

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, JULY 1, 2019
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 Tony Jewett, Steve Erickson, Melissa McNeill, and Kent Carlson

STAFF: Police Chief Cory Johnson, Zoning Coordinator Dale Cooney, and City Administrator Dana Young

2. **PLEDGE OF ALLEGIANCE**

The Council recited the Pledge of Allegiance.

3. **APPROVE CONSENT AGENDA**

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

- A. Approve June 17, 2019 Special Council Work Session Minutes
- B. Approve June 17, 2019 Regular Council Minutes
- C. Approve Verifieds

Seconded by Councilmember Jewett. Motion carried 5-0.

4. **MATTERS FROM THE FLOOR**

Mayor Skrede read a letter from Elizabeth Claypool requesting that the City repair the fountain and gazebo at Children's Park and a letter from Liam & Aidan Henderson and Ben Ferguson requesting that the City construct a skate park. The Council referred the letters to the Park Committee for their consideration.

5. **PLANNING & ZONING REQUESTS**

- A. **Showcase Event Permit request of Swan Architecture to include 1955 Cottagewood Avenue in the upcoming AIA Homes for Architects Tour**

Zoning Coordinator Cooney presented the staff report. He said he property located at 1955 Cottagewood Avenue is a new construction single-family home. He said that the project is nearing completion and the builder and architect would like to include it in the AIA Homes by

Architects Tour which is being held Saturday, September 21 and Sunday, September 22 from 10 a.m. to 5 p.m. each day.

Cooney said that Section 1355.03 of the zoning ordinance permits the public showing of residential structures with the issuance of a Showcase Event Permit, and the city code does not require Planning Commission action on Showcase Event requests.

Cooney said that Section 1355.04 limits Showcase Events to three consecutive weekends. The AIA Homes by Architects Tour is a one weekend event. Cooney said that Section 1355.06(a) requires the submittal of a detailed site plan. He said that there will not be any special accommodations for guests at the property itself and that a copy of the survey for the property was submitted by the applicant.

Cooney said that Section 1355.06(b) requires the submittal of maps showing the pick-up points and shuttle routes to the showcase property and that the applicant shows a shuttle route to and from the Deephaven City Hall public parking lot. He said that Section 1355.06(c) requires a letter of approval from the Police Department stating that all of their conditions have been met. He said the applicant has spoken with the Deephaven Police Department regarding their plan to provide shuttle service from the public parking lot at Deephaven City Hall. Cooney said that the Police Department has approved the proposal.

Cooney said that Section 1355.06(d) requires the applicant to provide general liability insurance to cover injury and property damage. He said the applicant has submitted proof of insurance coverage that exceeds the city's required coverage amounts.

Cooney said that the applicant submitted four neighbor letters of acknowledgement of the event which were distributed at tonight's meeting.

Cooney said that he recommends approval of the Showcase Event Permit for Swan Architecture for the property located at 19955 Cottagewood Avenue to participate in the AIA Homes by Architects Tour which is being held Saturday, September 21 and Sunday, September 22. He said that his approval is based on the following findings:

Section 1355.07(a) – the Showcase Event will not endanger the public health, safety or general welfare of its (City of Deephaven) residents: The applicant has worked with city staff to create a safe environment for the showcase event.

Section 1355.07(b) – the Showcase Event will not cause undue traffic hazards, congestion or parking shortages: The applicant has submitted the proposed parking information and has worked with the police to address potential safety issues.

Section 1355.07(c) – the Showcase Event will not impose an excessive burden on the City or its residents or cause damage to private property, parks, streets, right-of-ways or other public property: The City is within its rights to impose conditions on any approval that the applicant is responsible for the cost of any of the above-mentioned damage.

Cooney concluded his staff report.

Mayor Skrede asked Police Chief Johnson if the applicant had reviewed the event with him. Johnson said yes and that there would only be shuttle bus traffic.

Councilmember McNeill asked where “no parking” signs would be posted. Johnson noted the areas in the Cottagewood neighborhood where the signs would be posted and that certain areas along certain streets would be posted “no parking” on both sides of the street.

Councilmember Erickson asked about the staffing of the event. Constance Chen of Swan Architecture, applicant, said that there would be 4 volunteers per shift from the American Institute of Architects as well as staff from Swan Architecture and Elevation Homes.

Mayor Skrede asked about the frequency of the shuttle buses. Chen said that there would be shuttles every 20 minutes and that they would have two shuttles running and rotating locations at all times.

Councilmember Carlson said that he likes the two shuttle system since it makes it very easy for the tour attendees.

Motion by Councilmember Erickson to approve the Showcase Event request as proposed based on the recommendation and findings of staff. Motion was seconded by Councilmember McNeill. Motion carried 5-0.

B. Variance requests of Joshua & Beth Janzen to encroach into the minimum required lake yard setback, to encroach into the minimum required front yard setback, to encroach into the minimum required side yard setback, and to exceed the maximum permitted impervious surface coverage in conjunction with a home addition and a fence at 19820 Cottagewood Road

Zoning Coordinator Cooney presented the staff report. He said the property owners are building a garage and shed addition to the existing house which triggers several variance requests. Cooney said the property is a 17,380 square foot R-2 property which is 43% of the minimum lot size for the zoning district. He pointed out that the lake yard and front yard setback requirements overlap, thus constructing anything on the property requires a variance. Cooney noted that the house was built in 1952 according to Hennepin County records.

Cooney said that Section 1302.04(3) of the zoning ordinance requires a front yard setback of 50 feet and a lake yard setback of 100 feet. He said the applicant is seeking a variance to encroach 14.9 feet into the front yard setback, and 60.9 feet into the lake yard setback. Cooney noted that, currently, the closest encroachment in the front yard is 27.7 feet, and the closest lake yard encroachment is 36.8 feet, and the applicant is proposing additional encroachments for the proposed garage and shed that do not exceed these encroachments. He said that he is supportive of this aspect of the request since the proposed addition does not exceed the existing closest encroachments.

Cooney said that Section 1302.04(3) of the zoning ordinance requires a side yard setback of 20 feet. He noted that as originally proposed, the addition would have been 17.1 feet off of the east side property line but that the applicant has revised the location of the shed to meet the side setback requirements per the recommendation of the Planning Commission. He noted that the side property line is at a severe angle to the front property line and the majority of the originally proposed addition was within the required setback.

Cooney said that Section 1302.04(2) of the zoning ordinance limits the maximum impervious coverage for the property to 25%. He said that the applicant is proposing an impervious surface area of 27.4% and is seeking a variance to exceed the maximum permitted impervious surface area by 2.4%. Cooney said that, at 17,380 square feet, the property is 43% of the minimum lot size for the R-2 zoning district (and would be substandard even if it were within the R-3 zoning district). He said that, due to the substandard lot size and the fact that the property is well below any structural coverage limitations, staff is supportive of the expanded impervious coverage. He noted that, since the property drains to the lake, there is little stormwater impact to the adjacent properties and the proposed mitigation would offer some pretreatment of stormwater runoff in the vicinity of the driveway.

Cooney said that the applicant is requesting a privacy fence along the east and west property lines. He noted that Section 1310.08(h) states that fences over 3.5 feet tall shall not be constructed in the lakeshore setbacks. Cooney said that, as proposed, the fence would be as close as 5 feet from the OHW of Lake Minnetonka. He said that, due to the property configuration, staff is supportive of some kind of variance for fencing, but would not be supportive of privacy fences within the lake yard itself. He said that even conforming lake front properties are not permitted to have privacy fences into the lake yards unless they are over 100 feet from the OHW, and few of the properties meet this criteria. Cooney said that the Planning Commission recommended that any privacy fence be no closer to the lake than the rear of the house on the west side, and the rear of the proposed shed on the east side. Cooney said that the fencing would need to meet all other fence standards, including the side yard setback requirement from the neighboring properties.

Cooney said that he recommends approval with conditions of the variance request to encroach 14.9 feet into the front yard setback, to encroach 60.9 feet into the lake yard setback, and to exceed the maximum permitted impervious surface area by 2.4% for the proposed house addition and fence at 19820 Cottagewood Road, as proposed.

Cooney said that his recommendation is conditioned that:

- The privacy fence not be closer to the lake than the rear of the house on the west side, and the rear of the proposed shed on the east side. The fencing would need to meet all other fence standards, including the side yard setback requirement from the neighboring properties.
- The applicants complete the stormwater management improvements to meet the requirements and specifications of the city engineer.
- Construction of stormwater management facilities should be observed by a City representative to ensure system is installed as proposed. At least 24 hours' notice shall be given prior to inspection.

- The applicants enter into a maintenance agreement with the city to ensure the long-term operation and maintenance of the stormwater management improvements. The maintenance agreement shall be executed and recorded against the parcel.

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

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

Yes. The proposal seeks to modify an existing nonconforming property in terms of setbacks, grading and impervious area. Since the front and lake yard setbacks for the property overlap, the legal nonconforming property would be otherwise unbuildable without some kind of variance. The property is also a substandard size for the zoning district. The lot lines are at a severe angle to the house and the front yard setback, creating a wider than usual area for potential setback encroachments.

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 garage and shed addition are reasonable expansions of the existing house. The proposed structural footprint of 3,506 square feet is well below the zoning district limitations of 6,000 square feet. The impervious area is reasonable given the substandard property size.

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

Yes. The lake yard and front yard setback requirements overlap, thus constructing anything on the property requires a variance. At 17,380 square feet, the property is 43% of the minimum lot size for the R-2 zoning district (and would be substandard even if it were within the R-3 zoning district).

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 scale of the proposed building footprint is comparable to other properties within the neighborhood.

Cooney said that the Planning Commission held a public hearing at their June 18, 2019 meeting. He said the Planning Commission felt that it was important to avoid a side yard encroachment and requested that the entire structure be moved towards the rear of the property to accommodate this setback requirement. On a 5-1 vote, with Webster voting against, recommended approval of the request based on the findings of staff and with the following conditions:

- That the entire proposed addition be pushed towards the rear of the lot the minimum distance needed to meet the 20 foot side yard setback.
- That the privacy fence encroach no closer than the furthest encroachment of the existing house on the west side and the proposed addition on the east side, with the distance determined based on a line drawn at a right angle to the property line.

- The applicants complete the stormwater management improvements to meet the requirements and specifications of the city engineer.
- Construction of stormwater management facilities should be observed by a City representative to ensure system is installed as proposed. At least 24 hours' notice shall be given prior to inspection.
- The applicants enter into a maintenance agreement with the city to ensure the long-term operation and maintenance of the stormwater management improvements. The maintenance agreement shall be executed and recorded against the parcel.

Cooney noted that, to meet the side yard setback requirement, the applicant reduced the size of the proposed shed instead of pushing the entire structure towards the rear of the property.

Cooney concluded his staff report.

Mayor Skrede asked how the city would become aware of fencing that did not meet zoning requirements. Cooney said that since fences are not required to obtain a building permit, he would only find out about a violation via a neighbor complaint.

Mayor Skrede asked if they were okay on the building area. Cooney said that the property is well below any building footprint limitations.

Councilmember Jewett said that he has not come across a variance request for a fence and that he would prefer some kind of restriction that mirrored the DNR shoreland limitation of 50 feet. He said that he did not know that a 3.5 foot fence could be built within the lake yard setbacks.

Mayor Skrede noted that the rationale for the side yard setback requirements is to enable the property owner to do repairs on the fence without necessarily having to go onto the neighbor's property to do so.

Joshua Janzen, applicant, said that the fence would step down to 3.5 feet as it gets closer to the lake. He said that both neighbors are supportive of the request as well as having the fence closer to the property lines. He said that he currently has an open fence along Cottagewood Road and that he is worried about the safety of his children. He would also like to provide some privacy for his back yard. Janzen said that, since they were doing the addition, it seemed like a good time to address the fence issue as well. He said that this is the right thing to do from a safety perspective.

Mayor Skrede asked about the wire fencing on the property. Janzen said that it is temporary to show the neighbors the property lines. He said that he is concerned about the neighbor's dogs and that he wants some privacy as well as some added safety. He said that he would start the wood privacy fence about 35 feet back from the front property line.

Mayor Skrede noted that the survey shows the property extending into the lake and asked where the setback measurement is taken from. Cooney said that the setback is measured from the Ordinary High Water Level of Lake Minnetonka.

Councilmember McNeill said that there was talk at the Planning Commission meeting about enclosing the back yard along the lakeshore. Janzen said that was not what he was proposing and there must have been a misunderstanding since that is not the intention.

Councilmember Jewett asked if the existing fence around the retaining wall area would have required a variance. Cooney said that it would have.

Mayor Skrede asked if there were any issues with the proposed impervious area. Councilmember Jewett asked about an as-built survey for this property to show the required mitigation. Cooney said that he would request an as-built survey for this property.

Councilmember Erickson noted that there was some discussion at the Planning Commission about a 1.5 car garage versus a 2 car garage and he asked why the applicant was building another substandard garage. Janzen said that he is doing it partially because he thinks it would look better and partially because it meets their parking needs. Janzen said they don't need a bigger garage but they do need the storage.

Councilmember Erickson asked about the shed. Janzen said that would also be more storage.

Councilmember Carlson said that he was happy with the fact that they pulled the building back to meet the side yard setback.

Councilmember Jewett noted that the mitigation will require a maintenance agreement to be recorded against the property.

Mayor Skrede said that he would like to have the fence at least 5 from the OHWL and that it be a condition of approval.

Councilmember Jewett asked if a 6 foot fence could be started at the front property line. Cooney said that they typically can be, but in this case a portion of the fence would be in the setback.

Councilmember Erickson confirmed that the existing aluminum fence would go to the front corner of the house, and then the privacy fence would start at a 6 foot height that would be reduced to 3.5 feet at the back corner of the house and run towards the lake at that height. Janzen said that was correct.

Motion by Councilmember McNeill to approve the variance requests to encroach 14.9 feet into the front yard setback, to encroach 60.9 feet into the lake yard setback, and to exceed the maximum permitted impervious surface area by 2.4% for the proposed house addition and fence at 19820 Cottagewood Road, as proposed, based on the recommendation and findings of the Planning Commission and with the following conditions:

- The fence shall come no closer than 5 feet from the Ordinary High Water Level of Lake Minnetonka.

- That 6 foot tall privacy fence encroach no closer than the furthest lake yard encroachment of the existing house on the west side and the proposed addition on the east side, with the distance determined based on a line drawn at a right angle to the property line.
- The applicants complete the stormwater management improvements to meet the requirements and specifications of the city engineer.
- Construction of stormwater management facilities should be observed by a City representative to ensure system is installed as proposed. At least 24 hours' notice shall be given prior to inspection.
- The applicants enter into a maintenance agreement with the city to ensure the long-term operation and maintenance of the stormwater management improvements. The maintenance agreement shall be executed and recorded against the parcel.

Motion was seconded by Councilmember Erickson. Motion carried 5-0.

6. UNFINISHED BUSINESS

A. Discuss Minnetonka Blvd Street Reconstruction Project

Administrator Young stated that the preconstruction meeting for the Minnetonka Blvd Street Resurfacing Project was held on June 26th and two items requiring Council authorization were brought up at the meeting concerning contractor work hours and establishing weekly contractor meetings.

He stated that according to the specifications, Bituminous Roadways has until August 31st to complete the project. He stated that Bituminous Roadways has submitted their construction schedule that shows the project ending on September 17th. He stated that discussion was held on efforts to complete this project by August 31st and the contractor suggested that it would be helpful if the City would approve expanded work hours.

He stated that the City Code already provides fairly liberal construction hours and the only time that would need specific Council permission would be to allow the contractor to begin work from 7:00 a.m. to 8:00 a.m. on Saturday mornings.

Administrator Young stated that the other main discussion topic at the preconstruction meeting concerned establishing weekly meetings between City representatives and the contractor in order to provide weekly project updates and to resolve any outstanding construction issues. The City representatives would include Mayor Skrede, Councilmember Erickson or Carlson, Police Chief Johnson, Public Works Foreman John Menzel, and Administrator Young. Further discussion was held on the Council allowing Mayor Skrede authorization to approve any change orders at these meetings in order to keep the project moving forward without having to wait for the next available Council meeting.

Councilmember Carlson stated that this is similar to the project team we had for the construction of the multi-purpose facility.

Mayor Skrede added that we also had a project team for the construction of the Vine Hill Bridge. He noted that he and Councilmember Erickson reviewed the Parkway & Highland street reconstruction project and noted the need for several storm water structures on Parkway.

Councilmember Carlson stated that a project team is helpful in identifying and resolving construction issues. He mentioned the need to field verify the installation of the sidewalk at Chimo East.

Councilmember McNeill stated that she has no objection to the project team but felt that a 7:00 a.m. start time on Saturdays was too aggressive.

Councilmember Jewett noted that there are only seven Saturdays between July 22nd and August 31st.

Mayor Skrede suggested letting the contractor start at 7:00 a.m. on Saturdays to see if there is a problem with this start time. He stated that if it becomes a problem, we can switch back to an 8:00 a.m. start time.

Motion by Councilmember Carlson to grant the contractor authorization to start work at 7:00 a.m. on Saturdays and to authorize Mayor Skrede to approve project change orders not to exceed a total of \$50,000 for the entire duration of the project at the weekly construction meetings, subject to obtaining official approval of the change order at the next regularly scheduled Council meeting. Seconded by Councilmember Erickson. Motion carried 5-0.

B. Authorize Change Order No. 1, Parkway & Hamilton Street Reconstruction Project

Councilmember Erickson stated that he met with Mayor Skrede, Public Works Foreman John Menzel and Project Inspector Art Taylor to review the Parkway & Hamilton Street Resurfacing Project to identify any potential storm water problems. He stated that there were three drainage issues identified on Parkway that had been missed by the engineer. He stated that they met with a representative from Northwest Asphalt and obtained a quote in the amount of \$22,500.00 to correct the drainage issues.

Motion by Councilmember Carlson to authorize Change Order No. 1 to Northwest Asphalt in the amount of \$22,500.00 to repair three drainage issues on Parkway. Seconded by Councilmember McNeill. Motion carried 5-0.

C. Other

There was no other Unfinished Business this evening.

7. NEW BUSINESS

A. Review 2020 EFD Budget

Councilmember and EFD Boardmember Erickson provided the following highlights on the 2020 EFD Budget:

- The 2020 Budget proposes a 2.95% increase in the 2020 municipal contribution
- The 2020 Budget proposes to spend down \$50,498 in fund reserves, while still maintaining an estimated 29.63% fund reserve balance.
- Staffing costs are the primary reason for cost increases in 2020 due to increased pay and staffing for the Duty Officer, Duty Crew, a new part-time administrative assistant, and additional part-time inspector hours.
- The contribution for the 2020 Capital Equipment Fund is scheduled to increase by \$10,000.

Councilmember Jewett asked if the funding formula for the Excelsior Fire District has always been based on tax capacity.

Administrator Young stated that the Joint Powers Agreement developed a funding formula that has evolved over the years from the average of five criteria including population, call volume, market value, tax capacity, and households, to solely using tax capacity.

Councilmember Carlson thanked Councilmember Erickson for all his work on the Excelsior Fire District.

Motion by Councilmember Carlson to approve the 2020 EFD Operating Budget as presented. Seconded by Councilmember McNeill. Motion carried 5-0.

Motion by Councilmember Carlson to approve the 2020 EFD Capital Equipment Budget as presented. Seconded by Councilmember McNeill. Motion carried 5-0.

B. Discuss Request to Conduct Fire Training at 3620 Pamela Place

Lee Christopher, Training Coordinator with the Excelsior Fire District, was present to request permission to conduct live burn training at 3620 Pamela Place. He stated that the EFD has received permission from the property owners to conduct live burn training, subject to obtaining the necessary permits from the Department of Natural Resources and the Pollution Control Agency. He stated that the Department still has to notify all neighbors within 500' of the property and hope to conduct three to four training sessions from July 15 to August 3. He stated that live burn training provides a unique training opportunity for firefighters and helps them to meet their annual training requirements. He stated that the live burn training is a very low risk activity and the biggest problems are with those neighbors who like to watch the training and smoke.

Councilmember Erickson stated that the Department doesn't burn the structure down, they burn inside the structure.

Mayor Skrede stated that he would prefer the notice to the neighbors to have gone out first to get a better idea if there are any objections to the live training burn. He stated that the Minnetonka Blvd Street Resurfacing Project is scheduled to begin on July 22 and asked how many training

sessions the Department could undertake from July 15-22. He stated that any training session after the start of the street project on July 22 would be problematic in his opinion. He noted that the other fire departments that are proposed to participate in the training would fill up the cul-de-sac with vehicles. He stated that he would prefer smaller crews and trucks after July 22nd.

Lee Christopher stated that the first week starting July 15th would be devoted almost entirely to prep work for the training. He also noted that the Fire Relief Dance is scheduled on July 19th and most of the firefighters participate and work that event.

Councilmember Carlson asked if they could hold off the training until after September 1st.

Lee Christopher stated that they really don't have the time to wait. He stated that they will likely only have the pumper truck and tanker on Pamela Place and don't use a ton of water for the training. He stated that they are hoping to hold the training sessions on two Thursdays and on a Saturday. He suggested that they could coordinate the dates and times of the training with the Mayor and project manager.

Mayor Skrede suggested holding the training session on July 20, July 25 and August 1. He asked about the type of responses received from neighbors that would make the Department consider canceling the training.

Lee Christopher stated that they usually don't get a lot of negative responses but neighbors have tended to express concerns regarding truck access, traffic and smoke.

Councilmember McNeill stated that she sees some challenges with holding the training sessions and does not support holding any sessions after July 22nd.

Councilmember Erickson stated that it is important to know where the contractor is going to be around the training dates and if the training would be in the way of the contractor. He stated that if the contractor has not gotten as far as Highland by the training dates, the training may not be a problem. He stated that if there is a conflict with the road project, the road project wins.

Councilmember McNeill asked how much notice is needed before a decision on whether to allow the live training burns can be made.

Lee Christopher stated that the Department needs to start notifying people.

Councilmember Jewett stated that it feels backwards to canvas the neighborhood first and then get Council approval.

Lee Christopher agreed that we may need to determine the proper protocol for requesting live training burns.

Mayor Skrede agreed that we need to determine a better process. He stated that he supports the cause but finds it difficult to approve the training without knowing how it may impact the large scale street project. He stated that he would prefer a different home and a different timeline.

Lee Christopher stated that he would like to work with Councilmember Erickson on the process.

Mayor Skrede agreed that Lee should meet with Councilmember Erickson and Administrator Young on developing a process. He stated that he is sorry to take so long on this and he doesn't oppose the live burn training, he is just concerned about how the training could affect the street project.

C. Other

There was no other New Business this evening.

8. DEPARTMENT REPORTS

A. Police Department

Police Chief Johnson provided a review of the June Incident Report.

B. Excelsior Fire District

Councilmember Erickson noted that the Pining Ceremony for new Fire Chief Curt Mackay was held on June 24th.

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:

- 2019 Pending Contract Negotiations
- 2020 Presidential Nomination Primary

9. ADJOURNMENT

Motion the Regular Council meeting by Councilmember Erickson. Seconded by Councilmember Jewett. Motion carried 5-0. The meeting adjourned at 9:35 p.m.

10. SPECIAL BUDGET WORK SESSION

Administrator Young presented the 2020 General Fund Budget for Council review.

11. ADJOURNMENT

Motion to adjourn the Special Council Work Session by Councilmember Carlson. Seconded by Councilmember McNeill. Motion carried 5-0. The meeting adjourned at 10:06 p.m.

Respectfully submitted,

Dana H. Young

City Administrator