

**DEEPHAVEN CITY COUNCIL MEETING  
MONDAY, APRIL 6, 2015  
MINUTES**

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

PRESENT: Mayor Paul Skrede, Councilmembers Darel Gustafson, Tony Jewett, and Steve Erickson

ABSENT: Councilmember Keith Kask

STAFF: Police Chief Cory Johnson, Zoning Coordinator Gus Karpas, and City Administrator Dana Young

2. **PLEDGE OF ALLEGIANCE**

The Council recited the Pledge of Allegiance.

3. **APPROVE CONSENT AGENDA**

Mayor Skrede requested that Item 3C be removed from the Consent Agenda for further discussion under Unfinished Business.

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

- A. Approve March 16, 2015 Minutes
- B. Approve Verifieds

Seconded by Councilmember Gustafson. Motion carried 4-0.

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.**

Zoning Coordinator Gus Karpas 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 submit 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 review.

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

## 6. PLANNING & ZONING REQUESTS

### A. Variance request, Aulik and Associates, 4600 Linwood Circle – Request for a variance of the minimum required lake yard setback for the alteration/enclosure of an area under an existing non-conforming roof.

Zoning Coordinator Karpas summarized the request. He said the applicants are seeking to alter an existing non-conforming structure that was constructed in 2002 with the issuance of a fifteen (15) foot lake yard variance. The request would enclose an area under the existing roof on the lakeside of the home, totaling approximately one hundred and fifty (150) square feet. The closest portion of the proposed alteration would be located ninety-four (94) feet from the ordinary high water level (OHWL). He said the subject property currently exceeds the maximum permitted impervious surface area with an overall coverage of 39.1%. The proposal will be constructed entirely over existing impervious surface and will not change the current percentage.

Karpas said he recommended approval for the request based on the criteria outlined in his staff report, that the request met the spirit and intent of the ordinance, it would put the property to a reasonable use, there are unique circumstances not created by the property owner leading to the need for the variance and the proposal would not alter the essential character of the neighborhood.

Councilmember Jewett asked how the request to create the enclosed area under the existing deck was any different from the recent condition that a newly constructed front porch must remain unenclosed. Zoning Coordinator Karpas said he viewed the previous porch as a new encroachment whereas the proposal was essentially adding one additional wall and was not increasing the existing encroachment.

Jon Monson, Landschute, was available to discuss the request. He said the proposal falls under State Statutes which allow non-conforming uses to be continued, including improvements, which he believes the request falls under.

Councilmember Erickson discussed the request noting the wall is not encroaching any closer to the lake than the existing face of the structure.

Councilmember Gustafson has no issue with the request but asked if there was a stipulation placed on this property at the time it was approved that the area under the raised deck could not be enclosed. Mayor Skrede said that even if such a restriction is placed on a porch, a property owner can still seek to vary from that condition. He suggested the language be changed in the conditions that specifically state that future enclosures would require Council approval. Councilmember Erickson agreed.

Councilmember Erickson approved the recommendation and findings of the Planning Commission and staff to approve the application of Aulik and Associates for the variance request of Section 1302.05(3) of the zoning ordinance to encroach six (6) feet into the minimum required one hundred (100) foot lake yard setback for the alteration and enclosure of a one hundred and fifty (150) square foot area on an existing non-conforming structure as presented at 4600 Linwood Circle.

**The motion for approval is based on the following findings:** (a) the proposal meets the intent of the ordinance and is in harmony with the orderly development city. The applicant is seeking to modify an existing non-conforming structure in a manner which will not increase the degree of non-conformity; (b) the request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the development and redevelopment of residential property within the city; (c) the proposal is a reasonable use of the property and only seeks to continue the existing use currently on the property without creating further encroachments; (d) the shape of the lot limited the placement of the original home when it was constructed. Any type of increase in the living area outside of the existing footprint would create further encroachments,

requiring variance approvals, but the design of the existing home permits this alteration without further encroachment; and (e) the proposal would not alter the essential character of the neighborhood since there will be no discernible difference in the structure when viewed from adjacent properties or the lake.

Councilmember Jewett seconded the motion. The motion carried 4-0.

**B. Variance requests, Landschute, 19940 Lakeview Avenue – Request for variances of the required front, east and west side and lake yard setbacks and to exceed the maximum permitted impervious surface area to construct a new single family home on an existing non-conforming footprint.**

Zoning Coordinator Karpas summarized the request. He said the applicant is proposing to demolish the existing non-conforming single family home and construct a new single family home on the existing footprint. The proposed home would include the construction of a second story which does not currently exist. The applicant indicated the existing impervious surface area on the property will be reduced from 50.8% to 34.4%. This will be done primarily through the removal of rock and plastic landscaping located on the property.

Karpas said he recommended approval for the request and outlined the approval criteria included in his staff report.

Jon Monson, Landschute, was available to answer any questions. Councilmember Erickson asked if there was an existing foundation below the screen porch. Mr. Monson said there was and the intent of the project was to keep the request simple and propose a development which used the footprint of the existing structure as permitted by State Statute.

Mayor Skrede asked about the difference in the structure area shown in the impervious surface area table, with the proposed footprint being larger. Mr. Monson explained some of the deck area on the first table has been transferred into the footprint area of the house. He said the area of the lakeside deck is still included as a separate calculation on the second table.

Councilmember Jewett said the neighbors he spoke to were supportive of the request, but his concern was about the construction traffic. Mr. Monson noted he lives two blocks from the site and is also concerned about safety in the neighborhood and will be very aware of the traffic in the area. Jewett asked about the city owned tree on the SE corner of the property. Mr. Monson said he takes extreme measures to protect trees because they add value to property.

Mayor Skrede clarified that an approval on this application does not endorse any type of work on the lakeside deck. Mr. Monson said that is correct.

Councilmember Erickson approved the recommendation and findings of the Planning Commission and staff to approve the application by Landschute for the variance requests of Section 1302.05(3) of the zoning ordinance to encroach twelve feet, six inches (12'-6") into the minimum required thirty-five (35) foot front yard setback, to encroach three feet, seven inches (3'-7") into the required ten (10) foot east side yard setback, to encroach nine (9) feet into the required fifteen (15) foot west side yard setback and to encroach two (2) inches into the required one hundred (100) foot lake yard setback and the variance request of Section 1350.06(2)(a) of the zoning ordinance to exceed the maximum permitted impervious surface area by 9.4% for the demolition and reconstruction of a non-conforming single family home as presented at 19440 Lakeview Avenue.

It was noted the motion was based on the criteria for continuation of non-conformities outlined in the State Statutes.

**The motion for approval is based on the following findings:** (a) the proposal meets the intent of the ordinance and is in harmony with the orderly development of the city. The applicant is seeking to demolish an existing

non-conforming single family home and replace it with a new single family home on the same footprint with no further encroachments, thus not increasing the degree of dimensional encroachment; (b) the request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the development and redevelopment of residential property within the city; (c) the proposal is a reasonable use of the property and only seeks to continue the existing use currently on the property, with the addition of a second story to add living space; (d) the size of the lot and the angle of the property lines limit the development options for the property. Compliance with the required front yard setback would push the structure towards the lake side of the property and farther into the required lake and side yard setbacks. The lot area is one half the minimum required for the zoning district. Even so, the applicant has reduced the impervious surface area by 16%; and (e) the proposal would not alter the essential character of the neighborhood. The proposed structure setbacks are consistent with those currently in place and only a small percentage of the second story encroaches into the required setback, minimizing the massing on the adjacent properties.

Councilmember Gustafson seconded the motion. The motion carried 4-0.

**7. UNFINISHED BUSINESS**

**A. Approve Ground Lease Sublease and Leaseback with American Tower Corp.**

Administrator Young stated that American Tower Corporation has entered into an agreement with Verizon Communications to acquire the rights to more than 11,000 wireless towers in the U.S., including the cell tower located in the Chowen's Corner parking lot. He stated that American Tower is required under Section 23 of the Ground Lease Agreement to provide notice and obtain the City's consent to the Ground Lease Sublease and Leaseback between American Tower and Verizon Communications. If approved, the Ground Lease Sublease and Leaseback (GLS&L) would effectively result in American Tower Corporation, rather than Verizon, being the party responsible for the day-to-day operations of this tower site, including payment of our annual lease fee.

Administrator Young stated that the City has worked with attorney David Baratti of Stinson & Leonard, who specializes in cell tower matters, who has provided comments and recommendations on the proposed Consent Form relating to the Ground Lease Sublease and Leaseback.

The Council had several questions regarding the potential impact of having American Tower Corporation as the principal tower operator and the revised language on the Consent Form.

Motion by Councilmember Gustafson to approve the Ground Lease Sublease and Leaseback with American Tower Corporation including the conditions and limitation recommended by David Baratti. Seconded by Councilmember Jewett. Motion carried 4-0.

**B. Appoint John Studer, Jim Anderson, Bob Werneiwski, and William Sharp III to the Deephaven Planning Commission**

Zoning Coordinator Gus Karpas introduced John Studer, Jim Anderson, Bob Werneiwski, and William Sharp III who were recommended for appointment to the Deephaven Planning Commission.

Mayor Skrede stated that since more than 50% of the membership to the Planning Commission has changed, he wanted to invite the new members to meet the City Council.

Councilmember and Planning Commission Liaison Darel Gustafson stated that all four are excellent candidates.

Motion by Councilmember Gustafson to appoint John Studer, Jim Anderson, Bob Werneiwski, and William Sharp III to the Deephaven Planning Commission. Seconded by Councilmember Erickson. Motion carried 4-0.

Mayor Skrede noted that in the absence of the Chair and Vice-Chair at the April Planning Commission meeting, he recommended that Bob Werneiwski be appointed as Interim Chairman for this meeting.

**C. Accept Resignation of Gus Karpas**

Zoning Coordinator Gus Karpas informed the Council that he has accepted a position as Senior Planner in Florida and his last day of employment with the City of Deephaven will be April 10, 2015. Motion by Councilmember Erickson to accept the resignation of Zoning Coordinator Gus Karpas, effective April 10, 2015. Seconded by Councilmember Gustafson. Motion carried 4-0.

**D. Adopt Resolution No. 21-15, a Resolution of Appreciation to Gus Karpas**

The Council expressed their appreciation to Gus Karpas for all his years of service with the City of Deephaven.

Motion by Councilmember Erickson to adopt Resolution No. 21-15, a Resolution of Appreciation to Zoning Coordinator Gus Karpas. Seconded by Councilmember Gustafson. Motion carried 4-0.

**8. NEW BUSINESS**

**A. Other**

Councilmember Erickson voiced his concern regarding the potential redevelopment of 3445 Hamilton Avenue, which is a duplex currently on the market. He stated that the back half of the lot is a swamp, which holds the drainage from six adjoining lots. He stated that he would be interested in knowing whether this portion of the lot could be designated as a wetland or designated as a retention area as part of the City's storm water management plan.

Councilmember Gustafson stated that he would not be in favor of asking an outside agency to designate a portion of Deephaven land as a wetland. He stated that the City Code grants the Council control over the removal or addition of more than one foot of fill material. He added that it is important that comments that are made to residents on a particular property do not inadvertently give the impression that their particular project will be approved.

On a separate matter, Councilmember Jewett noted some changes that he would like to see made on the variance application form to better identify the owner of the property. He also noted a correction to the March 16, 2015 Council minutes.

**9. DEPARTMENT REPORTS**

**A. Police Department**

Police Chief Johnson provided an update on the March Incident Report.

Councilmember Gustafson stated that there have been a number of recent news reports lately particularly coming out of the Ferguson incident, that police departments have been used by cities as a revenue source. He stated that the City Council has no revenue expectations for the Deephaven Police Department and noted that the Department issues 2 ½ times more warning tickets than actual tickets and deal with the public in a professional manner.

**B. Excelsior Fire District**

Fire Board Liaison Steve Erickson provided a brief review of the Fire District Board meeting on March 11<sup>th</sup>.

- There were a total of 769 calls for service in 2014, an increase of 92 calls from last year.
- The 2014 EFD audit and 2014 Firefighter's Relief Association audit were presented.
- The Board approved a 3% per year benefit increase from \$6,700 to \$6,900.
- The Year in Review was presented.
- The 2016 EFD Budget will be discussed at the April 15<sup>th</sup> Work Session.

Mayor Skrede requested additional information concerning response times.

Councilmember Erickson stated that he would make sure that the Mayor receives a copy of the EFD Annual Year in Review.

**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
- Property Management Plan
- Upcoming dates of interest
- 2016 Budget
- 2015 Project Schedule

**10. ADJOURNMENT**

Motion to adjourn by Councilmember Gustafson, seconded by Councilmember Erickson. Motion carried 4-0. The meeting adjourned at 8:55 p.m.

Respectfully submitted,  
Dana H. Young  
City Administrator