

SPECIAL JOINT COUNCIL WORKSESSION

DEEPHAVEN CITY COUNCIL AND THE DEEPHAVEN PLANNING COMMISSION MONDAY, JANUARY 27, 2015 MINUTES

1. **CALL MEETING TO ORDER:** Mayor Paul Skrede called the meeting to order at 6:00 p.m.

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

Planning Commission members Kent Carlson, Pete Onstad, John McGary, and Brandon Gustafson

STAFF: Zoning Administrator Gus Karpas, City Administrator Dana Young, and City Attorney Jay Lindgren

2. **DISCUSSION ITEMS**

- A. **Process for Variance Review**

Mayor Skrede provided an overview of the purpose of tonight's meeting, which was to share common concerns over the implementation of the zoning code, and introduced new City Attorney Jay Lindgren.

Commissioner Carlson stated that some variance issues are somewhat subjective and wanted feedback from the Council to develop a similar approach to the review of variances. He stated that the Commission had previously addressed the height of structures issue and wanted to know if there are any other issues that the Council wanted the Commission to review this year, such as storm water allowances.

Attorney Jay Lindgren discussed the practical difficulty standard for variance review. He stated that the undue hardship standard had been changed to a practical difficulty standard by the state legislature several years back and that practical difficulties can be demonstrated by three criteria:

- Reasonable use – “property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;”
- Unique circumstances (physical) – “plight of the landowner is due to circumstances unique to the property not created by the landowner.” Uniqueness generally relates to the property's physical characteristics. “Economic considerations alone do not constitute practical difficulties;” and
- Essence not altered (surrounding area) – “variance, if granted, will not alter the essential character of the locality;” i.e., resulting structure will not be out of scale, out of place, or otherwise inconsistent with the surrounding area.

Commissioner Carlson stated that the Planning Commission often modifies the setbacks or plan details that are presented as part of a variance application and asked if there was a potential issue with these types of modifications.

Attorney Lindgren stated that as a practical matter, the review should be confined to what has been presented. He added that if the setbacks or plans have been modified; determine that these modifications provide a reasonable use. He stated that a decision should never be arbitrary or capricious.

Mayor Skrede cited an example in which a setback could be determined by the location of a well and the costs of relocating the well.

Attorney Lindgren stated while monetary considerations can't be the sole criteria in approving a variance request, it can be a consideration along with other factors. He stated that the potential location of a garage near a well could be considered a unique circumstance.

Councilmember Gustafson stated that one of his biggest concerns have been requests to construct a 6,000 S.F. home on a clearly undersized property. He stated that he struggles supporting this type of request simply because the property owner must be aware of the overall size of their property when it was purchased.

Attorney Lindgren stated that you need to answer all three criteria in order to grant a variance in this instance and whether this 6,000 S.F. home would change the essential characteristic of the neighborhood.

Mayor Skrede asked how the Commission or Council should respond if a neighbor complains that a house is too large.

Attorney Lindgren stated that it depends if a variance was needed on that particular house. If a variance is not needed, it meets the zoning code.

Further discussion was held on a variety of variance scenarios, including determining the essential character of a neighborhood.

Commissioner Onstad noted that the characteristics of a neighborhood have changed significantly since he moved to town and that it has become a relative concept.

Attorney Lindgren stated that the legislature has used the expression "essential character of the locality" to recognize that it is difficult to determine a practical difficulty. He stated that there is a need to act consistently by answering the three criteria when reviewing a variance request.

Zoning Coordinator Karpas asked if the Commission had the authority to lower the height on a structure that was in compliance with the height regulations if dealing with a separate variance request on that property.

Attorney Lindgren stated that he would find that concerning.

Mayor Skrede stated that the Commission and Council can be objective and subjective on a request as long as we answer those three criteria.

Councilmember Gustafson asked if it would be meaningful to include historical information on requests of a similar nature that had been approved to provide consistency.

Attorney Lindgren stated that this could be helpful to demonstrate consistency in past and future actions.

Councilmember Jewett stated that it is the severity of the variance request that appears to be most concerning to the neighbors.

B. State Statute Protection of Non-Conforming Structures

Attorney Lindgren stated that state statutes allows any nonconformity to continue legally after a zoning district or regulation would otherwise make it illegal. He stated that he believes that nonconforming accessory structures would be subject to these same standards.

He noted that nonconformity may continue despite being repaired, replaced, restored, maintained or improved and nonconformity ends if it is:

- expanded;
- discontinued for a period of more than one year; or
- destroyed, losing more than half its market value, and the owner does not apply for a building permit within 180 days of the damage occurring.

Discussion was held on how to address a nonconforming structure that proposes to include an expansion of a second floor addition.

Zoning Coordinator Karpas provided an explanation on how second floor additions on a nonconforming structure are treated. He stated that he requires a variance for a nonconforming structure if the second floor addition does not meet the required setbacks and a variance is not required if the second floor addition is in compliance with the required setbacks.

C. Other

Kent Carlson asked if the Council had any special items for the Planning Commission to review this year.

Both Councilmember Gustafson and Erickson recommended that the Commission look into storm water issues that are created by the construction of new structures and potential mitigation strategies.

Mayor Skrede suggested that the Committee research reoccurring variance requests, such as the request for reduced setbacks from street ends, for potential amendments in the zoning code.

3. ADJOURNMENT

Motion to adjourn by Councilmember Erickson. Seconded by Councilmember Gustafson. Motion carried 4-0. The meeting adjourned at 7:00 p.m.

Respectfully submitted,
Dana H. Young, City Administrator