

**DEEPHAVEN CITY COUNCIL MEETING
THURSDAY, MAY 7, 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, Steve Erickson, Darel Gustafson, and Tony Jewett

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

- A. Approve April 16, 2018 & April 30, 2018 City Council Minutes
- B. Approve Verifieds
- C. Approve Temporary Intoxicating Liquor License to the Lake Mtka Sailing School
- D. Appoint Jeff Eaton to the Deephaven Planning Commission

Seconded by Councilmember Erickson. Motion carried 5-0.

4. **MATTERS FROM THE FLOOR**

David Gross, 20245 Lakeview Avenue, was present to state that the ice-out on Lake Minnetonka was three weeks later than average. He stated that he has talked with several commercial marina operators who have stated that all boats will not be in the water by Memorial Weekend because they are so far behind. He stated that the City of Deephaven requires all boats to be at their mooring spaces by June 1st. He stated that due to this later ice-out and the inability of a number of boaters to obtain their boats from storage, he recommended that the City Council amend the ordinance to extend the June 1 Deadline until June 8th and reduce the 90 Day Rule to 83 days.

Councilmember Carlson asked if a one week extension was enough. David Gross stated not really.

Mayor Skrede stated that he would prefer to extend the June 1st Deadline administratively rather than through an ordinance amendment.

Councilmember Carlson stated that there is always enough motivation for people to get their boats in the water. He stated that he is sympathetic to boat owners and marina operators this year. He noted that he would be agreeable to extending the June 1st Deadline to June 15th.

Mayor Skrede thanked David Gross for bringing this matter to the attention of the Council.

Motion by Councilmember Erickson to extend the date that watercraft has to be at their assigned space from June 1st to June 11th. Seconded by Councilmember Jewett. Motion carried 5-0.

5. PLANNING & ZONING REQUESTS

A. Consider the Conditional Use Permit request of Woodbury Tandem Limited Partnership to expand the parking lot on the property and to install an illuminated sign at 18315 Minnetonka Boulevard

Cooney presented the staff report. He said that the applicant is proposing to expand the parking area on the property and install an illuminated sign. He said the applicant is in the process of completing a renovation on the existing building and seeks to make these improvements as the building prepares for its new tenants.

Cooney said that Section 1310.09 (Subd. 3.) states that, “No building permit will be issued for improvements on land in a commercial district until the site plan has been reviewed by the Planning Commission and approved by the Council. The notices and procedures for such review and approval will be the same as those for consideration of an application for a Conditional Use permit.” Cooney noted that this section of the ordinance is written to primarily address new commercial building construction; the parking lot expansion is regulated by this section as well. He said that the applicant is also adding a patio on the Minnetonka Boulevard side of the building.

Cooney said that the applicants are proposing to expand the parking lot to accommodate 24 vehicle parking spaces. He noted that for office space, city code requires 1 parking space per 330 feet of gross floor area of the building. Cooney said that with one floor of leasable space and a footprint of 3,445 square feet, city code requires a minimum of 10 parking spaces for the building.

Cooney noted that stormwater mitigation is required by the city only for those commercial properties that exceed 75% impervious surface area. He said that the current expansion would bring the property to 53% impervious. Cooney said that the Minnehaha Creek Watershed District has more restrictive thresholds for commercial properties, and the applicant will be required to comply with their mitigation requirements.

Regarding the proposed sign, Cooney said that Section 1115.04(2) states that no sign shall be erected, altered, reconstructed, maintained or moved in the city without first securing a Conditional Use Permit. He noted that the code further states the content of the sign shall not be reviewed or considered in determining whether to approve or deny a sign permit.

Cooney said that Section 1115.09 (a) states that “the size of a sign may not exceed 15 percent of the wall area of the front façade of the structure in which it is located and in no case exceed 100 square feet for all other types of signs.” He said that the applicant is proposing a 2-sided sign with 23.625 square feet per sign face, or 48.25 square feet total and that as proposed, the signage meets ordinance requirements. He noted that the proposal would illuminate the sign externally with a single 200 lumen led light per side.

He said that Section 1305.03(1) limits the hours a business can sell goods and services to consumers to only between the hours of 6 AM and 9:30 PM and that Section 1305.03(3) states that interior and exterior lighted signs permitted to businesses may operate during business hours only.

Cooney said that he recommends approval of the conditional use request to expand the existing parking lot and install a 48.25 square foot illuminated ground sign as proposed for the property at 18315 Minnetonka Boulevard. He said that there is a need to provide parking for and advertise the businesses and upon review of the application, it was determined that (a) the proposal will have no impact on the overall development of the community; (b) there will be no impact on the character and development of the neighborhood; (c) there will be no impact on the health, safety and welfare of the occupants of surrounding lands; (d) there will be no impact on traffic or parking conditions due to this signage; and (e) there will be no negative impact on property values on the subject property or those in the surrounding area.

Cooney said that the recommendation is made with the following conditions:

- (a) that the hours of illumination for the sign be as outlined in Section 1305.03 of the ordinance (only illuminated between the hours of 6 AM and 9:30 PM)
- (b) that the applicant comply with the mitigation requirements of the Minnehaha Creek Watershed District

Cooney said that the Planning Commission held a public hearing at their April 17 meeting and, on a 5-0 vote, recommended approval of the request based on the recommendation, findings, and conditions of staff.

Cooney concluded his staff report.

Councilmember Jewett asked about the MCWD requirements. Cooney said that there have been e-mail exchanges, but that he is unsure of the specific requirement.

Mayor Skrede said the MCWD requirements are not a Deephaven issue. Councilmember Gustafson said that the conditions in the staff report address the MCWD requirements.

Councilmember Carlson asked about directing water on the site to a rain garden that would capture runoff from the parking area.

John McGary, owner’s representative, said that he would like to direct water towards the southwest corner of the site since there tends to be water that collects and freezes there. McGary

asked if he could remove the concrete slab where the old bus stop used to be. He also asked if some curbing could be installed to keep water from overflowing onto the sidewalk.

City Administrator Young said that the concrete pad was no longer in use.

Mayor Skrede said that he was fine with the removal of the concrete slab since the bus stop has been abandoned. He said that he would be willing to have a curb installed to help contain the water.

Councilmember Carlson asked if the signage reflected the tenants in place.

McGary said that was correct. He said that he would like to reconfigure the signage to allow more room for the tenant's names, but the square footage would be the same. He said that they are proposing this sign now that also leaves space for tenants to have their own signage later.

Councilmember Jewett asked if they were going to build all of the parking stalls now. McGary said that yes, they would construct all the new parking now with spaces 11-24 as well as widening the drive lane to allow for a bi-directional approach.

Motion by Councilmember Carlson to approve based on the findings, conditions, and recommendations of the Planning Commission. Motion was seconded by Councilmember Jewett. Motion carried 5-0.

B. Consider the variance requests of Essay Holdings, LLC, property owner, to encroach into the minimum required side yard setback at 19035 Lake Avenue

Cooney presented the staff report. He said that the property owner has applied for a variance to encroach into the minimum required side yard setback in order to build a new house on the property. He said that, at 10,069 square feet, the property is an undersized R-3 property. Cooney said that the property is 50 feet wide, and the existing house was built in 1920 according to Hennepin County records.

Cooney said that Section 1302.05(3) of the city ordinance requires combined minimum side yard setbacks of 25 feet with a minimum side yard of 10 feet. He noted that the proposed west side yard setback would be 9.8 feet and applicant is seeking a variance of 5.1 feet from the minimum required side yard setback.

Cooney said that, while a fifty foot lot width is narrow, city code only requires a 25 foot house width, so a code compliant house is possible on the property without a variance. He noted, however, that the city may find that the minimum house width is less than optimal for a modern house.

Cooney said that another primary consideration is that the city has a number of 50 foot wide lots and granting variances primarily due to lot width constraints is likely to continue to generate variances in the future. He pointed out that the city has granted reduced setbacks for 50 foot

wide lots in the past and those variances have not always been based on existing nonconforming conditions.

Cooney said that if a variance were to be granted for the property, it is staff's opinion that the 10 foot side yard setback on each side is a generally favorable solution. He said that since the city's minimum side yard setback is 10 feet, the setback distance is quite common throughout Deephaven and does not unreasonably punish any particular neighbor. Cooney noted that even in a non-variance situation, one of the adjoining properties would have a 10 foot setback.

He said that while the property exceeds 25% impervious area, the property is beyond the Shoreland Management District, and therefore a mitigation proposal is not required as part of the variance request. Cooney said that the property owner will be required to submit a mitigation plan at the time of building permit to mitigate the property to the equivalent of 25% impervious or less.

Cooney said that he recommends approval of the variance request to encroach into the minimum required side yard setback by 5.2 feet for the property at 19035 Lake Avenue, as proposed, 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 small size of the lot creates a number of challenges for the property, but the proposed single family house remains in harmony with the purposed 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?

Yes. The proposal puts the property to a reasonable use by replacing the previous single family home, constructed in 1920, with a new single family structure.

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

Yes. The property was platted and developed prior to the city's current ordinance requirements regulating setbacks. The circumstances of the narrow lot with tend to be an issue on properties that were platted and developed prior to the adoption of the city's zoning provisions.

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 proposed setbacks provide a reasonable setback for the construction of the home and continued maintenance of it. The proposal would be consistent with the single-family character of the neighborhood.

The Planning Commission held a public hearing at their April 17 meeting and, on a 5-0 vote, recommended approval of the request based on the recommendation and findings of staff.

Cooney concluded his staff report.

Councilmember Carlson asked about the drainage for the property. Tom Osfar, builder for the property owner, said that they would be providing a rain garden as required.

Councilmember Erickson said that this property is similar to 3620 Northome Avenue which was also granted variances. He said that he is worried about the side of the house and that he would like to see downspouts and drain tile carry water to the back of the property.

Osfar said that side yard swales are proposed and that 10 feet should be adequate for a swale. He said that most water will drain naturally towards the rear anyways.

Councilmember Carlson said that the roof eaves encroach 2 feet and that makes the actual roof setback less.

Mayor Skrede said that he would want to see gutters and drain tile and that he was more worried about heavier rains.

Councilmember Erickson said that he has seen multiple failures on swales in Deephaven and that he would like to see something hard piped along the side yard.

Osfar said that drain tile is fine until it freezes.

Councilmember Erickson said that he understands the freezing problem which can be managed with an ice gap. He said that he is concerned about the typical 2 inch downpour that would quickly jump the swale and run into the neighbor's yard.

Motion by Councilmember Erickson to approve the variance request of Essay Holdings, LLC to encroach into the minimum required side yard setback by 5.2 feet at 19035 Lake Avenue. The motion is conditioned that the applicant will be required to install downspouts linked to underground piping that directs all water in the side yards to the rear of the property. Motion was seconded by Councilmember Gustafson.

Councilmember Carlson said some of the property drains towards the front and asked if Councilmember Erickson wanted that water to drain towards the front yard.

Councilmember Erickson said that he wants all of the water draining towards the back.

Osfar said that the way the roof is designed it would be difficult to get that to the rear of the house. Councilmember Erickson said that roof area could also be captured by drain tile and directed towards the rear yard. He said that he did not want to see the water become the city's problem. Councilmember Erickson said that the property is tripling the existing hardcover.

Osfar said that he was not sure there was enough elevation change to get the water from the front to the back.

Councilmember Erickson amended his motion to add that the applicant will manage all water on the property and adhere to the city engineer's recommendation to drain as much water as is practicable to the rear of the property. Motion carried 5-0.

C. **Consider the variance requests of Joe and Casey Bergquist, property owners, to encroach into the minimum required lake yard setback and to exceed the maximum permitted structural footprint for an accessory structure at 19094 Minnetonka Boulevard**

Cooney presented his staff report. He said that the property owners have applied for variances to encroach into the minimum required lake yard setback and to exceed the maximum permitted structural footprint in order to build an accessory structure in the lake yard of their property. He said that the property is a 53,270 square foot in size and is zoned R-2. Cooney said the structure is to be used for storage and will replace an existing, smaller structure in the lake yard.

Cooney said that Section 1302.04(3) of the city ordinance requires a minimum lake yard setback of 100 feet. He said the applicant is proposing a setback of 53 feet and applicant is seeking a variance of 47 feet from the minimum required lake yard setback. He said that he applicant would like to use the accessory structure for storage of personal property associated with the use of the lake.

Cooney stated that the property contains a bluff in the lake yard which is situated between the house and a large, usable lakeshore area. He noted that there is 38 feet of elevation change between the usable portion of the lake yard below the bluff and the rear of the house. Cooney said that the property has a small accessory structure in this area, but the applicant has stated that it is too small to be functional for their needs. He said the existing accessory structure would be removed. Cooney said that the applicant has noted that the structure will be freestanding, not be built on a foundation, and could be removed from the property at any time. Cooney said that the property currently has a tram along the hillside, but the tram is only large enough to haul 1 or 2 small items at a time.

Cooney said that Lake Minnetonka is regulated by the Minnesota DNR as a "General Development" lake and that state law has set the minimum setback requirements for General Development lakes with municipal sewer systems at 50 feet from the Ordinary High Water Level. Cooney noted that this setback applies to principal and accessory structures. He said that, while the City of Deephaven has adopted more restrictive standards than the state, several Lake Minnetonka cities (including Mound, Greenwood, Shorewood, Tonka Bay) have adopted the 50 foot setback. Cooney said that the location of the proposed structure at 19094 Minnetonka Boulevard would exceed Minnesota DNR shoreland regulations.

Cooney said that Minnesota shoreland regulations also include language related to "Water Oriented Accessory Structures" that permit one accessory structure (less than 250 square feet in size in most cases) within the required lake yard setback. He said that the City of Deephaven has

not adopted this language and the current city ordinance is more restrictive than state law. Cooney noted that since the proposed structure is situated over 50 feet from the OHWL, it is not considered a Water Oriented Accessory Structure under state regulations. He said that the Minnesota DNR requested information but did not offer any comments on the application.

Cooney said that Section 1302.04(3) of the city ordinance limits the maximum structural footprint for the property to 6,000 square feet. Cooney said the applicant is proposing to expand the nonconforming structural footprint on the property by 144 square feet. The house was recently completed and the house and the existing shed were built to the maximum allowable footprint.

Cooney said that a 329 foot deck was built in the lake yard and approved by staff at the time of building permit for the house. He said that, at the time, staff was unsure if the 6,000 limitation was for "building coverage" or "structural coverage" since the ordinance mentions both and that staff has since received clarification from the City Council on the matter.

Cooney said that the property is allowed 1,000 square feet for accessory structures and that the proposed shed would be the only accessory structure on the property.

Cooney said that the city should be very careful in granting variances for lake yard accessory structures, since these types of structures are both desirable and controversial. He said that, in his opinion, the 38 feet of elevation change in the lake yard coupled with the fact that an accessory structure already exists in this area creates a unique circumstance that would not necessarily set a precedent for similar requests in the future. He said that it is also fairly unique to have so much usable yard space beyond the bluff area. He said that for those properties that do contain bluffs, the bluffs typically drop directly to the lake, and very few taper into a usable backyard area beyond the bluff. Cooney pointed out that the notable exception would be the few properties directly to the north of the applicant's property that share a similar topographic layout. Cooney said that since the structure is over 50 feet from the lakeshore, it is beyond what could reasonably be considered a boathouse and it exceeds state shoreland setback regulations for principal structures.

Cooney said that he recommends approval of the variance request to encroach into the minimum required lake yard setback by 47 feet and to expand the existing nonconforming structural footprint by 144 square feet for the property at 19094 Minnetonka Boulevard, as proposed, based on the following findings:

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

Yes. The ordinance is intended to limit uncontrolled development within the shoreland areas. The proposal is a modestly sized structure and, at 53 feet, is set back as far from the lakeshore as is practical while still remaining functional for the stated purpose. The bluff impedes setting the structure back any further from the lake, and locating the structure beyond the bluff would require that it be setback approximately 160 feet from the shoreline.

Is the variance consistent with the comprehensive plan?

The request is consistent with the Comprehensive Plan's protection elements for lakes in that it exceeds Department of Natural Resources shoreline standards for principal structures.

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

Yes. The accessory structure is a reasonable proposal for the unique conditions of the property. With the steep grade change between the house and the lake yard area below the bluff, a storage shed in this area is a reasonable request in order to keep lake-oriented personal property accessible. The existing smaller shed is not large enough to store lake yard accessories such as kayaks, paddleboards, etc.

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

Yes. There is 38 feet of elevation change between the rear of the house and the usable area near the lakeshore. There is over 65 feet of usable lake yard beyond the bluff, which is a unique circumstance for lakeshore properties that include a bluff. Finally, the property has an existing nonconforming structure within the lake yard setback.

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

No. While accessory structures within the lake yard are rare, this property has an existing lake yard structure. The proposed structure is relatively modest in scale. Further, the accessory structure is set back 53 feet from the lakeshore, is set back as far as practical while still remaining functional for serving the lake yard area.

Cooney said that the Planning Commission held a public hearing at their April 17 meeting and on a 3-1 vote recommended approval of the proposal as presented based on the recommendation and findings of staff.

Cooney concluded his staff report.

Councilmember Gustafson asked about the portability of the shed. Cooney said that the shed does not have a permanent foundation or footings and could be easily removed from the property. He said that there was not an intention to move the shed, but it could be if need be.

Joe Bergquist said that they chose the location since it was less impactful to the neighbors.

Mayor Skrede said that, since it was so far from the lake, it was not a boathouse but an accessory structure.

Councilmember Erickson said that the property was very unusual with all of the usable land below the bluff.

Councilmember Carlson said that the structure will help enhance the look of the lakeshore since it will allow the removal of personal property from view.

Motion by Councilmember Gustafson to approve the request as proposed based on the recommendation and findings of the Planning Commission. Motion was seconded by Councilmember Erickson. Motion carried 5 to 0.

D. Short-Term Rental Discussion

Cooney said that he had received a couple of complaints regarding short-term rentals, specifically Airbnb, within the city. He said that the most recent complaint was related to on-street parking at a new rental property. Cooney said that the city does not have an ordinance regulating this type of activity and asked if the City Council would like the Planning Commission to consider it.

Councilmember Carlson said that the problem is situations such as bachelor parties that turn into disruptive situations. He said that this is a relatively new issue and said that the question was if the city wanted to be proactive with an ordinance.

Mayor Skrede said that, based on the few complaints, he does not think it is a problem at this point and would prefer not to create new regulations.

Councilmember Gustafson said that the impacts from these types of situations can be handled by the police department and that he does not see the need for an ordinance. The other councilmember's concurred.

6. NEW BUSINESS

A. Present Ordinance No. 04-62, Amending Fees on Stormwater Mitigation Inspections

Administrator Young stated that Mayor Skrede mentioned that he thought it would be a good idea for the City Engineer to inspect those storm water mitigation structures that the City Council have been approving during the variance process or during the building permit process for projects that exceed 25% hardcover standards outside the Shoreland Management District. He also stated that he would like the City to develop fees to recover the cost of this inspection.

He stated that the ordinance presented this evening would attempt to address this issue in two ways. First, it would require an additional \$150.00 inspection fee to be charged as part of the building permit fee for any project that requires a storm water mitigation structure (rain garden, cistern, eaves, etc). This \$150.00 fee would be in addition to the current \$100.00 fee that is charged for the City Engineer to do a desktop evaluation of the proposed grading plan to evaluate the storm water impact of a project.

And second, an additional \$150.00 inspection fee would be added to the \$450.00 variance fee for any request that requires a storm water mitigation structure but does not require a building permit application. This type of request usually involves a hardcover variance.

Mayor Skrede stated that an example of this type of inspection would be with a downspout to ensure it is installed properly to the underground pipe.

Further general discussion was held on the intent and impact of the ordinance.

Administrator Young stated that Ordinance No 04-62 is presented for Council review this evening and will be up for adoption on May 21st.

B. Other

There was no other New Business this evening.

7. UNFINISHED BUSINESS

A. Change Order No. 2, Warming House Construction Project

Administrator Young stated that the City was notified late last week of soil corrections needed underneath the new warming house at Thorpe Park. He stated that Bollig & Sons Excavating gave a price of \$31,096.00 to import good soil and export bad soils from an area of approximately 60' x 50' to a depth of approximately 8'. He stated that the Warming Construction Committee met with Bollig & Sons and the contractor earlier this morning to review the project area and discuss alternatives.

Councilmember Carlson stated that there is currently a 4' hole at the east end of the site that has some water at the bottom. He stated that this water is either frost or ground water that will continue to fill the hole. He stated that this is either a purged water situation or a ground water situation. He noted that it would be helpful to know the elevation of the Thorpe Park pond. He added that there are a number of different ways to address this situation but, either way, we will need to dewater the site to evaluate options. He stated that we have contacted Braun to do some test borings and to provide us with a report on the soil conditions. He added that, according to our construction contract, he doesn't know if this is our problem or the contractor's problem.

Councilmember Erickson asked if the solutions change because we are building a warming house.

Councilmember Carlson stated that we are building to only 2,000 pounds with a warming house. He stated that the footings will be installed below the frost with two foot wide footings. He stated that we may have to expand to four foot wide footings. He stated that we need the test borings to go down deep enough to where you can identify the best possible solutions.

Mayor Skrede noted that we are not changing anything above grade. He stated that one potential option instead of soil corrections is the potential use of screw piles.

Further discussion was held on whether to authorize the change order to proceed with the soil correction or to wait until there is further information to decide on the best course of action.

Councilmember Carlson noted that discussions between the soil engineer and structural engineer will take up at least the rest of this week.

Councilmember Gustafson stated that he didn't think this is the City's responsibility.

Mayor Skrede stated that he would like the Council to authorize contracting with Braun to provide soil borings and a report in the amount of approximately \$5,000.

Councilmember Erickson noted that since this is a soil investigation that we are requesting, it is our cost.

Motion by Councilmember Erickson to authorize Braun to prepare soil borings and a report in an amount not to exceed \$5,000, with the credit limit given to the Warming House Construction Committee covering any additional cost over and above \$5,000. Seconded by Councilmember Jewett. Councilmember Gustafson opposed. Motion carried 4-1.

B. Other

There was no other Unfinished Business this evening.

8. DEPARTMENT REPORTS

A. Excelsior Fire District

EFD Liaison Steve Erickson provided the following update on recent EFD activities:

- Two recent work sessions have been held on staffing issues.
- The 2019 Budget & updated Capital Equipment Plan have been reviewed. He noted that the heavy equipment schedule has been moved out to 25 years.
- The Roll-In Event was held for Ladder 11.
- The 2017 Year in Review was provided.
- The 2017 investment performance of the Relief Association warranted a 5% per year of service benefit increase.

He noted that he has asked staff to email out a copy of the 2017 Year in Review for council review.

B. Police Department

Police Chief Johnson reviewed the April 2018 Incident Report and the hiring process, which has been extended to May 15th.

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
- State Audit Report
- Street Sweeping Schedule
- City Cleanup Day
- Police Vehicle Reimbursement
- Deer Management
- Kindergarten Meetings

9. **ADJOURNMENT**

Motion to adjourn by Councilmember Erickson, seconded by Councilmember Gustafson.
Motion carried 5-0. The meeting adjourned at 9:17 p.m.

Respectfully submitted,
Dana H. Young
City Administrator