

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

**PRESENT:** Chairman Kent Carlson and Commissioners Barbarajean Brandt, Brandon Gustafson, John McGary, Gen McJilton and Pete Onstad

**ABSENT:** Commissioner Scott Hemink

**OTHERS PRESENT:** Council Liaison Darel Gustafson and Zoning Coordinator Gus Karpas

**MINUTES OF May 21, 2013**

Motion by Commissioner Onstad, seconded by Commissioner Gustafson, to approve the minutes of May 21, 2013. Motion carried 5-0-1. Commissioner McGary abstained.

**PUBLIC HEARINGS**

**Conditional Use Permit - Elizabeth Luzaich – Elizabeth Salon-Spa, 18322-B Minnetonka Boulevard**  
– request to install a twelve square foot, free standing business identification sign.

**Section 1150.04** of the Deephaven Sign Ordinance states that no sign shall be erected, altered, reconstructed, maintained or moved into the city without first securing a conditional use permit from the city in accordance with Section 1320 of the City's Ordinances. The content of the sign shall not be reviewed or considered in determining whether to approve or deny a sign permit.

Zoning Coordinator Karpas summarized the request. He said Elizabeth Luzaich is requesting a Conditional Use Permit to construct a ten foot high freestanding sign frame supporting a total of twelve square feet of signage to advertise her salon business. She has indicated there would be no lighting associated with the proposed signage. The proposed sign would contain the business logo, with lettering along the bottom.

He recommended approval of the conditional use request since there is a need to advertise the business and upon review of the application, it has been determined there would no negative impact on the development of the community, the character of the community or on the health, safety and general welfare of the occupants of surrounding lands. The proposal will not impact traffic conditions or impact property values.

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

Commissioner Brandt asked how far the sign would be from the sidewalk. Ms. Luzaich said she wanted to keep it close to the building and it would be similar to other signs in the area. It was estimated it would be about ten feet from the sidewalk.

Commissioner Onstad asked if staff received any comments regarding the request. Zoning Coordinator Karpas said he had not. Onstad asked if the lettering would be as it is represented on the submittal material. Ms. Luzaich said it would.

Commissioner Brandt raised concerns about the number of signs in the area.

Motion by Commissioner Onstad to recommend the City Council accept the recommendation of staff to approve the Conditional Use Permit request of Elizabeth Luzaich to construct a ten foot high freestanding sign with twelve square feet of signage to advertise her salon business at 18322-B Minnetonka Boulevard. The applicant complies with the criteria for approval outlined in Section 1320.03 in that; (a) the proposal will have no impact on the overall development of the community; (b) there will be no impact on the character and development of the neighborhood; (c) there will be no impact on the health, safety

and welfare of the occupants of surrounding lands; (d) there will be no impact on traffic or parking conditions due to this signage; and (e) there will be no negative impact on property values on the subject property or those in the surrounding area. Commissioner McJilton seconded the motion. Motion carried 6-0.

**Variance and Conditional Use Permit - Steve and Linda Olmsted, 20700 Linwood Road** - request to exceed the maximum permitted impervious surface area and to exceed the maximum permitted grade alteration for the construction of a new single family home.

**Section 1350.06(2)(a)** of the Shoreland Management Ordinance permits a maximum impervious surface area of 25%. The proposed impervious surface area on the property would be 26.4%. A variance to exceed the maximum impervious surface area by 1.4% is sought.

**Section 1345.26(b)** of the Deephaven Zoning Code states that the finished grade of construction on a vacant lot shall not increase the grade by more than one (1) foot the existing elevations on a property unless a Conditional Use Permit is granted by the City in accordance with Section 1320 of the City Code. The applicants propose to alter the grade a maximum of four feet, eight inches (4'-8"). A Conditional Use Permit to exceed the maximum permitted grade alteration by three feet, eight inches (3'-8") is being sought.

Zoning Coordinator Karpas summarized the request. He said the applicants propose to construct a new single family home on a lot which currently contains two detached structures that lie within the required north and south side and lake yard setbacks. The property also contains a ten foot city easement along the entire north side of the property along with a twenty-five foot driveway easement that runs in favor of the property to the north. The proposal would remove the existing non-conforming accessory structures and replace them with a single family home that would require a 1.5% variance of the required impervious surface area and are seeking to alter the existing grade by five (5) feet which they say necessary to elevate the home to permit proper drainage away from the home given the elevation of the lot in relation to the street.

Karpas said the existing impervious surface area on the property is increased by .7%. As noted in the staff report, the property includes area easements along its north boundary that contain approximately 4,522 square feet of impervious surface area. If the easement areas along with the corresponding lot area were removed from the equation, and the impervious surface recalculated, the impervious surface area for the property would be 20.9%.

He said he recommended approval of the request. He felt the variance met: (a) the purpose and intent of the ordinance in that the applicant is seeking to exceed impervious surface standards of the ordinance on a property that has existing easements that run in favor of other entities, but contain large amounts of impervious surface area; (b) the request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the development of residential property within the city; (c) the proposal would remove two existing non-conforming accessory structures and construct a new single family home which would comply with the required setbacks. Single family homes are a permitted use in the R-2 Zoning District; (d) the need to exceed the impervious surface is due to circumstances out of the property owner's control. There are two easements along the north side of the property, each containing large amounts of impervious surface area, equaling just over 9.5% of the existing lot area. If the easement areas along with the corresponding lot area were removed from the equation, and the impervious surface recalculated, the impervious surface area for the property would be 20.9%; and (e) the proposal would not alter the essential character of the locality. Any potential run-off issues will be addressed with a mutual grading plan with the property to the south as they are developed in tandem.

He felt the Conditional Use Request met the following criteria: (a) the proposed elevation change will have no impact on the overall development of the community; (b) the proposed elevation change will have no impact on the character and development of the neighborhood. The existing drainage pattern is

not changed. Water that was drained to this property continues to drain to this property and is contained and sheds from the property as it has in the past; (c) there will be no impact on the health, safety and welfare of the occupants of surrounding lands. The applicant proposes to grade the property in a manner to carry water from the neighborhood to control run off in the area; (d) there will be no impact on traffic or parking conditions due to this alteration; and (e) there will be no negative impact on property values on the subject property or those in the surrounding area.

Zoning Coordinator Karpas said another issue that has come up is an encroachment into a required easement setback. This is not an encroachment into a required dimensional setback in the ordinance so he's not sure how the Planning Commission should address it, but it may want to make a motion in the event one is necessary to carry the process onto the Council.

Peter Eskuche, Eskuche Associates, said the intent was to maintain the existing grade elevation at the road to the front door. Commissioner Brandt asked if the grade would be in line with the grade on the adjacent lot. Mr. Eskuche said it would. Mr. Eskuche discussed the impervious surface variance and said they tried to work within the requirements but the easements on the property pushed the building pad further from the road requiring a longer driveway, thus more impervious surface area.

Mr. Eskuche discussed the proposed grade alteration, again noting the change is intended to level the grade to the front of the home only. He said the house is pushed back from the lake behind the homes on either side. If the home were closer, a greater amount of fill would be necessary. He feels the proposal is improving the character of the neighborhood and said the applicants are removing 1,700 square feet of impervious surface area from the required lake yard setback and the design of the home does not include a walk-out basement.

Chairman Carlson opened the public hearing. Zoning Coordinator Karpas said he received two email inquirers about both projects but did not hear back from either with follow up questions. Hearing no further public comment, the hearing was closed.

Commissioner Gustafson asked about the volume of proposed fill that would be used in the alteration. Mr. Eskuche said he was not sure, but it would be hard to calculate since the area to be filled is a wedge and not a box. Commissioner McGary asked how much fill would be brought in from off site. Adam Barrington, Eskuche Associates, said it should be balance with the fill removed for construction being used to fill the area.

Commissioner Brandt asked about the overall height of the structure, noting she understood the city measures to the average, but she is concerned about the impact on the neighbors across the street from the property, who have an expectation that the grade would not be altered by more than one foot. She said the applicant is asking for a conditional use permit which gives the city an opportunity to review the height. Mr. Eskuche said the overall height of the structure would be thirty-five and a half feet (35'-6") from the proposed grade.

Commissioner McJilton confirmed the proposed grade alteration. Mr. Eskuche said the lower end of the home is being kept at the existing elevation and the lot is still below the street elevation. Commissioner McGary noted the grade alteration provides the opportunity for a greater setback from the street. Mr. Eskuche said it would and also would correct a potential drainage issue towards the house. Commissioner Carlson mentioned that low lying lots are typically going to need some type of grade alteration to comply with the city's lowest floor elevation requirements which states structures are to be at least three feet above the ordinary high water level.

Motion by Commissioner Carlson to recommend the City Council accept the recommendation of staff to approve the Variance and Conditional Use Permit requests of Steve and Linda Olmsted to exceed the maximum permitted impervious surface area by 1.5% and to exceed the maximum permitted grade alteration by four (4) feet and that the increase of grade on their lot may not exceed five (5) feet to

facilitate the construction of a new single family home as presented at 20700 Linwood Road. The additional grade is necessary to permit the owners to design a home with enough elevation to drain water away from the foundation. The applicants comply with the criteria for approval outlined in Sections 1315.03 and 1320.03 in that;

*The Variance meets the following criteria:* (a) 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 exceed impervious surface standards of the ordinance on a property that has existing easements that run in favor of other entities, but contain large amounts of impervious surface area; (b) the request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the development of residential property within the city; (c) the proposal would remove two existing non-conforming accessory structures and construct a new single family home which would comply with the required setbacks. Single family homes are a permitted use in the R-2 Zoning District; (d) the need to exceed the impervious surface is due to circumstances out of the property owner's control. There are two easements along the north side of the property, each containing large amounts of impervious surface area, equaling just over 9.5% of the existing lot area. If the easement areas along with the corresponding lot area were removed from the equation, and the impervious surface recalculated, the impervious surface area for the property would be 20.9%; and (e) the proposal would not alter the essential character of the locality. Any potential run-off issues will be addressed with a mutual grading plan with the property to the south as they are developed in tandem.

*Conditional Use Request meets the following criteria:* (a) the proposed elevation change will have no impact on the overall development of the community; (b) the proposed elevation change will have no impact on the character and development of the neighborhood. The existing drainage pattern is not changed. Water that was drained to this property continues to drain to this property and is contained and sheds from the property as it has in the past; (c) there will be no impact on the health, safety and welfare of the occupants of surrounding lands. The applicant proposes to grade the property in a manner to carry water from the neighborhood to control run off in the area; (d) there will be no impact on traffic or parking conditions due to this alteration; and (e) there will be no negative impact on property values on the subject property or those in the surrounding area.

Motion Seconded by Commissioner McGary. Motion carried 5-0-1. Commissioner Brandt abstained.

Motion by Carlson to recommend the Council amend the easement agreement requiring a twenty-five feet setback from the edge of the established easement, or grant a variance of five feet of the required twenty five foot setback into the north easement setback. Motion seconded by Commissioner McJilton. Motion carried 5-0-1. Commissioner Brandt abstained.

**Conditional Use Permit - Paul and Jessica Medlin, 20710 Linwood Road** – request to exceed the maximum permitted grade alteration for the construction of a new single family home.

**Section 1345.26(b)** of the Deephaven Zoning Code states that the finished grade of construction on a vacant lot shall not increase the grade by more than one (1) foot the existing elevations on a property unless a Conditional Use Permit is granted by the City in accordance with Section 1320 of the City Code. The applicants propose to alter the grade a maximum of four feet, eight inches (4'-8"). A Conditional Use Permit to exceed the maximum permitted grade alteration by three feet, eight inches (3'-8") is being sought.

Zoning Coordinator Karpas summarized the request, noting the applicants are seeking to construct a home that would alter the existing grade by four feet, eight inches (4'-8"), which they say is necessary to permit a main story walkout that would exit onto a lakeside patio/pool area and uses the grade that slopes towards the lake.

He said he recommended approval of the conditional use request since the proposed elevation change will have no impact on the overall development of the community, will have no impact on the character and development of the neighborhood, the existing drainage pattern is not changed since the water that was drained to this property continues to drain to this property and is contained and sheds from the property as it has in the past, there will be no impact on the health, safety and welfare of the occupants of surrounding lands since the applicant proposes to grade the property in a manner to carry water from the neighborhood to control run off in the area, there will be no impact on traffic or parking conditions due to this alteration and there will be no negative impact on property values on the subject property or those in the surrounding area.

Peter Eskuche, Eskuche Associates, was available to answer any questions. Chairman Carlson opened the public hearing.

Gary Wyard, 3630 Northome Road, was in attendance on behalf of Lois Shaw of 20730 Linwood Road. He said their concern involved any impact on drainage, disruption of line of sight and the impact of structure height.

Mr. Eskuche said the proposal would not bring the elevation of the house up from how it could be constructed without the grade change. Commissioner Brandt said that doesn't make sense since the applicant would be bringing in fill and placing a house on top of it. Mr. Eskuche said the fill would be leveling off from the street and the house would be set into the filled area, not on top of it. Brandt asked about the impact on the Shaw side of the structure. Mr. Eskuche noted there would be no grade alteration on that side of the lot. Council Liaison Gustafson asked if the same structure could be built at the road. Mr. Eskuche said it could.

Mr. Wyard asked about the proposed pool and if it were located within the required lake yard setback. Mr. Eskuche said it was not.

Hearing no further public comment, the hearing was closed.

Commissioner Brandt said she was opposed to the grade change and felt there were ways to design homes with the amenities the applicants wanted without such extreme changes in grade.

Commissioner McGary believes the grade alteration helps reduce the massing of the structure. If the applicant didn't alter the grade, more of the house would be exposed. He has to trust the judgement of the city engineer if he says the drainage plans conforms to code. Commissioner McJilton asked for clarification on the drainage along the south side of the home. Mr. Eskuche explained how the proposed swale carried water away from the foundation and property line and directed it towards the lake.

Commissioner Onstad is generally in favor of the request, agreeing that the fill will visually reduce the massing of the home from the street.

Commissioner Gustafson asked about enforcement if the proposed drainage plan doesn't work. Zoning Coordinator Karpas said the applicant is responsible for correcting any drainage issues associated with the development. The applicant is not permitted to increase the volume or velocity of runoff from their property from what currently exists. Gustafson asked if the volume of fill was known on this project. Mr. Eskuche said it was not. Commissioner Onstad said the fill request is similar to the previous request only the fill is shifted to the lake side of the home instead of the street side. Gustafson noted the fill is needed for the pool, not to access the front door.

Zoning Coordinator Karpas discussed the criteria between a conditional use permit and variance, noting the applicant does not have to show a practical difficulty in altering the grade, even though it's just to permit the construction of a pool. The Planning Commission is reviewing the request for its impact on the health, safety and general welfare of the community.

Mr. Wyard asked about the elevated pool and whether this would impact the line of sight for the Shaw property. Paul Medlin said the pool is set back from the lake so there should be no sight line impacts on the adjacent properties. Mr. Eskuche noted that the pool needed to be elevated as a safety precaution to allow those in the house to be able to easily see it.

Motion by Chairman Carlson to recommend the City Council accept the recommendation of staff to approve the Conditional Use Permit request of Paul and Jessica Medlin to exceed the maximum permitted grade alteration by three feet, eight inches (3'-8") and permit the increase of grade on their lot not to exceed four feet, eight inches (4'-8") to facilitate the construction of a new single family home as presented at 20710 Linwood Road. The additional grade is necessary to control drainage on the lot which is low lying, and the permit the owners to design a home with a main level walkout. The applicants comply with the criteria for approval outlined in Section 1320.03 in that; (a) the proposed elevation change will have no impact on the overall development of the community; (b) the proposed elevation change will have no impact on the character and development of the neighborhood. The existing drainage pattern is not changed. Water that was drained to this property continues to drain to this property and is contained and sheds from the property as it has in the past; (c) there will be no impact on the health, safety and welfare of the occupants of surrounding lands. The applicant proposes to grade the property in a manner to carry water from the neighborhood to control run off in the area; (d) there will be no impact on traffic or parking conditions due to this alteration; and (e) there will be no negative impact on property values on the subject property or those in the surrounding area.

The motion was conditioned that the City Engineer verify the drainage and grading plan.

Commissioner Onstad seconded the motion. Motion carried 4-2. Commissioners Brandt and Gustafson voted nay.

**Ordinance 13-64, Amending Section 1300 – Dimensional Requirements** – An ordinance amending Deephaven ordinance code section 1300; amending regulations controlling height and setbacks for non-conforming lots in the R-3 zoning district, also establishing an overall principal structure height for all residential districts.

Zoning Coordinator Karpas summarized his memo to the Commission stating the City Council directed the Planning Commission to discuss the need for the regulation of structure massing in July of 2012. This was due to a growing number of concerns raised by residents about the news homes being constructed in the city and how their size impacted adjacent properties.

He said the Commission began their process in August of 2012. This involved numerous meetings including a joint meeting with the City Council and a meeting with local contractors for their feedback. During these meetings the Commission established standards and made revisions to those standards and in May directed staff to schedule a public hearing for the proposed ordinance amendment. The ordinance included in the packet is the final draft version of the ordinance to be reviewed by the Commission for consideration as part of the public hearing.

Chairman Carlson opened the public hearing. Zoning Coordinator Karpas said he heard no comments on the proposed ordinance. Hearing no public comment, the hearing was closed.

Chairman Carlson said the table should read the "Sum Total" instead of "Average" when referencing side yard setback. Commissioner Gustafson said the 30 degree plane should reference it is measured from the vertical plane.

Commissioner Brandt asked if the ordinance would apply to accessory structures. Zoning Coordinator Karpas said it would not.

Commissioner Carlson moved the Council adopt ordinance 13-64 as amended, an ordinance of the City of Deephaven, Minnesota amending Deephaven Ordinance Code Section 1300; amending regulations controlling height and setbacks on non-conforming lots in the R-3 zoning district, as written. Commissioner McJilton seconded the motion. Motion carried 6-0.

## **OLD BUSINESS**

**Discuss – Rezone of 18545 Lake Avenue** – discuss request to rezone 18545 Lake Avenue from R2 Single Family Residential to R3 Single Family Residential.

Zoning Coordinator Karpas said reviewed his memo to the Commission stating the initial discussion at the Planning Commission centered on information submitted by the Corens intended to show the muted impact rezoning their property would have on the community.

He felt the direction of the Council was not to focus specifically on the Corens request, rather on what the Commission's feelings were on rezoning property in general. He believes rezoning requests should be broken down into the following questions 1) what is the purpose of the request?; 2) will the request set precedent?; and 3) where do you stop?

The typical purpose to request a rezoning for property is to take it from one use to another. Given the nature of property uses in the City of Deephaven, this type of request is not going to happen very often. The most likely purpose in the city would be to create additional buildable lots, which add value to property or to seek a lower zoning designation to provide setback relief.

Karpas described to the most recent rezoning request which was to rezone eight lots along Linwood Road from R-2 Single Family to R-3 Single Family. The request was initiated by a property owner whose lot did not meet the minimum required 40,000 square foot lot area, but still had to maintain the minimum required setbacks. The home he designed for the lot could not be built without the issuance of variances since it would not comply with the required side yard setbacks. Rather than redesign the home, the property owner argued that since his property did not meet the minimum required R-2 lot area, it should be rezoned to R-3 and those setbacks should be applied to his construction.

The question of precedent is the most important since the action taken by the city is closely watched. The previous rezoning request used natural beginning and end points for their rezoning area. The property went from an R-3 District to the south to a city easement to the north, where the lots got noticeable larger. Within these lots were four that did not meet the minimum required lot area for the R-2 District, but four that exceeded it, some under common ownership. It was determined that the eight lots in question could be subdivided into twelve legal lots. This would have created a density of one and a half times what currently would have been allowed in the neighborhood. Density aside, the location of the proposed property to be rezoned and its situation on the zoning map could easily be justified if the city did approve the rezoning.

But precedent is not that hard to set. Unlike the request above, the Corens property is lot in close relation to an R-3 District, but not connected to an R-3 District. In addition, it complies with the dimensional requirements of the R-2 zoning. Without a clear rationale for rezoning this property, the city would be hard pressed to justify why they would approve rezoning for one property and deny the request of another. Also, there are pockets of lots that "just don't fit" the zoning district they're in, is that justification for rezoning? That brings you to the question of where do you stop?

He believes once you start justifying rezoning based on lot area and dimensions you create a situation you can't control. The city was not uniformly platted and the zoning districts were created, literally, fifty to sixty years after most of lots in the city were platted. The lot characteristics and zoning districts were arbitrarily decided and have been in place for over forty years. To start making corrections, whether right

or wrong, on a piecemeal basis would be a mistake. If he were asked to make a recommendation on the Corens request, he would recommend denial of any formal application that would rezone 18545 Lake Avenue as an individual entity. The property complies with the requirements of its designated zoning district and he could not justify a reason for approving the request. Though the Corens have indicated the intent is to develop the property for family members, plans change and the ability to sell a subdividable property adds value to the lot.

Commissioner Onstad feels it would be difficult to approve most rezoning requests without setting precedent.

Commissioner McJilton agreed and felt the zoning districts and varying lots sizes helped maintain diversity in housing.

Commissioner Gustafson said property information is readily available and anyone researching the area would come to the conclusion that this property would host one home and use that information to make home buying decisions. It's the city's responsibility to maintain consistency.

Commissioner McGary would feel differently if the neighboring property were included in the request, but thinks any application including just this lot could be deemed spot zoning. He doesn't see a reason why the city would change the zoning.

Commissioner Brandt agrees. She feels any change in zoning in the city should be led by Staff. She commented that there are also unintended consequences when you rezone property such as impacts on infrastructure and drainage. Zoning Coordinator Karpas agreed those are big issues.

Chairman Carlson feels the larger lots create a greenspace buffer between the park and the more dense residential uses. He feels rezoning the property would have an impact on Thorpe Park.

Council Liaison Gustafson said it was his feeling there wasn't much traction on the Council for this request, but they feel residents have the right to due process.

It was agreed that staff would contact the Corens to discuss the decision.

## **LIAISON REPORT**

Council Liaison Gustafson said the Council had a lengthy discussion regarding the proposed construction ordinance. Zoning Coordinator Karpas outlined the two main concerns of the Council which included the added costs the additional surveys would add to small, homeowner initiated projects and clarification on how the grade restriction would be measured.

Councilmembers felt that even though staff had the ability to waive the survey requirement, there would be no consistency and could double the cost of small projects such as decks. They felt there needed to be some type of clear benchmark set as to when a survey would be required. Staff amended the proposed ordinance by adding a provision requiring a survey for all new structures and additions increasing the existing footprint greater than 20%.

The proposed ordinance would change the alteration limit to three feet with written approval from the City Engineer and staff. Any deviation would require a variance and the demonstration of a practical difficulty. The Council's concern centered on private landscaping projects and how the grading restriction would be applied. Staff attempted to address that by amending the proposed ordinance to permit an area of three hundred square feet of alteration before approval is necessary. Staff felt this was adequate to permit most homeowners to conduct reasonable landscaping activities on their properties.

Councilmember Gustafson said Council will continue to work with Staff on the ordinance.

**ADJOURNMENT**

Motion by Carlson to adjourn the meeting at 9:10. Commissioner Gustafson seconded. Motion carried 9:10.

Respectfully submitted,  
Gus Karpas  
Zoning Coordinator