

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, MARCH 5, 2018
MINUTES**

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

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

ABSENT: Councilmember Kent Carlson

STAFF: Police Chief Cory Johnson and City Administrator Dana Young

2. **PLEDGE OF ALLEGIANCE**

The Council recited the Pledge of Allegiance.

3. **APPROVE CONSENT AGENDA**

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

- A. Approve February 5, 2018 City Council Minutes
- B. Approve Verifieds
- C. Approve 2018 Street Sweeping Bids
- D. Approve 2018 Street Striping Bids
- E. Approve Use of Robinson's Bay Beach for Yoga Classes
- F. Approve January 2018 Treasurer's Report
- G. Approve 2018 Planning Commission Vice-Chair
- H. Reappoint Bob Werniewski to Planning Commission
- I. Approve Thorpe Park Grant Extension

Seconded by Councilmember Erickson. Motion carried 4-0.

4. **MATTERS FROM THE FLOOR**

There were no Matters from the Floor this evening.

5. **PLANNING & ZONING REQUESTS**

- A. **Consider the variance request of Jeff & Pam Konen to exceed the maximum permitted grade alteration in conjunction with the construction of lower level windows and an in-ground swimming pool at 4693 Vine Hill Road**

Administrator Young stated that Jeff & Pam Konen are requesting a variance to exceed the maximum grade alteration in conjunction with the construction of lower level windows and an in-ground swimming pool at 4693 Vine Hill Road. He stated that the property is zoned R-2 and is 105,773 square feet in size. He stated that Section 1312.04 of the Zoning Code requires a variance for any land alteration greater than three feet at any point and the applicant is proposing a land alteration up to 6 feet, and is seeking a variance of 3 feet from the maximum permitted land alteration.

He stated that the property previously had a house on the southwest portion of the property, directly south of the existing garage. The applicant chose to relocate the house further back on the property towards a natural high point on the property. He noted that the significant majority of the proposed house is compliant with the 3 foot grading limitation and a building permit has been issued for the house with construction well underway.

He stated that there are two relatively small areas on the property that are proposed to exceed the grading limitations:

1. The applicant would like to include lower level windows to the downhill side of the property. This would alter the grade by approximately 4 feet.
2. The northeast corner of the swimming pool begins to drop sharply away and proposed fill areas of up to 6 feet are proposed. Double retaining walls are proposed to limit the scale of the overall grade change.

He stated that the principal justifications for land alteration restrictions are to limit properties from circumventing 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 with this proposal. He stated that the applicant has worked hard to meet the grading limitations for the undulating property, and has largely achieved that goal except for the two small variance areas.

He stated that a portion of the property contains a wetland, which will not be impacted by the building area. The Minnehaha Creek Watershed District has reviewed the survey and issued erosion control permits for the project.

He stated the staff recommends approval of the variance request to exceed the maximum permitted grade alteration by 3 feet for the property at 4693 Vine Hill Road, as presented. He noted that the Zoning Coordinator's findings are included in his staff report.

He stated that the Planning Commission held a public hearing on the request at their February 20th meeting and recommended approval of the request as proposed on a 7-0 vote.

Administrator Young concluded the staff report.

Mayor Skrede noted that the applicants are not here this evening. Councilmember Jewett stated that they were at the Planning Commission meeting.

Councilmember Erickson stated that he spoke with Jeff Konen and was able to walk the property. He stated that the requests seem reasonable and the homeowners wanted to move their house to avoid water runoff from an adjoining property.

Councilmember Jewett asked about the fill needed around the swimming pool.

Councilmember Erickson stated that fill was needed to enhance and support the retaining wall. He noted that the back corner of the property drops off significantly.

Councilmember Jewett stated that he also walked the site but was not able to connect with the homeowners and did not locate any construction stakes.

Motion by Councilmember Erickson to accept the recommendations and findings of the Planning Commission to approve the variance request of Jeff & Pam Konen to exceed the maximum permitted grade alteration by three (3) feet for the property at 4693 Vine Hill Road as presented. Seconded by Councilmember Jewett. Motion carried 4-0.

B. Consider the variance requests of Summerville LLC to exceed the maximum permitted grade alteration and to exceed the maximum allowable roof eave encroachment for the property at 20350 Lakeview Avenue

Administrator Young stated that the applicant will be building an addition and completing a remodel for the nonconforming property at 20350 Lakeview Avenue. They are requesting a variance to exceed the maximum permitted grade alteration in conjunction with the construction of an accessory structure and a house addition, and to exceed the maximum allowable roof eave encroachment for the realigned garage.

He stated that many of the existing improvements on the property are nonconforming. Portions of the house and pool area are within the 100 foot lake yard setback and the patio and other landscaping areas are within the 30 foot bluff setback. The applicants are only proposing to rehab these nonconforming areas and the main body of the house will remain as is. He stated that beyond the nonconforming areas, the proposed improvements include a new addition at the southeast corner of the house, a realignment of the attached garage, and a new detached accessory structure.

He stated that Section 1312.04 of the Zoning Code requires a variance for any grade alteration greater than 3 feet at any point. The applicants are proposing a land alteration of up to 8 feet, and are seeking a variance of 5 feet from the maximum permitted grade alteration. The most severe grade change would be to allow lakeside lower level access to the proposed accessory structure. The two other areas exceeding the 3 foot limitation are adjacent to the proposed addition, and both of these areas are proposing less than 4 feet of grade change.

He stated 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. Neither of these concerns are the case with this proposal.

He stated that Zoning Coordinator Cooney does question whether the lower level lakeside entrance for the proposed garage would make the height of the garage exceed the 15 foot maximum accessory structure height. Based on how the access is designed, staff's opinion is that it does not exceed the height limit as the feature is comparable to an excavated basement access door or a large window sill.

He stated that Section 1310.02 of the Zoning Code allows roof eaves to encroach into a setback by as much as 3 feet. As proposed, the roof eaves would encroach 5.6 feet into the side yard. The garage is being realigned to be perpendicular with the front of the house, bringing the existing roof eaves closer to the property line. The existing house has 6 foot roof eaves, and the applicant would like to be architecturally consistent with the new garage eaves. The garage itself remains compliant with the required setbacks and the roof eave encroachment is minor.

He stated that the property is an R-2 property with a lot size of 93,174 square feet. For those R-2 lots that exceed minimum lot size of an R-1 lot, the City Code allows an increased structural footprint of up to 8,000 square feet with Council approval. With a proposed structural footprint of 7,997 square feet, the applicant is near the limit of this additional structural footprint allowance.

He stated that staff recommends approval of the variance requests to exceed the maximum permitted grade alteration by 5 feet and to exceed the maximum allowable eave encroachment by 2.6 feet, for the property at 20350 Lakeview Avenue.

He stated that the Planning Commission held a public hearing on the request at their February 20th meeting and recommended approval of the request as proposed on a 7-0 vote.

Administrator Young concluded the staff report.

Todd Irvine, a landscape architect with Keenan & Sveiven, provided a site plan showing the exact location of the proposed grade alterations on the property.

Mayor Skrede asked if the proposed garage was a two-story structure.

Todd Irvine stated that the garage is a one-story structure with a basement down below. He stated that the basement will be used for the storage of lake related equipment. He stated that the two-car garage with the awkward eaves is proposed to be turned to square up with the house. He provided a drawing of the proposed eave extensions and noted that the eaves will be well hidden from view until you drive well up the driveway. He stated that the eaves will be visible to the neighboring property owner but noted that the abutting neighbor has sent a letter consenting to the project.

Councilmember Jewett stated that he agreed with Zoning Coordinator Cooney's recommendations regarding the structural footprint. He stated that this is a unique property that can permit structures up 8,000 square feet yet is still under the 25% hardcover requirement.

Todd Irvine noted that the flat roof will minimize the massing effect.

Mayor Skrede stated that he thought they had done a nice job with the design.

Motion by Councilmember Jewett to accept the recommendations and findings of the Planning Commission to approve the variance requests of Summerville LLC to exceed the maximum permitted grade alteration and to exceed the maximum allowable eave encroachment for the property at 20350 Lakeview Avenue, as presented. I further move that the City Council approve a structural footprint of 8,000 square feet for the property. Seconded by Councilmember Erickson. Motion carried 4-0.

C. Adopt Ordinance No. 13-78, Amending Chapter 13 of the Zoning Code regarding Building Coverage, Land Alteration Permits, and Definitions of Finished Grade and Structure

Administrator Young stated that the first reading of this ordinance was presented for Council review at the February 5, 2018 Council meeting. He stated that the proposed changes are an attempt to update certain sections of the zoning code that may have become obsolete or contradictory to the current zoning code. He reviewed the changes are proposed for those sections of the Zoning Code pertaining to maximum structural footprint, land alteration permits, finished grade requirements, and the definition of “structure”.

Motion by Councilmember Erickson to approve the second reading and adopt Ordinance No. 13-78, an Ordinance Amending Chapter 13 of the Zoning Code regarding Building Coverage, Land Alteration Permits, and Definitions of Finished Grade and Structure, as presented. Seconded by Councilmember Gustafson. Motion carried 4-0.

D. Adopt Ordinance No. 11-10, Regarding Changeable Copy Signs

Administrator Young stated that the first reading of this ordinance was presented for Council review at the February 5, 2018 Council meeting. He stated that the amendment of the sign ordinance is intended to make the ordinance consistent with how the city has been regulating Changeable Copy Signs by allowing these signs to change not more than twice in a 24-hour period. He noted that this inconsistency was brought to staff’s attention by Councilmember Jewett.

Motion by Councilmember Jewett to approve the second reading and adopt Ordinance No. 11-10, an Ordinance Amending Changeable Copy Signs, as presented. Seconded by Councilmember Erickson. Motion carried 4-0.

E. Designate an LGU for Wetland Permit Applications with the Riley Purgatory Bluff Creek Watershed District

Administrator Young stated that discussion on this issue was also held at the February 5th Council meeting. He stated that the City of Deephaven is currently the Local Government Unit (LGU) in charge of administering the Wetland Conservation Act (WCA) within the Riley Purgatory Bluff Creek watershed area. He stated that the City could chose to maintain LGU

authority over the Riley Purgatory Bluff Creek watershed area or it could delegate that authority to the Riley Purgatory Bluff Creek Watershed District through the adoption of Resolution No. 06-18.

He stated that the Council asked at the February 5th meeting what the process would be to reverse the delegation of authority. He stated that if the City decides to delegate WCA authority to the watershed district, it would be unable to unilaterally recapture that authority without the consent of the watershed district or the Minnesota Board of Water & Soil Resources. In short, he stated it would not be a simple process to reverse the delegation of authority.

Mayor Skrede stated that the Riley Purgatory Bluff Creek Watershed District has not been very active over the years and has just relatively recently increased their funding and the size of their staff. He stated that the City would have to be sufficiently upset to want to take back the LGU authority.

Motion by Councilmember Gustafson to adopt Resolution No. 06-18, a Resolution regarding the Administration of the Minnesota Wetland Conservation Act and to Delegate the Riley Purgatory Bluff Creek Watershed District as the LGU. Seconded by Councilmember Erickson. Motion carried 4-0.

6. NEW BUSINESS

A. Approve Special Event Permit for Tour de Tonka & Firecracker Run

Administrator Young stated that Minnetonka Community Education will be sponsoring the 2018 Tour de Tonka on August 4th and co-sponsoring the 2018 Firecracker Run on July 4th along with the Excelsior Chamber of Commerce. He stated that the Public Safety Committee met with MCE Director Tim Litfin on February 13th to discuss both events and their potential impact on the City of Deephaven.

Tour de Tonka - the Committee reviewed the 2018 Tour de Tonka and the schedule of routes, parking and activities proposed for Deephaven, much of which were very similar to the slate of activities undertaken in 2017. At the conclusion of the discussion, the Public Safety Committee recommended approval of the proposed event for August 4, 2018.

Firecracker Run - The Firecracker Run is a relatively new event in Deephaven and this is the third year that a portion of the route will be held in Deephaven. Approval was granted for the event the past two years, as only the 10K run will enter into Deephaven. The participants will enter Deephaven north on Minnetonka Blvd, turning right on Cottagewood Road, and then right on Manor Road to Shorewood.

The Committee voiced concern that the event was starting a ½ hour later this year due to the request from the City of Excelsior, where the event is starting. The primary concern is that the later starting time will make it more difficult for Police Chief Johnson to monitor this road race and make it to the Cottagewood area to set up for the Cottagewood 4th of July. Mayor Skrede reached out to Excelsior Mayor Mark Gaylord to request a readjustment of the starting time but to no avail. Police Chief Johnson has concluded that the later start time for this event will make

it more of a challenge for him to coordinate both this event and the Cottagewood 4th of July activities but still believes it is manageable and has recommended approval of the Special Event Permit for the 2018 Firecracker Run.

Mayor Skrede stated that Excelsior Mayor Mark Gaylord did call him but they were unable to connect to discuss the starting time. He stated that to alleviate pressure on the Police Chief, the City could require the event organizers to pay for the additional staff that may be needed to monitor the race.

Motion by Councilmember Erickson to approve the Special Event Permit for the Tour de Tonka held on August 4, 2018 sponsored by Minnetonka Community Education and the Special Event Permit for the Firecracker Run held on July 4, 2018 sponsored by Minnetonka Community Education and the Excelsior Chamber of Commerce. Seconded by Councilmember Gustafson. Motion carried 4-0.

B. Other

There was no other New Business this evening.

7. UNFINISHED BUSINESS

A. Other

There was no other Unfinished Business this evening.

8. DEPARTMENT REPORTS

A. Police Department

Police Chief Johnson provided an update on the February Incident Report,

B. Excelsior Fire District

EFD Liaison Erickson stated that the EFD Board held their annual work session on future staffing issues on February 28th.

C. Public Works

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

D. Administration

Administrator Young provided a brief summary on the following items:

- April Newsletter
- Annual financial audit
- Engineering & Inspection service costs

- Williston Fitness Center
- September 4, 2018 Council meeting

9. **ADJOURNMENT**

Motion to adjourn by Councilmember Erickson, seconded by Councilmember Gustafson.
Motion carried 4-0. The meeting adjourned at 7:55 p.m.

Respectfully submitted,
Dana H. Young
City Administrator