



## **AGENDA - DEEPHAVEN PLANNING COMMISSION**

**Date:** Tuesday August 18, 2020

**Location:** Deephaven Council Chambers, 20225 Cottagewood Road

**Time:** 7:00 p.m.

1. APPROVAL OF MINUTES
  - a) July 21, 2020
2. PUBLIC HEARINGS
  - a) Single-Family Dwelling Definition and Accessory
3. DISCUSSION ITEMS
  - a) Fences Around Swimming Pools
4. LIAISON REPORT
5. ADJOURN

Next Council Meeting – Monday, September 8, 2020

Next Planning Commission Meeting – Tuesday, September 15, 2020



**DEEPHAVEN PLANNING COMMISSION  
MEETING MINUTES**

**TUESDAY, JULY 21, 2020**

**CALL TO ORDER:** Chair John Studer called the meeting to order at 7:00 p.m.

**PRESENT:** Commissioners Jeff Eaton, Doug Nagle, Cindy Hunt Webster, Bob Werneiwski, Josh Wilcox, and Chair John Studer

**ABSENT:** Commissioner John Daly

**OTHERS PRESENT:** Planning Director Pat Smith and City Council Liaison Kent Carlson

**1. APPROVAL OF MINUTES  
Minutes of April 21, 2020**

Motion by Commissioner Nagle, seconded by Commissioner Eaton, to approve the minutes of June 16, 2020. Motion carried 6/0.

**2. PUBLIC HEARINGS**

**a) 19390 Walden Trail – Variance/Preliminary Plat/Final Plat**

Smith presented the staff report. Andrew Mahoney is proposing to replat three properties, which requires variances from the minimum road frontage standard and minimum lake frontage standard.

Commissioners Wilcox and Webster questioned vacating the pedestrian easement. Smith stated that at its current located it runs in the middle of proposed Lot 2, making that lot unbuildable. Also, it is not used because it is narrow (at 10 feet), not maintained, difficult terrain to cross, and is not a direct line to the lake, unlike the many fire lanes in the rest of the city. The City Council vacated a portion of Dale Street in order to make snow plowing easier. That eliminated public access to the pedestrian easement. Wilcox asked if the applicant considered relocating the pedestrian easement.

Chair Studer opened the public hearing. No one spoke. Studer closed the public hearing.

Councilmember Carlson explained the difference between the fire lanes, which are between 30-50 feet wide and are large enough for people to have picnics by the lake and this easement, which is only 10 feet wide. Nagle is concerned about vacating the public easement, but supports the replat.

Studer motioned to accept the recommendation and findings of staff and recommend the City Council approve the preliminary and final plat and



## DEEPHAVEN PLANNING COMMISSION MEETING MINUTES

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variance requests of Andrew Mahoney for a reduced lake frontage of 109 feet and reduced road frontage of 15 feet in conjunction with replatting three properties located at 19390 Walden Trail, 19270 Dale Avenue and 19235 Dale Avenue as proposed. Wilcox seconded. Motion carried 6/0.

### **b) 5180 Hooper Lake Road – Front Yard Setback Variance and Canopy Encroachment Variance**

Smith presented the staff report. Tim Alt is proposing to encroach into the front yard setback and exceed the overhead canopy encroachment in conjunction with the construction of an addition to the existing home at 5180 Hooper Lake Road.

Tim Alt, applicant, addressed the Planning Commission. He indicated that the house was constructed in the wrong location that is why the 2000 site plan was inaccurate.

Chair Studer opened the public hearing. No one spoke. Studer closed the public hearing.

The Commission all supported the variance request.

Commissioner Eaton motioned to recommend the City Council approve the variance requests of Tim Alt to encroach one foot into the minimum required front yard setback and exceed the permitted eave encroachment by 2 feet in conjunction with enlarging the entry to the house located at 5180 Hooper Lake Road, as proposed. Chair Studer seconded. Motion carried 6/0.

### **3. DISCUSSION ITEMS**

#### **a) Accessory Dwelling Units**

Smith presented the staff report. Three families are either contemplating or submitted building plans for what staff would define as Accessory Dwelling Units. The single-family zoning district permits one family living together. The two building permits that were submitted had two separate living areas that are not designed for families to live together. Smith stated that some communities have more detailed definitions of what constitutes a family. This includes terms like living, sleeping and eating together; maintaining a common household and using common cooking and kitchen facilities; using a single common cooking facility in a living arrangement usually characterized by sharing living expenses, food costs; sharing common living, sleeping, cooking and eating facilities.



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The City Council discussed Accessory Dwelling Units at their meeting on July 20, 2020 and wanted Planning Commission feedback on the idea.

Commissioner Eaton has viewed ADUs in open houses and thought it was a novel idea. Not sure if the City would care if ADUs are rented or not. Commissioner Nagle asked about second electrical meters. Commissioner Webster is opposed to houses having second kitchens. Commissioners Nagle and Wilcox recommend limiting the second unit to a family member.

Commissioner Werneiwski believes this is an evolving idea and is not against renting or limiting it to family members. Commissioner Nagle stated that many homes already have multiple kitchens. Chair Studer and Commissioner Wilcox both believe the Conditional Use Permit process is most appropriate and prefer to limit the ADUs to family members. Commissioner Nagle said it depends on the definition of a family.

Commissioner Nagle was concerned that these end up being multi-family. Smith stated that the communities that he surveyed limit the number of ADUs per property to one. Smith also stated that he contacted the City Planner at Minnetonka, which has allowed ADUs for over 20 years, had the Planner said they haven't been much of an issue for the city.

The Commission generally favored making sure design of the house with the ADU still looked like a single-family residence. Smith stated that the two communities (White Bear Lake and Minnetonka) that were also concerned with the design of the house with the ADU process ADUs as Conditional Use Permit because design is not black and white and is better controlled through the Planning Commission and City Council.

Commissioners Eaton and Nagle think that allowing for a family member is a good first step. The Commission did not favor allowing ADUs in separate structures and was not concerned about the size of the ADUs as long as variances were not required to accommodate the ADU. Commissioner Wilcox liked the affidavit requirement and CUP process.



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b) Construction Review Timeline

The Commission discussed the construction of 18970 Azure Road at their June meeting. Smith put together a construction timeline of that project. Smith highlighted the changes that should ensure grading issues are resolved in the future.

**4. LIAISON REPORT**

Carlson presented the Liaison Report. There were a couple City Council meeting between Planning Commission meetings. The most significant discussion revolved around the location of new bathrooms at the Deephaven Beach.

**5. ADJOURNMENT**

Motion by Commissioner Studer to adjourn the meeting at 8:35 p.m. Motion seconded by Commissioner Eaton. Motion carried 6/0.

Respectfully submitted,

Patrick Smith  
Planning Director



**Agenda Date: 08-18-20**

**Agenda Item:** Definition of Single-Family Dwelling and possible Accessory Dwelling Units.

### **Background**

On August 3, 2020, the City Council directed staff to continue reviewing the plans for 18100 Honeysuckle Lane and 18855 Ridgewood Road as if they were single-family residences since they had one address, one sewer line and under one roof line.

A public hearing was scheduled for August 18, 2020, Planning Commission meeting to discuss the definition of a single-family dwelling and possibly allowing Accessory Dwelling Units.

Single-family detached dwelling units are permitted in the three residential zoning districts.

A **single family detached dwelling unit** is defined as a building designed or intended for occupancy exclusively by one family.

A **family** is defined as an individual person or two or more such persons related by blood, marriage or adoption living together exclusive of occasional guests or servants or a group of not more than five persons not related by blood, marriage or adoption living together in a single housing keeping unit in a single dwelling unit, exclusive of servants and occasional guests.

### **Definition of "Family" - Other Cities**

- Minnetonka defines **family** as any number of individuals living together on the premises as a single housekeeping unit as distinguished from a group occupying a boarding or lodging house, licensed residential care facility, licensed day care facility or community based residential facility.

A **housekeeping unit** is defined as all persons residing within a dwelling unit whose relationship includes a substantial amount of social interaction, including the sharing of housekeeping responsibilities or expenses and the taking of meals together.

- Chaska defines a **One Family Dwelling** as a residential structure containing one dwelling unit only. A **Dwelling Unit** is defined as one or more rooms containing complete kitchen facilities, permanently installed, which are arranged, designed, used or intended for use exclusively as living quarters for one family and for not more than an aggregate of two roomers or boarders. A **Family** is defined as one or more persons related by blood,

marriage, or adoption or a group of not more than four (4) persons not so related, maintaining a common household in a dwelling unit.

- Merced, CA defines ***Dwelling or Dwelling Unit*** as a building or a portion of a building (not including tents, cabins, or trailers) containing one or more habitable rooms used or designed for occupancy by one or more persons for living and sleeping purposes, including kitchen and bath facilities. Arrangements characterized by apartment-like subunits in individual interior bedrooms within a dwelling unit are prohibited, such as, for example, keyed locks or deadbolts on interior room doors; separate entrance or access from street, side yard, or backyard to interior rooms; or separate cooking facilities in individual rooms, including, but not limited to, cooking range and oven.

***Household*** is defined as one (1) or more persons, whether or not related by blood, marriage or adoption, sharing a dwelling unit and using a single common cooking facility in a living arrangement usually characterized by sharing living expenses, such as rent or mortgage payments, food costs and utilities, as well as maintaining a single lease or rental agreement for all members of the household.

- St. Charles, IL defines ***Family*** as one (1) or more individuals related by blood, marriage or adoption, or five (5) or fewer individuals not so related, living, sleeping, and eating on the premises as a single house keeping unit.
- Henderson, NV defines ***Family*** as a person living alone or any of the following groups living together as a single housekeeping unit and sharing common living, sleeping, cooking, and eating facilities:
  - A. Any number of related people; or
  - B. No more than six unrelated people. The size of a family unit is subject to the maximum dwelling unit occupancy of 20 persons set forth in Section 19.5.3.A.1.For purposes of this section, "related" means by blood, marriage, adoption, guardianship, or other duly and legally authorized custodial relationship.

### **Possible Definitions for Dwelling Unit, Family**

Below are the current and proposed definitions for Dwelling Unit and Family.

#### ***Dwelling Unit – Current***

A dwelling for one family.

#### ***Dwelling Unit - Proposed***

One or more rooms designed, occupied or intended for occupancy as separate living quarters, with a single kitchen, sleeping, and bathroom facilities for the exclusive use of a single family.

#### ***Family – Current***

An individual person or two or more such persons related by blood, marriage or adoption living together exclusive of occasional guests or servants or a group of not more than five persons not related by blood, marriage or adoption living together in

a single housing keeping unit in a single dwelling unit, exclusive of servants and occasional guests.

**Family – Proposed**

One (1) or more individuals related by blood, marriage, or adoption, or a group of not more than four (4) not so related, living together as a single housing keeping unit and sharing common living, sleeping, cooking and eating facilities.

**Possible Accessory Dwelling Unit Standards**

Below are accessory dwelling unit/guest apartment regulations from other cities, somewhat organized from most restrictive to lease restrictive.

City	Size of ADU	Ownership	Design	Approval Process
Wayzata				Administrative for living quarters for persons employed on the property CUP for non-rental guest house
Orono				Administrative for nonrental guest apartments with no exterior access CUP for nonrental guest apartments with exterior entrance
Minnetrissa				Administrative for nonrental guest apartments
Independence				Administrative – limited to relatives of homeowners
Minnetonka	950 SF or 35% of gross living area, whichever is less	Property owner must permanently reside in either unit	Must not substantially alter the single family character of the structure	Conditional Use Permit
White Bear Lake	880 SF or 40% of habitable area, whichever is less	Property owner must reside in the principal structure.	Must not detract from the single family character of the neighborhood.	Conditional Use Permit. Property annually submits an affidavit verifying owner-occupancy and fee.
Plymouth	1,000 SF or 50% of habitable area, whichever is less.	Property owner must permanently reside in either unit	Must be located over an attached or detached garage.	Administrative approval. Rental of the ADU requires a city rental license.
St. Paul	800 SF and shall not exceed 1/3 size of the total floor area of the structure	Property owner must permanently reside in either unit	A walkway shall be provided from abutting public street to the primary entrance of the accessory dwelling unit.	Administrative approval. Must record a Declaration of Restrictive Covenants. Property annually submits an affidavit verifying owner-occupancy and fee of \$63.

## **PLANNING COMMISSION DISCUSSION**

### Key questions

- *Does it matter who lives in the guest apartment/accessory dwelling unit?* Property owners are permitted to rent out entire houses.
- *What is the most appropriate approval process?* If exterior design is important, then staff would recommend that any ADU should be approved through the Conditional Use Process, similar to Minnetonka.
- *What is the appropriate size?* The Planning Commission believed that size was not a concern as long as a variance was not needed to accommodate the guest apartment/accessory dwelling unit.
- *Should an annual affidavit be required?* The Planning Commission thought this was prudent.

## **PLANNING COMMISSION ACTION REQUESTED**

- 1) Recommend the City Council adopt the proposed definitions of Dwelling Unit and Family.**
- 2) Discuss any requirements for Accessory Dwelling Units/guest apartments. Staff will then bring back a draft ordinance for Planning Commission review at the September Planning Commission meeting.**



**Agenda Date: 08-18-20**

**Agenda Item:** Fencing around swimming pools.

### **Background**

A resident of Deephaven contacted staff about requiring fencing around pools. Currently, the City only requires screening of pools, of at least 50% closed, but not necessarily fencing. Fencing around pools is not required by the State or the International Building Code either. It is up to individual cities to require fencing around pools or not. Drowning is the leading cause of accident deaths for kids between the ages of 1-4.

Staff checked with an insurance company, and their agent said not having a fence around a swimming pool does not affect a homeowner's policy. Having a pool does not affect a homeowner's policy.

On August 3, 2020, the City Council discussed fencing around swimming pools and directed staff to bring the item to the attention of the Planning Commission.

### **Other Cities**

- Minnetonka requires a non-surmountable fence, five feet in height around all residential pools and spas.
- Chaska requires a safety fence at least five feet in height to completely enclose a swimming pool.
- Orono does not require fences around swimming pools.
- Chanhassen requires a non-climbable fence, a minimum five feet tall, around swimming pools.
- Wayzata requires a structure or non-climbable safety fence at least five feet in height around pools.

### **Key Questions**

- Should it be the responsibility of the pool owner or the neighbor to install a fence to ensure young children do not accidentally drown in in-ground swimming pools.
- How does a possible swimming pool fence regulation affect homeowners on lakes? (Any new fence requirement would not be enforced retroactively.)

## **PLANNING COMMISSION ACTION REQUESTED**

The City Council should determine if the Council wants the Planning Commission to recommend regulations for fencing around swimming pools or not.