

**DEEPHAVEN CITY COUNCIL MEETING  
MONDAY, MAY 4, 2015  
MINUTES**

1. **CALL MEETING TO ORDER:** Mayor Paul Skrede called the meeting to order at 7:03 p.m.

PRESENT: Mayor Paul Skrede, Councilmembers Keith Kask, Steve Erickson and Tony Jewett

ABSENT: Councilmember Darel Gustafson

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 Kask to approve the Consent Agenda, consisting of the following items:

- A. Approve April 20, 2015 Minutes
- B. Approve Verifieds
- C. Approve \$1,200.00 Fireworks Donation to South Lake Excelsior Chamber of Commerce

Seconded by Councilmember Erickson. Motion carried 4-0.

Councilmember Erickson abstained from the approval of the April 20, 2015 Council minutes as he was absent from the meeting.

4. **MATTERS FROM THE FLOOR**

Jason Ulbrich, Executive Director of Eagle Ridge Academy, and Jay Hromatka, Piper Jaffray & Company, were present to provide an update on the recent growth and achievements of Eagle Ridge Academy and to request that the City of Deephaven issue Charter School Lease Revenue Bonds and loan the proceeds to Eagle Ridge Building Company in order to:

- Finance the costs of acquiring and renovating a 210,000 S.F. building
- Establish a debt service reserve fund
- Refund the Series 2013 Bonds issued by the City of Deephaven
- Finance bond issuance costs

Jason Ulbrich thanked the Council for their past collaboration on the 2013 bond issue and provided an update on the continuing success of Eagle Ridge Academy. He stated that they are currently busting at the seams at their current facility due to the growth in the number of students. He stated that their current enrollment is 860 students, which they hope to grow to approximately 1,300 students within the next few years. He stated that Eagle Ridge has become a very popular choice due to its outstanding test scores and the desire for a classical education.

He stated that they are looking to acquire a 210,000 s.f. property located in the Opus complex in Minnetonka. This would enable them to offer more classes and extracurricular activities with a gymnasium and theatre for the performing arts. He stated that the reason for this search for a new facility was due to receiving a Department of Education replication grant to assist with expansion efforts. He stated that once they are in the new facility, they hope to sell their old building.

Councilmember Jewett asked about the parking capacity at their new facility.

Jason Ulbrich stated that the City of Minnetonka is currently conducting a traffic study but it appears that they will need much less parking space than currently exists.

Jay Hromatka stated that the City of Minnetonka intends to issue bank qualified debt this year, which would take them over the \$10 million dollar limit. He stated that although Minnetonka is not able to issue debt on their behalf, Minnetonka will still provide local host approval. He stated that they plan on coming back to Deephaven to pass a resolution authorizing the sale of bonds. He noted that Dorsey & Whitney will serve as bond council and they plan to close on the \$30 million dollar bond in mid-July.

Mayor Skrede noted that MN State Statues exempt the City from any liability or obligation for the repayment of the bonds since we are solely providing conduit financing.

Councilmember Jewett asked how much was issued in 2013 for that particular bond issue.

Jay Hromatka stated that it was \$9 million, which will be defeased by the new bonds.

Further discussion was held on the \$10 million dollar bank qualified debt limit and the fact that a City can issue up to this amount each calendar year.

Jay Hromatka stated that their proposed \$30 million dollar bond issue will not be bank qualified.

Mayor Skrede noted that a public hearing will be required prior to the adoption of the resolution.

Jay Hromatka stated that they will likely be coming back at the June 1<sup>st</sup> Deephaven City Council meeting.

## 5. PLANNING & ZONING REQUESTS

### A. Variance request, Rod Komis, 18374 Heathcote Lane – Request to encroach into the minimum required front yard setback for the construction of a new attached garage onto an existing non-conforming home.

Mayor Skrede asked for the Staff Report on this request.

Administrator Young stated that the applicant is proposing to demolish an existing non-conforming detached garage which encroaches twelve feet, two inches (12'-2") into the required fifty (50) foot front yard setback and construct a new attached three stall garage, which would lessen the degree of encroachment into the front yard setback by three feet, two inches (3'-2"). In addition, the existing garage is set at an angle to the house and street while the proposed garage would be aligned with the house and street.

He stated that, as noted by the applicant in the variance application, the location of the existing house is built into the slope of the lot that limits development options. The main living spaces are located on the lower level of the house and a new garage, if located at the 50' setback, would substantially reduce access to the light and air for the main living spaces of the house.

Section 1302.04(3) of the city zoning ordinance requires a minimum front yard setback of fifty (50) feet from the front property line. The requested front yard setback for the proposed attached garage is forty-one (41) feet. A variance to encroach nine (9) feet into the required front yard setback is being sought.

Administrator Young stated that the proposed garage addition complies with all other setback requirements, height requirements, maximum permitted grade alteration and the property is not located in the Shoreland Management District.

He stated that staff recommends approval of the application submitted by Rod Komis for the variance request of Section 1302.04 (3) of the zoning ordinance to encroach nine (9) feet into the minimum required fifty (50) foot front yard setback for the demolition of the existing non-conforming detached garage and construction of a new attached garage on the existing non-conforming single family home as presented at 18374 Heathcote Lane. He stated that the Planning Commission also recommended approval of the request on a 4-0 vote

Mayor Skrede asked if there were any questions of staff or the applicant. There were none.

Motion by Councilmember Kask to accept the recommendation and findings of Staff and the Planning Commission to approve the application submitted by Rod Komis for the variance request of Section 1302.04 (3) of the zoning ordinance to encroach nine (9) feet into the minimum required fifty (50) foot front yard setback for the demolition of the existing non-conforming detached garage and construction of a new attached garage on the existing non-conforming single family home as presented at 18374 Heathcote Lane.

The motion for approval was based on the following findings: (a) the proposal meets the intent of the ordinance and is in harmony with the orderly development of the city. The applicant is seeking to demolish an existing non-conforming garage and replace it with a new garage attached to an existing non-conforming single family home, reducing an existing encroachment; (b) the request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the development and redevelopment of residential property within the city; (c) the proposal is a reasonable use of the property, removing an accessory structure in need of repair and attaching it to the principal structure. The proposal would allow the property to be used in a more reasonable manner; (d) the principal structure was constructed in its current location in 1952, nearly twenty years prior to the adoption of the current setback standards; and (e) the proposal would not alter the essential character of the neighborhood. The proposed garage would be pulled back from the street and the design of the home would more closely resemble others in the immediate area.

Motion seconded by Councilmember Erickson. Motion carried 4-0.

**B. Variance request, Tom Nicol, 20225 Lakeview Avenue – Request to exceed the maximum permitted impervious surface area for the construction of rear yard patios and a new front walkway at 20225 Lakeview Avenue.**

Mayor Skrede asked for the Staff Report on this request.

Administrator Young stated that Tom and Elizabeth Nicol are proposing to construct a 298 square foot dining patio, a 335 square foot patio with a fireplace, and a 45 square foot front walkway. The additional hardcover would increase the impervious surface area from 24.1% to 29.8%, an increase of 4.8% above the required 25% standard.

Section 1350.06 (2) (a) of the Shoreland Management District Ordinance permits a maximum impervious surface area of 25%. The proposed impervious surface area sought by the applicant is 29.8%. A variance to exceed the maximum impervious surface area by 4.8% is being requested.

He stated that the applicant proposes the installation of a cistern and rain garden as a means to mitigate the increase in impervious surface area. They have calculated that the cistern system alone will result in a mitigated percent of hardcover of 15.9%. The City Engineer comments regarding the proposed cistern & rain garden are as follows:.

1. Perimeter erosion control devices should be installed by the contractor and inspected by the City prior to any work.
2. Rain garden details were not submitted. However, the volume reduction potential from the rain garden was not included in the Hard Cover Calculations.
3. The Grading Plan for the rain garden should be submitted to verify elevations and ensure no site drainage will be routed to adjacent properties.
4. The stormwater chamber is more than adequate to accommodate 1" runoff from the roof, and the emergency overflow will direct runoff to Lakeview Avenue.

He stated that the City Engineer also sent additional comments for Council review that have been distributed this evening.

He stated that staff recommends approval of the application submitted by Tom and Elizabeth Nicol for the variance request of Section 1350.06 (2) of the Shoreland Management Ordinance to exceed the maximum permitted impervious surface area by 4.8% for the construction of two at-grade patios at the rear of the existing home and a new front walkway as presented at 20225 Lakeview Avenue. He stated that the Planning Commission also recommended approval of the request on a 4-0 vote.

Mayor Skrede asked if there were any questions of staff or the applicant.

Councilmember Jewett stated that the City Engineer's recommendations in his April 29<sup>th</sup> memo were very straightforward, but he had a number of questions regarding the email the City Engineer sent over today. He asked if maximum impervious surface standards were essentially to control runoff.

Administrator Young stated that maximum impervious surface standards only pertain to properties within 1,000 feet of the shoreline. He stated that he believes this standard was originally adopted to lessen runoff and to ensure higher water quality entering the lake. He stated that if it were established only to manage water runoff, the standard would have applied to every lot throughout the City. However, he noted that impervious surface has become increasingly an issue about controlling storm water runoff.

Councilmember Kask stated that this standard was adopted when it was thought that the MN Department of Natural Resources was going to establish specific water quality standards, which it never did. He stated that some sort of licensing process requiring bi-annual inspections of these cisterns would be advised to allow for physical inspections for sediment. He added that we are going to see cisterns more frequently and need to verify that they are working.

Mayor Skrede noted that there are several things that we allow that we need to check on. He stated that he doesn't want to burden this applicant with these requirements but agreed that we need to look into some sort of licensing process.

Tom Nicol noted that his cistern is gravity fed and does not include require any mechanical operations.

Mayor Skrede stated that an inspection would still be helpful to address how a cistern should be installed if they should happen to encounter 6' of solid clay.

Further clarification was held on the applicant's assertion that the cistern will result in a mitigated impervious surface of 15.9%.

Councilmember Erickson stated that the typical cistern we have reviewed in the past dealt was a water holding device that required to be pumped out periodically. This is different from the cistern that is being proposed here, which is a tank with no bottom that holds water until it seeps

into the ground. He stated that he agrees with Councilmember Kask that we need to require a license or permit for the installation of a cistern. He noted that he has a cistern on his property to control erosion. He added that he also recognizes that with the size of this particular lot, it doesn't take much to get to 25% impervious surface. He noted that he likes what the applicant has proposed.

Mayor Skrede stated that we have tasked the Planning Commission with the review of this issue and will eventually get the standards that we need to license or permit this use.

Councilmember Jewett stated that he likes the concept of a cistern but is concerned that we may someday receive a request with 50% hardcover with a large enough cistern to get the mitigated hardcover down to 25%. He stated that an applicant should only be allowed so much credit for the cistern.

Councilmember Erickson asked how do we calculate what is allowable for mitigation credit or how much storm water do we want held in a yard. He stated that that applicant has done a very good job with this project and felt that the proposed patios are needed.

Mayor Skrede also stated that he favored what was proposed.

Motion by Councilmember Kask to accept the recommendation and findings of Staff and the Planning Commission to approve the application submitted by Tom and Elizabeth Nicol for the variance request of Section 1350.06 (2) of the Shoreland Management District ordinance to exceed the maximum impervious surface area by 4.8% for the construction of two at-grade patios at the rear of the existing house and a new front walkway as presented at 20225 Lakeview Avenue.

The motion for approval was based on the following findings: (a) the proposal meets the intent of the ordinance and is in harmony with the orderly development of the city; (b) the request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the development and redevelopment of residential property within the city; (c) the proposal is a reasonable use of the property. There are currently no outside "spaces" consistent with other residential properties. Installation of a cistern and rain garden mitigates the effects of the increased impervious surface area; (d) the subject property is below the minimum required lot area for the R-3 Zoning District and was permitted a subdivision combination in 2012, where 2,000 square feet was removed from the subject property and attached to the adjacent property, thus reducing its size even further. This limits the ability for the current owner to create outdoor space; and (e) the proposal would not alter the essential character of the neighborhood. The proposed use is consistent with those in the neighborhood and typically found on residential properties. The improvements are at grade and would have no visual impact.

Motion seconded by Councilmember Erickson. Motion carried 4-0.

**C. Variance requests, Cyclone Construction, 19500 Rosedale Avenue – Request to encroach into the minimum required front and west side yard setbacks for the construction of a new home on an existing non-conforming foundation at 19500 Rosedale Avenue.**

Mayor Skrede asked for the Staff Report on this request.

Administrator Young stated that Cyclone Construction has submitted an application for the reconstruction of an existing non-conforming garage and a new front porch. The existing garage will be removed to its foundation and constructed as a new, two-story garage, which would maintain the existing non-conforming west side yard setback of eighteen feet, three inches (18'-3"). Living space is proposed to be added above the proposed new garage.

The request for a new open front porch is part of the tear down of the existing rambler to its foundation caps and reconstructed as a two-story house. The two-story house will be expanded in two areas - the proposed open front porch, which will encroach six feet, five inches (6'-5") into the front yard setback, and a new dining area addition on the rear corner of the house. With the exception of the front porch, the remainder of the proposed two-story house will be in compliance with all other setback and height requirements.

Section 1302.04(3) of the city zoning ordinance requires a minimum front yard setback of fifty (50) feet from the front property line. The requested front yard setback for the proposed front porch and single family home is forty-three feet, seven inches (43'-7"). A variance to encroach six feet, five inches (6'-5") into the required front yard setback is being sought.

Section 1302.04(3) of the city zoning ordinance requires a minimum west side yard setback of twenty (20) feet from the west property line. The requested west side yard setback for the proposed garage and single family home is eighteen feet, three inches (18'-3"). A variance to encroach one foot, nine inches (1'-9") into the required west side yard setback is being sought.

Administrator Young stated that staff recommends approval of the application submitted by Cyclone Construction for the variance requests of Section 1302.04 (3) of the zoning ordinance to encroach six feet, five inches (6'-5") into the minimum required fifty (50) foot front yard setback for the proposed front porch / single family house and to encroach one foot, nine inches (1'-9") into the minimum required twenty (20) foot west side yard setback for the demolition and reconstruction of a non-conforming garage with a new second story addition as presented at 19500 Rosedale Avenue. He stated that the Planning Commission also recommended approval of the request on a 4-0 vote.

Mayor Skrede asked if there were any questions of staff or the applicant.

Councilmember Erickson noted that this lot is located in the R-2 District but has less than 20,000 s.f., which is more typical of the lot area in an R-3 District.

Mayor Skrede stated that there is documentation of an existing non-conforming garage at a distance of 18'-3" from the west side lot line. He stated that the only new encroachment request is for the front porch, which he sees as necessary for access into the house.

Councilmember Jewett stated that the applicant is proposing to tear the house down to the foundation and wondered if the plan to save the foundation was simply a cost savings proposition.

Mayor Skrede noted that the contractor thought the foundation was in good condition, which benefitted the applicant by being able to save approximately \$50,000.

Councilmember Erickson stated that an applicant is able to repair, rebuild or replace a non-conforming structure. He is able to remove the foundation if he finds it is in poor condition and rebuild the house as long as it stays within the envelope.

Councilmember Jewett cited the Jandrow example, where he later decided to remove the exterior walls of the first floor when he originally intended to only install a second floor. He stated that if this applicant were to tear the entire house down and move it back, we wouldn't have to grant a variance.

Councilmember Erickson stated that they are not required to move the house back.

Councilmember Jewett stated that he likes the idea of a front porch and the applicant could come back at a later date if they want to enclose it.

Motion by Councilmember Kask to accept the recommendation and findings of Staff and the Planning Commission to approve the application submitted by Cyclone Construction for the variance requests of Section 1302.04 (3) of the zoning ordinance to encroach six feet, five inches (6'-5") into the minimum required fifty (50) foot front yard setback for the proposed front porch / single family house and to encroach one foot, nine inches (1'-9") into the minimum required twenty (20) foot west side yard setback for the demolition and reconstruction of a non-conforming garage with a new second story addition as presented at 19500 Rosedale Avenue, subject to the condition that any future enclosure or modification of the front porch would be brought back for the review of the Planning Commission and City Council.

The motion for approval was based on the following findings: (a) the proposal meets the intent of the ordinance and is in harmony with the orderly development of the city. The applicant is seeking to demolish an existing non-conforming portion of the home and replace it with additional living space, while not increasing the degree of dimensional encroachment; (b) the request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which promotes the development and redevelopment of residential property within the city; (c) the proposal is a reasonable use of the property and only seeks to continue the existing use currently on the property, with the addition of a second story to add additional living space. The proposed porch provides a covered entrance to the home and architectural interest; (d) the west side of the home is placed within the existing setback requiring a variance for any replacement of the garage, while the placement of the home right at the required setback does not permit the construction of a protected entryway to the home without the issuance of a variance; and (e) the proposal would not alter the essential character of the neighborhood. The proposed structure setbacks are consistent with those currently in place in the neighborhood.

Motion seconded by Councilmember Erickson. Motion carried 4-0.

**6. UNFINISHED BUSINESS**

**A. Other**

There was no other Unfinished Business this evening.

**7. NEW BUSINESS**

**A. Accept Resignation of Patricia Thiede, Administrative Assistant**

Chief Cory Johnson stated that Pat Thiede is going to retire from the City after 32 years of service. He stated that Pat has been an extremely valuable asset to the City and its residents. He noted that the resignation is effective June 30, 2015.

Motion by Councilmember Jewett to accept the resignation of Patricia Thiede, Police Administrative Assistant, effective June 30, 2015. Seconded by Councilmember Erickson. Motion carried 4-0.

**B. Authorize Hiring an Administrative Assistant**

Chief Cory Johnson stated that he would like to hire a new Police Secretary as soon as possible. He stated that he would like permission to post for this position and move forward with interviews in order to get someone in place to work with Pat for a couple of weeks.

Motion by Councilmember Erickson to authorize staff to hire a new Police Administrative Assistant. Seconded by Councilmember Kask. Motion carried 4-0.

**C. Other**

Discussion was held on whether there would be any benefit to offering additional incentives to employees to provide advanced notice of their resignation. It was decided that there really isn't any particular benefit and that three out of the last four resignations had provided the City with sufficient advanced notice.

Councilmember Kask noted that an email that had been sent to the Council regarding the storage of boats and trailers. He stated that he would support a review of our nuisance ordinance to require boats to be used or in useful condition.

Councilmember Erickson stated that it is not uncommon for a resident to store items on his property until a decision can be made on whether these items are going to be used. He added that it is also important that these items be screened or covered. He wondered if this problem was big enough to look into.

Mayor Skrede recommended that staff and Police Chief Johnson look into providing specific language on a public nuisance ordinance for the Council to review at their next meeting.

Mayor Skrede noted that an Executive Session will be held at 6:00 p.m. on May 18<sup>th</sup> to review potential litigation.

**8. DEPARTMENT REPORTS**

**A. Excelsior Fire District**

Fire Board Liaison Steve Erickson provided a brief review of the 2016 EFD Budget. Discussion was held on the proposed cost sharing of a full-time staff member between the Excelsior Fire District and the Chanhassen Fire Department, the sales tax exempt status of the EFD beginning January 1, 2016, the proposed addition of a concrete apron at Station No. 1 in 2016, and the proposed purchase of an aerial truck in 2018.

**B. Police Department**

Police Chief Johnson reviewed the April 2015 Incident Report and provided an update on his search for a part-time CSO Officer.

**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:

- Summer Hours
- Part-Time Summer Help
- City Cleanup Day - \$1,304
- Arbor Day Celebration
- State Audit Report
- Street Sweeping
- Potential interest in the purchase of memorial benches
- The groundbreaking ceremony for the Outdoor Learning Center was held on April 29<sup>th</sup>

**9. ADJOURNMENT**

Motion to adjourn by Councilmember Erickson, seconded by Councilmember Jewett. Motion carried 4-0. The meeting adjourned at 9:15 p.m.

Respectfully submitted,  
Dana H. Young  
City Administrator