

**DEEPHAVEN CITY COUNCIL MEETING  
MONDAY, JUNE 4, 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 Kent Carlson, Tony Jewett, and Steve Erickson

ABSENT: Councilmember Gustafson

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 May 21, 2018 City Council Minutes
- B. Approve Verifieds

Seconded by Councilmember Carlson. Motion carried 4-0.

4. **MATTERS FROM THE FLOOR**

There were no Matters from the Floor this evening.

5. **PLANNING & ZONING REQUESTS**

- A. **Variance requests of Jeff and Pam Konen to exceed the maximum permitted accessory structure height in conjunction with the remodel of an existing garage at 4693 Vine Hill Road**

Zoning Coordinator Dale Cooney presented the staff report. He said that Jeff and Pam Konen, property owners, are requesting a variance to exceed the maximum permitted accessory structure height for an existing nonconforming garage at 4693 Vine Hill Road. Cooney noted that the property is zoned R-2 and is 105,773 square feet in size. He said that Section 1302.04(4) of the zoning ordinance limits accessory structure height to 15 feet and that the applicants are

proposing an accessory structure height of 19 feet, 3 inches, and are seeking a variance of 4 feet, 3 inches from the maximum permitted accessory structure height.

Cooney said that the applicants are building a new house on the property, but have kept the existing garage and would like to remodel it to match the look of the house. He said that, at 1,207 square feet, the four-car garage exceeds the maximum allowable accessory structure footprint of 1,000 square feet. Cooney noted that, as a legal nonconformity, it cannot be expanded (including upward) without a variance.

Cooney said that the current height of the structure is 14.5 feet tall, and it has a 7 foot high garage door and a shallow hipped roof. He said that the applicant would like to increase the garage door height to 8 feet which is the current standard. Cooney stated that the roof will be insulated to allow for a heated garage and the interior ceiling height is 14 feet, 9.5 inches. He noted that the windows on the garage are decorative only and that, as designed, the garage would not allow for a second story. Cooney said that the applicant has stated that the garage roof could be designed to be lower, but that it would be difficult to meet the 15 foot restriction.

Cooney said that the garage is no closer than 60 feet from any property line and is on the opposite side of the lot from adjacent neighbors. He said that it is his opinion that the proposal would have nominal impacts on the surrounding properties. Cooney said that although the roof pitch could be slightly lowered, it would be difficult to meet the code requirements. He said that he feels that there is not enough benefit to the city to require code compliance and that the property owner's aesthetic considerations are appropriate for the structure.

Cooney said that he recommends approval of the variance request to exceed the maximum permitted accessory structure height by 4 feet, 3 inches for the nonconforming garage at 4693 Vine Hill Road, as presented based on the following findings:

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

Yes. The purpose and intent of the ordinance is to limit excessive accessory structure massing on a property. The garage exists with an oversized footprint, and state law permits the property owner to continue to maintain and use the structure. The additional massing is nominal relative to the existing structure.

(b) 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.

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

Yes. While the garage is larger than permitted, it is existing and the proposed changes are reasonable. The large size of the property further enhances the reasonableness of the proposal since the impacts to adjacent neighbors are negligible.

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

Yes. The structure is an existing, oversized, nonconforming garage. The garage door height that exists is not up to modern standards, and therefore some height increase is necessary to make the garage functional.

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

The proposed alterations would not alter the essential character of the locality. The garage exists today and the impact of the changes would be nominal.

Cooney said that the Planning Commission held a public hearing at their May 15 meeting and, on a 5-0 vote, recommended approval of the request as proposed.

Cooney concluded his staff report.

Mayor Skrede asked about the accessory structure and why it was not noted in the approval that it was a 1,207 square foot nonconforming accessory structure. He said that he would not want anyone to think it was a house.

Motion by Councilmember Erickson to approve the request as proposed, and noting that the structure is a pre-existing, nonconforming accessory structure. Motion was seconded by Councilmember Carlson. Motion carried 4-0.

**B. Variance requests of William Bieber and Helen Meyer to encroach into the minimum side yard setback and exceed the maximum permitted impervious area in order to construct a covered porch at 20730 Linwood Road**

Cooney presented the staff report. He said that William Bieber and Helen Meyer, property owners, are requesting a variance to build a lake yard covered porch. He said that the expansion encroaches into the side yard while also expanding impervious area on a property that already exceeds the 25% impervious area limitation. Cooney said that the property owners were unaware of the existing nonconformities on the property when the plans were submitted to the city for building permit and the issues were identified at staff plan review. Cooney noted that at 34,433 square feet, the property is an undersized R-2 lot. He said that the proposed hardcover expansion is 61 square feet.

Cooney said that the house was constructed in 1971 and both side yards are nonconforming. He said that the covered porch is only proposed for the south side yard and less than half of it would encroach into the setback. He said that the porch follows the existing line of the house. Cooney pointed out that Section 1302.04(3) of the zoning ordinance requires a side yard setback of 20 feet. He said that the applicants propose a side yard setback of 16.1 feet and are seeking a variance of 3.9 feet from the minimum required side yard setback.

Cooney noted that Section 1302.04(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25%. Applicants are proposing an impervious surface area of 27.8% and are seeking a variance to exceed the maximum impervious surface area by 2.8%. He stated that the applicants are proposing to expand hardcover on the property by 61 square feet, or 0.2%.

Cooney repeated that the property is an undersized R-2 lot. He said that, based on the size of the driveway and the house, staff suspects, but cannot confirm, that the property has likely been over 25% impervious surface area since it was constructed.

Cooney said that the excess impervious areas were only discovered when an updated survey was submitted as part of the variance request. He said that made the architect aware of city ordinances requiring mitigation, and he has stated that the property owners are willing to comply with city requirements but no specific proposal has been submitted.

Cooney said that due to the minor impervious area increase and the likelihood that some amount of nonconforming impervious has been on the property for quite some time, staff is hesitant to require mitigation to bring the property to 25% impervious. He said that he would recommend waiving the mitigation requirements, and instead propose a zero net increase of impervious area for the property by removing an equivalent amount (61 square feet) of impervious area from the property.

Cooney said that he recommends approval with conditions of the variance requests of William Bieber and Helen Meyer to encroach 3.9 feet into the minimum required side yard setback, and to exceed the maximum impervious surface area by 2.6% in conjunction with the construction of a covered porch at 20730 Linwood Road, as proposed. He said that the recommendation is conditioned that: the applicants remove 61 square feet of impervious area from elsewhere on the property.

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 applicant is seeking to vary from the stated setback and impervious surface standards of the ordinance to improve an existing non-conforming house constructed in 1971, per Hennepin County tax records. The expanded conditions are minor and remain in harmony with the purpose and intent of the ordinance.

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.

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

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

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

Yes. The existing house was constructed in 1971 and the side yard setbacks are nonconforming. Also, the property is undersized for an R-2 property.

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 minor expansion of existing conditions.

Cooney said that the Planning Commission held a public hearing at their May 15 meeting and, on a 5-0 vote, recommended approval of the request as proposed with the condition that the applicant removes 61 square feet of hardcover from the property.

Cooney concluded his staff report.

Councilmember Erickson asked where the hardcover would be removed from. Cooney said that the applicant had proposed removing it from the rear yard patio, but that there was also driveway area that could be removed.

Councilmember Carlson asked if an updated survey would be provided once the hardcover was removed. Cooney said that he did not ask for an updated survey, but that could be included as a condition.

Bill Bieber, property owner, said that he would request that he not be required to remove the 61 square feet of impervious. He said that they have an option to buy the vacant lot to the south that they will exercise that option. He said that they have no intention to build on that lot and that his properties taken together would be well under hardcover restrictions.

Councilmember Carlson asked if the lots would be consolidated. Bieber said that he was not sure. Carlson said that, if left a separate lot, someone could build on it and that it makes a difference. He said that if the lots were combined, they would have a conforming lot.

Councilmember Erickson said that the other lot cannot be part of the discussion since the purchase would be two years away. He said that the only question is whether or not to have him remove the 61 square feet of impervious area. Councilmember Erickson said that he does not need to see an updated survey, but that he would like to have the 61 square feet of impervious area removed. He said that even though the property would remain over 25% impervious, it is clear that the water from the property is draining towards the lake.

Motion by Councilmember Erickson to approve the request as proposed, with the condition that the applicant remove 61 square feet of impervious area from the property. Motion was seconded by Councilmember Jewett. Motion carried 4-0.

**C. Variance requests of Jeff and Susie Boeckmann to encroach into the side yard setback, and to exceed maximum permitted impervious area for a home addition at 19150 Lake Avenue**

Cooney presented the staff report. He said that Jeff and Susie Boeckmann, property owners at 19150 Lake Avenue, are requesting variances to build a home addition onto a legal non-conforming house which includes the building of a second story onto the house. He said that the addition creates the need for a variance from the minimum side yard setback and the maximum permitted impervious surface area. Cooney said that the footprint, height and massing of the house will increase, as will the overall hardcover for the property. He said the property is a 10,748 square foot R-3 lot, which is 54% of the minimum lot size for the zoning district.

Cooney said that Section 1302.05(3) of the zoning ordinance requires combined side yard setbacks of 25 feet, with a minimum of 10 feet. He stated that the applicants propose a side yard setback of 7.3 feet and are seeking a variance of 2.7 feet from the minimum required side yard setback. Cooney noted that the existing house is 7.5 feet off of the side property line and the house addition maintains the existing line of the house. Cooney pointed out that the house and lot line are not perfectly square with each other and therefore the encroachment will increase by .2 feet from existing conditions.

Cooney said that the overall height and massing of the house will increase significantly since the building will be enlarged from a 1 story house to 2 full stories with a larger footprint. He said that the current height of the house is 17 feet and the proposed house height is 31 feet. Cooney noted that the height limit for this property is 31 feet.

Cooney said that the property to the east at 19140 Lake Street would be most impacted by the addition and increase in massing, since the two houses would be separated by approximately 20 feet.

Cooney said that Section 1302.05(2) of the zoning ordinance limits the maximum allowable impervious surface area on the property to 25%. He said that the applicants propose an impervious surface area of 28.6% and are seeking a variance of 3.6% from the maximum allowable impervious surface area. Cooney said that, the opinion of staff, the proposed impervious area is a relatively modest overage relative to the lot size.

Cooney said that the variance triggers the city's stormwater mitigation requirements and the property will be required to provide mitigation to the equivalent of 25% impervious surface area. He said the property owner will be required to enter into a stormwater maintenance agreement which will be recorded against the property. Cooney said the applicant is proposing rear yard raingarden to accommodate the stormwater mitigation requirements, and that, as proposed, the raingarden exceeds the city's mitigation requirements. Cooney said that the City Engineer has reviewed the proposed plans and his comments are attached to this staff report.

Cooney noted that the survey shows a proposed "deck" that encroaches into the front yard setback. He said that city code allows steps, and landings not wider than associated steps, that lead directly into the primary structure and limited to the height of the ground floor level to be permitted up to a distance of 5 feet for front yards. He said he would consider the proposed steps and landing compliant with the city code.

Cooney said that he recommends approval with conditions of the variance requests to encroach 2.7 feet into the minimum required side yard setback, and to exceed the maximum allowable impervious surface area by 3.6% for the proposed home addition at 19150 Lake Avenue, as proposed, with the following conditions:

- The applicants complete the stormwater management improvements to meet the requirements and specifications of the city engineer.

- 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 was based on the following findings.

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

The purpose and intent of the ordinance is to allow the orderly development and redevelopment of property within the city and when the ordinance standards cannot be met, it outlines the procedures to vary from these standards. The applicant is seeking to vary from the stated setback and dimensional standards of the ordinance in order to modify a non-conforming house built in 1916, according to Hennepin County records. Additionally, the applicant is proposing a modest expansion of impervious areas on a substandard property. Both objectives are in harmony with the purpose and intent of the ordinance.

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?

The proposal puts the property to use in a reasonable manner. But for the existing non-conforming setback, the scale of the house is consistent with zoning limitations for the property. The expanded hardcover is reasonable relative to the substandard size of the property.

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

Yes. The 1916 house was built prior to the city's zoning requirements. The narrow side yard setback prevents expansions to much of the house without requiring the need for a variance. The lot is 54% of the minimum lot size for the zoning district, creating difficulty in meeting the impervious surface standards of the code.

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

The proposal would not alter the essential character of the locality. The proposal is consistent with the single-family character of the neighborhood.

Cooney said that the Planning Commission held a public hearing at their May 15 meeting and, on a 5-0 vote, recommended approval of the request as proposed, with the condition that the applicant removes the parking area at the side of the garage.

Cooney concluded his staff report.

Councilmember Jewett said that he has not seen a second story added successfully. He said that they tend to get torn down to the foundation. He said that it is a small lot and that they are trying to improve it.

Councilmember Carlson said that the lot is about half the size of the minimum R-3 lot size. He said that hardcover is partially an issue because of the city's required 35 foot setback. He said that he successfully built a second story on a house, so it can be done. Councilmember Carlson said that he liked the fact that the front of the house was kept as a single story to minimize the impact on the neighbor's property. He said that there is 20 feet between the house and the neighbor's house.

Mayor Skrede said that he would have felt better if the property were 10 feet off of the lot line and said that he has a problem going up to 31 feet on the east side.

Councilmember Erickson said that he has concerns with this and the potential that other houses on Lake and Azure will follow the same template. He said that there were at least 14 houses that would face similar problems and the lots are 50 feet and 75 feet wide. He said that side yards will be the driving factor in this district. He said that 10 foot setbacks on a 50 foot wide lot will probably be acceptable. Councilmember Erickson said that there is more flexibility on 75 foot wide lots. He said the house goes up at least 20 feet before the roofline starts, and that the house to the east will be most impacted.

Councilmember Carlson said that the water drains to the wide side of the lot away from the neighbors. Councilmember Erickson agreed, but said he was worried about water coming off the roof 5 feet from the property line.

Councilmember Erickson asked about the foundation under the expansion. Keith Westrup, builder for the property owner, said that there is block underneath that part of the foundation. Councilmember Erickson said that he had run into problems on his house. He said that, if they get into the project they find that the house needs to come down, he would want it to be moved, but that the owners would have a variance to keep it where it is.

Councilmember Erickson said that this type of construction might be at least as expensive as simply building new. Westrup said that new construction would add \$100,000 to the cost of the project. Erickson said that he is not supposed to think about cost, but that is a lot of extra money for the property owners.

Mayor Skrede said that going from existing height to proposed will be a shock and that he went through the same situation with a neighboring property building larger.

Jeff Boeckmann said that the roof overhang would be the same and the runoff situation would not be any different. He said they will add gutters and improve the runoff situation.

Mayor Skrede said that he was more concerned about the increase in massing, and less concerned about hardcover. He said that other property owners on this street are going to come through and ask for the same thing. Mayor Skrede said that the design does not necessarily minimize the impact.

Councilmember Carlson said that the city establishes guidelines, but that the city does not get into architectural review. Mayor Skrede said that the heights are in conjunction with the required setbacks. He said that maybe a dormer situation on the second floor would be less impactful.

Cooney said that, as a thought experiment, stepping back the second floor back to 10 feet would not alleviate very much of the visual impact.

Mayor Skrede said that he is not trying to design the house, but that a second story with dormers would be less impactful, and maybe a different roofline system would work better.

Councilmember Carlson said that if a sunlight/shadow study were to be done, the extra 2.5 feet would not make much difference.

Jeff Boeckmann said that moving it back a couple of feet would produce little gain for the added expense. Skrede said that he felt that there were design alternatives that could improve the roofline.

Susie Boeckmann said that they tried to work within the constraints of the zoning code. She said that they just want to live in the neighborhood where her daughter goes to school.

Jeff McKinney, of 19140 Lake Avenue, said that there is enough reconstruction that they should meet a 15 foot setback. He said that when he was on the Planning Commission, they tried to make properties more compliant.

Margaret McKinney, of 19140 Lake Avenue, said that they have lived in their house for 30 years and that this will be a huge change. She said that they don't know what the impacts will be and that she is disappointed that it has gone this far.

Susie Boeckmann said that they asked staff questions about what they could do. She said that they are building a modest house and will live there for a long time. She said that they are not flipping the house.

Councilmember Erickson said that he wished the expansion from 1963 had not been placed 7 feet from the property line, but that is the reality. Councilmember Carlson said that the garage on the neighboring property is 5 feet from the lot line, and there are a lot of issues in the area that are similar.

Councilmember Erickson said that he does not like the house 7 feet off of the lot line, but that the city does have a variance process. He said that the city was built out with small lake houses prior to the zoning requirements. He said that this is not Plymouth or Maple Grove where they map out massive subdivisions in farmland. Councilmember Erickson said that the city has no records as to how the house was built 7 feet off of the lot line. He said that this request is difficult.

Councilmember Carlson said that the front of the house lines up nicely to help minimize the impact to the property to the east. He said that Deephaven wants to encourage people to invest

in the community and that the city should not require that the house be demolished and that the property owners spend \$100,000 to move the house 2 feet to the west.

Motion by Councilmember Carlson to approve with conditions as proposed based on the findings and conditions of the Planning Commission. Motion was seconded by Councilmember Erickson.

Councilmember Jewett said that he is troubled by justifying the projects based on the expense, and that the home might come down anyways. He said that the house to the east will come down and move closer to the property line. Councilmember Jewett said that there is no happy medium.

Councilmember Erickson said that there is no precedent, since every property is unique. He said that he understands the cost constraints. He said it is a bad situation, but that he does not see an alternative based on the existing location of the house.

Councilmember Jewett said that he appreciates the investment and that stepping back the house does not do much to improve the situation.

Motion carried 3-1, with Mayor Skrede voting against.

Jeff McKinney asked the city what the appeals process is since he does not agree with the decision. Cooney said that he will contact McKinney tomorrow to discuss the appeals process.

Darlene Arndt, realtor for the property owners, said that there is a back-story and that the seller wanted to find a family to buy the house. Mayor Skrede said that he appreciates the story, but he has seen similar well-intended owners go into bidding wars and that has made him a somewhat jaded.

**D. Variance requests of Ashish Aggarwal to encroach into the front yard setback, and to exceed maximum permitted impervious area for a new house at 19380 Lake Avenue**

Cooney summarized the staff report. He said Ashish Aggarwal, property owner at 19380 Lake Avenue, is requesting variances to build a new house to replace the existing nonconforming house on the property and that, as proposed, the property would encroach into the front yard setback, and exceed the maximum impervious surface coverage. He said that the property is an 8,440 square foot R-3 lot, which is 42% of the minimum lot size for the zoning district.

He said that Section 1302.05(3) of the zoning ordinance requires a front setback of 35 feet. Cooney said that the applicant proposes a front yard setback of 20 feet and is seeking a variance of 15 feet from the minimum required front yard setback. He said that the existing house is setback 16.7 feet off of the front property line, and the proposed house would reduce the nonconforming setback for the property. Cooney said that the 20 foot setback is slightly greater than the adjacent property's setback and is comparable to other houses on the block.

Cooney noted that one consideration for the front setback requirement is that it helps limit on-street parking. He said that in this case, the proposed house has a side-load garage with a setback

comparable to the required front setback, thereby minimizing any parking concerns. Cooney pointed out that the driveway access to the property is via city property and that the city reviewed and approved the easement in 2017.

Cooney said that Section 1302.05(2) of the zoning ordinance limits the maximum allowable impervious surface area on the property to 25%. He said that the applicant proposes an impervious surface area of 30% and is seeking a variance of 5% from the maximum allowable impervious surface area. Cooney noted that, based on the Planning Commission's conditions, the applicant has reduced the total impervious area on the property from the originally proposed 33.40%. The property is 42% of the minimum lot size and the total hardcover footprint is 2,531.

Cooney said that the variance triggers the city's stormwater mitigation requirements and that the property will be required to provide mitigation to the equivalent of 25% impervious surface area. He said the applicants are proposing a perimeter French drain system along the north and west property line, and that, as proposed, the system exceeds the city's mitigation requirements. Cooney said the property owner will be required to enter into a stormwater maintenance agreement which will be recorded against the property.

Cooney said that he recommends approval with conditions of the variance requests to encroach 15 feet into the minimum required front yard setback, and to exceed the maximum allowable impervious surface area by 5% for the property at 19380 Lake Avenue, as proposed, with the following conditions:

The applicants complete the stormwater management improvements to meet the requirements and specifications of the city engineer.

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 his recommendation is based on the following findings:

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

The purpose and intent of the ordinance is to allow the orderly development and redevelopment of property within the city and when the ordinance standards cannot be met, it outlines the procedures to vary from these standards. The applicant is seeking to vary from the stated setback and impervious standards of the ordinance in build a new home on a significantly substandard lot size for the zoning district. Both objectives are in harmony with the purpose and intent of the ordinance.

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?

The proposal puts the property to use in a reasonable manner. The scale of the house is consistent with zoning limitations for the property, and the requested front setback is reasonable in the context of the surrounding setbacks. The expanded hardcover is reasonable relative to the substandard size of the property.

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

Yes. At 8,440 square feet, the property is only 42% of the minimum lot size for the zoning district, which creates challenges to meeting the impervious surface limitations. The existing house is setback 16.7 feet from the front property line, and the proposed setback would reduce this nonconformity while also situating the house to be setback slightly further than the adjacent property.

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

The proposal would not alter the essential character of the locality. The proposal is consistent with the single-family character of the neighborhood, is of a similar size and scale to other houses within the area, and has a comparable front yard setback to neighboring properties.

Cooney said that the Planning Commission held a public hearing at their May 15 meeting. He said that the Planning Commission determined that, due to the unique shape of the lot, they could justify an impervious percentage comparable to a 10,000 square foot lot (2,500 square feet), which would be the equivalent of 30% impervious for 19380 Lake Avenue. Cooney said that the applicant stated that they could meet that condition through the removal of driveway area, but had concerns about backing vehicles out into the busy beach area. He said that the applicant felt that the driveway proposal with the additional impervious area for the driveway turnaround was safer. Cooney said that the Planning Commission recommended approval of the request, as proposed, with the additional condition that the impervious area for the property not exceed 30%. Cooney pointed out that the applicants have submitted a revised proposal meeting the Planning Commission's added condition.

Cooney concluded his staff report.

Mayor Skrede said that he wants to make sure that the tennis court is protected. Cooney said that the tennis court is higher than the French drain. Mayor Skrede asked if there was an attempt to get water to the catch basin behind the property. Cooney said that was not the plan. Councilmember Carlson said that the French drain should capture most of the water coming off of the property.

Councilmember Jewett asked about the retaining walls noted by the city engineer. Cooney said that he and the City Engineer visited the site with the builder and that the property owner and the owner to the north are going to work to get the grading on the two lots to work together. Mayor Skrede asked what would be the drainage solution if the house next door were not for sale. Cooney said that this was not about managing drainage, but rather about how the grade transitions from front to back.

Mayor Skrede said that there are serious drainage issues in this area and that there are opportunities to clean up this area. Councilmember Erickson agreed that this might be a good time to address this. Mayor Skrede said that the neighbor to the north owns property that runs from the alley to the tennis court. He said that doing this piecemeal would be a missed opportunity. Councilmember Erickson said that the final mitigation might be dependent on how the city addresses this issue.

Cooney said that he talked to the owner of the property to the north 2 years ago and that he was open to letting the city use a portion of his property for drainage. Cooney said that there is nothing being built on this section of the property, so the land is available but that there was some discussion as to if the street needed to be addressed as part of this project as well. Mayor Skrede said that the road should be a piece of it, but that now is the time to fix the area. Councilmember Erickson said that this doesn't change the house plan in front of the city, but might change the mitigation.

Councilmember Erickson said that he does not want to take the turnaround out of the plan and thinks safety should be the priority. Councilmember Jewett asked if a honeycomb driveway system might work here. Carlson said that he didn't think that would be appropriate for something that gets everyday use.

Councilmember Erickson said that mitigation needs to be balanced against safety and that the property owners should come out onto the street facing forward.

Motion by Councilmember Carlson to approve the request as proposed based on the recommendation and findings of the Planning Commission with the condition that the proposal includes the originally proposed turnaround that puts public safety concerns as a priority over impervious surface concerns due to the property's proximity to the public beach. Motion was seconded by Councilmember Erickson. Motion carried 4-0.

**E. Variance requests of Brent and Lauren Asplund to exceed the maximum permitted building footprint, exceed the maximum permitted grade alteration, and to vary from the minimum connection requirements between structures in order to construct a new house on the properties at 18450 and 18500 Maple Ridge Road**

Cooney said the property owners have applied for variances to construct a new house on the R-2 properties at 18450 and 18500 Maple Ridge Road. He said the applicants are in the process of combining the properties and that, once combined, the properties will have a total lot area of 3.33 acres (145,053 square feet). He said that the existing houses on the property would be removed and a new home is proposed that would cross the existing boundary between the two properties.

Cooney said that the lot consolidation will happen at a later date and will require the vacation of utility easements between the properties. He said that a building permit will not be issued until the lots are consolidated and noted that lot consolidations are reviewed by the City Council only.

Cooney said that Section 1313.03 Subd. 3(b)(2) allows R-2 properties that exceed the R-1 minimum lot size to have building coverage of up to 8,000 square feet. He said that the

applicants are proposing building coverage of 8,942 and requesting a variance to exceed the building coverage limit by 942 square feet. He said that, while many cities set a proportional limit to building coverage by lot size, Deephaven has a set limit for each zoning district regardless of property size.

Cooney pointed out that the applicants are attempting to work with the drainage patterns on the lot, and the primary drainage way through the property would run beneath the main level of the house. He said that the house footprint is increased since the proposed home bridges this drainage way. Cooney said that, while this house layout is partially a design decision, the drainage way is also an unavoidable characteristic of the property that needs to be addressed.

Cooney stated that, once combined, the property would be more than double the minimum required lot size for an R-1 property, and that due to the large lot size, the proposed footprint would remain proportional to the property size. Cooney said that based on the placement of the proposed house and the large property size, the parcel would likely be sub dividable in the future even if the house were to remain. He estimated that, even if the property were to resubdivide, the proposed house would likely sit on an 80,000-100,000 square foot lot.

Cooney said that Section 1312.04 of the zoning ordinance requires a variance for any land alteration greater than three feet at any point. He said that the applicant is proposing land alteration of up to 10 feet, and is seeking a variance of 7 feet from the maximum permitted land alteration. Cooney pointed out that the two principal areas for grade alteration are 1) up to 10 feet of fill near the front entry to create an level, elevated lawn area; 2) up to 7 feet of cut in the front yard to further enhance the natural drainage pattern of the property allowing water to move more readily from the adjacent hill side towards the lake.

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 said that neither of these concerns are the case in this proposal. Cooney stated that the overall drainage of the property towards the lake will be enhanced, and the minor regrading near the west property line will be managed with side yard swales.

Regarding minimum building connection requirements, Cooney said that Section 1310.10 Subd. 1(d) states that *“An accessory structure shall be considered as part of the principle structure if the connection between the accessory and principle structure is above grade, fully enclosed with a full frost footing and has a minimum width equal to twenty five percent of the longest dimension of the accessory structure to be attached. In no case shall the length of the connection exceed fifty percent of the longest dimension of the accessory structure to be attached.”*

He said that the main level connection between the main building and the master suite area does not meet the above standards because 1) the connection does not include a full frost footing, 2) the enclosed portion of the connection is 5 feet, 8 inches wide connecting to a building that, at its longest dimension, is 53 feet wide; 3) the length of the connection is 30 feet, 5.5 inches, which exceeds 50% of the longest dimension of the master suite area. He said that the applicants are seeking a variance to waive the minimum building connection requirements.

Cooney said that the objective of the ordinance is to prevent attempts at circumventing the city's accessory structure limitations, which is not the case in this situation. He stated that the proposed connection is clearly a design decision to help facilitate drainage and not an attempt to circumvent accessory structure standards. Cooney noted that since this part of the house will be connected to sewer, nothing would prevent the master suite area from being converted into more of an accessory dwelling unit in the future.

Regarding the nonconforming accessory dwelling unit, Cooney said that no formal proposal has been submitted to renovate the legal nonconforming structure, but state law permits the ongoing maintenance, repair, or replacement of legal nonconforming structures.

Cooney said that he recommends approval of the variance requests of Brent and Lauren Asplund to exceed the maximum allowable building coverage limit by 942 square feet, to exceed the maximum permitted grade alteration by up to 7 feet, and to waive the minimum building connection requirements for the properties at 18450 and 18500 Maple Ridge Road, as proposed, based on the following findings:

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

Yes. The property is 3.33 acres in size, which is more than double the minimum lot size for an R-1 lot. The proposed home would remain proportional to the lot size, and would cover less of the property, as a percentage, than a code compliant house meeting the R-1 minimum lot size. The purpose and intent of the 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. Neither of these concerns are the case in this proposal and, in fact, the changes would improve the overall drainage for the property. The purpose and intent of the building connection ordinance is to prevent attempts at circumventing the city's accessory structure limitations. The proposal is clearly a design decision meant to work with the overall drainage of the lot by creating a drainage pathway underneath the main level of the house.

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 single family home is a reasonable use of the property. While the overall footprint is larger than permitted by code, it is proportional to the large lot. Additionally, the footprint of the home is relatively wide, but the overall massing of the house is modest in comparison to what could be permitted by the zoning code.

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

Yes. The drainage from the top of the adjacent hill through the property creates unique circumstances that the applicants are attempting to address through the grading alterations as well as the house footprint. The house footprint is impacted as it is expanded to accommodate

the drainage way. This circumstance also impacts the connection between the main building and the master suite area.

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 overall building footprint on the properties is comparable to what currently exists today. The footprint of the house is larger than permitted by code, but proportional to the lot with modest structural massing.

Cooney said that the Planning Commission held a public hearing at their May 15 meeting and on a 5-0 vote recommended approval of the request as proposed.

Cooney concluded his staff report.

Councilmember Jewett asked about the City Engineer comments. Cooney said that they are typically addressed prior to the building permit and that he has made the architects aware of the comments.

Brent Nelson of Peterssen Keller Architects, architect for the property owners, said that the engineer comments have been passed along to the design team and that it gets handled in pieces by the relevant team member.

Mayor Skrede asked if there is possibility that these comments don't get addressed. Gabriel Keller of Peterssen Keller Architects said that this is typical for what they see, that there is usually a little back-and-forth on the projects, and that there was nothing out of the ordinary in the comments that could not be addressed. Nelson said that it is a complicated site and that might have led to the additional comments. Cooney said that there are two home sites, one of which will be going away, that generated a number of comments.

Councilmember Carlson said that the design is nice and takes advantage of the existing conditions.

Councilmember Erickson said that he walked the property, and that the swale is very natural. He said that there is another modern house to the north and that the proposed house would fit in well with the look of that house.

Motion by Councilmember Carlson to approve the request as proposed. Motion was seconded by Councilmember Erickson. Motion carried 4-0.

#### **F. Review Final Draft of the Deephaven 2040 Comprehensive Plan Update**

Mayor Skrede introduced the agenda item. He said that at the last mayor's breakfast he attended the issue of the comprehensive planning process was raised and that the process puts a tremendous burden on city staff.

Cooney presented his staff report. He said that the goal of this review is to have the city council review the substantially complete version of the comprehensive plan prior to sending it for review to adjacent communities. He said that the document is still considered the draft document and will remain so until it is reviewed by the Metropolitan Council next year.

Cooney concluded his staff report.

Mayor Skrede noted his change to the location of the pond in Thorpe Park.

Councilmember Carlson said that the projections showing an increase in households would be hard to do without more lots. Mayor Skrede said that the projections are generated by the Met Council, and expressed concerns that the projections are meant to meet Met Council objectives rather than reflect actual city growth.

Councilmember Jewett said that using 2010 census as a baseline skews the numbers since that was a down year.

Cooney said that the numbers do not include Deephaven Woods which would increase the number of households.

Councilmember Erickson said that the projections are a way to drive higher density. He said that the city has no more land to add households.

City Administrator Young said that it is difficult to take ownership of the plan when the projections are provided to the city.

Mayor Skrede said that other cities review the plan, but asked if the city required to incorporate their comments. Young said that they would only respond for something that borders their city.

Councilmember Jewett noted the dashed lines on the wetland map that should be removed.

**G. Review Changes to the variance request of John and Linda Haugen to exceed the maximum permitted grade alteration in conjunction with the construction of a new house at 20720 Linwood Road**

Cooney said that the property owners were granted a grading variance in June of 2017. He said that the original grading plan had the potential to negatively impact the neighboring properties, and the applicants have revised their plan significantly enough that staff felt the City Council should review the proposed changes.

Cooney said that it is his opinion that the proposed changes are an improvement since they lower the overall grade change significantly. He said that the hardcover increase would be approximately 0.1%, that the raingardens have been relocated to natural low areas closer to the edge of the property, and the downspouts will capture the roof runoff which will be conveyed underground directly to the raingardens.

Cooney said that as far as city process is concerned, the City Council could A) deny the request and require that the proposal be consistent with the approved variances; B) approve the request to include the changes on the submitted plans, the approval which would be memorialized in the meeting minutes; C) send the revised plans to the Planning Commission for their review prior to making a decision; or D) deem the changes significant enough that they require the property owner to submit an additional variance request.

Cooney concluded his staff report.

Councilmember Carlson said that the changes make a lot of sense and actually help capture some of the runoff from the property to the north.

Councilmember Erickson said that the plan is to have stairs to a lower patio area. Aaron Lutz, contractor for the property owners, said that the grade change is being minimized and that the landing for the patio is lower which will also help reduce runoff.

Councilmember Jewett asked about the swales being moved back towards the neighboring property line. Mayor Skrede said that it helps the adjacent property. Lutz said it is a better location since the raingardens are now in a natural low area.

Motion by Councilmember Carlson to approve the changes to the original variance request as proposed. Motion was seconded by Councilmember Erickson. Motion carried 4-0.

## **6. NEW BUSINESS**

### **A. Review 2019 Budget Schedule**

City Administrator Young presented the following proposed schedule for the Council's review of the 2018 Deephaven City Budget:

Monday, June 18 - 2019 Budget Overview, 2019 Salaries, General Fund Revenues, General Fund Expenditures, Capital Improvement Budget, General Government, Elections, Administration, City Hall, Police Budget, Fire Budget, Planning & Zoning, Streets & Roads, Public Works, Parks & Recreation, Wildlife Management

Monday, July 2 - Budget Review & Revisions

Monday, August 20 - Budget Review & Revisions

Tuesday, September 4 - Final Budget Review, Adopt Preliminary Tax Levy

Monday, October 15 - Park Improvement Fund, Marina Fund, Recycling Fund

Monday, November 19 - Water Fund, Sewer Fund, Storm Water Fund

Monday, December 3 - Truth in Taxation Hearing, Adopt Final 2019 Tax Levy, Adopt 2019 Budget

The Council approved the proposed 2019 Budget Schedule.

**B. Other**

There was no other New Business this evening.

**7. UNFINISHED BUSINESS**

**A. Other**

Administrator Young stated that Councilmember Gustafson obtained a quote from Lake Management, Inc. in the amount of \$2,965.00 to treat Deephaven Beach twice a season. He stated that the treatment rids the beach area of all aquatic vegetation and also targets swimmer's itch. He stated that the treatments do not require the beach to be closed but Lake Management will typically treat on a quieter day such as a Monday or Tuesday morning.

Motion by Councilmember Carlson to approve aquatic weed management treatments at Deephaven Beach by Lake Management, Inc. in the amount of \$2,965.00. Seconded by Councilmember Erickson. Motion carried 4-0.

Mayor Skrede stated that he has asked Councilmember Carlson to oversee the coordination of the soil remediation issue between the contractor and Braun Intertec at the new Thorpe Park warming house.

Councilmember Carlson stated that the soil contractor has met with Braun Intertec and will be coming back with a revised proposal for addressing the soil conditions problem. He stated that the revised proposal will be reviewed and substantiated by Braun Intertec.

**8. DEPARTMENT REPORTS**

**A. Police Department**

Police Chief Johnson provided an update on the May Incident Report and on the interview process for a new officer.

**B. Excelsior Fire District**

EFD Liaison Erickson stated that the EFD Board reviewed the proposed 2019 EFD Budget, which he has since reviewed with Mayor Skrede. He stated that the 2019 Budget proposes a 3.9% increase. He stated that much of the increase is attributable to establishing an overnight crew beginning midyear next year. He noted that the District has received a State Grant to offset much of the cost of constructing the new sleeping rooms.

Further discussion was held on a recent house fire in Shorewood.

**C. Public Works**

Administrator Young provided an update on recent and upcoming public work activities.

He stated that due to the shortened spring, the Public Works Department has hired temporary summer help to work approximately 20 hours per week. He stated that the City has hired Jason Menzel, John Menzel's brother to fill this position. He stated that Jason has worked with the City in the past.

**D. Administration**

Administrator Young provided a brief summary on the following items:

- Population & Household Estimates
- 2019 City Budget
- July Newsletter
- 2019 Woodland Contract Negotiations
- City Cleanup Day Update
- Phone Communications

**9. ADJOURNMENT**

Motion to adjourn by Councilmember Erickson, seconded by Councilmember Carlson. Motion carried 4-0. The meeting adjourned at 9:35 p.m.

Respectfully submitted,  
Dale Cooney  
Zoning Coordinator