

**DEEPHAVEN CITY COUNCIL MEETING
THURSDAY, NOVEMBER 10, 2016
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 Gustafson to approve the Consent Agenda, consisting of the following items:

- A. Approve October 17, 2016 Minutes
- B. Approve Verifieds
- C. Appoint Robert Dircks to Boat Committee
- D. Approve September 2016 Treasurer's Report

Seconded by Councilmember Erickson. Motion carried 5-0.

4. **MATTERS FROM THE FLOOR**

There were no Matters from the Floor this evening.

5. **PUBLIC HEARING**

A. **Consider the Partial Vacation of Dyer Lane – Adopt Resolution No. 55-16, Approving Vacation of a Portion of Dyer Lane**

Administrator Young stated that the City Council reviewed the plat of Svoboda Addition on Dyer Lane on October 3, 2016 and was informed of a discrepancy regarding the width of Dyer Lane. The survey of Svoboda Addition showed Dyer Lane as a 40 foot right-of-way, while Hennepin County showed Dyer Lane as a 66 foot right-of-way.

He stated that at the October 3rd meeting, Zoning Coordinator Dale Cooney explained that although there is enough square footage for subdividing the property without the additional square footage, the discrepancy in the Dyer Lane setback is significant in that it could require the houses to be set 13 feet further back from the road.

He stated that during their review of the subdivision request, both the Planning Commission and City Council strongly preferred that the driveway entrance of both proposed lots to have access off of Dyer Lane rather than either Manor Road or Cottagewood Road due to public safety considerations. It was also concluded that the access off of Dyer Lane could be better accommodated by vacating the easterly and westerly thirteen feet of Dyer Lane.

He stated that the standards for granting a vacation are that “the city council may vacate a street only upon a finding that the vacation is in the best interest of the public.” It can be determined that the vacation of a portion of Dyer Lane is in the best interest of the public for the following reasons:

1. Dyer Lane is characterized as a minor street that will always serve a very limited number of properties
2. Dyer Lane currently has a 66’ right-of-way, which is far in excess of what it needed in regards to utility and snow storage, and can be adequately and more efficiently maintained with a 40’ right-of-way
3. The vacation will enhance public safety by allowing future driveway access off Dyer Lane versus access off of Manor Road or Cottagewood Road.

Mayor Skrede called the public hearing to order at 7:07 p.m. Hearing no comments, Mayor Skrede closed the public hearing at 7:08 p.m.

Motion by Councilmember Erickson to adopt Resolution No. 55-16, a Resolution Approving the Vacation of a Portion of Dyer Lane. Seconded by Councilmember Gustafson. Motion carried 5-0.

6. PLANNING & ZONING REQUESTS

A. Consider the variance requests of The Landschute Group, Inc. to encroach into the minimum required lake yard setback in order to install an underground accessory structure and expand a legal non-conforming deck at 20430 Lakeview Avenue.

Zoning Coordinator Cooney summarized the staff report. He said that The Landschute Group is requesting a variance to install an underground accessory structure within the lake yard setback and that the accessory structure would be a sauna located 20 feet from the Ordinary High Water Level (OHWL) of Lake Minnetonka.

He said that the City Council originally reviewed the application at their October 3rd meeting and extended the 60-day timeline by an additional 60 days in order to consider the request further. Cooney said that the City Council asked staff to provide information on new boathouses being constructed in other Lake Minnetonka communities and that staff submitted the memorandum related to boathouses and “water-oriented accessory structures” at the October 17th Council meeting.

Cooney said that he also followed up with the Minnesota Department of Natural Resources regarding the request and asked if the agency would be opposed to the underground accessory structure if the city were to adopt the “water-oriented accessory structure” language found in State of Minnesota Administrative Rules, Chapter 6120. He said that the Minnesota DNR stated that they would still be opposed to the proposed structure, partially because it would be constructed underground into a steep slope.

Joe Ryan of 4600 Linwood Circle, future owner of the property at 20430 Lakeview Avenue, said that he wants to get the facts straight and that there were some incorrect assumptions made about the project. He asked how this might be brought up later.

Councilmember Kask said that if the application is declined the project could not be resubmitted for 6 months and that withdrawing the application would start the process from the beginning.

Young said that a withdrawing the application alleviates the city from having to make a decision. Skrede asked what the timeline would be for resubmitting after withdrawing the application. Young said that he would get clarity from the city attorney.

Kask said that he would not want to see this proposal go on any further than the December 5th meeting if no new information has been presented.

Cooney asked what new information was needed before the city could make a decision. Skrede said that Mr. Ryan wanted to get clarification from the Minnesota DNR on their position. Ryan said that the Minnesota DNR's comments included references to sewer and water which were not part of his application. Ryan said that he was trying to do the right thing.

B. Consider the request of Revision, LLC for variances from the minimum required front and lake yard setbacks, in order to construct a second story on a nonconforming house at 19725 Lakeview Avenue.

Zoning Coordinator Cooney summarized the staff report. He said that Revision, LLC, builder for the property owners, has applied for a variance to construct a second story addition onto the existing nonconforming house at 19725 Lakeview Avenue. Cooney noted that the second story will not expand the footprint of the house but that the house encroachments are being expanded upward, a variance is required. He said that the property is an R-3 parcel and the existing home, built in 1972, has nonconforming front and lake yard setbacks and nonconforming impervious coverage.

Cooney noted that state statute allows nonconformities to be continued through repair, replacement, restoration, maintenance, improvement, but not including expansion. He said that expanding the encroaching areas of the house upwards is considered an expansion, and a variance is required. Cooney said that, since the footprint of the existing nonconforming impervious surface area will remain the same, a variance is not required for that nonconformity.

Cooney said that Section 1302.05(3) of the zoning ordinance requires a front yard setback of 35 feet. He said that the applicants are requesting a front yard setback of 24 feet and are seeking a variance of 11 feet. He said that Section 1302.05(3) of the zoning ordinance requires a lake yard setback of 100 feet. Cooney said that the applicants are requesting a lake yard setback to the rear face of the house of 55 feet and are seeking a variance of 45 feet.

Cooney pointed out the existing survey shows a lake yard setback of 56.7 feet, which is measured from the northeast corner of the covered porch, but that the porch overhang should be included in the setback calculation, which would put the rear face of the house at 55' from the OHWL.

Cooney said that the house is built into a hillside, and rear of the house is built up to the edge of a number of retaining walls, giving the perception of a taller house. He said that, since the retaining walls are not part of the building itself, they should not be calculated as part of the building height.

Cooney said that he recommends approval of the variance requests of Revision, LLC to encroach 11 feet into the minimum required front yard setback, and for the rear face of the house to encroach 45 feet into the minimum required lake yard setback for the property at 19725 Lakeview Avenue, as presented. He said that his recommendation is based on the following findings:

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

Yes. 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 in order to build a second story on an existing nonconforming house. The footprint of the house will not change and no proposed outward expansion of the nonconformities is proposed. The proposal is otherwise zoning code compliant.

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

Yes. 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?

Yes. The proposal puts the property to use in a reasonable manner. The property is a reasonable expansion and modernization of a 1972 house.

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

Yes. The encroaching footprint of the house creates practical difficulties to expand the house upwards to legal building height limits without expanding the volume of the encroachment.

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

No. The proposal would not alter the essential character of the locality. The proposed changes maintain existing setbacks, and the house will remain of a size and scale that is consistent with other updated homes in the area.

Cooney said that the Planning Commission held a public hearing at their October 18th meeting and on a 6-0 vote recommended approval based on the findings of staff. He said that the approval was conditioned that the applicants provide an updated certified survey for the property, and that they also work with the neighbor to address privacy concerns. Cooney said that both items have been addressed and concluded his staff report.

Jewett asked if a variance would be required if they removed the house and replaced it in the same spot. Cooney said that a variance would not be required. Jewett asked if the retaining walls will hold with the second story on the house. Cooney said that is outside of the city's engineering review.

Kask said that if the home could not accommodate a second story and needed to be removed a new variance application would have to be submitted.

Erickson asked if they were keeping the first floor. John Daly of Revision LLC, applicant, said that they would be scrapping the house to the floor of the first floor since new framing would need to be installed.

Kask said that the permit should indicate the scope of the job and that if the foundation is materially changed or removed a new variance application.

Jewett asked if the hillside and foundation would hold the additional story. Daly said that the foundation is fine but that the retaining walls might need some work.

Motion by Councilmember Kask to approve the request, as presented, based on the recommendation and findings of the Planning Commission with the conditions that if the foundation of the house is removed or materially changed, the applicant will need to reapply for a variance. Motion was seconded by Councilmember Erickson. Motion carried 5-0.

C. Consider the variance request to exceed the maximum impervious surface area in conjunction with the construction of a swimming pool at 20650 Bayview Court.

Zoning Coordinator Cooney summarized the staff report. He said that Coen + Partners have applied for a variance to exceed the maximum allowable impervious surface area in order to build a pool on the R-2 property. He said that the applicant is requesting 27.6% impervious surface area for the property. Cooney noted that with a lot size of 40,163 square feet, the property meets the minimum lot size for the zoning district.

Cooney said that Section 1302.04(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25% and that, currently, the property slightly exceeds the current impervious surface limitations. He said that the applicant is proposing an impervious surface area of 27.6% and is seeking a variance to exceed the maximum impervious surface area by 2.6%.

Cooney said that the applicant has stated that the steep grade of the lot and the location of the buildable area for the property required significant additional hardcover for the driveway. Cooney said that the driveway accounts for 37.6% of the property's allowable hardcover.

Cooney said that the applicant proposes stormwater infiltration systems that would exceed the city's performance standards and is proposing stormwater mitigation that would handle 48% of the property's proposed hardcover.

Cooney said that impervious surface variances for conforming R-2 properties should be rare occurrences since the lot sizes, which are nearly one acre in size, are generous enough to accommodate most needs. He said that he recognizes the driveway as a limitation to the property that requires additional hardcover but that the property on Bayview Court currently has a number of other hardcover amenities including an 808 square foot basketball court, 999 square feet of deck and screened porch, and 308 square feet of patio. He said that he struggles to find justification for additional impervious surface expansion, and believes there is an opportunity to reallocate existing impervious area to accommodate a pool without the need for a variance. Cooney said that he is concerned about the precedent that might be set by allowing a 40,000 square foot R-2 property exceed impervious surface requirements to accommodate what amounts to an outdoor amenity.

Cooney said that he recommends denial of the request of Coen + Partners for a variance to exceed the allowable maximum impervious surface area by 2.6% for the property at 20650 Bayview Court, as presented. He said that his recommendation was based on the following findings:

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

No. The purpose and intent of the ordinance is to limit the uncontrolled use of shoreland, via the Shoreland Management District impervious surface restrictions, which affects the public health, safety, and general welfare not only by contributing to pollution of public waters, but also by impairing the local tax base. The requested excess impervious surface area further exacerbates these issues, which are having a negative cumulative effect on the city. The proposed mitigation helps to alleviate this issue, but the city's objective is to avoid the impact in the first place.

Is the variance consistent with the comprehensive plan?

The comprehensive plan states that it will be a city policy to "Continue to maintain or exceed Department of Natural Resources shoreline standards through locally adopted shoreland ordinance requirements." Allowing the conforming lot to exceed to impervious surface requirements to accommodate what amounts to an outdoor amenity and without a clear practical difficulty, would be counter to these objectives and set a negative precedent for the city.

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

Yes. A pool of this size is a reasonable use of the property.

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

No. While the driveway creates some limitations for the property, the limitations are not unique within the city. These limitations do not create notable constraints for the use of the property as evidenced by the number of other impervious surface amenities on the property including the basketball court, deck, and the patio.

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

No. The proposal would not alter the essential character of the locality.

Cooney said that the Planning Commission held a public hearing at their October 18 meeting and, on a 6-0 vote, recommended approval of the application as presented. He said that the motion was conditioned that the applicant provides a soil test and meets the requirements of the city engineer. Cooney said that the approval was based on the following findings:

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

Yes. 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. In this instance, the applicant is seeking to vary from the stated impervious surface requirements of the ordinance.

Is the variance consistent with the comprehensive plan?

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

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

Yes. A pool of this size is a reasonable use of the property.

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

Yes. The driveway and topography on the property constitute unique circumstances to the property not created by the homeowner.

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

No. The proposal would not alter the essential character of the locality.

Cooney concluded his staff report.

Suzanne Kickhafer, property owner, said that the water captured will be directed underground to the infiltration areas. She said that the situation will be better than what is there now and that it improves water retention.

Erickson said that the proposal would stop erosion off of the property.

Kask said that he is not crazy about the idea of granting variances for amenities such as pools. But he said that the proposal will control erosion and reduce runoff and perhaps the tradeoff is worth it.

Gustafson said that it is pushing the limits to grant an impervious surface variance to allow an amenity. He said that he is hesitant to approve the request and that these seem to be getting out of control.

Kickhafer said that there is a lot of decking on the rear of the property that has gaps to allow infiltration even though city code does not count this area as pervious. She also said that the only way to get out of the house on the rear is via the decks.

Jewett said that he is sympathetic to the issues for the site. He said that it is built on a hillside and that the mitigation is oversized. Jewett said that the applicants have not proven practical difficulty, but are simply offering mitigation in exchange for hardcover.

Erickson said that they are capturing water that erodes and that the city gains an investment in better stormwater management from the proposal.

City Administrator Young said that with the proposal the water doesn't run onto adjacent properties. He said that effective stormwater mitigation is a better situation for the properties.

Skrede said that this may end up being a better situation for the neighbors.

Motion by Councilmember Kask to approve the request, as presented, based on the recommendation and findings of the Planning Commission with the conditions that a soil test will be conducted for the infiltration areas that meets the requirements of the city engineer. Motion was seconded by Councilmember Erickson. Motion carried 5-0.

D. Consider the variance requests to exceed the maximum allowable impervious surface coverage and for a reduction from the minimum required house width in order to build a new house at 20760 Linwood Road.

Zoning Coordinator Cooney summarized the staff report. He said that Peterssen/Keller Architecture has applied for a variance to construct a new house on the currently vacant R-2 parcel at 20760 Linwood Road. He said that the property is undersized for an R-2 parcel, and the elevation on the property is such that a basement cannot be constructed. He said that the property has not had any prior development.

Regarding lot size, Cooney said that Section 1310.01(2) of the zoning ordinance states “A structure may be built on any lot or tract of land of a size less than that required by this Section if such lot or tract of land is included in a plat or registered land survey filed for record after May 4, 1960 in accordance with all applicable laws.” He said that although the 32,699 square foot property is substandard by current R-2 zoning requirements, the property was subdivided in 1969 and is therefore not subject to a lot size variance.

Cooney said that Section 1302.04(2) of 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 29.45% and is seeking a variance to exceed the maximum impervious surface area by 4.45%. Cooney said that the property is vacant, and existing impervious conditions are 0%.

Cooney said that the elevation of the property is approximately 934 feet, and the floodplain elevation is 931.5 feet, which does not accommodate a basement being built for the home. Cooney said that the applicant has stated that the footprint of the house must be larger in order to accommodate those areas that are typically housed within the basement. He said that the lot is also 81% of the required minimum lot size for an R-2 property.

He said that the applicant has proposed a combination of stormwater mitigation systems for the property. Cooney said that portion of the required volume will be mitigated via a French drain infiltration basin, and a portion of the volume will be mitigated via a cistern. Cooney said that, as proposed, the system is somewhat oversized and will accommodate 145% of required mitigation volume.

Cooney said that the property was assessed \$2,400 for a sanitary sewer lateral at the time the sewer improvements were installed. He said that since the property has not had a house on it before, the City of Deephaven charges an additional sewer connection fee is \$2,400. He said that this would be in addition to the Metropolitan Council’s Sewer Access Charge that is typically charged at the time of building permit.

Cooney said that Section 1310.03 of the zoning ordinance requires that a single family residential dwelling must be a minimum of 25 feet wide at its narrowest dimension. He said that the applicant is proposing a house that has a dimension of 19 feet for the area that connects the main living area to the garage, as well as a 6 foot connection to the accessory-type structure. Cooney said that the connection to the accessory-type structure is allowed by the zoning code, and that therefore he interprets the potential variance as 6 feet from the minimum required house width.

Cooney said that, in 2007, the city granted an impervious surface variance for the R-2 property at 3342 Robinson’s Bay Road and that the situation on the property was very similar. He said that the 32,161 square foot property was an undersized R-2 property with no ability to build a basement. Cooney said that the major differences were that the existing hardcover for the property was 34.9%, and a private road encroached creating additional hardcover issues. Cooney said that property was granted a variance for 30.4% hardcover, but minus the road encroachment the effective hardcover for the property itself was 26.6%.

Cooney said that this background was provided to show that there is a precedent for this type of request. Cooney said that, in his opinion, the primary judgment for the city is the reasonableness of the request and that the variance findings found in Section 1315 asks the question: Does the proposal put property to use in a reasonable manner?

Cooney said that while he believes that unique circumstances exist for the property, he struggles with the reasonableness of the request. He said that there are a number of amenities that suggest that the applicants are not attempting to work within the given limitations of the property. Cooney said that in the face of a variance request, there must be some constraints. Cooney noted that the proposal includes a fourth garage stall, an accessory-type structure, a combined house/garage footprint of 5,296 square feet, a 3,152 square foot driveway/auto court, and a 651 square foot terrace. Cooney said that any single one of these items might be justifiable, but taken as a whole they fail to meet “reasonable manner” criteria.

Cooney said that he recommends denial of the variance requests of Peterssen/Keller Architecture to exceed the maximum allowable impervious surface area by 4.45%, and for a variance from the minimum required house width of 6 feet for the property at 20760 Linwood Road, as presented, based on the following findings:

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

No. The purpose and intent of the ordinance is to limit the uncontrolled use of shoreland in the City of Deephaven which affects the public health, safety, and general welfare not only by contributing to pollution of public waters, but also by impairing the local tax base. The requested excess impervious surface area further exacerbates these issues, which are having a negative cumulative effect on the city. The proposed mitigation helps to alleviate this issue, but the city’s objective is to avoid the impact, to the extent practical, in the first place.

Is the variance consistent with the comprehensive plan?

The request is consistent with the Comprehensive Plan’s Housing Elements Goals and Policies which encourages safe, healthy and quality housing that respects the natural environment of the community.

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

No. The proposal includes a fourth garage stall, an accessory-type structure, a combined house/garage footprint of 5,296 square feet, a 3,152 square foot driveway/auto court, and a 651 square foot terrace. The request suggests that the applicants are not attempting to work within the constraints of the undersized property.

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

Yes. The property is undersized for an R-2 lot, and the elevation of the property prohibits the construction of a full basement for the house.

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

No. The proposal would not alter the essential character of the locality. While the hardcover is in excess of what is permitted for the property, the proposal is of a similar size to other legal, conforming single-family houses within in the neighborhood.

Cooney said that the Planning Commission held a public hearing at their October 18th meeting and, on a 6-0 vote, recommended approval of the variance requests of Peterssen/Keller Architecture to exceed the maximum allowable impervious surface area by 4.45%, and a reduction from the minimum required house width of 6 feet for the property at 20760 Linwood Road, as presented, and based on the following findings:

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

Yes. 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 impervious standards to build on an undersized R-2 lot. The property is further hampered by the low elevation of the lot which does not allow a basement to be built for the house.

Is the variance consistent with the comprehensive plan?

The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which encourages safe, healthy and quality housing that respects the natural environment of the community.

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

Yes. The proposal is of a similar size and scale with other properties in the neighborhood.

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

Yes. The property is undersized for an R-2 lot, and the elevation of the property prohibits the construction of a full basement for the house.

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

No. The proposal would not alter the essential character of the locality. While the hardcover is in excess of what is permitted for the property, the proposal is of a similar size to other legal, conforming single-family houses within in the neighborhood.

Cooney concluded his staff report.

Jewett asked why the property was currently listed for sale.

Jessica Otis, property owner, said that the family circumstances are currently in limbo. She said that there was a 50 percent chance that they would build on the property.

Jewett asked what would happen if the ownership of the property changed. Cooney said that the variance runs with the land and that the new owners would be entitled to the variance if they start construction before the variance approval expires in one year.

Kask said that if the proposal changes in any material way it would require resubmission.

Gabriel Keller of Peterssen/Keller Architecture, applicant, said that they tried to be respectful of the area. He said that the site is flat and not able to have a basement. He said that there is a lot of the house that typically goes into a basement that needs to be accommodated on the first floor or second floor. He said that it was important to have a project that fits in with the neighborhood. He said that the one and a half story house brings down the scale of the house and that it looks smaller than it is. He said that in order to accomplish this, the house needs to spread out. Keller showed a graphic of a house that could be built without a variance which he said does not cover as much of the site but is more massive.

Travis Van Liere of TVL Studios, landscape designer for the proposed project, stated that the lot was a narrow wooded lot and they tried to preserve as many trees as possible. He said that mitigation would be provided by a cistern connected to the roof runoff. He said that the water would be used for irrigation. He said that they added an infiltration trench along the auto court portion of the driveway to

capture the runoff from that area. Van Liere said the trench was a rock trench that would allow the captured water to infiltrate.

Keller said that, regarding the reasonableness of the request, the proposal is comparable to other R-2 lots, and that if the lot were 40,000 square feet, a variance would not be required. He said that there are 5 bedrooms, which is typical of similar home. He said that the guest bedroom, workshop, man cave, are elements that are typically housed in the basement that are now required to be above grade.

Erickson asked what the finished square footage of the main body of the house would be, without the garage. Keller said that is was approximately 3,000 square feet.

Gustafson said that 120 feet wide is not narrow. He said 50 feet was a narrow lot. Van Liere said that the mitigation would create an effective hardcover on the property of about 23%.

Skrede said that he had some concerns about the accessory type structure and that it seemed like an add-on. Jessica Otis said that the house was built as kind of a ranch style house and that it was designed to protect privacy.

Jewett said that the new houses at 21700 and 21710 Linwood might be good comparable properties although the lots were bigger. He said that all of these properties were in the 9,000 square foot impervious range. Jewett said that if the hardcover is comparable on those properties, it should be allowed for this property.

Erickson said that he thought capturing the water off of the auto court was good planning. He said that he did not think the design was disproportionate for the lot and that the houses to the south also do not have basements.

Kask said that the hardcover ordinance was developed at a time when proposals were not providing opportunities for capture and reuse. He said that now we have a generation of requests that have provided mitigation, which he thinks meets the spirit and intent of the ordinance. He said that he could support the request.

Gustafson said that he challenges the proposal. He said that the bare lot is a blank canvass. He said that when the ordinance was developed, it was to manage water on difficult and undersized lots. He said that it is not that difficult to make a workable proposal on this lot. Gustafson said that the city was rubber stamping these proposals, and if that is the case, should there even be a variance process. He said that staff could handle the review without city council time if the only issue was meeting the mitigation requirements.

City Administrator Young said that applications before the council tended to have more detail and more care. He said that the quality is likely to remain higher if the project goes before the City Council instead of just being reviewed by staff.

Gustafson said that the effort put forth in applications due to fear of denial was a weak argument.

Erickson said if the variance process were eliminated, there would not be a public hearing or an open forum.

Motion by Councilmember Kask to approve the request, as presented, based on the recommendation and findings of the Planning Commission. Motion was seconded by Councilmember Erickson.

Jewett said that he understands Gustafson's argument, but the lack of ability to build a basement is the practical difficulty, and that basements are expected in Minnesota. Erickson said that they were offsetting the loss of 3,000 square feet below the main house.

Motion carried 3-2 with Skrede and Gustafson opposing the motion.

E. Consider the variance requests for side yard setback, exceeding the maximum accessory structure size, exceeding the maximum impervious surface limitation, and exceeding maximum grade alteration limitation in order to modify an existing garage and regrade a portion of the property at 3425 Northome Road.

Zoning Coordinator Cooney summarized the staff report. He said that Tom Kaul has applied for a variance to construct a garage addition and regrade a portion of the R-3 parcel at 3425 Northome Road. Cooney said that the garage addition would include an expansion towards the rear of the property, the addition of a second story for the garage, regrading in the vicinity of the garage, and the creation of a green roof on top of the garage. He said that the proposal triggers a number of variances.

Cooney said that he requested an updated survey from the applicant which, as of this writing, has not been provided. He said that the applicant has verbally expressed the desire not to incur additional costs prior to seeing if the project will be able to move forward. Therefore, some of the information below related to setbacks and impervious area, is based on staff's inferences and calculations from the previously submitted survey.

Cooney said that Section 1310.10 (1)(f) limits the maximum footprint for R-3 accessory structures that contain walls or a roof to 700 square feet. He said that, as proposed the accessory structure would be 1,003 square feet in size, and the applicant is seeking a variance to exceed the maximum accessory structure footprint by 303 square feet. Cooney noted that, as proposed, the accessory structure footprint would also exceed the footprint limitations for the R-2 zoning district, which has a minimum lot size of 40,000 square feet.

Cooney said that Section 1302.05(4) of the zoning ordinance limits the maximum accessory structure height to 15 feet. He said that the applicant is requesting an accessory structure height of 15 feet, measured to the top of the parapet for the green roof. He said that this height does not include the height of the railing for the green roof, which would further expand the height of the structure. Cooney said that the maximum height of the structure overall is if the railing/hedge is included would be 17 feet 8 inches.

Cooney said that structure will be stepped back from the rear of the property as the height increases. Due to the grade change, no single portion of the proposed structure would be greater than 15 feet in height above grade, including the railing and the hedge. If the grade is taken into account, the top of the railing/hedge would be a maximum of approximately 14 feet above grade. The city should make a determination on whether or not they consider the height to be compliant.

Cooney said that the applicant is requesting variances from the side yard setback and the rear yard setback. He said that the existing garage is 5 feet 5 inches into the south side yard setback, and it is not

possible to expand the garage without further encroachment into the setback. Cooney said that the applicant is seeking a side yard setback variance of 4 feet, 7 inches.

Cooney said that Section 1302.05(2) of 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 30.6% and is seeking a variance to exceed the maximum impervious surface area by 5.6%. He said that existing conditions on the property are 27.5% hardcover, and the applicant is proposing to expand the impervious surface area on the 11,150 square foot lot by 3.1%.

Cooney said that, in his opinion, the green roof should be considered stormwater mitigation. He said that the applicant would be required to meet the city's performance criteria, meet the specifications and requirements of the city engineer, and sign a maintenance agreement for the system. Cooney said that the city engineer has stated that the green roof should be considered pervious area. Cooney said that if the city considers the green roof area as adequate for stormwater mitigation, the impervious area on the lot would be reduced to 21.6%.

Cooney said that Section 1312.04 of the zoning ordinance states that any land increase or decrease of more than three feet at any point requires a variance. He said that the applicant is proposing to alter the existing contours by up to 9 feet at the rear of the garage and is seeking a variance to exceed the maximum grade alteration by up to 6 feet in order to be able to access the proposed green roof.

Cooney said that as Chairman Carlson pointed out at the original review of this application, the steep grade from the front of the property to the garage poses access problems for the owner and that access will be improved with this proposal. Cooney also noted that the existing setback conditions for the side yard are often allowed to remain as the building footprint expands.

He said that the proposed grade change is significant. Cooney noted that the principal justifications for land alteration restrictions is to limit builders from cheating height limitations by building up the grade around a property, or altering drainage patterns that would have adverse impacts. Cooney said that neither of those concerns seems to be the case here.

Cooney said that he struggles with finding a practical difficulty for the accessory structure to exceed the district requirements of 700 square feet. He said that the applicant's desire to provide extra storage and a green roof garden are desires of the homeowner, and not unique circumstances to the property. Cooney said that improved access and a flat garden area can be accommodated within the 700 square foot footprint restriction, as can a large, functional, two-car garage with room for additional storage.

Cooney said that he recommends denial of the variance requests of Tom Kaul:

- To exceed the maximum permitted accessory structure footprint by 303 feet
- To encroach 4 feet, 7 inches into the minimum required side yard setback
- To exceed the allowable maximum impervious surface area by 5.6%
- To exceed the maximum allowable grade alteration by up to 6 feet

for the property at 3425 Northome Road, as presented, based on the following findings:

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. While modifying the existing non-conforming structure as it is currently

located would meet the purpose and intent of the ordinance, exceeding the footprint requirements of the ordinance is not in harmony with the purpose and intent of the ordinance.

Is the variance consistent with the comprehensive plan?

The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which encourages residents to maintain and/or improve older homes which will promote diversity of housing in Deephaven.

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

The expanded footprint of the accessory structure significantly exceeds the city's regulations for an R-3 property and is not a reasonable request within the limitations of the zoning district.

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

There are not unique circumstances to the property not created by the landowner. While there are access issues for the garage, the request for additional square footage is not created by limitations of the property itself, but rather by the property owner's desire to expand storage and create a rooftop garden.

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

The proposal will alter the essential character of the locality by creating an accessory structure where the footprint of the structure is disproportionate in scale to other accessory structures.

Cooney said that the Planning Commission reviewed the application at their October 18th meeting. He said that while the commissioners generally expressed support of the proposal, they felt that more information needed to be provided in order to address several issues. Cooney said that Planning Commission recommended that city staff draft written notice to Tom Kaul stating the City of Deephaven needs to extend the 60-day time limit to January 14, 2017 for the following reason:

To allow more time to consider the application once additional details are provided by the applicant regarding the proposed grading, the green roof design, the proposed railings, impervious surface calculations, and survey information.

Cooney concluded his staff report.

Skrede asked if the 60 day notice had been sent out. Cooney said that the Planning Commission can only recommend the extension and that it would be the City Council that makes that determination.

Skrede asked if the City Council is meant to review the concept of the proposal. Cooney said that, while there is not complete information, the essence of the proposal is a 1,003 square foot accessory structure in an R-3 district. He said that if there is not support of that, there is enough information to deny the application tonight. Otherwise, the city can continue with the additional 60 days.

Jewett said that the lot is very challenging and that he would be willing to look at an oversized accessory structure. Jewett said he would want to know that the neighbors were okay with it.

Skrede asked how much of the structure would be visible. Cooney said that it would not be underground, but simply having a green roof and that the entire structure would be visible. Skrede said that the city could see the top and the sides, but that it would have a toupee on the top.

Gustafson said that the rendering shows that the building fades into the hill.

Erickson asked what the applicant was trying to accomplish. Tom Kaul, the applicant, said that there would be storage and a workshop. Erickson asked about transitioning from the house to the building. Kaul said that there would be an entrance into the upper level and interior stairs down to the main garage.

Skrede asked if the 1,000 square feet takes into account both levels. Cooney said that is was just the footprint.

Kask said that there is a practical difficulty, but asked if the hardship was sufficient for the additional 300 square feet.

Jewett said that he did not think a green roof could be counted as mitigation. Kask and Erickson agreed. Erickson said that he did not think 6 inches of soil was adequate. Kask said that he was not confident that the green roof would work long-term.

Erickson said that he did not have an issue with the 1,000 square feet, but that the mitigation would be important.

Gustafson said that the lot was difficult and unique, but that the applicant could almost build a new house based on what he is planning.

Kask said that he struggles with the 1,000 square feet and said that a three car garage would be 720 square feet which seems adequate.

Kaul said that he wants to live on the property for 30 years, and that the garage isn't usable the way it is.

Skrede asked if there were other requests for oversized accessory structures that have come through the city recently. Cooney said that there are fewer large accessory structures these days since most houses are building attached garages.

Kask said that he could not support the proposal at 1,000 square feet, but that he did not want to design the structure for the applicant. Gustafson said that the proposed design is more accessible, which is the biggest issue for the property.

Erickson agreed that access is the primary issue. He said he did not like the proposal, but he understands why a traditional three car garage would not work.

Skrede said that he would be more supportive if the garage were more buried into the hillside and less obtrusive.

Gustafson said that there are 3 wavering votes for approval and that the applicant can decide if he wants to take the risk to spend more money to bring the finished plan back to the city council.

Motion by Councilmember Gustafson to take an additional 60 days for the city to consider the application to allow the applicant to provide additional information and design details. Second by Councilmember Erickson. Motion carried 5-0.

F. Adopt Resolution No. 56-16, Acknowledging Lot Consolidation at 19735 Manor Road and 19825 Manor Road.

Zoning Coordinator Cooney summarized the staff report. He said that Billy Smith is the owner of two adjacent lots located at 19825 Manor Road and 19735 Manor Road and intends to combine the two adjacent lots into one lot. Cooney said that it is the policy of Hennepin County to require notification from the city in which the parcels are located.

Cooney said that Mr. Smith is in the process of designing a zoning code compliant house for the property and that both of the existing lots are zoned R-2, which requires a minimum lot size of 40,000 square feet. He said that 19825 Manor Road has a square footage of 271,395 square feet, while 19735 Manor Road has a lot size of 48,305 square feet.

Cooney said that due to the presence of bluffs, portions of the upland area on 19825 Manor Road are not considered suitable for structures and Mr. Smith is aware of this issue, and has indicated that he has no plans to build in these areas.

Cooney said that state law does not give municipal oversight into lot consolidations, but it is the policy of Hennepin County to require notification from the city in which the parcels are located. The City Attorney felt that the best way to memorialize such a transaction would be through a resolution.

Cooney said that since this lot has a long, controversial history in the city, he thought the item should be reviewed as a separate agenda item.

Motion by Councilmember Kask to acknowledge the lot split as presented. Motion was seconded by Councilmember Gustafson. Motion carried 5-0.

7. UNFINISHED BUSINESS

A. Select Special Council Meeting Date to Conduct Canvass of Election Results

Administrator Young stated that Minnesota State Statute authorizes the City Council to serve as the canvassing board for city elections. He stated that the Council must meet to canvass the returns and declare the results within three to ten days after a general Election. This means that a City Council can hold a Special Council meeting to canvass the municipal election results beginning Monday, November 14th and ending on Friday, November 18th.

The Council decided to canvass the municipal election results at a Special Council meeting to be held at 4:00 p.m. on Monday, November 14, 2016.

B. Authorize Final Payment to Pride Construction for 2016 Manhole Repair Project

Administrator Young stated that the Deephaven City Council authorized entering into a contract with Pride Construction & Excavating on March 21, 2016 for the 2016 Manhole Rehabilitation Project. The original bid for this project was \$24,800.00. He stated that the Final Payment Request from Pride Construction & Excavating in the amount of \$30,150.00 has been submitted for approval by the City Engineer.

He stated that the total cost of the 2016 Manhole Rehabilitation Project came in \$5,350.00 over the original bid price due to the need to install 1' barrel sections in four of the manholes to lift them up. While this eliminated some of the work that was planned, it was more expensive than just sealing these manholes.

He stated that the total engineering cost for this project through October 31, 2016 is \$8,986.50, which represents 29.8% of project cost. The original engineering budget for this project was \$3,975.

Motion by Councilmember Kask to authorize Final Payment to Pride Construction & Excavating in the amount of \$30,150.00 for the 2016 Manhole Rehabilitation Project. Seconded by Councilmember Gustafson. Motion carried 5-0.

C. Adopt Resolution No. 57-16, Approving Grant to Hennepin Youth Sports Program

Councilmember Jewett presented the proposed Thorpe Park Rehabilitation grant for Council review. He stated that the grant would be a matching grant budgeted at \$500,000 and includes a new warming house, restroom, new hockey rink surface, boards and lighting at Thorpe Park. He provided a brief overview of the grant review process.

Councilmember Jewett stated that this project is huge in scope and should be the type of project that the County is looking to fund. He stated that there are a number of ways to make sure that the project comes in under budget and noted that there are also ways to procure better bid prices on the project.

Mayor Skrede asked what would happen if the County should to decide to fund less than their share of the project cost, which is listed at \$250,000.

Councilmember Jewett stated that he is not sure what would happen if Hennepin County came in at a lower price. He stated that the County did wonder why we didn't partner with Minnetonka Youth Hockey Association, one of the bigger users of the hockey rink.

He stated that he discussed this project with Commissioner Callison's office to see if they were agreeable to such a large project. He stated that he didn't feel that we would be any better off delaying the submittal of the grant application for a year.

Mayor Skrede noted that we apparently don't need a full set of plans at this point and that what we currently have must be sufficient to move forward.

Councilmember Jewett stated that the County knows that the prices aren't locked in yet.

Motion by Councilmember Gustafson to adopt Resolution No. 57-16, a Resolution Approving the Submittal of a Grant Application to the Hennepin County Youth Sports Program. Seconded by Councilmember Erickson. Motion carried 5-0.

D. Other

There was no other Unfinished Business this evening.

8. NEW BUSINESS

A. Approve Special Event Permit Application

Mike Miller (1987 Fagerness Point Road, Wayzata) was present to represent IDNIYR – Western Region to request using the access and parking at Deephaven Beach at St. Louis Bay on either January 8-9 or 14-15 to conduct iceboat racing. He stated that he currently has a permit with the Hennepin County Water Patrol to hold the ice boat regatta on Lake Minnetonka. He stated that the St. Louis Bay launch is perfect for access to the lake. He stated that there were approximately 50 competitors for this race and they would only use this site if ice conditions were optimal.

Mayor Skrede stated that his only question is in regards to parking, as there is not a lot of room at the Deephaven Beach parking lot and the Park Avenue parking lot to accommodate 50 vehicles.

Mike Miller stated that there are approximately 16 parking spaces at each parking lot and the remainder of the vehicles can park on Lake Avenue and Azure Avenue. He noted that most applicants drive together.

Motion by Councilmember Kask to approve a Special Event Application to IDNIYR – Western Region to use the St. Louis Bay launch and available parking to hold an ice boat regatta on either January 8-9 or 14-15. Seconded by Councilmember Gustafson. Motion carried 5-0.

B. Adopt Resolution No. 53-16, Designating a Bridge Priority List

Administrator Young stated that he was contacted by Jacob Bronder, Bridge Engineer with the Hennepin County Transportation Department, regarding the City’s intention to replace the Northome Bridge. He stated that he was informed that the attached resolution designating a bridge priority list is needed by the MN Department of Transportation prior to the disbursement of state funds.

Motion by Councilmember Kask to adopt Resolution No 53-16, a Resolution Designating a Bridge Priority List. Seconded by Councilmember Gustafson. Motion carried 5-0.

C. Adopt Resolution No. 54-16, Approving the Deephaven Beach Swimming Dock Bid

Administrator Young stated that Public Works Foreman John Menzel met with three contractors and received the following two bids for the reconstruction of the Deephaven Beach Swimming Dock requesting the installation of 56 eight inch piles located every eight feet, 2” x 8” cross members, 2” x 8” stringers, 2” x 6” decking.

<u>Bidder</u>	<u>Total Bid Amount</u>
Concept Landscaping	\$42,000.00
THN Enterprises, Inc.	\$49,608.00

He noted that a Minor Change Application has been submitted to the Lake Minnetonka Conservation District for the new dock and he is waiting on approval from the MN Department of Natural Resources.

Motion by Councilmember Gustafson to adopt Resolution No. 54-16, a Resolution Approving the Deephaven Beach Swimming Dock bid submitted by Concept Landscaping in the amount of \$42,000.00. Seconded by Councilmember Erickson. Motion carried 5-0.

D. Approve Quote to Install LED Recess Lighting in Council Chambers

Administrator Young stated that following the installation of the new AV equipment last month, it became apparent that the reflection on the new television screen from the old style hanging light fixtures in the Council Chambers would interfere with the visibility of material presented on the screen.

He stated that staff was directed to obtain a quote on the installation of LED recessed lighting in order to correct the problem with the glare from the old lighting fixtures. He stated that a quote was obtained from Westy's Electric Inc. in the amount of \$2,239.00 to install 9 - 16 LED recess lights and a dimmer switch.

Motion by Councilmember Gustafson to approve the quote submitted by Westys Electric Inc in the amount of \$2,239.00 for the installation of 9 to 16 LED recess lights and a dimmer switch to replace the existing light fixtures in the City Council Chambers. Seconded by Councilmember Erickson. Motion carried 5-0.

9. DEPARTMENT REPORTS

A. Police Department

The Council reviewed the October Police Report.

B. Excelsior Fire District

Councilmember Erickson noted that the next EFD Board meeting will be held on November 16th.

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:

- Performance Evaluations
- Building Permit Update
- Street Maintenance Patching Totals
- Organics Recycling Update from Hennepin County

10. ADJOURNMENT

Motion to adjourn by Councilmember Kask, seconded by Councilmember Gustafson. Motion carried 5-0. The meeting adjourned at 10:55 p.m.

11. Executive Closed Session regarding potential litigation settlement discussions pursuant to Minn. Stat. 13D.05 Subd. 3(B) and labor union contract discussions pursuant to Minn. Stat. 13D.03 Subd. 1 (b).

Motion by Councilmember Kask to enter into Executive Closed Session pursuant to Minn. Stat. 13D.05 Subd. 3(B) and 13D.03 Subd. 1 (b) to discuss litigation settlement and union contract proposals. Seconded by Councilmember Gustafson. Motion carried 5-0.

Discussion was held on a recent settlement proposal from the City of Shorewood and on the most recent union proposal.

12. Adjournment

Motion by Councilmember Kask to adjourn the Executive Closed Session. Seconded by Councilmember Gustafson. Motion carried 5-0. The meeting adjourned at 11:35 p.m.

Respectfully submitted,
Dana H. Young
City Administrator