in the Planning Commission minutes, a few of the planning commissioners were concerned about the 60 day timeline. Skrede said that it was not the goal of the city to be unreasonable and that mitigating factors would be considered. He said that residents should feel free to discuss the issue with the Zoning Coordinator if flexibility on the law is needed.

Skrede said that he thinks the language in the ordinance should be modified to remove the reference to personal property. Kask agreed with this change.

Erickson said that he is not opposed to the ordinance but that someone could buy a shed from the hardware store and that it would be legal, serve the exact same purpose, and likely be just as unattractive. Erickson asked if it would make a difference if the storage unit were screened behind a fence. Erickson said that some of these storage containers can look nice.

Kask said that he agreed that sometimes the storage containers can look nice, but he said that they were never designed to be permanent structures.

Skrede said that if someone wanted to propose constructing a house with these, they could do it as long as it met the building code, and was reviewed by zoning.

Erickson said that the city does not allow modular homes. He said he doesn't like the law, but he understands it. He said that he felt that in this case, the law was a reaction to stop a single violation.

Kask said that he is aware of at least one other situation, and that there may even be more than that.

Motion by Councilmember Kask to approve the first reading of ordinance 13-74, an ordinance of the City of Deephaven, Minnesota amending Deephaven Ordinance Code Chapter 13 by amending Section 1310.10 regarding accessory structure standards and storage containers, and further moved that the Council waive the second reading and direct staff to publish the amendment in the city's official newspaper.

Seconded by Councilmember Gustafson. Motion carried 5-0.

F. Discuss Boathouse Sewer Connection at 20670 Linwood Road.

Cooney summarized the staff report. He stated that staff recently received a permit request from Olson Sewer to install a sewer connection to the boathouse at 20670 Linwood Road. Cooney said that it is the policy of city staff to deny these requests based on the Section 1005.10 of the City Code which states: "Not more than one house or building may be supplied from one sewer connection, except through the action of the Deephaven City Council."

Cooney said that staff operates under the policy understanding that one of the reasons that such a restriction exists is in order to prevent the future conversion of accessory structures into accessory dwelling units. Cooney said that the builder, Streeter & Associates, claims that they were informed by the previous zoning coordinator that such a connection would be allowed since the connection is not coming directly from the street, but is a spur from the main house. Streeter

& Associates also contend that this issue has already been vetted by the city council via the original variance request and that plans showing a bathroom and a sink were submitted to the city on May 29, 2015 and a building permit was issued based upon these plans on July 6, 2015.

Cooney said that he cannot confirm the assurances made by the previous zoning coordinator, but that the approved resolution, meeting minutes, staff reports, and attachments do not reference a bathroom or a sewer connection to the boathouse. However, Cooney said that he did approve building plans showing a boathouse with a bathroom and sinks were submitted to the city in May of 2015 and subsequently issued a building permit.

Cooney said that, per Section 1005.10 of the City Code, the City Council should take action on whether or not to allow a sewer connection to the boathouse at 20670 Linwood Road. Cooney concluded his staff report.

Mayor Skrede said that this situation might be slightly different since he would not expect people to stay in the boathouse for an extended length of time.

Councilmember Gustafson said that the zoning coordinator could not have approved the sewer connection since he was not authorized to approve it. He said only the city council could approve the sewer connection.

Councilmember Jewett said that the timeline of the information suggests that the city council did not approve it.

Cooney said that he found no reference to the interior of the boathouse or the sewer connection in the public record.

Councilmember Kask said that the city has been consistent in not allowing these types of requests. He said that there have been similar situations in the past that the city has denied or stopped. Kask said that the minutes would have suggested if this issue had been addressed.

Steven Streeter of Streeter & Associates, the builder, stated that the previous zoning coordinator told him that there could not be a sewer connection in the garage, but there could be one to the boat house. He said the boat house would not have a separate line, but would be injected into the main line of the house. He said this has always shown in the plans.

Skrede said that he did not understand why the zoning coordinator would say that the boathouse is acceptable and that the garage is not.

Streeter said that this was not a livable structure and that it was seasonal.

Skrede said that he remembers the turning of the structures, but he does not remember the boathouse.

Erickson said that this property had previously had two sewer connections, one of which was to the garage. Kask said that the city ordered that it be removed. Streeter said that it was not removed and that they capped it when they began construction.

Jewett said that the resolution does not address the sewer connection.

Kask said that the sewer connection would have been a material change and the variance request did not expand the scope of use of the property.

Skrede said that he will view the recording of the meeting to confirm if the issue had been brought up. Skrede said that he would like to continue this discussion until the next City Council meeting on June 20th.

6. NEW BUSINESS

A. Approve Temporary Intoxicating Liquor License (Lake Minnetonka Sailing School)

Kelly Brackin was present to represent the Lake Minnetonka Sailing School in their request for a Temporary Intoxicating On-Sale Liquor License for their fundraising event on Lighthouse Island on July 23rd. She stated that no one under the age of 21 will be invited to the event and that off-site parking will be provided at Deephaven Elementary School, with shuttle service to the Minnetonka Yacht Club at Carson's Bay. She stated that guests will be ferried to Lighthouse Island from the Yacht Club.

Police Chief Johnson noted that there have been major parking issues on Park Avenue due to prior events at Lighthouse Island. He recommended no parking on Park Avenue or on Talton Avenue for this event.

Kelly Brackin stated that notices will be sent to the guests to not park on these streets and to use the shuttle service from Deephaven Elementary School.

Motion by Councilmember Kask to approve a Temporary On-Sale Intoxicating Liquor License to the Lake Minnetonka Sailing School for July 23, 2016. Seconded by Councilmember Gustafson. Motion carried 5-0.

B. Approve Special Event Permit for Minnetonka Yacht Club

Chrisy Hughes was present to represent the Minnetonka Yacht Club in their request for a Special Event Permit for the E Scow Regatta from September 8-11.

Councilmember Gustafson stated that he asked that this item be pulled from the Consent Agenda because he noticed that the Yacht Club intended to offer free beer at the Sunday, September 11th Award Ceremony.

Councilmember Jewett added that the Yacht Club also intended to offer free food, brats and chips at this event.

Administrator Young stated that the State of Minnesota does not consider any alcoholic beverage as “free” if the cost of the beverage is actually covered by event fees.

Chrisy Hughes stated that the Yacht Club is not collecting a fee for the beer. She stated that beer and food will be offered at the September 11th Awards Ceremony, which will only be about an hour and a half long and participants will want to grab a brat and a beer before they head home.

Mayor Skrede stated that he hopes the Yacht Club will show discretion in who gets a free beer.

Chrisy Hughes stated that it will be an older crowd.

Mayor Skrede suggested that the Yacht Club apply for a Temporary On-Sale Intoxicating Liquor License for the Award Ceremony on September 11th.

Administrator Young stated that the Yacht Club’s application for a Temporary On-Sale Intoxicating Liquor License could be changed from September 9-10 to September 9-11.

Motion by Councilmember Jewett to approve a Special Event Permit to the Minnetonka Yacht Club from September 8-11, 2016. Seconded by Councilmember Erickson. Motion carried 5-0.

C. Approve Temporary Intoxicating Liquor License for Minnetonka Yacht Club

Chrisy Hughes was also present to represent the Minnetonka Yacht Club in their request for a Temporary On-Sale Intoxicating Liquor License from September 9-11, 2016. She stated that the Yacht Club will host a happy hour on Lighthouse Island from 3:00 p.m. – 7:00 p.m. on Friday, September 9th, a banquet on Lighthouse Island from 6:00 p.m. – 11:30 p.m. on Saturday, September 10th, and the award ceremony at the Cottagewood Children’s Park from Noon – 5:00 p.m. on Sunday, September 11th.

Chief Johnson noted that he has already met with Chrisy to discuss the parking situation.

Motion by Councilmember Jewett to approve a Temporary On-Sale Intoxicating Liquor License for the Minnetonka Yacht Club on September 9-11, 2016. Seconded by Councilmember Erickson. Motion carried 5-0.

D. Approve Temporary Sign Request from Excelsior Fire District

Administrator Young stated that the Excelsior Fire District is celebrating its 125th year anniversary and is requesting permission to display a 3’ x 18’ banner at Station No. 2 in Deephaven. He stated that the Fire District is requesting approval to display the banner from the date of approval until the end of the year.

He stated that this request is somewhat problematic in that the time period exceeds the 45-day requirement for a temporary sign yet it seems excessive to require a Special Use Permit for a banner that will be removed at the end of the year. He stated that due to the unique nature of the banner and the fact that it will be displayed on public property, staff recommends that a public

hearing should not be required for this Special Use Permit request and further recommends that the City Council approve a Special Use Permit for the Excelsior Fire District to display a 3' x 18' banner on Fire Station No. 2 from July 1, 2016 to December 31, 2016.

Motion by Councilmember Kask to approve a Special Use Permit request for the Excelsior Fire District to display a 3' x 18' banner stating "Celebrating 125 Years" on Fire Station No. 2 from July 1, 2016 to December 31, 2016. Seconded by Councilmember Erickson. Motion carried 5-0.

E. Adopt Ordinance No. 09-25, Amending City Watercraft Spaces

David Gross, Boat Committee Chairman, was present to discuss the decreasing use of the City's mooring buoys, with only 33 out of 53 currently in use by residents. He stated that 20 unused buoys amount to loss revenue of approximately \$10,000 per year. He stated that the Council has long discussed allowing motorboats on buoys and Ordinance No. 09-25 would open up the use of buoys to all watercraft.

David Gross provided a short history on the City's use of buoys for powerboats. He stated that back in 1987, the City was allowed to have motorboats on our buoys. However, when the City applied in 1987 to have our license amended, the LMCD restricted our buoys to only sailboats. Following our restriction, the LMCD passed a policy restricting buoys to sailboats.

He stated that in 1993, when the City of Wayzata amended their license, their license did not prohibit motorboats on buoys. He stated that Deephaven is the only mooring field with a restricted use.

Mayor Skrede asked if we needed a further definition of watercraft in the proposed ordinance.

David Gross stated that a definition of watercraft is not needed. He stated that if the ordinance is passed this evening, we will be out of sync until Wednesday night, when this issue will be addressed by the LMCD.

Councilmember Kask asked about the strength of the mooring field and whether they could support the weight of heavier motorboats. He noted that larger motorboats are more susceptible to breaking free.

David Gross stated that sailboats can be quite heavy. He added that he wants to have a discussion with the Boat Committee about the Marina Fund Budget and the possibility of converting the mooring lines to cable.

Councilmember Erickson noted that upgrades to the mooring lines were made a couple of years ago.

Councilmember Kask asked if the ordinance is adopted, we could consider limiting the size of a motorboat on the buoy.

Mayor Skrede stated that if permission is granted from the LMCD, the City can adopt standards on buoy usage that makes sense to us. He stated that the Boat Committee can work out the

details. He added that he doesn't mind losing revenue this year to make sure that we are doing this right.

David Gross stated that in 1987, there were a total of 1,372 sailboats on the lake. This has dropped to 627 sailboats in 2016. He stated that the demand for sailboats is way down and noted that even the Yacht Club has four open buoys.

Councilmember Jewett asked for clarification that of the four buoy fields on the lake, the three other entities have license agreements that do not restrict power boats on buoys. David Gross stated that this is correct.

Mayor Skrede stated that our position is that we would like to manage our own buoy fields to enable more people to enjoy the lake.

Motion by Councilmember Kask to adopt Ordinance No. 09-25, Amending Section 900.06 Subd. 1 (a) of City Watercraft Spaces, and to waive the second reading. Seconded by Councilmember Erickson. Motion carried 5-0.

F. Other

There was no other New Business this evening.

7. UNFINISHED BUSINESS

A. Approve Payment No. 1 to Valley-Rich Co., Inc. for 2016 Linden Road Project

Administrator Young stated that this is a partial payment in the amount of \$49,003.31 for Valley-Rich Co., Inc. for the 2016 Linden Road Drainage Improvement Project. He stated that the original bid for this project was \$66,343.20 and he expects the Final Payment request to be presented at the next Council meeting.

Motion by Councilmember Kask to approve Payment Request No. 1 to Valley-Rich Co., Inc. in the amount of \$49,003.31 for the 2016 Linden Road Drainage Improvement Project. Seconded by Councilmember Erickson. Motion carried 5-0.

B. Review 2017 Budget Schedule

City Administrator Young presented the following proposed schedule for the Council's review of the 2017 Deephaven City Budget:

Monday, June 20th - 2017 Budget Overview, 2017 Salaries, General Fund Revenues, General Fund Expenditures, Capital Improvement Plan, General Government, Elections, Administration, City Hall, Police Budget, Fire Budget, Planning & Zoning, Streets & Roads, Public Works, Parks & Recreation, Wildlife Management

Tuesday, July 5th - Budget Review & Revisions

Monday, August 15th - Budget Review & Revisions

Tuesday, September 6th - Final Budget Review, Adopt Preliminary Tax Levy

Monday, October 17th - Park Improvement Fund, Marina Fund, Recycling Fund

Monday, November 21st - Water Fund, Sewer Fund, Storm Water Fund

Monday, December 5th - Truth in Taxation Hearing, Adopt Final 2017 Tax Levy, Adopt 2017 Budget

The Council approved the proposed 2017 Budget Schedule.

C. Other

There was no other Unfinished Business this evening.

8. DEPARTMENT REPORTS

A. Police Department

Police Chief Johnson provided an update on the May Incident Report and on upcoming graduation parties. He stated that 78 parking permit tickets and 37 warning tickets have been issued since May 1st.

B. Excelsior Fire District

EFD Liaison Erickson stated that he will provide a report on the June 8th Fire District Board meeting at our next Council meeting. He noted that this meeting will include a discussion on the Fire Relief Association investment policies, the 2017 Budget, and a follow-up on the Service Delivery discussion. He noted that the Fire District will be holding a presentation of the 2017 Budget to all interested city councilmember's on June 22nd.

Further discussion was held regarding the recent structure fire on Spring Creek Drive.

C. Public Works

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

D. Administration

Administrator Young provided a brief summary on the following items:

- Population & Household Estimates
- AIS Inspections at the Carson's Bay Launch
- 2017 City Budget

- July Newsletter
- 2017 Woodland Contract Negotiations
- 2017-2020 Greenwood Contract Negotiations
- AIS Inspections at the Carson's Bay Launch
- Traffic Signal Preliminary Agreement

Mayor Skrede requested an update from our bond attorneys at Dorsey Whitney regarding recent IRS actions on conduit debt financing.

Councilmember Jewett provided an update on the last meeting of the Lake Minnetonka Communications Commission. He stated that the subscriber base has increased over last year, Mediacom is doing a substantial build out in Independence, and Maple Plain will be leaving the LMCC at the end of the year. He added that both the LMCC and Mediacom are auditing each other over PEG fees.

9. ADJOURNMENT

Motion to adjourn by Councilmember Kask, seconded by Councilmember Erickson. Motion carried 5-0. The meeting adjourned at 10:08 p.m.

Respectfully submitted,
Dana H. Young
City Administrator