

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, NOVEMBER 2, 2015
MINUTES**

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

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

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**

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

- A. Approve October 19, 2015 Minutes
- B. Approve Verifieds

Seconded by Councilmember Gustafson. Motion carried 5-0.

4. **MATTERS FROM THE FLOOR**

There were no Matters from the Floor this evening.

5. **PLANNING & ZONING REQUESTS**

- A. **Consider Variance Requests, The Landschute Group, Inc., for 20430 Lakeview Avenue – Request for variances from the required R-2 lake yard setback, in conjunction with the construction of a new house, and expansion of a non-conforming structure in conjunction with the remodeling of an existing garage.**

Zoning Coordinator Cooney summarized the request stating that The Landschute Group, Inc., architect for the property owner, has applied for a variance to construct a new single family house partially onto an existing non-conforming footprint. The proposed house would require a variance to encroach into the required lake yard setback. The applicant is also requesting a variance to expand a legal non-conforming detached garage.

Cooney said that the applicant has made a modification to the plan since the staff report was submitted to the council. Cooney said that the porch area on the southwest side of the house has

been enlarged, but it remains within the previous non-conforming footprint of the home. Cooney said the City Council should consider whether the change is significant enough that it needs to be reviewed again by the Planning Commission.

Cooney said that the proposal is to remove the existing home and rebuild a new home partially within the non-conforming footprint of the existing home. He stated that the existing home currently sits 37 feet from the OHW of Lake Minnetonka and that the proposed house would sit 61 feet, 6 inches from the OHW.

He said that Section 1302.04(3) of the zoning ordinance requires a lake yard setback from the OHW of Lake Minnetonka of 100 feet and that the applicant is seeking a variance of 38 feet, 6 inches from the minimum required Lake Yard setback.

Cooney noted that the proposed 61 foot, 6 inch Lake Yard setback would reduce the current encroachment by 24 feet, 6 inches. He added that, by way of comparison, the property immediately to the south at 20550 Lakeview has an existing lake yard setback of 36 feet, albeit on a lot size of just under 16,000 square feet.

Zoning Coordinator Cooney said that according to the site plan submitted by the architect, the proposed property would reduce the non-conforming areas of the house footprint below current existing conditions. He said that the current footprint has 2,779 square feet of encroachment, while the proposed footprint would have 2,171 square feet of encroachment. Cooney said that the magnitude of the encroachment would be reduced by 608 square feet.

Cooney said that the proposal complies with the remaining setback requirements, building coverage limitations, and height limitations outlined in Section 1302.04, and the maximum permitted grade alteration permitted in Section 1312.04, and the maximum permitted impervious surface requirements of Section 1350.06(2) (a).

He discussed the proposed changes to the existing, legal non-conforming garage. Cooney said that the garage would be remodeled and that state law allows legal non-conforming structures to be continued through repair, replacement, restoration, maintenance, improvement, but not including expansion. Cooney said that, while the footprint of the garage is not changing, the roof peak is being lowered, and the slope of the roof will widen the overall above grade area of the garage. He said that, technically, this could be considered an expansion of the non-conformity that would require a variance.

Cooney said that staff had recommended approval based on the originally submitted application as presented. He stated his findings upon which he based the recommendation:

a) The variance is in harmony with the purpose and intent of the ordinance, since 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 remove an existing non-conforming single family home constructed in 1955 and replace it with a new home that significantly reduces the non-conforming area compared with

existing conditions. The applicant is also proposing a modest change to an existing non-conforming structure.

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

c) The proposal puts the property to use in a reasonable manner. The construction of a new single family home on the property is reasonable and continues the single family use of the property. The existing garage remodel is a reasonable modification of an existing structure.

d) There are there unique circumstances to the property not created by the landowner. According to Hennepin County Tax Records, the existing home was constructed in 1955, prior to the setback standards that are in place today. The encroachments on the existing house and garage are legal non-conformities, and the applicant is proposing to reduce the non-conforming footprint of the new house.

e) The variance would not alter the essential character of the locality. The property is in an area where, due to the ages of the houses, Lake Yard non-conformities are common. The proposed project would reduce the non-conformities compared with existing conditions. The modest garage remodel of an existing non-conformity will not alter the essential character of the locality.

Zoning Coordinator Cooney concluded his report by stating that the Planning Commission accepted the recommendation of staff and recommended approval of the variance requests, as presented, based on the findings of staff.

Mayor Skrede said that this is not the first time a change has been made between the Planning Commission meeting and City Council meeting. He said that he did not think that the changes were substantial enough to require another Planning Commission review. Skrede asked if any of the Councilmembers had any issues with the amended application.

Councilmember Kask said that he did not have any issues with the changes since the impacted area is to the rear of the originally proposed deck and that it would not materially impact the variance request. Councilmember Erickson said that he agreed with Kask's comments for the same reasons.

Councilmember Erickson asked about the changes to the garage. Zoning Coordinator Cooney said that the footprint for the garage is not changing, but the slope of the roofline is changing. Cooney said that this changes the volume of the garage on the second floor and could be considered an expansion of a legal non-conformity that would require a variance.

Councilmember Jewett asked if the City Engineer had seen the revised garage roofline to offer any comments on the impact of the runoff.

Zoning Coordinator Cooney said that the City Engineer had not reviewed the roofline changes. Cooney said that the City Engineer has told him in the past that it is not necessarily the roof pitch that would be an issue, but the overall size of the roof.

Councilmember Erickson said that, in the past, the city has required a variance for these types of changes to non-conformities. Cooney clarified his staff report stating that the proposed motion for approval that he included in the staff report includes language approving a variance for the changes to the garage.

Mayor Skrede entertained a motion for the variance application.

Councilmember Kask made a motion to approve the application, as presented, based on the findings of staff and the Planning Commission.

Councilmember Erickson seconded the motion. Motion carried 5-0.

6. UNFINISHED BUSINESS

A. Review Draft Ordinance on Storm Water Management

Zoning Coordinator Cooney summarized the memo that was included in the City Council packet.

Cooney stated that after rejecting the policy concept of an impervious surface limitation for the currently unregulated areas of the city, staff proposed the concept of a stormwater management plan. Cooney said that he presented a memo with a broad policy outline for the City Council which was reviewed at the October 5th meeting. He said that he drafted a revised ordinance based on feedback from the City Council, the Planning Commission, and the City Engineer.

Cooney stated that he worked with the City Engineer to explore the idea of a more robust plan review stage that attempts to address stormwater runoff through means other than mitigation. He said that in his conversations with the City Engineer Dave Martini and the City Water Resources Engineer Bob Bean, both engineers stated that beyond what is already being reviewed, there is little more that can be done at the plan review phase.

Cooney stated that the City Engineers have stated that without managing runoff by limiting impervious area or requiring stormwater mitigation, the fundamental problem of runoff will not be addressed. Cooney stated that, acknowledging the reluctance to require a hard cap on impervious surfaces, he has drafted an ordinance that would allow unlimited hardcover expansion that is offset by corresponding stormwater mitigation.

Cooney stated that the goal of the ordinance was to manage stormwater runoff by regulating significant expansions of hardcover, while also allowing exemptions for smaller projects. He said that all of this could be done administratively and that no property within the city would be required to mitigate below 25% hardcover.

Cooney stated the proposed policy outline for the proposed ordinance:

- 1) There will not be a hard cap on impervious surface area restrictions for the currently unregulated areas within the city.

- 2) Only new construction projects and major hardcover expansions would be subject to a stormwater management plan requirement.
- 3) Stormwater mitigation would be required for properties that exceed defined thresholds.
- 4) Stormwater mitigation proposals and approval would occur at the administrative level.
- 5) Stormwater mitigation requirements may be waived by the City Engineer/City Staff if it is determined that the proposal would not generate negative stormwater impacts.
- 6) All stormwater mitigation systems will be credited at 75% of actual mitigation.
- 7) Maintenance agreements will be required for all stormwater management systems.

Cooney spoke about the proposed thresholds for triggering a Stormwater Management Plan. He said that the consensus heard by staff from the Planning Commission and City Engineer is that all new construction projects would trigger a stormwater management plan requirement. Cooney said that below are several proposed thresholds that would trigger a stormwater management plan:

- All new construction.
- Any hardcover expansion of 10% or more over existing conditions.
- Any residential hardcover expansion that would create more than 35% hardcover on a lot 10,000 square feet in size or less, or 30% hardcover on a lot greater than 10,000 square feet in size.
- Any commercial expansion that would create more than 75% hardcover.
- Any proposal that would not adequately manage on-site stormwater.

Cooney stated that the proposed exemptions from Stormwater Management Plan requirements were: 1) any project with an impervious surface footprint of less than 500 square feet. 2) Total proposed hardcover results in less than 25% impervious surface area on a given property. 3) City Engineer/City Staff determination that Stormwater Management Plan is not required.

Cooney stated that, as proposed, the ordinance would require a property to mitigate stormwater to the less restrictive of the square footage of proposed hardcover expansion; or the portion of the proposed hardcover expansion that exceeds 25% impervious surface area for the lot.

He said that because the proposed stormwater management requirements in currently unregulated areas would be handled administratively, no variances would be required. Therefore, Cooney said, the variance requirement from the previous draft ordinance (the requirement that variances from impervious surface limitations will require stormwater mitigation) has been moved to section 1350 Shoreland Management District. He said that the proposed amended section is attached to this staff report. Cooney stated that the proposed policy outline for the amendment is that:

- 1) Variances from impervious surface limitations will require stormwater mitigation.
- 2) Stormwater mitigation systems will not be credited for reducing impervious surface coverage unless approved through the variance process.
- 3) All stormwater mitigation systems will be credited at 75% of actual mitigation.
- 4) Maintenance agreements will be required for all stormwater management systems.

Cooney stated that the variance requirements are essentially what is being done now, but that this would formalize the process and at the 75% credit for mitigation.

Cooney stated that the proposed ordinance replaces the concept of impervious surface area restrictions with the concept of a soft cap for impervious surfaces. He pointed out that the upside of this is that the city will have oversight over a broader range of projects that could impact stormwater runoff, but that the downside is that a property's hardcover could be greatly expanded incrementally, over time, without any mitigation requirements.

Cooney stated that if the City Council feels that the Stormwater Management draft ordinance and proposed amendment to the Shoreland Management District are acceptable, staff will arrange for the public hearing to take place at the December 15 Planning Commission meeting, with City Council approval to take place at the January 4, 2016 meeting. He said that the changes could become effective upon publication as early as the January 14th edition of the Lakeshore Weekly News.

Cooney concluded his staff report.

Mayor Skrede stated that he wanted to ensure that the language used was broad enough that it would include the expansion of a "structure" not just the expansion of a "house".

Mayor Skrede asked Zoning Coordinator Cooney if he thought a 10% expansion of hardcover would mean having a property at 28% would add 2.8% hardcover for a total 30.8% hardcover, or if it would be taking a property from 28% hardcover to 38% hardcover. Cooney said that the first example was the way he would interpret the 10% hardcover expansion.

Councilmember Jewett asked what was considered a major expansion. Zoning Coordinator Cooney said that under our current city code, a major expansion is considered expanding a house's footprint by 20% or more. Cooney said that, as written, this kind of expansion would require a more detailed survey to be provided which would include existing and proposed topography.

Councilmember Jewett said that he was flip-flopping about the proposed ordinance. He said that he recognized that something should be done, but that he felt the ordinance was too complicated. Jewett said that it might be off-putting to potential builders who might just ignore it. He said that the City Council did not want to put a hardcover limit on those currently unregulated areas of the city, but that such a limit would at least be easy to understand and implement.

Councilmember Erickson said that a resident in the unregulated areas of the city could presently pave their entire yard. He said that he thought the previously proposed ordinance was too arduous and that this ordinance would really be about administering mitigation requirements.

Mayor Skrede said that builders are probably more sophisticated than we are giving them credit for.

Councilmember Jewett said that under this ordinance property owners will probably expand 450 square feet at a time.

Councilmember Erickson stated that since the water has no place to go, the goal is less about managing hardcover on a property and more about retaining water on the site for a period of time.

Mayor Skrede stated that he was less concerned about the 450 square foot expansions but he was more worried about the larger impacts. He said he considered this ordinance to be a best effort to avoid abuses.

Councilmember Erickson stated that a good example of the usefulness of this ordinance would be the new construction at 18970 Azure Road.

Councilmember Jewett stated that, as proposed, the code would allow that property up to 30% hardcover.

Councilmember Gustafson stated that the Azure Road house is a good example of impacts that go beyond simply hardcover.

Councilmember Erickson stated that now that Azure Road house has to go through a stormwater mitigation review.

Mayor Skrede stated that this will give the Zoning Coordinator more work. He said that this provides an opportunity to interact with the applicant at the beginning of the process. Skrede said that Cooney should come back in a few months give the City Council feedback on how the ordinance is working. Skrede added that if it becomes arduous to administer, he should let the City Council know so that it can be adjusted.

Councilmember Erickson said that the Azure Road house was advertised as an \$800,000 to \$900,000 build. He said that the couple of thousand dollars in mitigation requirements would not be too expensive for that property.

Zoning Coordinator Cooney said that there were ways to simplify the ordinance if the council wanted to explore those options.

Mayor Skrede said that he was comfortable with the ordinance as written. Mayor Skrede asked Councilmember Kask if he had any comments.

Councilmember Kask said that he was prepared to support the ordinance. He said that he liked the flexibility it affords the applicant and that he thought the 500 square foot exclusion was reasonable.

Councilmember Erickson stated that the ordinance might seem complex, but the City's ordinances are pretty simple. He said that this would not be that complex of an ordinance compared with other cities.

Councilmember Kask asked if Zoning Coordinator Cooney would be preparing a handout to help people with the ordinance, particularly those that might be more visual learners.

Zoning Coordinator Cooney said that he thought that would be a good idea and would help make his job a little easier.

Mayor Skrede said that the ordinance would have a public hearing at the December Planning Commission meeting. Mayor Skrede closed the discussion at this point.

B. Approve Six Month Probationary Period for Zoning Coordinator Dale Cooney

Administrator Young stated that the City hired Dale Cooney on May 13, 2015 to replace long-time Zoning Coordinator Gus Karpas. He stated that over the course of the past six months, Dale has demonstrated exceptional competence as he was thrown into the fire during the peak of our building and planning season. He stated that the transition period was very smooth solely owing to Dale's professionalism and competence. He stated that we are very fortunate to have Dale Cooney with the City.

Councilmember Gustafson stated that he has found Dale's reports to be accurate and well-presented. He stated that his research is very good.

Mayor Skrede stated that he has asked Dale to remain during this discussion so that he could hear the positive comments. He added that Dale has always been very responsive to any issue that he has raised.

Councilmember Jewett stated that he is in full support of approving Dale's probationary period and thanked him for his hard work.

Motion by Councilmember Gustafson to approve the six-month probationary period of Dale Cooney and authorize an increase in his hourly wage from \$24.12 per hour to \$25.39 per hour for the successful completion of his probationary status. Seconded by Councilmember Erickson. Motion carried 5-0.

C. Other

There was no other Unfinished Business this evening.

7. NEW BUSINESS

A. Discuss LMCC Audio / Video Support Program

Administrator Young stated that the Lake Minnetonka Communications Commission (LMCC) has allocated \$80,000 from October 8, 2015 to December 31, 2019 to assist member cities with approved improvements to the city's audio and video equipment. He stated that the City of Deephaven has been allocated \$11,496 as part of this program. He noted that the City of

Greenwood has allocated \$2,480 and the City of Woodland has allocated \$1,600, both of which could be used to improve the audio and video equipment at Deephaven City Hall.

Mayor Skrede asked if the intent would be for the City to put together a plan to upgrade the audio and video equipment, submit it to the LMCC, and the City would be obligated to pay for anything above the approved allocation.

Councilmember Jewett stated that he doesn't think the LMCC staff will make this process very difficult as they want member cities to upgrade their audio and video equipment. He stated that the cities will have to work with Jim Lundberg on the ordering of the equipment.

Councilmember Jewett stated that, on a different issue effecting the LMCC, the City of Maple Plain is withdrawing from the LMCC. He stated that their letter stated that they were withdrawing due to declining cable subscribers and did not feel that the LMCC could be sustained with declining subscribers and no additional revenues from member cities. He stated that Greenwood's representative wanted to know if Excelsior, Deephaven and Shorewood, planned to remain in the LMCC. He stated that these three cities contained a significant proportion of cable subscribers.

Mayor Skrede stated that the City of Deephaven has always been consistent in our commitment to the LMCC.

Councilmember Jewett also added that the LMCC plans to undertake an audit of Mediacom in the near future. He stated that the last audit of Mediacom was several years ago.

Further discussion was held on Maple Plain's pending departure from the LMCC.

Councilmember Erickson stated that he thought Maple Plain's reason for leaving was unfounded since the LMCC seems to be managing their funds very well. He stated that the only extra spending that the LMCC has approved is for digital equipment upgrades.

B. Other

There was no other New Business this evening.

8. DEPARTMENT REPORTS

A. Police Department

Police Chief Johnson presented the October Police Report. Discussion was held on the importance of the speed trailer and its ability to monitor traffic and vehicle speeds.

B. Excelsior Fire District

Councilmember Erickson noted that there has not been a recent EFD Board meeting.

C. Public Works

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

Mayor Skrede stated that he has received a number of phone calls complimenting the public works crew.

D. Administration

Administrator Young provided a brief summary on the following items:

- Performance Evaluations
- Building Permit Update
- State of the Cities Meeting
- E-Polling Training

9. ADJOURNMENT

Motion to adjourn by Councilmember Erickson, seconded by Councilmember Jewett. Motion carried 5-0. The meeting adjourned at 8:35 p.m.

Respectfully submitted,
Dana H. Young
City Administrator