

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, APRIL 2, 2018
MINUTES**

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

PRESENT: Mayor Paul Skrede, Councilmember's Darel Gustafson, Kent Carlson, Tony Jewett, and Steve Erickson

STAFF: 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 Erickson to approve the Consent Agenda, consisting of the following items:

- A. Approve March 19, 2018 Council Minutes
- B. Approve Verifieds

Seconded by Councilmember Gustafson. Motion carried 5-0.

4. MATTERS FROM THE FLOOR

There were no Matters from the Floor this evening.

5. PUBLIC HEARING

A. Public Hearing to receive public comment regarding the City of Deephaven's Storm Water Pollution Prevention Program. Comments will be included in the City's annual report to the Minnesota Pollution Control Agency.

Administrator Young stated that one of the main requirements of the Storm Water Pollution Prevention Plan (SWPPP) is to hold an annual hearing to solicit public comments on the plan. He stated that the City has been required since 2003 to develop a Storm Water Pollution Prevention Plan to reduce pollution entering into area water bodies by establishing best management practices. He noted that our SWPPP and related documents are available for public review on the City webpage.

Mayor Skrede opened the public hearing for public comments. Hearing no comments, Mayor Skrede closed the public hearing.

6. PLANNING & ZONING REQUESTS

A. Variance requests of Dean & Stephanie Friezen to encroach into the minimum front yard setback and to exceed the maximum roof eave encroachment allowance for the property at 4395 Cottonwood Lane

Zoning Coordinator Cooney presented his staff report. Cooney said that Dean and Stephanie Friezen, property owners, are requesting a variance to expand the front entryway to their house and that the expansion would require a variance of the front yard setback and maximum roof eave encroachment.

Cooney said that the project proposes several minor additions, only one of which triggers a variance. He said that the front entry of the house would be increased two feet in depth, would be wider than the existing entry, and would encroach 1 additional foot into front yard setback. Cooney pointed out that the front entry would add approximately 17 square feet of new front yard encroachment.

Cooney said that Section 1302.05(3) of the zoning ordinance requires a front yard setback of 35 feet. He stated that the applicants propose a front yard setback of 31.6 feet and are seeking a variance of 3.4 feet from the minimum required front yard setback.

Cooney said that applicants have stated their need for the expanded front entry is to allow more access area for guests since there is a stairwell immediately off of the front foyer. Cooney noted that the front of the house already encroaches into the front yard setback, and even minor expansions to the front of the house require a variance.

Cooney stated that the applicants are also rebuilding an entry overhang on the front of the house. He said that Section 1310.02 of the zoning code allows roof eaves to encroach into a setback by as much as 3 feet. He said that, as proposed, the roof eaves for the overhang would encroach 4 feet into the front setback and the applicants are seeking a variance of 1 foot from the maximum permitted roof eave encroachment.

Cooney said that he recommends approval of the variance request to encroach 3.4 feet into the minimum required front yard setback and to exceed the maximum allowable eave encroachment by 1 foot, for the proposed expansion of the front entryway at 4395 Cottonwood Lane, as presented based on the following findings:

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

Yes. The applicant is seeking to vary from the stated setback standards of the ordinance to improve an existing non-conforming house constructed in 1959, per Hennepin County tax records.

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

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

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

The minor expansion of the non-conforming footprint of the house and the eave encroachment are reasonable, and the additions remain within the scope and scale of surrounding properties.

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

Yes. The existing house was constructed in 1959 and the front of the house is entirely within the required front setback. It is not possible to modify the front of the house without a variance into the setback.

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

The proposal would not alter the essential character of the locality. The proposed project is a very minor expansion of existing conditions.

Cooney said that the Planning Commission held a public hearing at their March 20th meeting and on a 4-0 vote recommended approval of the request as presented based on the findings of staff.

Cooney concluded his staff report.

Mayor Skrede asked the Council if there were any comments or questions of staff. Hearing no comments, Mayor Skrede requested a motion.

Motion by Councilmember Gustafson to accept the recommendation and findings of the Planning Commission approving the variance request of Dean and Stephanie Friesen to encroach 3.4 feet into the minimum required front yard setback, and to exceed the maximum allowable eave encroachment by 1 foot for the proposed expansion of the front entryway at 4395 Cottonwood Lane, as presented. Motion was seconded by Councilmember Erickson. Motion carried 5-0.

B. Variance request of Zehnder Homes, Inc. to exceed the maximum permitted grade alteration in conjunction with the construction of a new home at 197XX Manor Road (address unassigned, the southern half of the properly formerly considered part of 19655 Cottagewood Road)

Cooney presented his staff report. Cooney said that Zehnder Homes, Inc., property owner, is requesting a variance to exceed the maximum permitted grade alteration in conjunction with the construction of a new house. He said the property is zoned R-2 and is 79,911 square feet in size. Cooney stated that Section 1312.04 of the zoning ordinance requires a variance for any land alteration greater than 3 feet at any point. He said the applicant is proposing land alteration of up to 6 feet, and is seeking a variance of 3 feet from the maximum permitted land alteration.

Cooney said that the property was subdivided from the property at 19655 Cottagewood Road in 2016 and has never had a house on it before. He said that grading on this property was always going to be a challenge since the grade drops away quickly from Dyer Lane towards the wetland in the rear yard. Cooney noted that the applicant is exceeding the maximum permitted grade alteration in two areas: 1) the northwest corner of the house near the stoop area, and 2) immediately behind the garage.

Cooney said that the principal justifications for land alteration restrictions are to limit properties from circumventing the house height limitations by building up the grade around a property, or altering overall drainage patterns in a significant or detrimental way. He pointed out that either of these concerns are the case in this proposal. Cooney said that the property is challenging and, except for the two small variance areas, the applicant has worked within the constraints of the lot.

Cooney said that he recommends approval of the variance request to exceed the maximum permitted grade alteration by 3 feet for the property at 197XX Manor Road (address unassigned), 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 limit properties from circumventing the house height limitations by building up the grade around a property or altering overall drainage patterns in a significant or detrimental way, neither of which is the case in this proposal.

Is the variance consistent with the comprehensive plan?

Yes. The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which encourage 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 proposed house and grading are reasonable for the property, and are comparable in scope and scale to surrounding properties. The grading changes are minor in comparison to the overall project and the proposal generally works with the constraints of the lot.

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

Yes. The property drops away sharply from Manor Road towards the low lying wetland area. The applicant has been able to meet the grading limitations except for two small variance areas.

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

The proposed grading alterations would not alter the essential character of the locality. The overall proposal is of a scope and scale similar to neighboring properties.

Cooney said that the Planning Commission held a public hearing at their March 20th meeting and on a 4-0 vote recommended approval of the request as presented based on the findings of staff.

Cooney concluded his staff report.

Dave Pemberton of Sathre-Bergquist surveying said that he was representing the applicant and is available for questions.

Councilmember Jewett asked about the driveway access on the Zehnder homes property to the north at 19655 Cottagewood Road was off of Dyer Lane. Pemberton said that he did not recall but that he thought it was off of Dyer. Cooney said that he could not remember either.

Councilmember Erickson said that this is a challenging site the way the grade drops quickly from the road.

Councilmember Carlson said that the city expected that they might need a grading variance when the property was subdivided.

Mayor Skrede read a neighbor comment with concerns about the grading and the wetland areas. Pemberton said that there is no proposed grading near the wetland areas.

Motion by Councilmember Erickson to accept the recommendation and findings of the Planning Commission approving the variance request of Zehnder Homes, Inc. to exceed the maximum permitted grade alteration by 3 feet for the property at 197XX Manor Road (address unassigned), as proposed. Motion was seconded by Councilmember Gustafson. Motion carried 5-0

C. **Variance request of Joel Conner & Rachael Jarosh to exceed the maximum permitted impervious surface coverage for the property at 4300 Chimo East**

Cooney presented his staff report. He said that the property owners have applied for variances to redo the hardcover on the R-2 property at 4300 Chimo East. Cooney said the property is 46,170 square feet in size and exceeds the minimum lot size for the R-2 district.

Cooney said that Section 1302.04(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25%. He said the applicants are proposing an impervious surface area of 27.11% and are seeking a variance to exceed the maximum impervious surface area by 2.11%. Cooney noted that currently, the property is at 27.56% impervious.

Cooney said that the house was built in 2000, and the proposed impervious area for the property at that time was 23.5%. He said that a variance was never granted for the additional impervious areas. He noted that all impervious areas over 25% should be considered illegal nonconforming. He noted that the bulk of the illegal impervious areas appear to be at-grade patio and step areas around the house. Cooney said that the property owners purchased the house in February of 2015, and that he assumes that they have inherited the excess impervious coverage.

Cooney said that the applicants are proposing to redo the impervious areas on the property at a percentage slightly less than existing conditions. He said that impervious surface variances for an R-2 property that exceeds the minimum lot size are rare. Cooney stated that since the hardcover on the property is being completely redone, this may be the appropriate time to have the owners assess their priorities and bring the property into compliance. He noted that a reduction of the 4,531 square foot carriage driveway represents an opportunity to both bring the property into compliance while also allowing for the desired patio areas.

Cooney said that he is inclined to give the applicants the benefit of the doubt for trying to improve a situation not of their own making and attempting to bring the property into compliance by A) requesting a variance, and B) providing the required mitigation. He noted that, without such a request, the excess hardcover would have remained undetected and the city would not have benefited from the proposed mitigation.

Cooney said that Owen and Dorothy Schott are the owners of the property at 4290 Chimo East for which several storm sewer additions are proposed as a part of this project. Cooney noted that Mr. Schott has expressed a willingness to allow the applicants to tie into the storm sewer via his property, but Mr. Schott is not in favor of the additional catch basins that are proposed for his property. Cooney would recommend conditioning any approval on obtaining written consent from Mr. Schott for the improvements that would impact his property.

Cooney said that, as proposed, the property would be required to provide 110.6 cubic feet of mitigation volume and that the applicants are proposing 162 cubic feet of mitigation volume with excess runoff routed towards the lake via storm sewer belonging to the homeowners association. He said that a portion of the roof runoff will be routed to the mitigation area via direct connection to the downspouts. Cooney said that he has requested written approval from the homeowners association to link into the storm sewer.

Cooney said that he recommends approval with conditions of the variance requests of Joel Conner and Rachael Jarosh to exceed the maximum allowable impervious surface area by 2.11%, for the property at 4300 Chimo East, as proposed, with the following conditions:

- Applicants comply with the recommendations of the city engineer.
- Eliminate the two additional manholes proposed for the 4290 Chimo East property.
- Applicants obtain written consent from neighboring property owner to install the proposed improvements.
- Applicants verify that the storm sewer is in proper working order.
- Applicants obtain written consent from the homeowners association to utilize the storm sewer.
- The applicants enter into a maintenance agreement with the city to ensure the long-term operation and maintenance of the storm water management improvements. The maintenance agreement shall be executed and recorded against the parcel.

Cooney said that his recommendation was based on the following findings:

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

Yes. The requested excess impervious surface area reduces impervious conditions from existing while also providing required mitigation.

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 impervious areas, while they exceed code requirements, are improvements from existing conditions.

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

Yes. The excess impervious areas are an existing condition of the property created prior to their purchase of the home in 2015.

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 March 20 meeting, and on a 2-2 vote (with Daly and Werneiwski voting against) recommended denial of the application based on the findings that the application did not meet the practical difficulty standard since the hardcover was installed illegally without a variance, the desire to exceed the maximum allowable hardcover is created by the landowner and not a unique circumstance, and that redoing the impervious areas on the property allows the property owner to bring the property into compliance by reducing hardcover areas throughout the property.

Cooney concluded his staff report.

Councilmember Jewett said that the motion by the Planning Commission was for approval, but that the tied vote meant that it was denied. Cooney said that was correct and that the City Council should be deliberate in spelling out any reasons for denial.

Joel Conner, applicant, said the location of the house requires a large amount of hardcover dedicated to driveway area. He said they are restricted as to what they can do beyond a house and driveway, and that they are proposing a reduction in excess hardcover.

Councilmember Erickson asked Conner his definition of excess. Connor said it was those areas over 25% and that he was proposing a reduction of 500 square feet of hardcover.

Councilmember Erickson asked about the dip in the center of the carriage driveway. Conner said that would be filled and would be a landscaped area. Connor said that the area was dangerous. He said that there are some complicated drainage issues.

Connor said that the new house at 19094 Minnetonka Boulevard has created more runoff down the hill and is jeopardizing a retaining wall. He said that the area between his property and 4290 Chimo East becomes the red sea when there is significant rain.

Councilmember Jewett noted that the hardcover reduction was closer to 1,000 square feet.

Mayor Skrede said that the homeowners association might want to come together to help mitigate the area. He said that he does not want to approve a plan that depends on a neighbor approval that has not yet been obtained. He said there is an opportunity to solve a bigger problem.

Councilmember Carlson said that there is runoff from the neighbor and the street. He said that he has an issue with the storm water being dumped directly into the lake.

Owen Schott of 4290 Chimo East said the water comes down from Minnetonka Boulevard as well as the Chimo East cul-de-sac. He said that it can overflow the catch basin.

Mayor Skrede said the storm drain might be undersized for the water it is supposed to handle. Schott said that the storm drain is 20 inch concrete pipe all the way to the lake.

Dave Pemberton, surveyor for the project, said that the catch basins are not on the low spot and they don't catch all of the water.

Mayor Skrede said that there are several pieces to the puzzle and asked if it should be a bigger Chimo project. Conner said that they are trying to address some of the water that does not originate on the property.

Tim Johnson, landscape designer for the project, said that they are proposing a curb and drain to help get rid of water at the front of 4300 and 4290 Chimo. He said that the water from the hillside puts the retaining walls in jeopardy and that a drainage area would catch water from the hillside.

Mayor Skrede said that he was worried about oil and sediment being dumped into the lake and if there was any filtration. Dan Schmidt, engineer for the project, said that the underground mitigation will handle the first flush of rainfall which is the dirtiest. He said that beyond that, the water would overflow to the lake. He said about one third of the site will drain to that mitigation area.

Mayor Skrede asked about the proposed catch basins. Schmidt said that in the area where they are proposed the grade is subtle and does not drain well. He said that he was tasked with getting it to drain.

Johnson said that one of the catch basins on the Schott property will be removed.

Councilmember Jewett asked where the curb would direct the water. Schmidt said that the water would go to the catch basin in the center of the driveway. He said that a sump catch basin could be added to create filtration.

Mayor Skrede said that the curb is on a private road, and the storm drain is also private. He said that he cannot authorize improvements to those and that he would need to hear from the homeowners association. He said that he would not want to formally approve the application at this stage and want to table the issue until the parties have gotten together. Skrede said that he is supportive of fixing the drainage in this area. Johnson said that the private improvements are outside the scope of the variance request. Skrede said that he wants to be the last vote on the issue, not the first one.

Conner said that they are trying to split the discussion into those things that are part of the variance request, and those that are not.

Councilmember Erickson said that the ordinance requires a functional mitigation system as part of the variance request. Johnson said they have that already.

Mayor Skrede asked about the signer of the mitigation agreement. Conner said the maintenance agreement is his alone.

Cooney said that the city could approve the application with as many conditions as required to make us comfortable. He said that the city could also take an additional 60 days to review the application and bring it back next month. Cooney said that he recognizes that the applicant is trying to solve several problems, but it is the complexity that makes the review of the request take a bit longer.

Conner said a 60 day delay would push the project to 2019 since summers are so short. Skrede said he doesn't need 60 days, but he would like the other stakeholders to approve the application. Erickson said there is a City Council meeting in two weeks.

Schott said that the homeowners association would probably not care. Conner agreed that it would be approved as long as it did not cost the association anything.

Councilmember Carlson asked how much water would be captured from the street side of the drainage. Johnson said that is a bigger drainage area and they he does not know the answer. Councilmember Carlson asked where that water would go. Johnson said the center of the driveway.

Councilmember Erickson said the driveway drain goes straight to the lake. Johnson said that the mitigation is for the Conner property only, not for Chimo East. Councilmember Erickson said that water from the street goes directly to the lake with no filtration.

Councilmember Gustafson said that things are still up in the air, and that he was not sure what the city would be voting on. He agreed with the mayor that he would prefer that the city be the last vote.

Councilmember Carlson suggested the water could be directed to the low area to offer an opportunity for infiltration. Conner said that he is not interested in treating the water for the entire neighborhood and that the project is already fairly expensive.

Schott said that the street has always been this way.

Mayor Skrede said that by the next meeting, the city would want updated drawings, a signed approval from the homeowners association stating that they agree to the list of items and an agreement from Mr. Schott.

Motion by Councilmember Erickson to table a decision on the request until the April 16 City Council meeting. Motion was seconded by Councilmember Jewett. Motion carried 5-0.

D. Variance requests of Steve Perkins to exceed the maximum permitted impervious surface coverage and to encroach into the minimum required lake yard setback at 19980 Lakeview Avenue

Cooney presented his staff report. Cooney said that property owner has applied for variances to expand hardcover on the property and to reconfigure an existing deck. He said that, at 14,926 square feet, the property is a substandard R-3 property. He said that in 2012, the property was granted several variances in order to construct a new house including a reduced front yard setback, a reduced lake yard setback, to exceed the maximum permitted impervious surface area, and to exceed the maximum permitted grade alteration.

Cooney said that Section 1302.05(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25%. He said the applicant is proposing an impervious surface area of 29.4% and is seeking a variance to exceed the maximum impervious surface area by 4.4%. Cooney noted that the property is currently at 27.4% impervious area.

Cooney noted that the property was granted a variance to exceed hardcover in 2012, but the variance percentage permitted was only 25.8%. He said that existing hardcover is 27.4%, or 1.6% percent higher than that permitted by variance. Cooney said that, in looking at the 2012 survey, the driveway is significantly different and the primary culprit for the hardcover excess. He said the current driveway is 305 square feet larger than the proposed driveway in the 2012 survey. Cooney said that any current conditions over 25.8% impervious are considered illegal nonconforming. He said that the applicant purchased the property in 2016 and staff assumes that they inherited the impervious surface excess.

Cooney said that the applicant is asking for a hardcover expansion of 2% from existing conditions and that the primary expansion area is the large patio in the lake yard. He noted that the applicant states that one of the reasons for the improvements is to help manage a drainage issue near the rear of the house. He said that the driveway is proposed to be reduced in size to be comparable in size to the proposed driveway from 2012.

He said that the applicant is required to provide 132 cubic feet of mitigation volume and stated that the applicant is proposing to mitigate 321 cubic feet of storm water mitigation via a lake yard rain garden. Cooney said that the city engineer has reviewed the mitigation plans and confirmed that the design is acceptable and exceeds the requirements of the city code.

Cooney said that Section 1302.05(3) of the city ordinance requires a minimum lake yard setback of 100 feet. He said that the applicant is proposing to modify an existing deck which would expand it toward the lake yard. He said the proposed deck setback would be 83.7 feet and applicant is seeking a variance of 16.3 feet from the minimum required lake yard setback. Cooney said the deck would have

a similar footprint to existing, but would be rounded to increase the functionality of the deck and that the rounded deck is a slight (.3 feet) lake yard encroachment increase.

Cooney said that the original request presented to the Planning Commission was for an impervious surface area of 32.9% and that he had not been supportive of such an aggressive expansion of impervious areas and recommended denial. He said that, based on the changes—including the reduction of the driveway footprint, as well as reductions made on the lake yard hardcover—staff feels that the applicant is attempting to work within the constraints of the property while also trying to meet their goals of a lake yard patio area.

Cooney said that he recommends approval of the variance request to exceed the maximum allowable impervious surface area by 4.4%, and to encroach into the minimum required lake yard setback by 16.3 feet for the property at 19980 Lakeview Avenue, as proposed, based on the following findings:

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

Yes. The ordinance is intended to limit uncontrolled development within the shoreland areas and to limit pollution of public waters. The proposal is in harmony with the stated purpose and intent.

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 deck is a reasonable use and a minor expansion of existing conditions. The impervious surface expansion is reasonable in the context of the substandard lot size.

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

Yes. The property was granted a variance to build within the lake yard setback. The reconfiguration of any structure in this area requires a variance. The lot size is substandard for the zoning district creating challenges to meeting the impervious surface limitations or of the ordinance.

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 proposal is of a similar size to other legal, conforming single-family properties within in the neighborhood and will be largely unnoticeable. The impervious surface expansion is comparable to other substandard lots within the community.

Cooney said that the Planning Commission held a public hearing at their March 20 meeting. He noted that the proposal presented at that time had an impervious surface variance request of 32.9%, which has since been reduced. He said the deck request remains the same. He said that, at that time, he had recommended denial of the impervious surface request and approval of the lake yard encroachment. Cooney said that, on a 4-0 vote, the Planning Commission also recommended denial of the impervious surface expansion and recommended approval of the lake yard encroachment.

Cooney said that the denial findings were: a) that the proposal was not in harmony with the purpose and intent of the ordinance since the proposal would contribute to additional storm water stress and that mitigation proposed to alleviate the issue should not be, in and of itself, considered a suitable substitute for maintaining pervious areas in the first place; b) the request was not consistent with the comprehensive plan; c) the aggressive expansion of impervious areas beyond existing conditions is not

reasonable; d) and that the proposal would change the essential character of the locality by setting a precedent that constant expansion of impervious areas, regardless of existing conditions, should be permitted.

Cooney concluded his staff report.

Councilmember Jewett asked if they were aware that, even though the application changed, the recommendation for denial is still in effect. Cooney said that he was unsure, but felt that they understood that the Planning Commission was a recommending body and that the City Council made the final decision.

Councilmember Erickson asked about the modifications. Cooney said that the patio was reduced, the steps to the lake were removed, and that the driveway area was reduced.

Councilmember Erickson said that the hammerhead on the driveway was for additional parking and asked if that should be part of the conversation. Cooney said that looking at the 2012 survey might help determine what the council considered for the original request.

Councilmember Erickson said that during this era, people would propose minimized hardcover to get approval and expand at a later date. He said that the application provides mitigation and that he is pro-mitigation.

Councilmember Carlson said that many of the neighbors commented in the negative on the original submission and he did not know if they had a chance to see the revised submission. He said that the Planning Commission has also not seen the changes and wondered if it should go back to the Planning Commission.

Councilmember Jewett said that the Planning Commission often tries to hold the line on hardcover. He said that the hardcover grew from what was proposed in 2012

Councilmember Erickson said that the city can't necessarily penalize buyers for hardcover they didn't install. He said that some Planning Commissioners do not favor mitigation, but that he thinks the benefits would exceed the hardcover increase.

Councilmember Gustafson said that the homeowner purchased the property, so that they had to know what they purchased. He said that he is not as big of a fan of mitigation and that it doesn't always work. He said that the city hanging its hat on mitigation is not wise. Councilmember Gustafson asked when enough is enough.

Councilmember Carlson said that he likes the idea that there is less hardcover, but would like to see that the neighbors are aware of the changes.

Cori Johnson, landscape designer for the applicant, said that Steve Perkins, applicant, has spoken with the neighbors. She said that the rain garden would capture water from the east property. Johnson said that the only thing changed from the original plan was a reduction in hardcover. She said the yard would be graded away from the neighboring properties. Johnson said that Perkins inherited the excess hardcover and that, in her experience, homeowner are often unaware of hardcover situations and limitations when they buy a property.

Mayor Skrede said that he understands that evaluating hardcover is difficult to ascertain. He said that it is his philosophy on variances that the homeowner will be on the property for 6 months, and that the impacted neighbors will be there for 30 years. He said that he wished the adjacent neighbors had sent a note regarding their opinion of the revised proposal.

Johnson said that the patio is an attempt to manage drainage issues that come into the lower level patio doors.

Councilmember Jewett said that he still agrees with the Planning Commission's recommendation. He said that he might feel better about it if it went back to the Planning Commission.

Councilmember Erickson asked about addressing the water issue with less hardcover. Johnson said that the patio is the quickest way to get the water away from the foundation. She said that they are capturing over half of the roof runoff.

Councilmember Erickson said that the water issue at the foundation is an important consideration. He said that the water ends up in the basement.

Mayor Skrede asked about the water from the roof. Johnson said that the water would be connected underground via 6 inch PVC.

Councilmember Carlson said that he is supportive of the mitigation, understands the foundation issue, and is glad to see the hardcover reduction. He said he would prefer to see the Planning Commission offer input.

Mayor Skrede said that he thinks the Planning Commission performed their function by getting their input and having the applicant modify their plan accordingly.

Councilmember Jewett said that the Planning Commission likely wanted to hold the line on hardcover. Councilmember Erickson asked if they discussed the foundation issue. Councilmember Jewett said that they did not since the hardcover request was 32.9%.

Councilmember Erickson asked what the city would have done if the city had seen the plan in total, and that the city likely would have approved it.

Motion by Councilmember Erickson to accept the recommendation and findings of staff to approve the variance requests as proposed. Motion was seconded by Councilmember Carlson. Motion carried 3-2 with Councilmember Jewett and Councilmember Gustafson voting against.

E. Consider the rezoning of 19300 State Hwy No. 7, 19340 State Hwy No. 7, 19400 State Hwy No. 7 from C-1 (Commercial District 1) to C-2 (Commercial District 2)

Cooney presented his staff report. He said that currently the city has two commercial zoning districts: C-1 and C-2 and that, as written, they are virtually identical. He said the zoning code defines them as follows:

- C-1 Commercial District 1: retail sales and service businesses directly oriented to the consumer.

- C-2 Commercial District 2: sales and service businesses not directly oriented to the consumer.

Cooney said that, in conversations with the city council, staff heard a desire to distinguish between those businesses in Chowan's Corner and those that are highway commercial. He said that if the council anticipates that the highway businesses may have different impacts or uses than those in Chowan's Corner, then it would be logical to have consistent zoning regulations for those parcels facing County Road 101 and State Highway 7. Cooney said that if the long-term vision is for the commercial zoning districts to remain nearly identical, it would make more sense to simplify the zoning code and have one commercial district.

Cooney said that the Planning Commission held a public hearing at their March 20 meeting and on a 3-1 vote, with Nagle voting against, recommended that the City Council consolidate the commercial zoning into a single commercial zoning district.

On the TV monitor Cooney showed the C-1 and C-2 districts as written side by side so that the public could see the differences between the two districts. Cooney noted that there are only a few conditional uses that are different between the two districts and that they are otherwise the same.

Cooney concluded his staff report.

Councilmember Erickson asked if the zoning change would include the realtor's office as well. Cooney said that, yet, it would.

Councilmember Carlson said that the conversation was started as part of the comprehensive plan. He said that the uses between the highway districts and Chowan's corner have evolved over time to be somewhat different.

Councilmember Erickson said that Midas and Jerry's Automotive, both automotive uses, should be in the same zoning district. He said that he would want to restrict C-1 since he would not want to see automotive in Chowan's Corner.

Mayor Skrede said that both of the commercial zoning districts are surrounded by housing. Erickson agreed that the residential impacts are important considerations for all of these districts.

Councilmember Carlson said that automotive businesses require a conditional use and the city would review at that time.

Mayor Skrede said that traffic is a problem at the Vine Hill/State Highway 7 intersection. He said that he had heard about the possibility of a day care center replacing the real estate office a few years ago, but he did not think that was a workable use because of the traffic issue.

Councilmember Carlson said that this is the wrong side of the road. He said that the going-to-work side of the road is on the Shorewood side and that the Deephaven side is the going-home side.

Mayor Skrede said that some people assumed that there were nefarious reasons for the rezoning. He said that this was a spring cleaning item that has inadvertently turned into something bigger.

Councilmember Carlson said that the city needs to decide if they want two districts with different uses, or one district with most uses as conditional uses.

Cooney said that conditional uses are still legal uses and the city could not make unreasonable conditions on a proposal in order to squeeze them out of a certain part of town.

Councilmember Erickson said that the city should clean up the C-1 district and leave the C-2 district to allow automotive. He said that the city does not want to make the districts too restrictive that no one would do business in the city. He said that it is not the job of the city to promote or predict what kind of business might be viable, but rather to distinguish the character between the zoning districts.

Mayor Skrede said a big delivery truck would not want to deal with Chowan's Corner, but would work in the highway districts.

Councilmember Jewett said that the zoning code definitions are not clear.

Councilmember Erickson said that the automotive uses have disappeared from Chowan's Corner over the last few years.

Councilmember Gustafson said the highway locations are different than Chowan's corner and the zoning should be different.

Councilmember Jewett said that he would be comfortable with 1 zoning district.

Mayor Skrede said that the automotive businesses could become legal nonconforming. Cooney said that the legal nonconforming use makes expansion of a business problematic and might limit the future of the business or the sale of the business.

Councilmember Carlson said that the worst thing that would happen would be for Midas to go out of business and sit vacant for years because of being a nonconforming use. He said that is one of the gateways to the city. He said that he is not in favor of expanding auto uses, but that he would not want to make them nonconforming either.

Councilmember Jewett said that signage impacts are also a consideration.

Councilmember Carlson said that the zoning district uses would also need to be cleaned up.

Mayor Skrede asked for comments from the audience.

Maria Jetty of 19555 Excelsior Boulevard said that the notice did not have enough information which led to confusion and suspicion. She said that some of the comments at the Planning Commission were a bit patronizing.

Mayor Skrede agreed. He said that the city thought it was a small housekeeping issue but was legally bound to send notice. He said the city should have done better work on the notice.

Peter Lowry of 5036 Vine Hill Road said that he has lived in the city since 1973 and that he thought history was repeating itself.

Mayor Skrede said that the last time a change was proposed was when Excelsior Fire District was exploring a second station on Vine Hill Road. He said that he has not heard any recent proposals for a rezoning in that area. He said that he apologized for getting people upset.

Jim Armour of 19150 Vine Ridge Court said that consolidating to C-1 and grandfathering the automotive businesses. He said that the commercial properties face Excelsior Boulevard and not State Highway 7.

Mayor Skrede said that he has prided itself on being transparent and apologized for the lack of communication on the issue.

Lowry said that history of the corner makes the residents suspicious. Skrede said that he understands.

Mike Randall of 4982 Vine Hill Road said that he feels discriminated against since this area is as residential as the rest of Deephaven. Skrede said that the changes over time have created traffic problems. Randall agreed that it was more of a traffic issue. Skrede said he would like to see Old Market Road reopened.

Councilmember Gustafson said that he has changed his mind, and that the city needs one commercial district. Skrede said that some items would become legal nonconforming.

Councilmember Carlson said that would be problematic since a couple of uses would become illegal. Erickson would be more inclined to leave the zoning as is. Carlson said that he agreed and that it would be problematic for the existing businesses to become legal nonconforming.

Motion by Councilmember Carlson to maintain the current zoning. Motion was seconded by Councilmember Erickson.

Councilmember Gustafson said the purpose of the comprehensive plan is to say that this is the direction the city wants to go and it is not simply being mean to the businesses to change the zoning. He said it is the long range plan for the city. Councilmember Carlson said that it has legal ramifications for what the business can do.

Administrator Young said that there are challenges and that the city should check with legal counsel on the nonconformity issue.

Motion carried 3-2 with Councilmember Gustafson and Councilmember Jewett voting against.

F. Review Planning Commission recommendations on the Pines Neighborhood Zoning Request

Cooney presented his staff report. He said that in July of 2017, residents of the Pines Neighborhood in Deephaven approached the City Council with a petition to create further zoning restrictions within the neighborhood in order to “stop the neighborhood from becoming supersized.” Cooney said that the residents were open to a variety of solutions, but specifically mentioned the possibility of limiting height and setbacks for the neighborhood via new zoning regulations.

He said that in September of 2017, the city held a listening session with residents in the neighborhood in order to hear the concerns of the community as well as to try and gauge the level of support for these

changes among existing homeowners. Cooney noted that while support for zoning changes was not unanimous within the community, a significant majority of those who supported zoning changes supported additional height restrictions.

Cooney said that since then, the Planning Commission has held discussions on the topic at three meetings: October, December, and March. He said that at the October meeting, the Planning Commission discussed the outcomes of the September listening session and next steps. He said that at the December meeting, the Planning Commission reviewed zoning from peer cities within the Lake Minnetonka area, and reviewed the City of Deephaven's process from the last time the height ordinance was amended. He said that at the March meeting, the Planning Commission reviewed the documentation that is attached to this staff report and made a recommendation to the city council.

Cooney said that the staff report includes an illustration of building sections that illustrate the height of a typical 1, 1.5, and 2 story house built using modern construction methods. He said that the staff report also includes Housing Elevation Study that shows the street level impacts of new, taller houses relative to the many single-story houses within the neighborhood. Cooney said that the buildings are shown relative to the 100 foot and 110 foot lot width typical of the neighborhood.

Cooney said that he encouraged a site visit to the neighborhood since two new houses were being constructed at this time—one in Minnetonka and one in Deephaven.

Cooney said that the Planning Commission reviewed the attached material and recommended that the City Council maintain the current zoning regulations governing the neighborhood. The Planning Commission stated that A) they were uncomfortable limiting potential property values by enacting height restrictions particularly since there were several property owners who were not in favor of additional limitations, and B) the lot sizes were substantial enough to support the height limitations with the current zoning.

Cooney concluded his staff report.

Councilmember Carlson asked if the neighborhood had approached the City of Minnetonka. Cooney said that he spoke with the city planner at Minnetonka and that they had not received any organized neighborhood feedback regarding the new construction.

Councilmember Carlson said that their rules allow taller houses. Cooney said that was correct and that Minnetonka's rules allow a 35 foot tall house to the midpoint, which is taller than Deephaven's 36 foot height to the peak. Carlson said that most of the lots are smaller and would be restricted to 32 feet or 33 feet. Cooney said that was correct and that the house at 3542 Leroy was 32 feet tall.

Councilmember Erickson said that the height to the midpoint depends on the pitch of the roof which could get up to as tall as 42 feet at the peak of the roof.

Mayor Skrede asked if he had received comments from the neighborhood. Cooney said that he had not heard much. He said that one neighbor asked him about the status of the review a few weeks ago, and the Hoben letter was sent to him. Cooney said that he had sent notification of the meeting out to the neighborhood, but he had not received any comments.

Mayor Skrede asked about action the neighborhood could take for themselves. Cooney said that the neighborhood could do a homeowners association. He said that 100% participation is not required, and

that if 80% of the neighbors wanted to join that would be perfectly acceptable. He said that by creating the homeowners association, the neighbors would basically be putting a deed restriction on their property.

Councilmember Jewett said that since the beginning the Planning Commission has not wanted to modify the ordinance, and that they have not changed their minds with the additional information presented. Jewett said that Deephaven is more restrictive than Minnetonka in most of the zoning, except for the rear setback. He said that the Planning Commission was sensitive to the impact of the value of the property. Jewett said that the height restrictions from a few years ago allowed the city to get in front of this issue and he would not be in favor of additional height restrictions.

Councilmember Erickson said that he is with the Planning Commission on the issue, especially since Deephaven's height is more restrictive than the properties to the north. He said that he does not favor an overlay and that it could potentially be a taking.

Councilmember Carlson said that he agreed and that the city dealt with height recently. He said that there are many small lots that are under these guidelines and that the lots in the Pines area are bigger than many of those.

Councilmember Gustafson said that this is an extremely tough decision and that he feels for the residents of the neighborhood since it is such a nice area. He said that the area he lives in used to be cabins and that they are being removed and the area is changing. He said that the elevation study shows that the impacts aren't as severe as he had originally feared. He said that the council should maintain the zoning but enforce the zoning without variances.

Mayor Skrede asked for public comments.

Mike Zegarac of 3608 Therese Street asked what the height restrictions were. Cooney said that the height is based on lot size and that most lots would be 32 feet, but that larger lots could go up to 36 feet.

Zegarac said that he does not know the answer. He said that the neighborhood has continuity. Zegarac read from the city's comprehensive plan. He read "In a number of instances, smaller homes were acquired and demolished to allow the construction of larger homes. This activity impacts both the neighborhood and the community's housing stock. Large, contemporary housing may be totally out of character with the surrounding neighborhood. Additionally, the demolition of existing homes and the combination of lots to form larger building parcels reduces the quantity of more affordable homes in the community." He said that the "impacts in the community" line has a negative connotation. He said that he cannot imagine a neighborhood where this would apply to more than the Pines. Zegarac said that some discussion has to take place to stop the teardowns. He said that buying a lot in the area for \$300,000 and tearing the house down means that the economics would require a large house to be built on the property to make the project worthwhile. Zegarac said the disappearance of affordable houses would bring the Met Council knocking on Deephaven's door.

Mayor Skrede said that the Met Council has already asked to see more affordable housing in the city.

Zegarac said that he does not like the speculators. He would like to see homeowners buy the properties. He asked the city how they could stop the development.

Mayor Skrede said that the city is limited to a certain extent by the law. He said holding the line on variances would help. Zegarac said that it is not a variance issue since 3542 Leroy Street was constructed without a variance.

Lorie Peralez of 3404 Leroy Street said that Deephaven will get to a point where teachers, firefighters, and police cannot afford to live in the city and that the city will become more like Vail, Colorado. She said that the new house is far out of reach of people with average incomes.

Sue Hoben of 17751 Jericho Road said that she supports the position of the Planning Commission. She quoted from her husband's letter and said that many types of homes fit the character of the neighborhood and they all exist within the community. She said that there are a mix of styles of homes within the Deephaven neighborhoods, and that housing stock evolves over times and tastes and needs change. Hoben said that it is not surprising to see expansions and new homes. She noted several projects in the neighborhood have been completed and have been uncontroversial. Hoben said that the house that caused this controversy is not a McMansion and fits within the neighborhood. She said that the current zoning is appropriate and that changing the zoning for 1 half of a small neighborhood does not advance a public purpose and that any changes should apply to the rest of the zoning district. She said that she and her husband Tom do not support changing the zoning code.

Mayor Skrede said that it appears that there will not be any changes. Skrede asked about a motion. Cooney said that a motion is not required, but that it would be beneficial to have formal closure to the issue.

Mayor Skrede said that they listened to the neighbors and explored many ideas but did not feel that they could come up with any constructive changes to the zoning code. He said that the city will still remain aware of possible changes.

Motion by Mayor Skrede to maintain the existing zoning for the neighborhood. Motion was seconded by Councilmember Carlson. Motion carried 5-0.

7. UNFINISHED BUSINESS

A. Other

Administrator Young noted that discussion on the Bikeway Feasibility Grant and Cooperative Agreement will be held at the April 16th Council meeting. He stated that he had distributed information on the grant for the Council to review well in advance of the meeting. He asked the Council to send him any questions they might have that he could direct to Hennepin County staff regarding the grant and cooperative agreement.

8. NEW BUSINESS

A. Other

There was no other New Business this evening.

9. DEPARTMENT REPORTS

A. Police Department

Mayor Skrede noted that the March Police Incident Report was provided in your packets and any questions can be directed to Police Chief Johnson.

B. Excelsior Fire District

Councilmember Erickson provided a brief summary of the Excelsior Fire District Board meeting held on March 28th. He stated that the Board reviewed the annual 2017 EFD audit and the 2017 Fire Relief audit, the 2017 Year in Review was provided, and the Board ratified a 5% increase in the per year of service benefit for the members of the Excelsior Fire Relief Association.

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:

- April Mailings
- Upcoming dates of interest
- 2019 Budget
- 2018 Project Schedule
- Cable installation within the City ROW
- Update to the Surface Water Management Plan

10. ADJOURNMENT

Motion to adjourn by Councilmember Carlson, seconded by Councilmember Erickson. Motion carried 5-0. The meeting adjourned at 10:15 p.m.

Respectfully submitted,
Dale Cooney
Zoning Coordinator